THE

LEGISLATIVE ASSEMBLY DEBATES

(OFFICIAL REPORT)

VOLUME IV, 1933

(31st March to 12th April, 1933)

FOURTH SESSION

OF THE

FIFTH LEGISLATIVE ASSEMBLY,

1933

SIMLA
GOVERNMENT OF INDIA PRESS
1933
16

Legislative Assembly.

President:

THE HONOURABLE SIR IBRAHIM RAHIMTOOLA, K.C.S.I., C.I.E. (Upto 7th March, 1933.)

THE HONOURABLE MR. R. K. SHANMUKHAM CHETTY. (From 14th March, 1933.)

Deputy President:

MR. R. K. SHANMUKHAM CHETTY, M.L.A. (Upto 13th March, 1933.)

MR. ABDUL MATIN CHAUDHURY, M.L.A. (From 22nd March, 1933.)

Panel of Chairmen:

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

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

SIR LESLIE HUDSON, KT., M.L.A.

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

Secretary:

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

Assistants of the Secretary:

MIAN MUHAMMAD RAFI, BAR.-AT-LAW.

RAI BAHADUR D. DUTT.

Marshal:

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

Committee on Public Petitions:

MR. R. K. SHANMUKHAM CHETTY, M.L.A., *Chairman.* (Upto to 13th March, 1933.)

MR. ABDUL MATIN CHAUDHURY, M.L.A., *Chairman.* (From 22nd March, 1933.)

SIR LESLIE HUDSON, KT., M.L.A.

SIR ABDULLA-AL-MÁMÚN SUHRAWARDY, KT., M.L.A.

MR. B. SITARAMARAJU, M.L.A.

MR. C. S. RANGA IYER, M.L.A.

CONTENTS.

VOLUME IV.—*31st March to 12th April, 1933.*

LEGISLATIVE ASSEMBLY.

Monday, 3rd April, 1933.

The Assembly met in the Assembly Chamber of the Council House at Eleven of the Clock, Mr. President (The Honourable Mr. R. K. Shanmukham Chetty) in the Chair.

QUESTIONS AND ANSWERS.

REPRESENTATION OF CANTONMENTS IN THE LEGISLATIVE ASSEMBLY.

1109. *Khan Bahadur Haji Wajihuddin: (*a*) Are Government aware that the cantonments of India have consistently pressed their claim for additional representation in the Assembly?

(*b*) Is it a fact that this claim has been based upon the following reasons:

(i) that the cantonment law is materially different from the ordinary municipal law and has still many drastic provisions affecting the liberties and civic rights of the cantonments people;

(ii) that the cantonment administration is a Central subject and that discussion about the same and the changes in the cantonment law can be moved only in the Assembly;

(iii) that under the existing system of elections, in which small groups of cantonments are included in large general constituencies of different Provinces, with the cantonments' votes as a mere fraction of the total votes of the constituency, there is very little chance for the cantonments people to send their own chosen representative to the Assembly, through election;

(iv) that the civil population of the cantonments comes to about a million and is large enough to press their claim for adequate representation in the Assembly;

(v) that the interests of the cantonments people have suffered grievously in the past for want of effective and adequate representation in the Assembly?

(*c*) What action have Government taken in the matter? Have they made or do they propose to make any representation in this matter to the authorities who are now engaged in the framing of the future constitution of India? If not, why not?

Mr. D. G. Mitchell: (*a*) and (*b*). Representations on the subject, citing the grounds mentioned in part (*b*), have, from time to time, been received by the Government of India.

(c) Government informed the memorialists on more than one occasion that in the event of no person with special knowledge of cantonment conditions being elected to the Legislative Assembly at a general election, the question of nominating such person would receive consideration. Such person or persons having always been elected, no further action was taken. Government have no doubt that in the future, as in the past, cantonment interests will secure adequate representation in the Central Legislature, and they have, therefore, submitted no proposals in the matter, nor do they propose to do so. I would point out that residents in cantonments have had and still have abundant opportunity of addressing representations to the authorities from time to time engaged in the formulation of proposals for the new constitution.

