21st September 1939

THE

LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

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(30th August to 22nd September, 1939)

TENTH SESSION

OF THE

FIFTH LEGISLATIVE ASSEMBLY, 1939

NEW DELHI
GOVERNMENT OF INDIA PRESS
1940.

Legislative Assembly.

President:

THE HONOURABLE SIR ABDUR RAHIM, K.C.S.I.

Deputy President:

MR. AKHIL CHANDRA DATTA, M.L.A.

Panel of Chairmen:

DR. SIR ZIAUDDIN AHMAD, C.I.E., M.L.A.

MR. M. S. ANEY, M.L.A.

SIR COWASJI JEHANGIR, BART., K.C.I.E., O.B.E., M.L.A.

MR. A. AIKMAN, C.I.E., M.L.A.

Secretary:

MIAN MUHAMMAD RAFI, BAR.-AT-LAW.

Assistants of the Secretary:

MR. M. N. KAUL, BAR.-AT-LAW.

KHAN SAHIB S. G. HASNAIN.

Marshal:

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

Committee on Petitions:

MR. AKHIL CHANDRA DATTA, M.L.A., *Chairman.*

MR. A. AIKMAN, C.I.E., M.L.A.

SYED GHULAM BHIK NAIRANG, M.L.A.

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

RAJA SIR VASUDEVA RAJAH, C.I.E., M.L.A.

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LEGISLATIVE ASSEMBLY.

Thursday, 21st September, 1939.

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

MEMBER SWORN.

Mr. Dhirendra Nath Mitra, C.B.E., M.L.A. (Government of India : Nominated Official).

STARRED QUESTIONS AND ANSWERS.

(a) ORAL ANSWERS.

CURTAILMENT IN THE DURATION OF THE STAY OF THE GOVERNMENT OF INDIA OFFICES IN SIMLA.

†260. ***Mr. Suryya Kumar Som** : Will the Honourable the Home Member please state :

(a) whether the duration of the stay of the Government of India Offices in Simla for the next season and thereafter has been curtailed due to the permanent location of the Secretariat at New Delhi from next October ; if so, for what period and whether there is no further possibility of curtailment ; and

(b) whether Government propose to bring up the camp offices only for four months at the most ; if not, why not ?

The Honourable Mr. J. A. Thorne : (a) and (b). I refer the Honourable Member to the Press communiqué, dated the 25th May, 1939 (copies of which are in the Library of the House) and to my reply to Mr. Lalchand Navalrai's starred question No. 54 of the 1st September, 1939.

DIVISION OF OFFICERS OF THE RAILWAY DEPARTMENT IN CERTAIN CATEGORIES.

261. ***Maulvi Muhammad Abdul Ghani** : Will the Honourable the Finance Member please state :

(a) whether officers in the Railway Department are divided into two categories, *viz.*, the Secretary of State's officers and the Governor General's officers ; if so, since when ;

(b) what is the distinction between, and educational qualifications of, these two categories of officers, and their respective functions ;

†Answer to this question laid on the table, the questioner being absent.

(c) whether it is a fact that the Secretary of State's officers are ordinarily Europeans and the Governor General's officers are ordinarily Indians ;

(d) whether it is a fact that the Secretary of State's officers ordinarily get overseas pay in addition to their pay proper and the Governor General's officers do not ordinarily get this overseas pay ;

(e) what are the different scales of the rates of overseas pay allowed to respective officers of the Secretary of State's group ;

(f) whether it is a fact that more than two years ago the Railway Board issued orders to the effect that the Calcutta and Bombay compensatory allowances should be withdrawn from all railway officers including the Secretary of State's officers and the Governor General's officers ;

(g) whether it is a fact that after the lapse of more than two years the Railway Board have ordered that in the case of the Secretary of State's officers, the compensatory allowances should be paid to them again with effect from the date from which they were stopped ;

(h) whether it is a fact that under these orders the Secretary of State's officers will receive arrears of compensatory allowances for more than two years ; if so, the total amount of such allowances ;

(i) whether it is a fact that compensatory allowance is given to re-imburse an officer for expenditure incurred by him in the discharge of his official duties ;

(j) whether it is a fact that there are orders to the effect that compensatory allowances should be so fixed as not to be a source of profit to those who received them ; if so, whether Government propose to lay a copy of the order on the table ;

(k) the reason why the compensatory allowances have not been restored in the case of the Governor General's officers ; and

(l) whether it is a fact that the Government of India decided to discontinue the compensatory allowances at Calcutta and Bombay because the cost of living had gone down ?

The Honourable Sir Jeremy Raisman : (a) Prior to the 1st of April, 1937, officers were appointed to the Railway Department both by the Secretary of State and by the Governor General ; the former are referred to as Secretary of State's officers and the latter as Governor General's officers. Since this date all appointments are made by the Governor General and the distinction, therefore, is disappearing.

(b) The conditions of service of officers who were appointed by the Secretary of State are, under the Government of India Act, 1935, to be prescribed by the Secretary of State and of officers appointed by the Governor General by the Governor General. There is no distinction in their respective functions ; nor was there, broadly speaking, any distinction between the educational qualifications required of the two classes of officers at the time of appointment.

(c) Yes ; but there are many Indian officers in the Services who were appointed by the Secretary of State.

(d) Yes ; but certain Indian officers who were appointed before a certain date also draw overseas pay.

(e) I would refer the Honourable Member to the Superior Civil Services Rules, a copy of which is available in the Library of the House.

(f) and (g). Yes.

(h) Arrears are to be paid from the date of stoppage, but the period will, in most cases, be considerably less than two years. The total amount of back allowance paid or payable to State Railway officers up to the 31st of July, 1939, as a result of restoration was Rs. 2,06,224-9-0.

(i) and (j). I would refer the Honourable Member to Rules 9 (5) and 44 of the Fundamental Rules, a copy of which is available in the Library of the House.

(k) The matter is under consideration.

(l) The allowances were discontinued because it was considered that the difference in cost of living at Bombay and Calcutta as compared with other stations in India did not warrant their continuance.

Mr. Lalchand Navalrai : With reference to part (j), may I know whether the allowances are so fixed as not be a source of profit to those that receive them ?

The Honourable Sir Jeremy Raisman : My reply was : I would refer to the Fundamental Rules under which compensatory and other allowances are not to be a source of profit.

Mr. Lalchand Navalrai : I want a definite reply from the Honourable Member whether it is actually in force or not ?

The Honourable Sir Jeremy Raisman : The question which the Honourable Member asks me is a question on which obviously two opinions are possible. It was on the view that the allowances were to some extent a source of profit that they were abolished and it was on a conflicting view that perhaps that has not been proved that they have been restored.

Maulvi Muhammad Abdul Ghani : What is the total number of the Secretary of State officers and the number of Indians therein ?

The Honourable Sir Jeremy Raisman : I require notice. I have not got the information with me.

Mr. Muhammad Nauman : May I ask why is it that it has disappeared ? What is the percentage of disappearance and from what date has the Honourable Member been able to calculate in giving his answer ?

The Honourable Sir Jeremy Raisman : The position is that no further recruitments are being made by the Secretary of State and that has been the practice for some time, and, in the course, I suppose, of twenty years or so all the Secretary of State's officers will have disappeared from this service.

Maulvi Muhammad Abdul Ghani : I find that mostly the Governor General's officers are Indian officers and the Secretary of State's officers are Europeans. Does it follow from this that because the Governor General is in India, he recruits Indian officers, and because the Secretary of State is in England, he recruits only Europeans ?

The Honourable Sir Jeremy Raisman : Obviously in practice the fact that the Secretary of State used to recruit in England meant that he recruits largely Europeans as well as a certain number of Indians. The recruitment in India was naturally and entirely Indian. But that is not the basis of the distinction. There is a legal distinction in that the officer recruited by the Secretary of State is subject to the rule-making powers of the Secretary of State, whereas officers recruited by the Governor General are completely under the rule-making control of the Governor General.

Maulvi Muhammad Abdul Ghani : Are not Indians entitled to be appointed in the group of Secretary of State's officers ?

The Honourable Sir Jeremy Raisman : As I pointed out, that method of recruitment has now been abandoned, and officers are now recruited entirely by the Governor General.

AMENDMENT IN THE DECLARATION *RE* REGISTRATION OF FOREIGNERS ACT.

The Honourable Mr. J. A. Thorne (Home Member) : I lay on the table a copy of the Home Department Notification, No. 21|68|39-I-Political (W), dated the 31st August, 1939.

No. 21|68|39-I-Political (W.).

GOVERNMENT OF INDIA.

HOME DEPARTMENT.

Simla, the 31st August 1939.

NOTIFICATION.

In exercise of the powers conferred by section 6 of the Registration of Foreigners Act, 1939 (XVI of 1939), the Central Government is pleased to make the following amendment in the Declarations published with the notification of the Government of India in the Home Department, No. 21|32|39-Political, dated the 21st June, 1939, namely :

In the said Declarations :

1. In Declaration 4 for the words " or Portuguese India " the words " Portuguese India, the Straits Settlements or the Federated Malay States " shall be substituted ;
2. After Declaration 4 the following Declaration shall be inserted, namely,—

" 4A. That the provisions of rules 4, 15 and 16 of the Rules shall not apply to, or in relation to, any British subject who enters, or departs from, British India on board any vessel travelling solely between a port in British India and a port in the Persian Gulf, Makran, or Saudi Arabia."

H. J. FRAMPTON,

Deputy Secretary to the Government of India.

THE WORKMEN'S COMPENSATION (SECOND AMENDMENT) BILL.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar (Member for Commerce and Labour) : Sir, I beg to move for leave to introduce a Bill further to amend the Workmen's Compensation Act, 1923, for a certain purpose.

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

"That leave be granted to introduce a Bill further to amend the Workmen's Compensation Act, 1923, for a certain purpose."

The motion was adopted.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar : Sir, I introduce the Bill.

THE INDIAN ARBITRATION BILL.

The Honourable Sir Muhammad Zafrullah Khan (Law Member) : Sir, I move that Mr. D. N. Mitra be appointed to the Select Committee on the Bill to consolidate and amend the law relating to Arbitration in place of Sir George Spence, and Mr. A. Aikman, Khan Bahadur Nawab Siddique Ali Khan and Mr. Akhil Chandra Datta be added to that Committee.

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

"That Mr. D. N. Mitra be appointed to the Select Committee on the Bill to consolidate and amend the law relating to Arbitration in place of Sir George Spence, and Mr. Aikman, Khan Bahadur Nawab Siddique Ali Khan and Mr. Akhil Chandra Datta be added to that Committee."

The motion was adopted.

CONSIDERATION OF THE REPORT OF THE PUBLIC ACCOUNTS COMMITTEE.

Mr. President (The Honourable Sir Abdur Rahim) : The House will now resume the discussion on the motion relating to the Report of the Public Accounts Committee for 1937-38.

Mr. Muhammad Nauman (Patna and Chota Nagpur *cum* Orissa : Muhammadan) : Sir, before I make any observations on the report of the Public Accounts Committee, I should like to offer my own thanks and the thanks of the House to the Honourable the Finance Member for having accepted my suggestion of supplying us with copies of the evidence before we were asked to consider this report. We could not have compelled Government to postpone the motion but the accommodation shown is certainly very much appreciated. However, I do confess at the outset that in spite of the facilities given to us we were not able to study the various reports as much as we might have been expected to, as the House was busy with an important piece of legislation like the Defence Bill and we were keenly interested in the amendments moved to that Bill. However, we are in a position to say something and I should like to make my comments as briefly as possible and confine my observations to only one or two departments.

[Mr. Muhammad Nauman.]

I will first deal with the Railway Department which is called a national asset of 750 crores of the Government of India. I want to refer to the constitution of the Railway Accounts Department as referred to in Volume I, Part II, page 3, column 5. I fully endorse the views of the Auditor General and think that the General Managers have been given too wide an authority and power in dealing with the finances. Too much of whitewashing has been done on the acts of these General Managers and the Government of India officials in the Railway Board have shown a weakness by which hundreds of thousands of rupees, as is apparent from page 2 of the Audit Report, have been lost. The railways are claimed to be a commercial department of the Government of India and I hardly believe any businessman would have tolerated this state of affairs. Can Government specify any probable figure of the amounts which were lost by negligence and extravagance of these officials who had committed irregularities in their railways ? Page 38 of Volume I of the report shows that the Railway Board could not effectively control the Agents and General Managers to whom they have delegated wide powers in the matter of accounts and who follow their own methods in dealing with the accounts as they like. If the Railway Board retained effective control and interfered in day to day works of the General Managers the powers so delegated to them would have little or no chance of being used in the manner in which they have been actually used. The House will perhaps remember that instances of irregularities were quoted during the Budget Session of 1938 and were also repeated during the Budget Session of 1939,—instances of irregularities and of abuse of powers, defiance of rules and cases of extreme favouritism and nepotism have been so numerous. I am not going to suggest that these General Managers have not given some sort of explanation to the Railway Board but from the explanations given by them which the Railway Board in their turn gave to us we have not been able to satisfy ourselves that those explanations were at all satisfactory. The Railway Board tries to shelve these officers of different administrations and instances have only convinced me and many people like me that the Agents and General Managers use their autonomous powers like kings who are beyond approach and beyond reproach in all matters. In spite of this they have the good luck to get the patronage of the Railway Board. I believe there is a good deal of anxiety on the part of the members for Railways and probably on other members of the Railway Board to see that General Managers do not do what they have been doing, but as yet things have not changed. Even in the matter of replies to questions the Honourable Member for Railways only reads out the replies which these General Managers send him.

The Honourable Sir Andrew Clow (Member for Railways and Communications) : Not at all.

Mr. Muhammad Nauman : I do not know whether he has ever taken upon himself responsibility to make confidential inquiries on these things. As public men and representatives of the people it is our duty to bring these matters to the notice of the Railway Board and of the Honourable Member. Stereotyped replies do not make things better or improve them. They only sometimes make things worse and make

people feel that things are not done in the way they should be done, and hence the whole purpose of putting questions is defeated.