Dr. Ziauddin Ahmad: May I ask what conveniences were provided in the past as regards the representation of these cantonments in the Central Legislature?

Mr. D. G. Mitchell: The convenience that has been provided for in th past is explained in my answer, namely, that it has always happened that one or two Members of the Central Legislature have been residents in cantonments.

Dr. Ziauddin Ahmad: Was it only an accident that they happened to be residing in cantonments or did the Government nominate them?

Mr. D. G. Mitchell: I think the Honourable Member's knowledge of mathematics will convince him that on the theory of probabilities residents of cantonments will always have a Member on the Central Legislature.

Dr. Ziauddin Ahmad: I think it is very doubtful all the same, because the number of cantonments is so small. It is very doubtful we will always have a representative of the cantonments in the Assembly. Besides, the interests of cantonments cannot be safeguarded simply because of this off-chance of representation.

Mr. D. G. Mitchell: The persons from cantonments who make this representation claim that residents in cantonments number one million.

Sir Muhammad Yakub: What are the special interests of the residents of these cantonments besides those of the general people of India?

Mr. D. G. Mitchell: I think that question should be addressed to the Honourable Member who has asked the original question.

GRANT OF MONEY FOR THE REPAIRS TO THE TOMBS OF THE MEMBERS OF THE FAMILY OF HYDER ALI AND TIPU SULTAN.

1110. **Sir Abdulla-al-Mámún Suhrawardy:** (a) Are Government aware that a sum of Rs. 500 per mensem originally sanctioned by the Court of Directors on the representation of His Highness the late Prince Gholam Mohammad, K.C.S.I., son of Tipu Sultan, for *Fateha* expenses, preservation of tombs of the sons of Tipu Sultan and for the maintenance of the cemetery in Tollygunge (Calcutta) in which the members of the family

of Hyder Ali and Tipu Sultan lie buried and which was purchased by Government for such purposes, has been stopped since May, 1913, on the death of the last stipendiary under the capitalization scheme of 1860? Was it to be a *permanent grant* and described as such in the Parliamentary Paper of 1863 under the heading: "Circumstances of Original Grant *re Fateha* Allowance (Permanent Grant)" page 10?

(*b*) Are Government aware that in 1859 when His Highness the late Prince Gholam Mohammad and his son the late Prince Feroze Shah were in England and a scheme for the permanent provision for the family of Hyder Ali and Tipu Sultan was under contemplation before the Committee of the Council of the Secretary of State appointed by Sir Charles Wood, the then Secretary of State for India, His Highness the Prince Gholam Mohammad and the said Prince Feroze Shah submitted a Memorandum briefly stating a few observations in order to place the entire case of the Mysore Family before the said Committee and in the said memorandum which is included in the return to the address of the Honourable the House of Commons, dated the 12th February, 1861, and issued as Parliamentary Paper in pages 108 to 111 it was laid down in paragraph 11 that the scheme for permanent arrangements was not to affect in any way the allowances then granted for Fateha and other religious ceremonies, lighting of the cemetery, repairing of the tombs and graves and keeping them in good order, medical and school expenses which were to be carried out as heretofore? Is it a fact that in the Political Despatch No. 50-P., dated the 11th June, 1860, a scheme was framed to place upon a revised and permanent footing the general arrangements for the maintenance of the Mysore family, and the Right Honourable Sir Charles Wood in paragraph 13 of the said despatch stated clearly to accord generally to the family such privileges as they had hitherto enjoyed and such friendly protection and consideration as their respectability and unquestioned loyalty entitled them to receive at the hands of the British Government? Are Government prepared to restore in perpetuity the original grant for the maintenance of the cemetery and for the preservation of the Princes' tombs or capitalize a sum yielding such income as is done in the case of the Nizamat family of Murshidabad and the Moghul family of Benares?