As regards accounts, the most important factor is the question of method of giving contracts. In this matter power has been delegated even to Divisional Superintendents for smaller items—I do not wish to cite examples, but I assure the House that things are not being done as they should have been. I will give instances later with the help of such evidence as is embodied in the report of the Public Accounts Committee and not refer to those that I have got myself. In matters of contracts, the General Managers and their hirelings indulge in all sorts of things. This attitude of patronage of the Railway Board shields them and they feel encouraged. I would refer to paragraph 59 at page 28 of the Audit Report of 1939 where a figure of Rs. 5,177 is mentioned which is not explicit to me. May I have your permission, Sir, to get that book, I mean the reports ?

Mr. President (The Honourable Sir Abdur Rahim) : Has the Honourable Member finished ? If not, he must get on with his observations.

Mr. Muhammad Nauman : The Book is not here and however I hope the Honourable Member will explain the figure I have mentioned. It is unrealised rent from certain staff. The Railway administrations have been collecting rents and why it was not done in those few cases is surprising to me and requires an explanation.

I now want to refer to the findings as embodied in the Railway Audit Report, 1939, under the head " Financial Irregularities ", Chapter II, page 20. We find that in spite of the fact that the lowest tender was not accepted in order to avoid experiment, a comparatively expensive offer was accepted by East Indian Railway for purchase of Rail anchors which had probably the support of experience ; but the result was absolutely the contrary. The total purchase was valued at 1,45,000 rupees and the total amount of loss was about 70,000 rupees or just half. I would refer the House again to paragraph 47 at page 20 of the said report, which Honourable Members must have read and I do not want to waste time in reading same again. What conclusion can it lead to except that the measurer so appointed on the Great Indian Peninsula Railway was in conspiracy with contractors or something like that ? These sleepers were being supplied to the Great Indian Peninsula Railway and the measurement was being wrongly given. Timber is not a commodity which shrinks or expands in transit. I do not know whether the Railway Board have made inquiries into these matters. The different railways are full of such stories and the same sort of people always make some understanding with the Railway officials. These are rather strong statements to make but there are already same suggestions in the reports that have been made available to us. Later on I will prove that the way these contracts are handled is most unsatisfactory....

The Honourable Sir Jeremy Raisman (Finance Member) : As the Honourable Member is making some very serious charges in connection with this point, would he very kindly explain exactly how in the circumstances given there is any scope for dishonesty ?

Mr. Muhammad Nauman : I ask why was it not possible to have the measurements checked on that railway, unless the authorities were in collusion with the contractors ?

The Honourable Sir Jeremy Raisman : Does the Honourable Member realise that the point here was that the actual measurements of timber were found to be larger than the invoiced amounts ? The actual measured amounts were larger and payment was made on the basis of the actual amounts discovered by measurement.

Mr. Muhammad Nauman : Am I to understand that payment was being made for the actual measurement received which was in excess of the contracted figure ? I would now refer to paragraph 48 on page 20, regarding affairs on the Eastern Bengal Railway which has been a State Railway from the very beginning and which, in my opinion, requires very close attention from the Honourable Member in charge of Railways. That administration has been criticised from different angles and different points of a view for over two years and I do not want to repeat them now, but I hope the Honourable Member in charge for Railways does realise what complaints we have been showering on that particular administration and why.

The Honourable Sir Andrew Clow : I have not heard any relating to the accounts from the Honourable Member.

Mr. Muhammad Nauman : I am coming to the accounts now. The issue is as referred to on page 21, paragraph 48 of the said report. After only six years' use, sleepers purchased by the Eastern Bengal Railway have been found to be unfit and this resulted in a loss of six lakhs of rupees. Sleepers whose normal life is forty years have had to be rejected after only six years of service. The North Western Railway and the East Indian Railway have had previous experience in this matter as is stated on the same page of this Report, and still the Eastern Bengal Railway authorities did not care to take advantage of the experience of the North Western Railway and the East Indian Railway. I think if the Railway Board had more effective control, they would have interfered in the matter and asked the Eastern Bengal Railway to take advantage of the experience which the other Railways had acquired in this matter. I do not want to suggest any particular model in buying those sleepers, but I would like to hear from the Honourable Member in reply whether sanction was ever taken from the Railway Board at all for this purpose or everything was done behind the back of the Railway Board.

Now, Sir, I should like to come to the old story of the Hardinge Bridge on the Eastern Bengal Railway. I would not like to read the history which is given in this " Report of the Government ". I hope Honourable Members are in possession of that Report, and so I do not propose to take up the time of the House in reading same again. I would, however, refer Honourable Members to the Report of the Public Account Committee, Volume I, Part II, where the brief history appears at page 56 of Appendix 50. Members will see the suggestion from the kind of remarks which have been made on this. No tenders were called for in the first instance, nor any advertisements were given. The officers of the Eastern Bengal Railway administration entered into a contract for supply of stones with unfair motives, and the terms of

the contracts were not so much to the interest of the administration as it was made to the interest of the contractors as the Report I have referred itself suggests at a later stage. Honourable Members will observe that even the terms of contract were altered without reference to the Railway Board....

The Honourable Sir Jeremy Raisman : What is the actual reference please ? Which case is the Honourable Member referring to ?

Mr. Muhammad Nauman : I am referring to the case which was referred to arbitration and in which a sum of Rs. 54,000 was paid for merely removing the debris of small stones which found no place in the original contract. As I was saying, Sir, even the terms of contract were altered without the sanction of the Railway Board. Then, as stated in column 6, of the same report, Appendix 50, page 57, trouble arose when the Engineer reported that the contractor had not fulfilled his obligations. The matter was referred to an arbitrator, and in the words of the Government report itself " the choice of the arbitrator was unfortunate ". A payment of Rs. 54,000 was made for removing the debris, although there was no mention of it in the original contract. When the contractors supplied big stones, it should have been pointed out to them that small stones which were either supplied or resulted in breakage would be of no use, and those stones should have been removed by the contractors at their cost entirely.

Then, Sir, in paragraph 8 it is stated in the said Report, page 58, that " in regard to the framing and handling of the contract itself, the circumstances disclosed, generally speaking, an attitude of undue laxity and possibly lack of strict business acumen on the part of some officers ", but no mention is made as to who the officers were in charge who entered into that contract, and the beautiful parliamentary language has been used by saying " an attitude of undue laxity and possibly lack of strict business acumen on the part of some officers " mainly to shield the General Manager of the Eastern Bengal Railway. The Railway Board are satisfied that the contract was not entered into with fair motives, and still they want to give the officers concerned the benefit of doubt. I would like to ask Honourable Members of this House who understand business methods, especially my European friends, whether they would allow any manager in their own concerns to go scot free under such circumstances ? Certainly they would have dealt with the man concerned severely for entering into such a fraudulent contract. We have no idea what action the Railway Board proposes to take against the officer or officers concerned. Are they going to punish the officers concerned in this matter for putting the Railway Administration in such a big financial loss ?

The Honourable Sir Andrew Clow : The Honourable Member will find the conclusions of the Railway Board in paragraph 10.

Mr. Muhammad Nauman : There is nothing stated as to what action is proposed to be taken. I am very glad that the Honourable Member proposes to take severe action, and if an assurance to that effect is given to us, we will be happy.

The Honourable Sir Andrew Clow : Read the paragraph.

Mr. Muhammad Nauman : Which paragraph ?

The Honourable Sir Andrew Clow : Paragraph 10, page 59.

Mr. Muhammad Nauman : I have read that. Sir, it is very necessary not only in the interest of this particular contract, but in the interest of all contracts which will have to be entered in regard to other Railways that strict measures were adopted.

Another fact has been brought to my notice, though it is not quite relevant to the accounts we are discussing here, but I want to point out that among the contractors in the approved list of Railways the Muslims do not appear. It is an unfortunate fact that due facilities are not offered to Muslim contractors for tender, and this is a matter which the Railway Board should consider seriously. I do not want to lay much stress on this point, but I would like to read a copy of a telegram which was sent to the Railway Board....

Mr. President (The Honourable Sir Abdur Rahim) : Which portion of the Report is the Honourable Member referring to ?

Mr. Muhammad Nauman : I am referring to Railway Audit Report for 1937-38. The telegram sent to the Railway Board reads ' Solicit direct inquiries by the Railway Board against injustice to qualified Muslims ' and refusal of facilities to Muslim merchants.

Mr. President (The Honourable Sir Abdur Rahim) : It has nothing to do with the Report.

Mr. Muhammad Nauman : I now only want to take up the question of ticketless passengers which finds a place in the evidence Report and on which I find that Sir Guthrie Russell stated that unless legislation is brought in there is no prospect of meeting the situation. I think that legislation cannot be thought of in this connection. It is the duty of the railway to improve the morals of its own people. I can tell you from my own experience that your own guards compel honest passengers sometimes to travel without tickets. When passengers come and report that for some reason or other they were not in a position to buy a ticket, the guards will not take any notice of them. I do realise that the situation is serious, but you cannot get over the fact that a certain number of people will remain ticketless in spite of any legislation which might be made. What I would suggest is that proper precautions, if taken, would be very good and with regard to that I want to give concrete suggestions, such as surprise visits, appointments of Railway honorary magistrates to look after your cases and go about in their own areas in due discharge of their duties to stations for surprise visits. It would not cost you very much as if you give " free passes " you will get quite a number and at the same time that would relieve the position to a very great extent in the matter of congestion in compartments. (Interruption.) I was given to understand that the D. S. of Howrah, Mr. N. C. Ghosh, had lately started surprise visits and it has improved the situation at Howrah. I suggest that such instructions should be given to every D. S. and if they do in their turn start surprise visits by themselves or by certain members of the railway staff I think the situation will improve. These are the different methods which should be adopted by the Railway Board. It is no use merely saying that nothing can be done because there is no legislation. I do not know whether there is any legislation in that respect in England or in any other part of the world. If there is, the Honourable Member will enlighten me on the subject whether it is a cognisable offence in England

if a man is found without a ticket. I have given my concrete suggestions so far as this is concerned. I now leave the railways, and make one or two observations on other items.

Mr. President (The Honourable Sir Abdur Rahim) : The time is limited, and there are other Honourable Members who desire to speak. The Chair hopes the Honourable Member will remember that.

Mr. Muhammad Nauman : I do not want to take much of the time of the House but I would only refer to a few items which are not very explicit to me, and I would request the Honourable the Finance Member when he gets up for a reply to try and convince the House as to what they are. One is about Rs. 10 lakhs given annually to the Nepal Government as a *bukshish* or some thing like that. Why is that ? I would like to hear from the Honourable Member what is the position of this donation or contribution made by the Government of India to Nepal Government. Is it under any contract or is it by way of a convention, we would like to know. I have no time to discuss the other parts of the subject, and I would leave them to other Honourable Members. With these observations I take my seat.

Dr. R. D. Dalal (Nominated Non-Official) : Mr. President, I will not detain the House for more than two minutes. Since 1931 I have been a Member of the Public Accounts Committee, and I may inform this Honourable House that it is the Auditor General who in the main guides the affairs of the Public Accounts Committee. As the House is aware, Sir Ernest Burdon has been the Auditor General for the last ten years, and after completing a full term of service in India Sir Ernest Burdon is about to retire. So, I hope the House will not forfeit this opportunity of placing on record its appreciation of the valuable services Sir Ernest Burdon rendered to the Public Accounts Committee during the last ten years and of his lucid comments on the various appropriation accounts which greatly facilitated the work of the Public Accounts Committee. Sir Ernest Burdon is no doubt possessed of more than the average industry, and in 1934 with an originality that does him much credit Sir Ernest Burdon invented the remarkable " Key " Statement—the statement that has proved so useful to the Public Accounts Committee and to the various departments of Government. Sir Ernest Burdon has given the Public Accounts Committee the benefit of his wide knowledge and experience. We deeply regret his impending departure from India, and we shall miss him very much indeed. Sir, the Auditor General in India who merely devotes himself to figures and to book-keeping will never leave his mark upon the history of this country, and it is because Sir Ernest Burdon has not looked at his work......

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member must remember that we are discussing the Report of the Public Accounts Committee and not any particular official.

Dr. R. D. Dalal : I will finish, Sir. And it is because Sir Ernest Burdon has not looked at his work through the narrow spectacles of the accountant but from the wider standpoint of the man of affairs that he has attained the success which he has achieved. We sincerely wish Sir Ernest Burdon every happiness and prosperity ; above all, good health and long life, and we earnestly pray that it may be given to him to enjoy his well-earned repose for at least as many years as he has served Government.

Mr. Lalchand Navalrai (Sind : Non-Muhammadan Rural) : I have no contracts to sing about or curse them, I have no opinion about honorary magistrates, to ask that ticketless travellers should be tried by honorary magistrates. In my opinion, woe be to those honorary magistrates. I have seen and got enough of experience and it is to the credit of the Government, especially the Provincial Governments, that these honorary magistrates have been done away with. I have also to make no praise for anybody, but I want to make observations on the report itself.

An Honourable Member : What about Dr. Dalal ?

Mr. Lalchand Navalrai : He may have an object which I have not. The Honourable Member may be trying for something which he should get for having remained long there.

Dr. R. D. Dalal : The Honourable Member must withdraw those remarks. I object to them.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member must withdraw his remarks.

Mr. Lalchand Navalrai : He is my friend. I can speak to him privately.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member must withdraw his remarks.

Mr. Lalchand Navalrai : If Dr. Dalal wants me to withdraw them, I will do it.

Dr. R. D. Dalal : He has not withdrawn his remarks, Sir.

Mr. Lalchand Navalrai : We will talk in the lobby about it.

Mr. President (The Honourable Sir Abdur Rahim) : Does the Honourable Member withdraw the remarks he has made ?

Mr. Lalchand Navalrai : I have withdrawn, and I do withdraw them. What more is needed.

I shall now restrict myself to the report itself. The point to which I will make a reference is the report on the Railways and then I will come back to the Civil side and I won't take much time. The first point that I raise is with regard to the powers of the Managers and in particular the transfer of the accounts staff to the General Managers. We have in this House often complained and not without reason that the General Managers on the railways are all in all, that they are the lords of all that they survey and the powers have been so much decentralised to them that even the Railway Board finds it difficult to get information as to what they are doing or not doing. When we put questions in this House, the general reply comes that they are being sent to the General Managers for information and so on. Now my point is as to the transfer of the accounts staff. The history of this question is on pages 35 to 37 of the Public Accounts Committee report. This staff was independent of the General Managers, so that they could scrutinise and criticise the accounts independently. This is the principle on which this department was kept separate but then, sometime ago, the proposal was made that this department as a whole should be transferred to the General Managers. In the beginning the Government was against it. They did recognise that the accounts staff should work

independently, if they are to do their work efficiently. Later on, a Railway Committee was appointed and they suggested that it should be under the General Managers. Government seemed inclined to follow the Railway Committee but the Auditor General was against it and he put up a strong note, *vide* the report of the Public Accounts Committee for the year 1936-37 to this effect. He said that the arrangement should be left as it was but, finally, the Auditor General gave in on this condition that the new system was to be experimental. The Railway Board took up two railways, the Great Indian Peninsula and the North Western Railways, for this experiment. Now, Sir, my information is that there is no love lost between the accounts staff, the accountants particularly and the General Managers. These accountants have many times found out flaws and irregularities but they have been put under foot by the General Managers and their staff. These men are expected to criticise the work done in the office of the General Managers and if they are made subordinate to them, one can understand the situation that will arise. How can you expect these men to work fearlessly and independently? Incidents have happened to that effect and I hope the Honourable the Finance Member will inquire into it. I know that the Chief Accounts Officer is not wholly dependent upon the General Manager but one can understand the position if he has got to take orders from him. Disagreements may arise and every time matters may come before the Financial Commissioner. Therefore, I would ask the Honourable the Finance Member that if this is a trial and an experiment, it should come to an end now. It has been in force for about eight months and they want to wait for another five or six months. I say 'No'. Considering the portion of the report which I shall read out, I say that this system in the North Western Railway should come to an end at once. On page 37, this is what they say about the North Western Railway:

"The organisation on the North Western Railway however is peculiar in that the control of all staff is exercised by the General Manager through a Personnel Branch represented by a Deputy General Manager Personnel at Headquarters and by the Divisional Superintendents through Personnel Officers in all the Divisional offices. The General Manager of the North Western Railway has insisted that the arrangements for controlling the accounts staff should conform to the arrangements applying to the rest of the railway staff, and that, while control and disciplinary action in specifically technical matters may be exercised by accounts officers, general control which would include powers of promotion" (*this is important*), "major punishments for offences of a general character, should be exercised by the heads of departments to whom the accounts staff is attached, working through the Personnel Branch of the railway administration up to the General Manager in the last resort. This involves a considerable change in the authority of the Financial Adviser and Chief Accounts Officer *vis-a-vis* members of the accounts staff."

The General Manager wants more, and he wants to secure those powers to himself so that as regards his own bills and his own accounts they should not be independently scrutinised.

12 NOON.

The next point that I want to raise is with regard to saloons. I would refer to page 29 of the report. Sir, it has been often urged in this House that these saloons should not be so many, that the officers who have got saloons now do not all need them, and that it is necessary to economise and to reduce the number. I am glad to see that they have said in this report at page 29 that "no demand for saloons in 1938-39, 1939-40 and 1940-41 has been sanctioned, and no requests for new saloons and reserved carriages will be considered in future until the Board are convinced that the number in use has been

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reduced to the absolute minimum required for systematic and frequent inspections to ensure safety and the efficient conduct of railway work".

I am glad that the matter has, after all, after so many years now been seriously taken up, as this report says. I would suggest that it seems to me that the four-wheeler saloons are of no use at all. Officers who have got four-wheelers are complaining. I would submit that those officers should be provided with the better saloons of other officers who are not inspecting officers and that these four wheeler saloons should be scrapped; they are absolutely useless. The inspectors have got them.

Mr. M. S. Aney (Berar : Non-Muhammadan) : How many of them are there ?

Mr. Lalchand Navalrai : I do not know how many there are. I submit they are surely very inconvenient. Almost all the officers have complained.

An Honourable Member : Have you yourself travelled in them ?

Mr. Lalchand Navalrai : Yes, I have, for the purpose of having this experience. There is so much of jolting and shaking the whole time and you cannot work in them. The point is that you cannot do the very work for which they have been given to those inspecting officers.

I will now pass on to another subject, which is with regard to the passes. Now, I would request the Honourable Member for Railways to kindly consider one question that I am now raising ; that has been raised on the floor of the House several times and I do not think the Honourable Member for Railways would be very hard—I won't say hard-hearted, I know he is not hard-hearted—but I say I hope he would not be so hard as to shelve this question. I would make a small suggestion which should be considered. The point is that railway servants who used to get, before their scale of pay was changed, more than Rs. 60 were travelling by intermediate class. Now, a rule has been made that all those persons and those now appointed after the introduction of the new scale should travel by third class. Well, this is an injustice to those men that were already travelling by intermediate that they should travel third class. I say do not do any harm to those people, as it would be rather a degradation for them.

An Honourable Member : Does not Mahatma Gandhi travel third class ?

Mr. Lalchand Navalrai : All are not Mahatma Gandhis. The point is that the question of first class passes should again be considered and they should be reduced, and intermediate class passes should be given to those only that were actually having them before the new scale came into force. Now, I find there are 3,558 first class passes being given to officers, I think that is a large number and I think that economy can be made there and these passes can be reduced and those with regard to the intermediate class should be raised.

I now come to the third point and the last point, with regard to the development of industries. I would refer to page 42. Now, Sir, with a view to the development of these industries, there is an office

which is called the Central Standards Office. Now, that office, they say, is working well and it is looking after this development of industries. Now, it is quite plain that the Pacific Locomotive Committee's Report that was presented to the House the other day made, if not recommendation, as this word was objected to on that day in connection with that report, at any rate a suggestion that there ought to be an industry for making locomotives in India. I find nothing from this report whether anything is being done with regard to that, and whether any initiation has been made. If it is the serious intention of the Government that we should make our own locomotives, I think it is not too early but even too late, but a beginning should be made, and with regard to that—(I have not got the report of 1936-37, with me—but the Honourable Member must be knowing it). I have read in that report that the Public Accounts Committee had stated that in certain factories—I think about two factories—in India this work of making locomotives could be started. Now, I am, therefore, submitting that in connection with that there ought to have been some information given to us now in this report which is under consideration.

Sir, I have done with regard to the railway report and I won't take a long time over the civil side of the Public Accounts Committee's Report. I have only one point to draw attention to. I have gone through it and my attention has been drawn to page 30 with regard to Baluchistan. The other day my Honourable friend, the Leader of our Party, made a reference to me having pointed out something that is required in building Quetta. While giving further information with regard to the re-construction of Quetta, the report says :

> "It was noticed that the progress of the Quetta re-construction was slower than was originally expected. This, however, was not to be deplored as the greater consideration given to the type of the structure to be erected in Quetta had yielded valuable economies. The Committee were gratified to find that considerable impetus had been given to the development of forests in Baluchistan."

As the House is aware, there was opposition by some of the Members in this House that the re-construction of Quetta should not be on the same spot. After the earthquake what we find is that thousands of people got buried under the debris. Although some of the debris has been removed, it cannot possibly be said that the whole of the rubbish and the corpses inside have been removed. Now, Quetta has been built on the same spot. There is at least one thing which we expected from the Government, namely, to select a site which will be free from disease and other maladies. Sir, I belong to Sind and I must bring to the notice of the House that in Quetta sanitation has not been taken care of.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member cannot discuss all that.

Mr. Lalchand Navalrai : I am mentioning all these things because the question of the re-construction of Quetta is there.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member cannot discuss the general policy.

Mr. Lalchand Navalrai : I would only like to point out, Sir, that in the re-construction old bricks, which must have become infected, are being used in drains for carrying water with the result that we have

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there mosquitoes which are not even of an ordinary kind. They cause eruptions and boils and malaria prevails there. I am not inclined to take up the time of the House unnecessarily but this is an important matter to be careful about.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member cannot go into all these questions about the re-construction of Quetta, because it is not relevant to the motion before the House.

Mr. Lalchand Navalrai : If the Chair is of that opinion, I will not refer to it any more. The matter has been sufficiently ventilated in this House by this time and I do not think the Government is so callous as not to investigate into the matter of sanitation of Quetta.

Maulvi Muhammad Abdul Ghani (Tirhut Division : Muhammadan) : Sir, I had no intention of taking part in this debate but for the fact that I received a cover from the Assistant Income-tax Officer from the district of Saran. The Public Accounts Committee decided that the amount should be written off in connection with the Revenue Department, more particularly about the income-tax assessment. Wrong assessments are sometimes made and the Government then have to come for writing off the amount.........

The Honourable Sir Jeremy Raisman : Will the Honourable Member please indicate what page of the report he is referring to ?

Maulvi Muhammad Abdul Ghani : If the Honourable Member will refer to the expenditure of the Crown Representative, he will find there......

Mr. President (The Honourable Sir Abdur Rahim) : Will the Honourable Member refer to the page of the report ?

Maulvi Muhammad Abdul Ghani : It has been discussed that when some pauper persons file applications through the court, they get a decree and sometimes that decree is not realised and yet the Income-tax Department make assessment thereon. The Public Accounts Committee dealt with a similar instance. I would, therefore, like to bring to the notice of the Finance Department that such a repetition should not be made. A few days ago I received a registered cover from the Income-tax Department, Chupra, as if I was going to be assessed. When I opened that cover I found that a lady relation of mine was asked to submit certain statements. Now, the facts of the case are that this lady filed a pauper suit as far back as 1929, and got a decree in 1930. The decree has been barred but the Government has been benefited already by selling the property.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member is referring to some grievance which has nothing to do with the report.

Maulvi Muhammad Abdul Ghani : In this way they make wrong assessments and I want to draw the attention of the Finance Department to it, to issue instructions to be more careful in future.

Mr. President (The Honourable Sir Abdur Rahim) : Will the Honourable Member refer to the page of the report ?

Maulvi Muhammad Abdul Ghani : I am not in a position to refer to the page of the report.

Mr. President (The Honourable Sir Abdur Rahim) : Then the Honourable Member must not refer to that case again.

Maulvi Muhammad Abdul Ghani : Very well, Sir.

Now, Sir, the Public Accounts Committee called for a report last year regarding amenities and safety of passengers. The statement submitted by the Railway Board does not appear to be satisfactory. If we compare the state of things that existed in 1933-34, with that of 1937-38, the condition is not only the same but rather worse. If we compare the figures of the total number of persons killed, we find that the number of persons killed in 1933-34 was 2,826 as compared to 3,370 in 1937-38. The total number of persons injured in 1933-34 was 10,982 as compared to 14,111 in 1937-38.

As regards collisions to passenger and other trains, in 1933-34, there were 256 and in 1937-38, there were 263. So the position instead of improving is getting worse day by day.

The next point is about the passes. I find that in 1937-38, the State Railways issued 7,08,886 passes to their employees. After all there are other departments and people are serving there. What is the reason for the issue of free passes only to those serving in the Railway Department ? Not only are passes issued to the railway employees but also for their families and children and relatives. It will be observed that the number of passes is nearly double the number of persons employed in the railways. The number of employees is about 3,31,837. I urge upon the Government that if they consider it desirable to issue passes to railway servants to go from their headquarters to bring their families, this privilege ought to be extended to other Government servants in other departments. What is the reason for showing this undue favour to railway employees ?

The Honourable Sir Andrew Clow : The Honourable Member will address his question to Mr. Lalchand Navalrai.

Maulvi Muhammad Abdul Ghani : I now come to the Printing and Stationery Department. I feel that this department is publishing books unnecessarily. Year after year we get a list of publications which are going to be burnt or destroyed and asking the Members of the Assembly if they would like to have copies of any of those publications.

Mr. President (The Honourable Sir Abdur Rahim) : If the Honourable Member will give reference to the page of the report of the Public Accounts Committee, then the House will follow the Honourable Member's point better.

Maulvi Muhammad Abdul Ghani : Last year it was pointed out....

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member will please refer to the page of the report.

Maulvi Muhammad Abdul Ghani : We received letters from the Printing Department about the publications in 1937-38......

Mr. President (The Honourable Sir Abdur Rahim) : But the Chair wants to know where is it in the report. If the report does not deal with it, the Honourable Member cannot discuss it. This is not a budget speech.

Maulvi Muhammad Abdul Ghani : I am not making a budget speech.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member must give the House reference to the page of the report.

Maulvi Muhammad Abdul Ghani : I want to bring to the notice of the Government that this House appointed the Public Accounts Committee to deal with accounts matters and I, as a member of that Committee, have certain grievances to bring to the notice of the House......

Mr. President (The Honourable Sir Abdur Rahim) : This is not the time for ventilating any grievances.

Maulvi Muhammad Abdul Ghani : All right, Sir, I resume my seat.

The Honourable Sir Jeremy Raisman : Sir, the discussion has ranged mostly over the field of railways and to a large extent on matters which are purely administrative and I do not feel that this is the occasion, nor am I the competent person to go into details of the administrative efficiency of various aspects of the Railway Board's activities. I can only take up one or two points which seem to me to be more directly relevant to the consideration of the Public Accounts Committee Report. I would, however, like to say that I deprecate the wild and sweeping way in which Mr. Nauman made charges without any very precise justification. I should have thought that since he was the author of the motion that the debate be adjourned until the evidence volume has been placed in the hands of Members, he would at least have taken the trouble to read the evidence. But I conclude that he has not done so with any particular care from the fact that on one point on which he made very sweeping and serious charges, he has obviously not read the few lines in which this was explained by the Chief Commissioner in the course of the proceedings. I am referring to the point of the method of payment for timber which occurs in Chapter II of the Audit Report on Railways which is dealt with on page 46 of the Evidence Volume II, Part II, Railways, where Sir Guthrie Russell pointed out that " with all respect to the Audit Officer, the Railway Board do not admit that there was any loss because they got what they paid for ". The position was not that the invoices for this timber were for a larger amount than the amount delivered to the railway authorities but that on the contrary for some reason not very satisfactorily explained the amounts of timber delivered were larger than the amounts invoiced and the sums paid by the railways were based on the actual measurement of timber delivered to them and he further pointed out that there can be no possible question of any malpractices or payment being made for more than they received. I interrupted the Honourable Member in order to find out whether he had any definite idea of how there can be scope for malpractices in this matter and I understood him to withdraw his charge. But I must say that I deprecate the somewhat sweeping way in which he referred to this point which the Committee actually, although there are only three or four lines of it in this printed evidence, went into with some care and they saw no reason whatever to suppose that there was any malpractice much less dishonesty. And that is why no allusion is made to the subject in the main report. I only take this as an example of how the Honourable Member, having asked for the evidence to be placed in his hands, has not used it and has attacked the railway administration in what I consider to be an entirely unwarrantable manner.