(*c*) Are Government aware that the preservation of the tombs of the ancestors is considered by the Mussalmans of India to be a religious duty?

(*d*) Do Government propose to sanction an adequate sum for the necessary repairs to the Princes' tombs and Mosque of the Cemetery originally built at Government cost and now in a dilapidated state?

Mr. H. A. F. Metcalfe: With your permission, Sir, I will answer questions Nos. 1110—1112 together. The information is being collected and will be laid on the table in due course.

PAYMENT OF STIPENDS TO THE MEMBERS OF THE FAMILY OF HYDER ALI AND TIPU SULTAN.

†1111.***Sir Abdulla-al-Mámún Suhrawardy:** (*a*) Are Government aware that the Secretary of State for India in his Despatch No. 50-P. of 1860, dated the 11th June, sanctioned Rs. 15,000 and Rs. 5,000 to each of the grandsons and great grandsons respectively, for providing a permanent

†For answer to this question, *see* answer to question No. 1110.

residence in some other locality and like amounts to each of the grandsons and great grandsons with a view to their relief from present embarrassment and with a view to meet those expenditures only the Secretary of State sanctioned Rs. 8,30,000?

(*b*) Will Government be pleased to state that out of 21 grandsons and 14 great grandsons who were then living and allowed to participate in the scheme, how many grandsons and great grandsons took the house money and how many took the relief money and what is the total amount which had lapsed to the Government?

(*c*) Are Government prepared to sanction payment of the lapsed amount for the benefit of the heirs of those who did not draw the house allowance, and place it at the disposal of a Committee of the Mysore Family Association to be utilised for providing residences for those who have become homeless and stranded in life due to the failure of the capitalization scheme and to pay stipends to the future indigent members of the Mysore family?

BALANCE OF THE APPROPRIATED MYSORE DEPOSIT FUND ON ACCOUNT OF THE FAMILIES OF HYDER ALI AND TIPU SULTAN.

†1112. ***Sir Abdulla-al-Mámún Suhrawardy**: (*a*) Will Government be pleased to state what was the balance of the Appropriated Mysore Deposit Fund on account of the families of Hyder Ali and Tipu Sultan in the year 1855-56 when, by order of Government, it ceased to form a separate item of account?

(*b*) Have Government considered the desirability of making the surplus or savings of the said Appropriated Mysore Deposit Fund available for the benefit of the family of Hyder Ali and Tipu Sultan or for purchasing a perpetual inalienable jagir and placed under the management of the Court of Wards for the maintenance of the members of the family?

(*c*) Are Government aware that the Honourable the Court of Directors addressed an important Political Despatch No. 1, dated 2nd January, 1857, to the Government of India stating that it would not be in accordance with that just and liberal policy which should actuate our proceedings towards the families of the deposed Princes of India to allow considerations either of financial expediency or of social economy to induce us to make such sudden changes in an existing system as could not fail to be attended with suffering and possible degradation to those who have hitherto been entirely dependent on our Government support and it was also stated in the said despatch that *the claims of the legitimate descendants of Hyder Ali and Tipu Sultan could not equitably be ignored and a principle was established that beyond the fourth generation members of the family must expect only such assistance from the British Government as might appear to be called for on a full consideration of circumstances on each individual case*? Are Government aware that in the said despatch certain resolutions of the Government of India were duly approved relating to the grant of stipends to the Mysore Princes and certain rules were also framed for the guidance of the same in accordance of which *the great grandsons and the great grand daughters were to receive a sum of rupees 200 and rupees 100 each per mensem, respectively*?

† For answer to this question, *see* answer to question No. 1110.

RETRENCHMENT OF MILITARY SUB-ASSISTANT SURGEONS.

1113. *Mr. M. Maswood Ahmad: (a) Is it a fact that about eighty Military Sub-Assistant Surgeons have already been retrenched and that about eighty more are soon going to be retrenched?