Now, two Honourable Members dealt with the question of the experimental transfer of accounts establishments to the control of the General Managers of Railways, an experiment which is being tried on two railway administrations. I think, Sir, that it is fair to point to the Committee's own report on the matter. They have by no means a closed mind on this matter. It is still in an experimental stage and they themselves have taken full cognisance of the possible danger which might arise from the interference or undue influence on the independence of the accounts staff. They particularly dealt with the North Western Railway and they say :

"We recommend that any arrangements which operate against the conditions suggested by the Auditor General or which are not in accordance with the safeguards referred to above should be immediately removed."

That condition was that the arrangements must be such that the accounts staff should feel free to maintain a critical, though of course impartial, attitude both in financial cases and in the exercise of internal accounts check. The Committee continue :

"We also desire that a final report by the Auditor General should be submitted next year together with the conclusions of Government thereon and that the report should specify how far our recommendation in respect of the conditions of service of the accounts staff is being implemented in actual practice."

It is clear, therefore, that not only is this an entirely experimental matter but that the Committee is fully aware of possible dangers and that they are continuing to give their close attention and to call for further reports both on the general working of the experiment and on particular aspects of it. In those circumstances, Sir, I do not think that it is necessary for me to deal in detail with the apprehensions expressed by the Honourable Members.

I should like to take this opportunity of associating myself with the expression of appreciation of Sir Ernest Burdon's services which fell from Dr. Dalal. It does, I suggest, arise out of this report because this is the last......

Mr. President (The Honourable Sir Abdur Rahim) : If the Honourable Member is referring to the ruling of the Chair, what the Chair ruled was that Sir Ernest Burdon was not under discussion. Of course, any reference to his services was a different matter. But Dr. Dalal was discussing Sir Ernest Burdon all the time and not dealing with the report at all.

The Honourable Sir Jeremy Raisman : Thank you, Sir. I merely wish to take this occasion of repeating what has been actually mentioned in the Committee's report and that is their appreciation of the extremely valuable services rendered by Sir Ernest Burdon for a number of years. And as this is likely to be the last occasion on which the present Auditor General would have been associated with these proceedings it was I think entirely suitable that the Committee should have expressed themselves on the subject.

I was asked a direct question on one point relating to the civil accounts by Mr. Nauman and that was with regard to the annual payment of ten lakhs which is made to the Nepal Government. That payment, as was explained to the Committee in the course of the proceedings, is a payment more or less in the nature of a treaty payment. It has

[Sir Jeremy Raisman.]

been made ever since the last treaty with Nepal was made and the basis of it is recognition of the services rendered in the last war by Nepal by the provision of troops for the defence of India.

Sir, I cannot find that there were any other points raised of sufficient general interest to warrant my taking up the time of the House by a detailed reply to them. This is hardly an occasion on which particular cases should be gone into. I would, however, like to draw the attention of the House, particularly as so many Members have criticised the financial administration of the railways, to the broad conclusion reached by the Auditor on the accounts of 1937-38 and which is also mentioned in the evidence :

"Considering the volume of transactions on railways the financial administration may be regarded as generally satisfactory from the auditor's point of view."

The Auditor General endorsed that general opinion and the attention of the Committee was drawn to it. I think it is only fair that when particular cases have been selected and brought to the notice of the House, the House should be aware that the general conclusion reached by the audit authorities was definitely favourable to the financial administration of the railways. Sir, there is no other point on which I need detain the House.

DEMAND FOR EXCESS GRANT.

AJMER-MERWARA.

Mr. President (The Honourable Sir Abdur Rahim) : The other day, the following motion was moved :

"That an excess grant of Rs. 27 be voted by the Assembly to regularise the expenditure chargeable to revenue actually in excess of the voted grant in the year 1936-37, in respect of 'Ajmer-Merwara'."

The question is :

"That an excess grant of Rs 27 be voted by the Assembly to regularise the expenditure chargeable to revenue actually in excess of the voted grant in the year 1936-37, in respect of 'Ajmer-Merwara'."

The motion was adopted.

THE INDIAN OATHS (AMENDMENT) BILL.

The Honourable Mr. J. A. Thorne (Home Member) : Sir, I move :

"That the Bill further to amend the Indian Oaths Act, 1873, for a certain purpose, as reported by the Select Committee, be taken into consideration."

I will briefly remind the House of the history and object of this measure. It was introduced in March, 1937, and circulated by Resolution of this House, and referred to a Select Committee in February, 1938, and the House has now before it the report of the Select Committee. As regards the object of the measure, the legal position at present is that a young child can give evidence as a witness on two conditions. First

condition is that the child makes an oath or affirmation. That is a rigid requirement laid down by sections 5 and 6 of the Indian Oaths Act, and there is no exemption from that requirement for any class of witness or for a child in particular. The second requirement is stated in section 118 of the Indian Evidence Act. I will read the relevant part of that section :

"All persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years....."

Now, it is clear that a case may arise where a child is perfectly competent to testify, in the sense that the child understands the questions put to him and is capable of giving rational answers to those questions, but at the same time is not really competent to form any idea of the obligation imposed by an oath or affirmation. That gap has been filled in the English law by section 38 of the Children and Young Persons Act of 1933, and the measure before the House is designed to fulfil the same purpose ; broadly speaking, as that provision of the English law. The Select Committee has made only one change in the Bill as introduced and that will, I think, be generally recognised as an improvement. It requires that a child shall understand the duty of speaking the truth. Sir, I move.

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

"That the Bill further to amend the Indian Oaths Act, 1873, for a certain purpose, as reported by the Select Committee, be taken into consideration."

Mr. Lalchand Navalrai (Sind : Non-Muhammadan Rural) : Sir, I was a member of the Select Committee on this Bill. This is a purely legal question and for the benefit of those who are not lawyers I appended a note to the Select Committee Report which must have been read by Honourable Members. I was handicapped on account of the fact that excepting myself and the Honourable Mr. Miller of the European Group there was no other elected Member present on the Select Committee—but I do not, however, complain of it because the Home Member and the Leader of the House accepted one of my suggestions, though my other suggestions were not such as should be disregarded. The Bill has two objects : one, that the evidence of a child of tender years, that is, under 12 years of age, should be admissible as evidence without oath or affirmation ; and the second, that if such a child were to speak a falsehood then he can also be punished. My first objection is this : a child who is not above seven years should not have his evidence admitted at all. Section 82 of the Indian Penal Code provides that nothing is an offence which is done by a child under seven years of age. Section 83 says that nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion. Therefore, it is plain that a child under seven years is exempted and no responsibility of any kind has been fixed upon him by the law. That is quite wise. But what is now attempted by me is to make the law consistent with that principle. It may be asked : if he commits an offence and is exempted, why should not he give evidence ? The principle is in the two sections I have read, that a child under seven years should be presumed to have no faculty of understanding : and even with regard to a child between seven and twelve, the magistrate has to find out before he examines him or gives him oath or affirmation, that he under-

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stands the nature of the questions put to him and is intelligent enough: otherwise the magistrate will not take his evidence. If that principle is conceded, then this amendment of mine should be accepted that you may give the oath or affirmation to a child under 12 years of age but not examine at all one under seven years of age. My Honourable friend has framed this Bill, as he said, on the basis of the English law. I will explain what the English law on this point is, and I shall read out only the relevant portion where it is said:

"Under the law of England a child under 7 years of age cannot be said to be guilty of a criminal offence.....".

Even if the boy is of a mischievous mind, the presumption is that he is only a boy and his evidence is not enough to establish the offence. Then, it is further said that for *ex presumptive* that is by presumption, he has no discretion or sufficient understanding, and that presumption cannot be rebutted and in consequence of this rule it has been held illegal to arrest a child under seven years of age for stealing and so forth. Now, my submission is that when the principle underlying a child's evidence is such as I have indicated to the House, I trust the House will agree that the amendment which I have moved should be accepted and the law should be modified accordingly. I will give the House an instance of the danger......

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member can deal with that question later in connection with his other amendments.

Mr. Lalchand Navalrai: Sir, I will only say a few words now unless the Chair wants me to defer my remarks.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member can go on with his speech.

Mr. Lalchand Navalrai: Very well, I shall put my whole case on all the amendments so that they may be understood properly. Sir, there is a section in the Indian Evidence Act, section 134, which says: "No number of witnesses are necessary for any matter being decided", in other words, no number of witnesses are necessary for convicting a man. If the Magistrate believes it, he can send a man to the gallows on a child's evidence. Instances have happened, and we have seen that Magistrates have convicted people of murder without corroboration of the child's evidence. There is, therefore, that danger to which we should not be a party and we should make the law so as to suit the present times. I am giving here an instance which happened in my practice,—the Judge heard evidence of a child and said that the evidence is such that it cannot be believed. Then when the second witness came up, the counsel began to cross examine him to remove the evidence of corroboration. The Judge did not like it and then turned round and said: "I am going to believe the child only and convict the man", and the man was actually convicted. Therefore, I submit that the evidence of a child who is under seven years should not be admissible, and no question of taking oath or affirmation should arise in the case of a child under seven years of age. Then about the evidence of a child under 12 years of age, if it is going to be taken without affirmation or oath, some safeguards should be imposed, and one of those safe-

guards have been accepted by the Select Committee. That was that the Court should be of opinion that the child under 12 years of age understands the duty of speaking the truth. That is a very salutary provision, but my submission is that a further provision should also be made to the effect that the Magistrate is of opinion that a child under 12 years of age does understand and has been made to understand the points at issue. That is, according to section 118 of the Evidence Act, a witness must be competent to understand and to give rational answers.

Now, Sir in this matter it is not that I am alone who holds this view. I would draw the attention of Honourable Members to page 4-D. of the Precis of Opinions wherein they will find support to the view I hold. It is said there that the evidence of a child of tender years shall be deemed to be a deposition if in the opinion of the court he is possessed of sufficient intelligence and understanding. I need not refer to other opinions.

Then, Sir, I would refer to the last paragraph of the Bill which says that this will not affect the obligation of the witness to state the truth; that is to say, if it is found out by the Magistrate that the child has spoken an untruth, the Magistrate can punish the witness under the Indian Penal Code under sections 193, 194, 195 and so forth and impose a very heavy punishment too. Again, when you leave it to the court to decide that a child under 12 years understands the consequences and gives rational replies, it might form a wrong opinion, and if you give him no oath or affirmation, do not charge him afterwards with having given false evidence, because in the case of a grown up person there is a certainty that he has understood the oath and the consequences of speaking lies whereas it is not so in the case of the children and, therefore, that provision should be eliminated. On this I will only read some portion from the opinions. I will read from page 1 of the Precis, where it is said:

"The District and Sessions Judge, Ajmer-Merwara, suggests that more safeguards should be adopted so as to exempt boys below 12 years from liability for perjury".

There are several other opinions on pages 2, 3 and 4. So, this is also a point for the House to consider. Again, the child whether under twelve or above seven or below seven, he should be warned by the magistrate that he has to speak the truth, because he gives him no oath or affirmation, and the magistrate must make a note of it. Some magistrates actually put questions to the child to find out whether he is able to understand and give rational answers, but I say he should be warned so that an impression may be created in his mind that even though he is a child and is not given any oath or affirmation, yet he has to take great care when he gives evidence and to speak the truth. On this point also there are several opinions in support in the Precis, particularly at pages 1 and 4.

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My last point is that a child's evidence alone should not be sufficient for a conviction or for deciding upon any important question. So, an addition should be made in the shape of a proviso to the effect that the evidence of a child under 12 years of age, when taken without affirmation or oath, will not be sufficient for the matter that is going to be decided, unless it is corroborated in material particulars. That is the principle enunciated in the Indian Evidence Act with regard to certain other kind of evidence which is tainted, and therefore it is specifically provided in the

[Mr. Lalchand Navalrai.]

Act, in section 114, that such evidence will not be accepted without corroboration. So far as a child's evidence is concerned, I do not find in the Evidence Act a direct provision to the effect that a child's evidence without corroboration will be accepted and on his evidence alone a man can be convicted or a point of a crucial nature decided on his evidence alone. On this point Honourable Members will find at page 3 of the opinions that corroboration must be provided for. What I submit then is when you are making a law, make it complete. One word with regard to this matter. What will it be if a child of 6½ years of age comes before the court, and why should his evidence be not admissible ? I would say the same principle. Even a child of 6½ years—we have doubt about his understanding, and on presumption, there should be no question of the child being 6½ years or five years or so, because the presumption if you once accept it, and it is also a presumption of English Law and should be the law here also—on that presumption, whether he is a child of 6½ years makes no matter because you are providing a safeguard and in that safeguard, if you even go and give the benefit to that subject you have to do it and therefore do not risk even in the case of 6½ years child, his evidence should not be accepted. Supposing the child is one of four or five years and comes before the court and the court comes to the opinion, to say yes, he understands it, I can take his evidence and act on it—that is the danger there. Therefore, the law should be laid down that if it is a child even above the age of seven, there should be these safeguards, but so far as a child below seven years is concerned, I think his evidence should not be accepted at all.

Mr. Muhammad Azhar Ali (Lucknow and Fyzabad Divisions : Muhammadan Rural) : This amendment of the Indian Oaths Act, 1873, appears to be a very dangerous amendment. In my opinion, so far as I have read sections 136 and 118 of the Evidence Act, it appears to me that there is absolutely no necessity for amending the Indian Oaths Act.

Section 118 says :

" All persons should be competent to testify unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions, by tender years, and so on."

The question turns entirely on the competency to testify. This has been interpreted by different courts in different ways. Some courts have held that competency to testify is a matter which is a condition precedent to the administration to him of an oath or an affirmation. You will find from the Evidence Act that the most competent person to judge this point is the judge himself or the magistrate who is presiding. The object of the amendment sought to be made is that no child under 12 will be required to take the oath but at the same time his evidence will be admissible. The amendment says that the witness understands the duty of speaking the truth and in the next line it is stated that he does not understand the nature of an oath or affirmation. This seems to me to be a contradiction. How is it that the child understands one thing and does not understand the other thing. From childhood, children are taught in every family, I suppose, that speaking of the truth is the cardinal principle of life. At the same time administration of oath or affirmation

is not very palatable. This is the first lesson that children get from their mothers. They are asked to speak the truth and not to swear or take oath unnecessarily. You say in one breath that the child understands the duty of speaking the truth and in the next breath you say that he does not understand the significance of oath or affirmation. This is a thing which I cannot understand. To me, it seems a contradiction. These two sentences coming one after the other seem to me absolute contradiction, in legal phraseology. I said that this was a very dangerous amendment. Now, courts are allowed by law to recognise the evidence of approvers. If a child is asked to make a statement, the police will make use of the statement of the child in the same way that they make use of the statement of an approver. It is very easy for the police officer or any one conducting the case to give two lozenges or chocolates to the child and ask him to make a statement. Therefore, I submit that this is a dangerous amendment to give the child the right of making a statement in court and at the same time not make him liable for any lie or untruth that he may be taught by the police.

The Honourable Mr. J. A. Thorne : That is not the effect of the Bill.

Mr. Muhammad Azhar Ali : The last words of this amendment have got that effect : " but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth ".

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

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

Mr. Muhammad Azhar Ali : Sir, I was saying that it would be a handle in the hands of the police or even of one party to put up a small boy and who may be mulcted in some sort of trouble afterwards. It is risky, Sir, the fact is that with regard to children no exact or precise age is mentioned so far in any of the laws in India.

An Honourable Member : Question.

Mr. Muhammad Azhar Ali : I know the Honourable the Home Member said that in England they have enacted like that ; but I do not really see the necessity of any such enactment so far as India is concerned,—because section 118 of the Evidence Act is quite capable and enough to allow the judge to form his own opinion and discretion when a child is produced. Sir, there is nothing like that in any legislative enactment, so far, by which children are absolutely excluded from giving evidence on the presumption that they have not got sufficient understanding, nor any precise remedy is laid down respecting the degree of intelligence and knowledge which will render a child a competent witness. Now all depends on the reason which the judge gives or the discretion of the judge. If a child possesses sufficient understanding, the judges even now under section 118 will admit their evidence. I really do not see, as I said, the necessity of enacting this ambiguous amendment. I take a concrete case. If a child is produced

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in any court, does this amendment mean that the moment the child is produced the judge or the magistrate will explain to him his duty of speaking the truth, or is it meant that the child, after his examination will be judged by the judge or magistrate whether he is speaking the truth or not speaking the truth and make a note. So this "duty of speaking the truth" is rather ambiguous to me.

Mr. Lalchand Navalrai : They have given us a horse ; why do you look it in the mouth ?

Mr. Muhammad Azhar Ali : You don't understand. Children do not understand the "duty of speaking the truth" ; so I say even adults and old people very often do not understand what is their duty and what are their rights. It may be said that where an educated man can or cannot understand his duty and his right still a child under twelve years of age is expected, by this amendment, to know the "duty of speaking the truth". I say my objection is to the words "duty of speaking the truth". Sir, by allowing to produce children to give evidence in court, my only submission is that it will be a very dangerous and risky practice. So far, whenever children were produced, it was for the judge to decide whether they really understood the evidence which they were giving in the court, but now, by this amendment advantage will be taken. I do not see the reason why it has been brought before this House, except that some such amendment has been made in England about this duty of a child giving evidence, otherwise, I see no reason ; so, unless I am convinced that section 118 of the Evidence Act and section 136 of the Evidence Act are not sufficient for the judge to ascertain whether the evidence is admissible or not admissible, Sir, on these grounds I think that this amendment is not necessary.

The Honourable Mr. J. A. Thorne : Sir, the points raised by my Honourable friend, Mr. Lalchand Navalrai, will all arise at a later stage when his amendments come before the House, and I prefer to hold my fire until those amendments come within range. As regards my Honourable friend, Mr. Azhar Ali, the first point he set out to make was that if a child does not understand the nature of an oath or affirmation, then that child should be considered incompetent to testify. Well, that is my friend's opinion, and he is entitled to his opinion ; but all I have to say to the House is that that opinion is not the opinion of the great majority of authorities who have expressed their views on this measure. Then he went on to describe this as a "very dangerous" Bill. I can understand people regarding it as a Bill of very little importance or even as an unnecessary Bill, but I do think that it shows a very unsteady state of nerves to describe it as a dangerous Bill ; and in fact it was quite clear that my Honourable friend's system had received a shock,—because he interpreted a part of the Bill in exactly the reverse sense from its obvious interpretation. I listened carefully, and the ground he gave for regarding it as a dangerous Bill is that it removes the penalty for perjury on the part of children. Well, Sir, that is precisely what the Bill does not do. The concluding words of clause 2 are that this shall not affect the obligation of the witness to state the truth. Therefore, I must regard all his remarks, which were based on this misinterpretation of the Bill, as entirely beside the point.

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

"That the Bill further to amend the Indian Oaths Act, 1873, for a certain purpose, as reported by the Select Committee, be taken into consideration."

The motion was adopted.

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

"That clause 2 stand part of the Bill."

Mr. Lalchand Navalrai : Sir, I move :

"That in clause 2 of the Bill, in the proposed proviso, after the word 'age', occurring in the second line, the words 'and above seven years' be inserted."

Sir, I made my points very clear when I spoke at the stage of consideration. I would have liked that the replies to all these points had been given by the Honourable the Home Member in order to give me an opportunity to understand generally what his objections were, so that, when presenting these amendments, I would have been in a position to say something on his objections. He has left me under that disadvantage. I submit, however, that so far as this amendment is concerned, I have made it plain that a child who is under seven years of age should not be considered to be a person whose evidence should be accepted based on the presumption to which I have referred. I have shown clearly by giving instances that the evidence of a child under seven years of age will be accepted under a doubt and the results of that doubt have been that people have been actually punished on the evidence of a child under seven years of age. I will also submit that the evidence of a child under seven years of age is such that none will be certain that the evidence that he has given is true. Besides, if the court considers that the evidence given by the child under seven years of age is false, he may be prosecuted for perjury.

There is one thing which I would like to say about my amendment. One of my friends has told me that the amendment, as it is worded, is not happy. But I have made it clear to the House what my object is and the aims and objects of the Bill are also very clear. The object of the Bill is that a child under 12 years of age should not be given any oath or affirmation and he should be examined without oath or affirmation. The doubt that seems to have been created by the frame of my amendment—with which I do not agree—is that a child under 12 years of age will not be given any oath or affirmation but a child under seven years of age will be given an oath or affirmation. To have such an interpretation of my amendment is, to put it mildly, wrong, because it is mere commonsense that when no oath is given to a child under twelve years of age how can it be given to a child under seven years of age. If the wording of the amendment is, to put it mildly, wrong, because it is mere common sense of Government. The point that I aim at is whether the Government is prepared to accept my amendment in the sense that the evidence of a child under seven yeare of age will not be admissible and no oath or affirmation will be given to him. Sir, I do not think I need take any more time of the House on these amendments and I also said this in my speech on the general consideration of the motion. Sir, I move.

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

"That in clause 2 of the Bill, in the proposed proviso, after the word 'ago', occurring in the second line, the words 'and above seven years' be inserted."

Sir Syed Raza Ali (Cities of the United Provinces : Muhammadan Urban) : Sir, I will content myself with saying a very few words indeed on this amendment of my Honourable friend. The net effect of the amendment, if carried, would be this that if a child over seven years of age and under 12 years of age appeared before the court as a witness, it would not be necessary for the court to administer an oath to the child. But after explaining to the child his duty as a witness, it would be open to the presiding Judge to record the evidence of the child without giving him an oath. But if the witness before the court happened to be a child just below seven years of age, it would be the duty of the Judge under this amendment, if carried, to administer the oath.

Mr. Lalchand Navalrai : Do you accept the principle underlying the amendment ?

Sir Syed Raza Ali : There is no question of any principle whatsoever. You are providing here for certain emergencies by a specific, clear, definite and unambiguous word. The question of principle does not arise when applying the provisions of an Act. If I understood my Honourable and Learned friend correctly, what he means is this that it would be the duty of the court, if the amendment is carried, to administer oath to a child who is under 12 years and over seven years of age. Because oath is dispensed with in the case of a child whose age is above seven, therefore, by implication, my Honourable friend thinks it will also be done away with in the case of a child whose age is below seven. He may be right so far as the principles are concerned, but let me repeat in this Chamber that the statutory law is not always concerned with principles but with the application of principles as embodied in Statutes. That is the real difference between the Statutory Law and Common Law. I will read the first two lines of the proviso as it will stand after this amendment :

"Provided that where the witness is a child under twelve years of age and above seven years, it will not be necessary to administer an oath to him."

Honourable Members can decide for themselves what the meaning of that is. It means that if the child is under seven years, an oath must be administered to such a child. If on no other ground, at least on the ground of a serious defect in drafting, I must oppose this amendment.

The Honourable Mr. J. A. Thorne : Sir, I was proposing to deal first with the effect of Mr. Navalrai's amendment and then with his intention, the intention and effect being absolutely different. But my friend, Sir Syed Raza Ali, has saved me the trouble of dealing with the effect of it—which is, to put it bluntly, to make the clause nonsense. However, the intention is, as I understood my Honourable friend, to shut out altogether from a court the evidence of a boy of seven years or under.

Mr. Lalchand Navalrai : That is correct.

The Honourable Mr. J. A. Thorne : That my Honourable friend acknowledges to be his intention. If that is his intention, then I am quite sure it is not the intention of this House or of the great majority of people who have been consulted about this Bill. If one wanted an illustration of the effect which such a provision would have, one has only to turn to the case which gave rise to this measure. That case was one of an unnatural offence on a boy of 6½ years old. Without the evidence of that boy, it is pretty clear to me that the offence could not have been proved. If the evidence of a boy of that age in such a case is to be shut out, what hope is there of punishing a revolting offence of that kind? Mixed up with that intention of my Honourable friend, there appears to be another : that a child of seven or under should be protected from prosecution for perjury. Well, if that is his object, it is entirely unnecessary to provide for it in this Bill because section 82 of the Indian Penal Code is an absolute bar against the prosecution of any child under seven years of age. Sir, I must oppose this amendment both because as it stands it makes nonsense of the Bill and because behind it is an intention which cannot be accepted.

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

"That in clause 2 of the Bill, in the proposed proviso, after the word 'age', occurring in the second line, the words 'and above seven years' be inserted."

The motion was negatived.

Mr. Lalchand Navalrai : Sir, I beg to move :

"That in clause 2 of the Bill, in the proposed proviso, after the word 'truth', occurring in the fourth line, the words 'and gives rational answers to the questions put to him' be inserted."

Sir, it is clear from the Bill as it has emerged from the Select Committee that a change has been made in the proviso which puts the duty on the court to be of the opinion that in giving the oath or affirmation, the child understands the duty of speaking the truth. Now, Sir, that has been much commented upon by my Honourable friend, Mr. Muhammad Azhar Ali. But it is very necessary that the court should understand and should be of the opinion that the child has understood the duty of speaking the truth. Anyway this is a great safeguard. What I am at present asking by this amendment is to add the words also that it would be incumbent upon the court to satisfy itself that the child understands and is able to give rational answers. It might be said that the Evidence Act has a provision in section 118 for this purpose. I am conscious of this. This Bill is enacted now after that Evidence Act and I, therefore, want that this provision should be put in here also. If such a proviso is not reproduced here, the court might think that it is only sufficient if it finds that the child is able to speak the truth. Then he might think that he is absolved from the duty laid on him under section 118 of the Evidence Act because this is a subsequent Act. Doubts may arise from that point of view and, therefore, my amendment should be accepted to clear all doubts.

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

"That in clause 2 of the Bill, in the proposed proviso, after the word 'truth', occurring in the fourth line, the words 'and gives rational answers to the questions put to him' be inserted."

The Honourable Mr. J. A. Thorne : Sir, I understand my Honourable friend, Mr. Lalchand Navalrai, to say that this provision is superfluous, nevertheless, it should be put in the Bill. My case is that it is superfluous and, therefore, should *not* be put in the Bill. It is admitted that this very provision appears as a general requirement in section 118 of the Indian Evidence Act. Under that section no one is competent to testify, whether a child or not, unless he is capable of giving rational answers to questions put to him. Therefore, as my Honourable friend has recognised, it is quite unnecessary to put it in again. At any rate it would be superfluous if included in the Bill, and I cannot believe that any reasonable person can harbour the doubts which he imagines might arise. Sir, I oppose.

Mr. Lalchand Navalrai : Sir, I beg leave of the House to withdraw my amendment.

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

Mr. Lalchand Navalrai : Sir, I beg to move :

"That in clause 2 of the Bill, in the proposed proviso, the words 'nor affect the obligation of the witness to state the truth' be omitted."

Sir, it has also been made clear by the Honourable Member in charge of the Bill that a child under seven years of age will not be punishable. But my point is a little more than that. I want that a child even under the age of 12 years when his evidence is being taken should be given the same concession and should not be prosecuted. If the court considers that the evidence of a child under 12 years can be taken for the purpose of evidence in a particular case and if the court comes to the conclusion that the boy's evidence can be accepted to a certain extent, but that the boy is not giving the whole truth, or is not giving evidence in the manner in which the court likes him to give evidence, then the court should not impose any penalty upon the child. The child is of tender age and there may be doubts about the evidence of the child or there may be difference of opinion when the evidence goes before another Judge and in such cases the child should not be liable to punishment. Sir, I move.

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

"That in clause 2 of the Bill, in the proposed proviso, the words 'nor affect the obligation of the witness to state the truth' be omitted."

Sir Syed Raza Ali : Sir I wonder whethere my Honourable and learned friend realises the effect of the amendment, if carried. The amendment deals with persons whose age may be somewhere in the neighbourhood of 12 years. Now, in very many cases a person of 12 years is not always a child in India. I know a boy who matriculated at 12 a couple of years ago, and it is such persons whom my Honourable friend, if I understood him properly, wants to escape scot-free if he comes to court and tells any number of lies. If he chooses to tell lies he must take the consequences, if detected. This amendment if carried would only encourage falsehood and lies being uttered in court. As my Honourable friend himself realises, in the case of a child below seven years of age different considerations arise but I do

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not understand why my friend wants to give this licence to persons of the age of something like 12 to tell any number of lies that he or she may choose to tell in court.

Mr. Lalchand Navalrai : What about children of eight or nine ?

Sir Syed Raza Ali : To show how weak my Honourable friend's point is I insist on taking the case of a person whose age is in the neighbourhood of 12 years. Sir, in certain parts of our country girls of the age of 12 almost reach womanhood and boys also attain maturity of understanding to some extent. I really do not see what good purpose this amendment would serve except to make it easier for persons of that age to tell lies in court.

The Honourable Mr. J. A. Thorne : Sir, once again I must make a distinction between the intention and the effect of the amendment. The intention is to exempt from prosecutions for perjury every child under 12. It is now admitted, I am glad to hear, that a child under seven is absolutely exempted by section 82 of the Indian Penal Code. So, we are concerned only with children between the ages of seven and twelve. My friend thinks he can attain his object, which is to exempt those children also absolutely from prosecution, by deleting those words. He is quite wrong. Even if these words were deleted section 14 of the Indian Oaths Act would remain in force and that says :

"Every person giving evidence on any subject shall be bound to state the truth on such subject."

So, even if you wipe out these words in this Bill that obligation to state the truth will remain even on a child between the ages of seven and 12 years, and he will be subject to the penalties of law if he does not speak the truth. What those penalties are my friend knows very well ; but I doubt whether in his plea that a total exemption should be given he has taken into account the language of section 83 of the Indian Penal Code :

"Nothing is an offence which is done by a child above seven years of age and under twelve who has not attained sufficient maturity of understanding to judge of the nature and the consequences of his conduct on that occasion."

So a child between seven and 12 cannot be convicted unless he is fully able to judge of the nature and consequences of giving false evidence. Sir, I oppose the amendment.

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

"That in clause 2 of the Bill, in the proposed proviso, the words 'nor affect the obligation of the witness to state the truth' be omitted."

The motion was negatived.

Mr. Lalchand Navalrai : Sir, I move :

"That in clause 2 of the Bill, at the end of the proposed proviso, the following be added :

'after he has been warned of the possible consequences of not speaking the truth and a note in writing made thereof'."

This is more or less consequential on the amendment made in the Select Committee. I only want a safeguard in the sense that after all he is a child and the magistrate should explain to this child witness his duty of speaking the truth and inform him of the consequences

[**Mr. Lalchand Navalrai.**]

of not doing so. There can be no objection to this amendment and if the magistrate does not warn him or make a note but forthwith takes his evidence, there is a likelihood of his not being able to find out if the witness has got the understanding to give rational answers. On this point of giving warning I find there are several opinions. On page 4 I find this :

"The Honourable Judges of the Chief Court of Oudh while agreeing with the proposed Bill consider that it should be the duty of the examining authority to impress on the child the necessity of telling the truth and to make a note of the mental condition of the child and the manner in which the necessity of speaking the truth was brought home to him."

So I have got the opinion of the Chief Commissioner on my side. On page 4 the Deputy Commissioner also gives his opinion as follows :

"and the presiding Judge or Magistrate shall explain to such witness the meaning of truth if it should appear necessary to do so."

These are precautions that even judges are agreed upon ; and I have found in practice that if this is not done injustice is likely to result. The Honourable Justice Vivian Bose of the Nagpur High Court also agrees with the underlying principle of the amendment and he considers that a child should be warned of the possible consequences of not speaking the truth. I do not think I need any more weighty opinion to support my amendment. If it is not accepted by Government, it only means that there is a desire on their part to have the Bill as they presented it, which I submit is not a correct attitude, especially in view of the present thinness of the House.

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

"That in clause 2 of the Bill, at the end of the proposed proviso, the following be added :

'after he has been warned of the possible consequences of not speaking the truth and a note in writing made thereof'."

The Honourable Mr. J. A. Thorne : Sir, I think the last remark of my Honourable friend was an ungenerous one. An amendment suggested by him was accepted in the Select Committee and it is quite clear to my mind that that amendment sufficiently covers what he is now anxious to put into the Bill. That amendment which is now in the Bill requires a court to satisfy itself that the child understands the duty of speaking the truth. I do consider it rather superfluous then to set out to instruct the magistrate or judge how he should go about the task of satisfying himself that the child understands the duty of speaking the truth. It is really quite superfluous to require him by statute to warn the child of the possible consequences of not speaking the truth and to write a note to that effect. It is treating the magistrate or judge rather as if he were himself a child under twelve.

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

"That in clause 2 of the Bill, at the end of the proposed proviso, the following be added :

'after he has been warned of the possible consequences of not speaking the truth and a note in writing made thereof'."

The motion was negatived.

Mr. Lalchand Navalrai: Sir, I move :

"That in clause 2 of the Bill, after the proposed proviso, the following further proviso be added :

'Provided further that the evidence of such a child will not be acted upon unless it is corroborated in material particulars'."

My amendments have been objected to as being superfluous. My point is that for want of this superfluity, judges and magistrates may be misled. I may say that my purpose has to some extent been served by the speeches of the Honourable the Home Member and I hope that magistrates and courts will see why my amendments have not been accepted and will read the explanations of the Home Member. I say that if there is any possible room for misunderstanding in the minds of judges, that should be cleared. I am superfluous because I happen to move these amendments ; but if it is said that my amendments are superfluous, I would only say that judges and magistrates have given similar opinions..

An Honourable Member : They are also superfluous !

Mr. Lalchand Navalrai : Very good. Then everybody is superfluous ! I hope a similar explanation will be given by the Home Member on this amendment as on other amendments. I want that the evidence of a child should not be accepted unless it is corroborated........

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member appears to have dwelt on that point already.

Mr. Lalchand Navalrai : I am asking the Honourable the Home Member if there is any statutory provision in the Evidence Act to show that a child's evidence without corroboration cannot be accepted. No doubt some courts do not convict unless and until there is strong evidence in material particulars to corroborate the child's evidence, but there is no statutory provision—you are leaving it to magistrates to follow their own inclinations. I want that it should be made clear and this amendment seeks to do it.

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

"That in clause 2 of the Bill, after the proposed proviso, the following further proviso be added :

'Provided further that the evidence of such a child will not be acted upon unless it is corroborated in material particulars'."

Sir Syed Raza Ali : Sir, the amendment provides, as Honourable Members can see for themselves, a clear rule of evidence. We are here today dealing with the Indian Oaths Act. Certainly this is not the place for an amendment of this character being incorporated in the present Bill. I do not mean to concede that my Honourable and learned friend is right when he seeks to put a child witness on the same footing as an accomplice. Legal Members of this House know that the rule of law which is incorporated in this proposed amendment is a rule that is generally applied to the evidence of an accomplice, namely, that an accomplice is generally unworthy of credit and his evidence is not to be accepted unless it is corroborated in material particulars by independent evidence. I entirely fail to see why a poor child's evidence, who, for all we know, may be speaking nothing but the truth, should be treated like that.

Mr. Lalchand Navalrai: Which is that section of the Evidence Act which says that corroboration is needed for a child?

Sir Syed Raza Ali : I am very thankful to my friend for asking that question. Fortunately, there is no such provision in any section of the Indian Evidence Act for the simple reason that there should be no such silly provision. There is no reason why a child's evidence should not be accepted. Why should not a child be treated on the same footing as a grown up honest witness?

Sir H. P. Mody (Bombay Millowners' Association : Indian Commerce) : He is probably more honest.

Sir Syed Raza Ali : Quite so. In criminal cases I have had experience of child witnesses ;—but I can't say the same of civil cases. During the course of my practice I have known several children appearing in criminal cases, and the general impression,—I cannot recall all the facts,—left on my mind is that they are as good, as honest and as trustworthy witnesses as grownup people. Rather they are more honest and trustworthy witnesses than those whom one generally meets in courts of law. There is really no point in this amendment. In fact, the world of child witnesses will be up in arms against my friend, because there is no reason why a child's evidence should be treated with suspicion. Sir, I oppose the amendment.

The Honourable Mr. J. A. Thorne : Sir, my learned and indefatigable friend this time wrongly anticipated the objection I should take to his amendment. I do not regard it as a superfluous or trivial amendment. On the other hand, I regard it as one which might have very grave consequences indeed if it were carried into law. It is an amendment which, I believe I am right in saying, would import into Indian Law a principle which does not exist as a legal requirement in any context whatever at present. My friend quoted section 114 of the Indian Evidence Act......

Mr. Lalchand Navalrai : Not I.

The Honourable Mr. J. A. Thorne : Then I withdraw the implication against my friend, but certainly it was quoted before lunch this morning, and I am pretty certain, by my friend........

Mr. Lalchand Navalrai : I said it does not apply to a child witness, and I did say it......

The Honourable Mr. J. A. Thorne : So my friend did quote section 114 of the Indian Evidence Act this morning before lunch, and he quoted it in this sense that that provision of law requires that the evidence of an accomplice should be corroborated in material particulars. I pause for a contradiction. Well, my friend is quite wrong. Section 114 of the Indian Evdience Act does not do anything of the sort. It reads as follows :

"The Court may presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case".......

Mr. Lalchand Navalrai : There is any illustration?

The Honourable Mr. J. A. Thorne : There is an illustration. Illustration (b) says : "The Court may presume that",—this is an illustration to the provision which I have just read,—" an accomplice is unworthy of credit unless he is corroborated in material particulars ". That is an illustration ; it is not part of the substantive law of the land. It is not laid down that the evidence of an accomplice shall never be accepted unless he is corroborated in material particulars : and, Sir, I base my objection to my friend's proposal precisely on this provision of law. If the court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars, the Court may certainly presume that any particular child giving evidence before it is unworthy of credit unless he is corroborated in material particulars. That is a totally different thing from saying that in no case whatever shall the evidence of a child under 12 be acted upon unless it is corroborated in material particulars, and it might lead to very serious miscarriage of justice if any such requirement were enacted. It might easily happen that the evidence of a child is the only evidence of an offence, possibly an offence of the kind to which I referred just now. It would be for the court to decide whether the evidence of that child was worthy of credit or not, and in weighing that evidence the court would naturally consider whether the child was likely to be speaking the truth or not. If no other evidence were available from any source, if nevertheless the court were convinced that the child was speaking the truth, it would be a gross miscarriage of justice if that evidence were not acted upon. Sir, I regard this amendment as a serious one and one which should be seriously opposed.

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

"That in clause 2 of the Bill, after the proposed proviso, the following further proviso be added :

'Provided further that the evidence of such a child will not be acted upon unless it is corroborated in material particulars'."

The motion was negatived.

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

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Mr. J. A. Thorne : Sir, I move :

"That the Bill, as amended by the Select Committee, be passed."

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

"That the Bill, as amended by the Select Committee, be passed."

The motion was adopted.

THE INDIAN AIR FORCE VOLUNTEER RESERVE (DISCIPLINE) BILL.

Mr. C. M. G. Ogilvie (Defence Secretary) : Sir, I move :

"That the Bill to provide for the discipline of members of the Indian Air Force Volunteer Reserve raised in British India on behalf of His Majesty be taken into consideration."

This Bill, as Honourable Members will have seen for themselves, is a very short and simple one. It follows very closely the Bill for the discipline of the Indian Naval Volunteer Reserve and somewhat less closely the Indian Reserve Forces Act. The provision that members of this reserve will not be subject to air force discipline unless they are called up for training or embodied for actual service follows the similar provision for the Naval Reserve, but the case of the Army Reserve is different. The Army Reservist is at all times subject to the military discipline of the Army just as though he was a serving soldier. As regards the penalty sections, again, the Naval Reserves Act has been followed. That means that the penalties are less drastic than those imposed for the Army Reserve. According to the Indian Reserve Forces Act, reservists who have failed to appear for training are liable to imprisonment as well as those who fail to appear when called up for actual service. In this Bill they are made liable to fine only, and a differentiation is made between their failure and of those who do not respond to the call for actual service in time of emergency or war. Finally, clause 5 of the Bill is precisely the same as the corresponding sections in the Naval Discipline and Indian Reserve Forces Acts and embodies a well-known departure from the ordinary rules of evidence which is necessitated by the facts of the case. It allows of an officer's certificate that a reservist has failed to appear, to be treated as evidence without requiring the officer himself to proceed to courts perhaps in far distant parts of the country, which would be difficult and expensive at any time and impossible in time of war. That, Sir, is all I have to say about this Bill itself but, with your permission, I should like to say a little about the reserve forces for which it is intended.

The proposal to form an Indian Air Force Reserve has long been under consideration. The lack of money has been the chief obstacle, and, in particular, the lack of where-whithal to purchase aeroplanes. We are now in possession of the necessary aeroplanes, owing to the rearmament of the regular squadrons by His Majesty's Government. The object of the reserve is to provide a force which, in time of peace or when peace shall come again, will be similar to the Indian Territorial Forces, that is to say, it is designed to cater for civil presonnel who are skilled either in aviation or in the technical maintenance of aircraft, who will do their training in their spare time and be called up periodically for intensive training. In time of war they will be embodied, and, of course, when the enrolment of the proposed reserves which is shortly to begin is completed, they will at once be embodied for actual service for the period of the war. During war time they will be paid the same rates as the officers and airmen of the Indian Air Force. During peace—that is looking rather a long way ahead perhaps—during peace they will be paid a small retaining fee, a uniform allowance and full pay when called up for the period of training. The units will be Indian but there will be provision for seconding to them

officers and airmen of the Royal Air Force Volunteer Reserve in order that the skilled services of such persons may not be lost. At present they will be designed for coast defence duties, and these units will, therefore, be recruited from flying personnel and technical personnel living in or near the great ports. There will also be a unit stationed at Delhi. It is believed that this reserve will be popular, to judge from the number of applications to join it which have already been received. In time of war it will undoubtedly be a valuable asset to the country's defence, and in time of peace it will generally improve civil aviation by affording opportunities for persons to become expert in flying advanced types of machines, while technical personnel will also gain in the practice of their own trades and will also learn the care and maintenance of aircraft. Sir, I move.

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

"That the Bill to provide for the discipline of members of the Indian Air Force Volunteer Reserve raised in British India on behalf of His Majesty be taken into consideration."

Mr. F. E. James (Madras : European) : I should like to welcome very heartily this Bill, and the reasons for it. My only regret is that it took the outbreak of war to bring this about. There are one or two questions I should like to ask the Honourable Member who moved the motion. In the first place, with regard to the machines to be used by the Air Force Reserve, what provision has been made for those ? Will the machines at present being used in aero clubs be commandeered for this purpose ? Secondly, the Honourable Member referred to the fact that this new unit would be an Indian unit. I take it that the term Indian includes persons known as statutory Indians. I would like to ask him what about the numbers of Europeans in this country who are members of aero clubs and who possess pilot's certificates ? Where can they enlist ? Presumably, they will not be able to enlist in the Indian Air Force Volunteer Reserve. Is it contemplated that they should be allowed to enlist in the Royal Air Force units in this country, or will they have to go to the United Kingdom for service ?

The next question is as to what provision has been made for the continuous training of these units. I assume that there will be seconded to these units for training experienced officers of the Royal Air Force. But I should like to hear on that point from the Honourable Member. My final question is, what is the present authorised strength of this volunteer reserve ? My Honourable friend said that there would be units stationed in the main ports and also at Delhi but it would be interesting to know what strength has already been contemplated by the authorities and what strength has, at present, up to date been actually authorised.

The other point I wish to make is this. There is occasionally a tendency on the part of the defence services to take things for granted as far as the public is concerned and I hope, therefore, that if they really propose to make use of the Indian Air Force Volunteer Reserve and to encourage recruitment to it, they will get down to the business of letting the public know all about the conditions of recruitment to this service and the avenues through which members of the public may enter it. There is a very large body of young men, certainly in the part of the world which

[Mr. F. E. James.]

I know best at present, who are desperately keen to volunteer for service in connection with the war and many of them have for some time past thought of the air force as an opportunity for this service. I hope they will not be discouraged. I hope that everything will be done to encourage recruitment to this volunteer reserve of all young men who are prepared to undergo the necessary training and take the necessary qualifications. I am glad that this Bill has been brought forward and I hope that this volunteer reserve force will be a great addition, as it should be, to the defence forces of this country.

Mr. C. M. G. Ogilvie : I think that I should be able to answer the majority, if not all, of the questions put to me by my Honourable friend, Mr. James, in a manner as satisfactory to him as the circumstances permit. The first question was what machines are to be used. There is, I understand, no idea at present of commandeering machines belonging to flying clubs. These young pilots will be trained on Royal Air Force machines and they will be sent to a training camp for that purpose. All Indians, including statutory Indians, will be eligible for recruitment or for commissions.

Sardar Sant Singh (West Punjab : Sikh) : May I ask whether the pilots already trained in the Aero Clubs will be eligible under this Act ?

Mr. C. M. G. Ogilvie : Any one who has already a knowledge of flying will certainly be preferred to those who have not. As regards Europeans who possess pilot certificates, I said just now that it is proposed to second European members of the Royal Air Force Volunteer Reserve for service with them. The only other way in which Europeans can obtain service in units is by joining the Royal Air Force Volunteer Reserve which they can now do in this country, for service with Royal Air Force squadrons. The same also applies to Indian officers who apart from these reserve units may be granted temporary commissions in the Indian Air Force proper. As my friend doubtless knows, the Air Force is small and there may not for some time be any considerable number of vacancies in them. Full provision has been made for the continuous training of these units and experienced fighting and technical personnel from both the Royal Air Force and the Indian Air Force will be seconded to them.

Finally, he asks me what is the present authorised strength of this reserve. It amounts to five units at present and it will depend not only upon the number of persons who volunteer or wish to volunteer for this service which may well be very large but also upon the number of service machines which can be made available. Should, as it is confidently expected, the number of volunteers be large, every effort will be made to train as many as possible but the number of machines may still remain a difficulty in allowing all those who would like to take advantage of it to do so.

Mr. F. E. James : May I ask one further question. The Honourable Member said that the present authorised strength is five units. Does he mean by a unit a squadron ?

Mr. C. M. G. Ogilvie : It means a flight.

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

"That the Bill to provide for the discipline of members of the Indian Air Force Volunteer Reserve raised in British India on behalf of His Majesty be taken into consideration."

The motion was adopted.

Clauses 2, 3, 4, 5, 6 and 7 were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

Mr. C. M. G. Ogilvie : Sir, I move :

"That the Bill be passed."

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

"That the Bill be passed."

The motion was adopted.

THE MOTOR VEHICLES (AMENDMENT) BILL.

The Honourable Sir Andrew Clow (Member for Railways and Communications) : Sir, I move :

"That the Bill to amend the Motor Vehicles Act, 1939, for certain purposes, be taken into consideration."

Honourable Members will recollect that during the passage of the main Act last year through this House certain sub-sections were added to section 134, which was a section providing for the repeal of the old Act. The main object of those sub-sections was to give the Provincial Governments time to frame the rather elaborate code of rules necessary to implement the Act which came into force on the 1st of July last. Unfortunately, the attempt to dovetail the two Acts has not been entirely successful and, as Honourable Members will see from the Statement of Objects and Reasons, the existing provisions have given rise to certain difficulties and doubts. The most obvious one of these is that the Act as it stands contemplates the setting up of the various transport authorities from the moment when it comes into force, that is, on the 1st July last, whereas these authorities could not effectively operate without the new rules. Actually, the authorities have not been set up, so that, as Honourable Members will see from Clause 1 (2) of the Bill, we propose to go back a little and validate what has not been done. That explains the purposes of Clauses 2 and 3.

Clauses 4 and 5 contain a great many words, but they all boil down to this, that we are asserting a very simple definition of colour blindness. The Act as passed contains no definition. We are advised that for the purpose of driving cars it is quite sufficient that a man should be able to distinguish between red and green. There are certain references in these sections to night blindness but we are leaving the position in respect of night blindness as it is. At the same time I must confess to some doubts as to whether the ordinary medical practitioner will be able to make a

[Sir Andrew Clow.]

proper test for night blindness and we may have to come later to the House with proposals for modification here also. Clause 6 does no more than add a registration sign for the Andaman and Nicobar Islands and Clause 7 proposes to alter one of the traffic signs included in the Ninth Schedule to the Act. The existing sign has been criticised on the ground that, whereas it is intended to constitute a warning not to sound your horn, it may very well be read by drivers as an invitation to do so. If any Honourable Member has forgotten to bring his Act with him, he will find a reproduction of the existing sign on the paper that has been circulated, and I think he will recognize the danger of the sign we adopted last year. The new sign was chosen out of two alternatives by the Transport Advisory Council and I recommend it to the House.

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

"That the Bill to amend the Motor Vehicles Act, 1939, for certain purposes, be taken into consideration."

Mr. F. E. James (Madras : European) : Sir, might I ask the Honourable Member one question which relates to the amendment to the Sixth Schedule in clause 6 of the Bill. Has he made any provision for suitable numbers for Panth Piploda ?

The Honourable Sir Andrew Clow : No, Sir, I have not. I am not aware that there are any roads in Panth Piploda on which cars can run.

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

"That the Bill to amend the Motor Vehicles Act, 1939, for certain purposes, be taken into consideration."

The motion was adopted.

Clauses 2 to 7 were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Sir Andrew Clow : Sir, I move :

"That the Bill be passed."

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

"That the Bill be passed."

Dr. P. N. Banerjea (Calcutta Suburbs : Non-Muhammadan Urban) : Sir, I have no desire to oppose this Bill, but I do wish to raise my voice of protest against the habit of Government of not doing things at the proper moment. Sir, they seem to have great faith in the doctrine of legislating in a hurry and repenting at leisure. The consequences of such hurried legislation very often fall on people other than themselves. In this Bill we find it is stated that sections 2 and 3 shall be deemed to have taken effect from the 1st July, 1939. Legislation giving retrospective effect to some of the provisions is to be strongly condemned. It is most undesirable that legislation should be introduced and retrospective effect should be given to its provisions

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member ought to have taken the opportunity to make these remarks at an earlier stage.

Dr. P. N. Banerjea : Sir, I am protesting against the method of doing things, and I hope and trust that the Government will not, in future, introduce such legislation giving retrospective effect to its provisions.

Mr. F. E. James : Sir, I should like to dissent from the remarks of my friend, Dr. Banerjea. He used the phrase, " legislate in hurry and repent at leisure ". I think he was using the analogy of marriage. Sir, legislation has one advantage over marriage. In the case of marriage, the procedure is that you have first to introduce the lady, and then she is taken into consideration. Sometimes there is an amendment to that, if the family ties are strong, and the question is referred to the Select Committee of the family. Then, the report of the Select Committee is received and at a later stage there is consideration,—a process which often takes a long time. Finally, the motion is that the marriage be made, or passed. Now, the difference between legislation and marriage is this. You may make a terrible mistake in a particular Bill, but it is always open to Government to amend their previous mistakes. That is not the case in regard to marriage. Unlike Dr. Banerjea, I should like warmly to congratulate Government upon the way in which they have been willing to recognize their sins of omission and commission in the past and to bring forward this piece of legislation ; and I trust that the attitude of the House to this will be repeated on a subsequent motion that I see on the paper and that the small amendments to these Bills will be passed without undue delay.

The Honourable Sir Andrew Clow : Sir, I am afraid I do not feel terribly repentant when I remember the long weeks of last year in the Select Committee and so many weeks in this Assembly when about a thousand amendments were given notice of. I am afraid I cannot plead guilty to the charge of bringing this legislation in haste, particularly, when several years work went over the preparation of the main Act. I have not yet known a big Act in which one could not discover a good many errors. Actually, a considerable number of errors were put right in the Council of State which met several months later. But another reason why I cannot profess to be terribly repentant or promise not to do it again is that I am conscious of quite a number of other probable mistakes in the Act. The reason why I have not brought them before the House is that they involve points on which, I think, Provincial Governments ought to be consulted before we put them before the House. There is one other point which I would like to mention and that is that I cannot accept the sole responsibility. Dr. Banerjea and Mr. James were also the Members of the Assembly and it was equally open to them to detect the errors that I failed to detect.

4 P.M.

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

"That the Bill be passed."

The motion was adopted.

THE INSURANCE (SECOND AMENDMENT) BILL.

Sir George Spence (Secretary, Legislative Department) : Sir, I move :

"That the Bill further to amend the Insurance Act, 1938, for a certain purpose, be taken into consideration."

The Insurance Act of 1938, accorded differential treatment.........

Maulvi Muhammad Abdul Ghani (Tirhut Division : Muhammadan) : Sir, I rise on a point of order. This Bill was introduced only today.....

Honourable Members : No, no.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member has not read the agenda properly.

Maulvi Muhammad Abdul Ghani : It was introduced perhaps on the 19th. At any rate, three days have not elapsed, and, therefore, Standing Order 38 stands in its way.

Mr. President (The Honourable Sir Abdur Rahim) : When was this Bill introduced ?

Sir George Spence : It was introduced on Tuesday, and it was open to the Honourable Member to take objection, as the period since introduction is one day short of the original period. The Standing Order which the Honourable Member has cited provides that any Member may object to any such motion being made unless copies of the Bill have been made available for three days, but he did not object to the motion being made. I have already made the motion.

Mr. President (The Honourable Sir Abdur Rahim) : The Chair does not think that is a sufficient explanation. Is there any explanation why it has been brought up one day short ?

Maulvi Muhammad Abdul Ghani : Sir, I have taken serious objection to the motion.

Sir George Spence : There was no bar to this business being placed on the paper. If any Member objects, then it is for the Chair to say whether the objection will prevail. This is a combined agenda for Tuesday, Wednesday, Thursday and Friday and we were not in a position to foresee that all or any of these Bills would be reached before Friday. As a matter of fact, the objection which is being taken to this Bill was equally applicable to the two Bills which the House has just passed.

Mr. President (The Honourable Sir Abdur Rahim) : Do other Honourable Members also object to these Bills being proceeded with ?

Honourable Members : No, No.

Mr. President (The Honourable Sir Abdur Rahim) : In that case, the Chair dispenses with the requirement of the Standing Order.

Sir George Spence : Sir, I was saying that the Insurance Act of 1938 accorded differential treatment in certain respects, such as the documents required to accompany applications for registration, to insurers

or provident societies which were companies incorporated under the Indian Companies Act, 1913. This formula had the unintended and obviously irrational effect of excluding from the differential treatment, those companies which are referred to in the Indian Companies Act as existing companies, that is to say, companies incorporated under the Indian Companies Act, 1882, or the Indian Companies Act, 1866, or any Act repealed thereby. One instance in which this inadvertent effect was produced was detected when the amending Bill passed in the Delhi Session was in course of preparation and was dealt with in that Bill. Clause 2 of the present Bill in the form in which it now stands deals with another instance which recently attracted attention, while the amendment standing in the name of Mr. Sukthankar deals—and I hope exhaustively—with other similar cases which were brought to light by a general examination undertaken too late for these additional cases to be dealt with in the Bill as introduced. Sir, I move.

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

"That the Bill further to amend the Insurance Act, 1938, for a certain purpose, be taken into consideration."

The motion was adopted.

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

"That clause 2 stand part of the Bill."

Mr. Y. N. Sukthankar (Government of India : Nominated Official) : Sir, I move :

"That for clause 2 of the Bill the following clause be substituted, namely :

'2. (*1*) In—

Amendment of sections 3, 70, 74 and 88 of Act IV of 1938.

(*i*) clauses (*a*) and (*b*) of sub-section (*2*) of section 3,

(*ii*) clause (*a*) of sub-section (*2*) of section 70,

(*iii*) clause (*c*) of sub-section (*1*) of section 74,

(*iv*) sub-sections (*1*), (*3*) and (*4*) of section 88

of the Insurance Act, 1938, after the words and figure " incorporated under the Indian Companies Act, 1913," the words and figures " or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby," shall be inserted.

(*2*) In sub-sections (*1*) and (*3*) of section 88 of the Insurance Act, 1938, for the words " that Act " the words and figure " the Indian Companies Act, 1913 " shall be substituted."

Sir, I have very little to add to what Sir George Spence has already said. The intention of the first part of the amendment is that companies incorporated under these earlier Acts should also be brought under the purview of these particular sections. Part 2 of the amendment is purely consequential.

Mr. President (The Honourable Sir Abdur Rahim) : The Chair would like the Honourable Member to explain to the Chair and to the House how this amendment is not beyond the scope of the Bill. Clause 2 of the Bill refers only to clauses (a) and (b) of sub-section (2) of section 3.

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whereas by this amendment other sections will be affected, such as, sections 74 and 88 which deal with provident societies. They do not deal with the same subject-matter as section 3.

Sir George Spence : My submission is this. There is one common purpose in all the amendments made by Clause 2 as introduced and by Clause 2 as moved by my Honourable friend, Mr. Sukthankar. There is one common object, to do away with the restriction to companies incorporated under the Indian Companies Act, 1913, of the difference of treatment which was not intended to and ought not to exclude companies incorporated under the Indian Companies Act, 1882, or under any of the earlier Companies Acts.

Mr. President (The Honourable Sir Abdur Rahim) : The amendment moved just now refers not only to section 3, but to sections 70, 74 and 88 of the Insurance Act of 1938.

Sir George Spence : The preamble to Bill which I have moved says " Whereas it is expedient further to amend the Insurance Act, 1938 for the purpose hereinafter appearing ". I submit " the purpose hereinafter appearing " is clearly the purpose of doing away with this unintended failure to bring in existing companies along with companies incorporated under the Indian Companies Act, 1913.

Mr. President (The Honourable Sir Abdur Rahim) : The other sections which are mentioned in the amendment do not refer to the same sort of companies.

Sir George Spence : They are all referred to as companies registered under the Indian Companies Act.

Mr. President (The Honourable Sir Abdur Rahim) : That does not matter.

Sir George Spence : Sub-section (*2*) of section 3 refers to the case where the applicant is a company incorporated under the Indian Companies Act,......

Mr. President (The Honourable Sir Abdur Rahim) : Surely the Honourable Member wants to enlarge the scope of the Bill. Otherwise there is no object in bringing in this amendment.

Sir George Spence : Every amendment—and a large number of amendments are admissible—is moved with the object of doing something which the original Bill has failed to do.

Mr. President (The Honourable Sir Abdur Rahim) : The Chair holds that this amendment goes beyond the scope of the Bill. The Bill seeks only to amend certain clauses of section 3, while the amendment seeks to amend certain other sections of the Insurance Act. The Chair does not think this can be allowed in the circumstances of this case. The Chair disallows the amendment on the ground that it goes beyond the scope of the Bill.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

Sir George Spence : Sir, I move :

"That the Bill be passed."

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

"That the Bill be passed."

The motion was adopted.

THE REGISTRATION OF TRADE MARKS BILL.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar (Member for Commerce and Labour) : Sir, I beg to move :

"That the Bill to provide for the registration and more effective protection of Trade Marks be referred to a Select Committee consisting of Syed Ghulam Bhik Nairang, Mr. Muhammad Azhar Ali, Mr. H. A. Sathar H. Essak Sait, Pandit Lakshmi Kanta Maitra, Dr. P. N. Banerjea, Mr. J. D. Boyle, Mr. C. C. Miller, Sir H. P. Mody, Rao Sahib N. Sivaraj, Lieut.-Colonel M. A. Rahman, Dr. R. D. Dalal, and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

Sir, if I shortly recall to this House the history of this legislative effort on the part of the Government of India, I trust the House will see that many words from me are not necessary to commend the motion that I have just made. In the year 1875, an Act for the Protection of Trade Marks and Registration was passed in the United Kingdom by the Houses of Parliament. Two years later, that very vigilant commercial body, the Bombay Millowners' Association, applied to the Government of Bombay for registration in India of trade marks on the lines of the recently passed measure in the United Kingdom. They put forward an alternative prayer that in case it was considered necessary to have legislation on an all-India basis, the Government of India may be moved to introduce such legislation. The Government of Bombay accordingly forwarded that application to the Government of India holding the view that the provincial legislation in such a matter would not be quite fruitful and that central legislation should be undertaken. In 1879, the Government of India introduced a Bill in the then Imperial Legislative Council for the protection of trade marks by way of registration. The Bill was circulated to various commercial bodies and when the Select Committee considered the opinions received on the Bill it was found that the opinions were so hostile to the measure as introduced that that piece of legislation had to be dropped. Several successive efforts were made by the Government of India in the same direction, but commercial opinion was either not unanimous or was predominantly hostile to the provisions of such a Bill. It is sixty years later, today, almost to a day, that it has fallen to me and if I may say so fortunately, as it has indeed fortunately fallen to this Legislative Assembly, to consider a provision of this nature and to put if possible on the Statute-book a Bill to provide for the more effective registration and protection of trade marks.

The interim history is very interesting. From time to time a few commercial bodies and interests who saw the importance of such a measure approached the Government, but on each occasion when they circulated

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it for opinion to Provincial Governments and commercial bodies, a great mass of opinion was unfortunately against this measure. In that state of affairs in the year 1903, the Bombay Millowners' Association again, and I am glad to pay a tribute to the Association and its past activities with reference to this Bill, the Bombay Millowners' Association took on itself to propose some measure of protection to such trade marks. It asked various members to register voluntarily in its books, cotton trade marks, for by that time the cotton trade had become a fairly extensive business in the Bombay presidency. Other Chambers of Commerce like the Madras Chambers of Commerce, and in particular, the Upper India Chamber of Commerce followed suit and opened registers for the voluntary registration of such trade marks. But public opinion and commercial opinion was still far behind ; so that in 1908 and again in 1917, during the war, when the Government of India approached the Provincial Governments and commercial bodies, the opinion received as regards the advisability of such a measure was distinctly hostile. It required the great war and the expansion of trade and business and industries in this country consequent on that war to enable businessmen to realise that a measure of this kind was absolutely indispensable. So early as the year 1883 an international convention had been arrived at for the protection of such trade marks and property whereby countries acceding to that convention would have a right of having their trade marks registered in the particular country being recognised in foreign countries which were parties to that convention. India, not having had legislation for the registration of trade marks, could not be a party to this convention. In 1922, again, the League of Nations which inquired into the question of protection of property rights made a recommendation to such members of the League of Nations as were not already members of the international convention that I have referred to, that they should accede to such convention and thereby facilitate the protection mutually in the various countries of such trade marks. Again the Government of India tried to move in the matter but without success. The turning point in the history of legislation on this subject came about in the year 1927. The Indian Industrial and Commercial Congress which met in the historic city of Madras in that year passed the following resolution :

"This Congress recommends to the Government of India that it is desirable in the interest of Indian trade and industries to introduce at an early date legislation for the registration of trade marks in India in the absence of which Indian merchants are put to considerable hardship both in India and abroad and India is unable to join the international convention for the protection of industrial property."

The Associated Chambers of Commerce followed suit by passing a similar resolution in the year 1933. Meanwhile, Sir, public opinion was being gradually educated and both legislators and the public had begun to take an active interest in this matter. My friends Mr. S. C. Mitra and Mr. Vidyasagar Pandya by more than one interpellation in the years 1929 and 1930 tried to bring to the notice of the then Commerce Member the difficulties that were being encountered by trade and business for the lack of such legislation. My friend Sir Purshotamdas Thakurdas representing a very important Chamber of Commerce, the Indian Merchants' Chamber of Bombay, in connection with an amending Bill on the Indian Patents and Designs Act in the year 1930 put forward a very strong and vigorous plea both in the Select Committee and in this House for similar

legislation on this subject. I said public opinion was also becoming increasingly aware of the necessity for such legislation. The *Indian Textile Journal*, the *Statesman*, the *Times of India*, *Forward*, *Liberty*, and last but in the opinion of some at least not the least, the *Whip* of Calcutta referred to the necessity for a measure of this kind. It was therefore thought by Government that a move could safely be made in the direction of promoting legislation on the subject. But having regard to the previous history and the infructuous attempts that had been made repeatedly by the Government of the day, the Government of India felt that it should proceed on the most cautious basis possible. Therefore, Sir, in the year 1937 they circularised the Provincial Governments and commercial bodies a memorandum in which the history of this piece of attempted legislation was laid down. The objects that were intended to be promoted by that legislation were carefully explained in the memorandum and the advantages that would flow from the registration of trade marks were put forward fairly simply to the commercial bodies and to the public. We received a mass of opinion from various Chambers of Commerce and other commercial bodies and from Provincial Governments. These opinions were very carefully considered by an officer who was put on special duty in connection with this measure, and the officer drafted a Bill for the more effective registration of these trade marks. Then, Sir, that Bill was again circulated to Provincial Governments and to commercial bodies and the opinions of all these bodies were invited. These opinions were received and the final measure that I have the honour to present for the consideration of the House is a result of the carefully considered conclusions of Government in the light of all those opinions. In fact, Sir, among the papers that I propose to circulate to members of the Select Committee will be the opinion of the Federation of Indian Chambers of Commerce who, I am glad to say, have congratulated Government on the procedure that they have followed in connection with this particular measure. They say :

"The Committee at the outset desire to express their appreciation of the procedure followed by the Government of India in ascertaining the views of the commercial community before formulating their proposals in the form of a draft Bill and again circulating the draft Bill for eliciting opinions of the interests concerned. The Committee feel that such a procedure has certain definite advantages and that it should be followed by the Government of India whenever they have an occasion to introduce legislation affecting the trade and industries of this country."

While I appreciate the congratulations of the Federation I feel that I cannot go so far as to give any assurance that such a procedure will be followed on every possible occasion.

Sir, that is the history of this measure. I should like to say a few words on the Bill itself. Honourable Members will notice that in the Preamble of the Bill it is stated that it is sought to enact this measure for the more effective protection of trade marks. It may be admitted at once that there is some sort of protection for these trade marks. Honourable Members who are aware of what may be known as "passing-off cases" in the course of law where an infringement of trade mark is either in criminal court or civil court made the subject of adjudication will realise that at present there is both in common law and in the Indian Penal Code some relief to be obtained by the person whose right to the trade mark has been invaded upon. But it is an elementary consideration for anybody

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who has had anything to do with such cases that this right is not a very real or a very effective right. Take the case of the criminal law. Under the Merchandise Marks Act taken with the Indian Penal Code it is open to a party aggrieved to proceed in a criminal court of law for the infringement of such a right. But the trouble is that in that case the person has to prove, as in a civil court, his right to that trade mark and the fact that he has been a user of that trade mark before the other person who has invaded and infringed that right. Honourable Members who have experience of matters of criminal law, my friend Sardar Sant Singh in particular, would no doubt realise what a difficult task it would be for a complainant to establish a civil right in a criminal court. Not only that; as has been well pointed out by Lord Justice Moulton in an English case—

"Penalties are utterly inefficient for the purpose of preventing bad practices. It is infinitely better to be able to call in the assistance of a civil court and get an injunction preventing the bad practice being continued. There are many people"

—and I draw my Honourable friend's (Sir H. P. Mody) attention to it:

"who would willingly pay a penalty for something nefarious once a fortnight.

They would probably earn it in an hour or two the next day. It is very much better to have the power of getting an injunction which nobody in England dare disobey."

That is so far as the penal provisions of the Indian Penal Code and the Merchandise Marks Act and the Sea Customs Act taken together provide for an infringement of such a right. Under the common law, again, the right is not much more easy to establish. In the first place, you have to prove that you had a right to the trade mark, that you were a prior user and you have to prove it in every court and against every person who may infringe that trade mark. It is not as if once you have established it in any particular court as against A you can have that right established against the whole world. With reference to each individual who invades your property right and with reference to every area where it is invaded you must necessarily proceed by civil action; and have your right established by a court of law. It is these considerations that so early as 1875 led the English Parliament to put on the Statute-book an Act for the registration of trade marks and it is for these considerations, Sir, that I today move that this measure be referred to a Select Committee. Sir, I move.

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

"That the Bill to provide for the registration and more effective protection of Trade Marks be referred to a Select Committee consisting of Syed Ghulam Bhik Nairang, Mr. Muhammad Azhar Ali, Mr. H. A. Sathar H. Essak Sait, Pandit Lakshmi Kanta Maitra, Dr. P. N. Banerjea, Mr. J. D. Boyle, Mr. C. C. Miller, Sir H. P. Mody, Rao Sahib N. Sivaraj, Lieut.-Colonel M. A. Rahman, Dr. R. D. Dalal, and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

Sir H. P. Mody (Bombay Millowners' Association: Indian Commerce): Mr. President, the Bill is going to the Select Committee, and I, therefore, do not wish to make any comments on any of its provisions. The measure, as has just been stated by my Honourable friend the Commerce Member, was suggested by my Association as far back as 1877, and the Bill before the House has conclusively shown that what the Bombay

Millowners think today, the Government of India and the rest of India think sixty years after. However, this slow and deliberate conception has not been without its advantages, and I would like to congratulate the young father, Mr. Nehru, and the not-so-young foster-father the Commerce Member on the result of their labours. I do not agree with all the provisions of this Bill, though I am free to admit that every possible care has been taken by the Government of India in ascertaining commercial opinion before it has been put before this House ; and I join the Federation of Indian Chambers of Commerce in congratulating the Government on the procedure that they have adopted ; and I venture to think that the Commerce Member or any other Member of the Government of India will think twice before they decide not to follow that precedent with regard to any future legislation. The Bill is going before the Select Committee and, therefore, commercial and industrial opinion will I am sure place its view-point before the members of the Committee ; and I have no doubt that finally the Bill will emerge moulded more near to our heart's desire. Sir, I support the motion.

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

"That the Bill to provide for the registration and more effective protection of Trade Marks be referred to a Select Committee consisting of Syed Ghulam Bhik Nairang, Mr. Muhammad Azhar Ali, Mr. H. A. Sathar H. Essak Sait, Pandit Lakshmi Kanta Maitra, Dr. P. N. Banerjea, Mr. J. D. Boyle, Mr. C. C. Miller, Sir H. P. Mody, Rao Sahib N. Sivaraj, Lieut.-Colonel M. A. Rahman, Dr. R. D. Dalal, and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

The motion was adopted.

STATEMENT OF BUSINESS.

The Honourable Sir Muhammad Zafrullah Khan (Leader of the House) : Sir, the only remaining item of business which Government propose to bring before the House during this Session is the Bill introduced this morning by the Honourable Sir Ramaswami Mudaliar, further to amend the Workmen's Compensation Act, 1923, for a certain purpose. It is proposed with your permission, Sir, and the permission of the House to make a motion to proceed further with this Bill and to pass it tomorrow ; and it will be necessary to ask you, Sir, to suspend the Standing Order in that connection. I have tried to ascertain the wishes of Leaders of Parties in this connection and I am assured that they would have no objection to that course being adopted.

Mr. President (The Honourable Sir Abdur Rahim) : The Chair does not know whether there is any objection. Is there any Member who objects to this course being adopted and the Bill taken up tomorrow ?

Honourable Members : No, no.

Mr. President (The Honourable Sir Abdur Rahim) : Very well.

The Assembly then adjourned till Eleven of the Clock, on Friday, the 22nd September, 1939.