(b) Will Government please state on what principle the retrenchment of Military Sub-Assistant Surgeons is made?

(c) Is it a fact that many young men have been retrenched in preference to many old persons who were recruited before 1900?

(d) Is it a fact that in the first instance it was decided to retrench those who have completed 25 years' service, but afterwards this decision was reversed?

(e) Will Government state what was the special necessity for discharging these young men?

(f) Is it also a fact that it is the declared policy of Government to first discharge those persons who are nearing the age of superannuation and that this principle was applied to persons in other Departments of the Government? If so, why was the departure from that policy made in the case of Military Sub-Assistant Surgeons?

(g) Are Government prepared to follow the principle of giving preference to those who are nearing the age of superannuation while making further retrenchment in the number of Military Sub-Assistant Surgeons? If not, why not?

(h) Are Government aware of the hardships of the retrenched junior Military Sub-Assistant Surgeons? If so, are they prepared to re-engage them whenever there is a vacancy in that cadre?

Mr. G. R. F. Tottenham: (a) 122 Sub-Assistant Surgeons have been retrenched. No further retrenchment is contemplated.

(b) and (e). Volunteers for retrenchment were first called for; those Sub-Assistant Surgeons whose retention in the service was considered least desirable were then selected for discharge.

(c) No, Sir.

(d) No.

(f) No, Sir. The principles followed in the selection of personnel for retrenchment are explained in the reply given on the 17th February, 1932, by the Honourable the Finance Member to Mr. Lalchand Navalrai's starred question No. 409.

(g) Does not arise in view of my answer to part (a) of the question.

(h) The Honourable Member is referred to the answer which I gave on the 21st November, 1932, to part (b) of Mr. B. N. Misra's starred question No. 1303.

PROSECUTION OF SARDAR DIWAN SINGH MAFTOON BY THE BHOPAL STATE.

1114. *Mr. B. Das: (a) With reference to questions Nos. 232 and 233 of Dr. B. S. Moonje, on the 5th February, 1930, regarding the application of the Indian States (Protection against Disaffection) Act of 1922, will Government be pleased to state if they have since permitted the Bhopal Durbar to prosecute Sardar Diwan Singh Maftoon, Editor, *Riyasat*, in a similar case in another Court?

(*b*) Will Government be pleased to state if the two cases against Sardar Diwan Singh were not sanctioned on similar grounds for alleged violation of law?

Mr. H. A. F. Metcalfe: (*a*) No.

(*b*) Does not arise.

PROSECUTION OF SARDAR DIWAN SINGH MAFTOON BY THE BHOPAL STATE.

1115. *Mr. B. Das: (*a*) Will Government be pleased to state if they sanctioned the Bhopal Durbar to file a suit against Sardar Diwan Singh Maftoon, Editor, *Riyasat*, in a Delhi Court?

(*b*) Is it a fact that five months before the case was filed against Sardar Diwan Singh, the Bhopal Durbar filed a complaint for the same offence against one Azfar Hussain and in that complaint no mention was made of Sardar Diwan Singh?

(*c*) Has the attention of Government been drawn to the judgment of Mr. Isar, Additional District Magistrate, Delhi, dated the 5th September, 1932, whereby Sardar Diwan Singh was acquitted and the judgment recorded:

"Such are the prosecution witnesses and such is their evidence and it seems to me if there was any conspiracy in this case it was on the part of the Bhopal Police the object being to incriminate Diwan Singh and to cripple the *Riyasat*."

(*d*) Are Government aware that Mr. Isar's judgment has been upheld recently by the Lahore High Court?

Mr. H. A. F. Metcalfe: (*a*) No.

(*b*) Government have no information.

(*c*) Government have seen the judgment referred to.

(*d*) Yes.

Sardar Sant Singh: May I know if the Bhopal Police carried on the investigation in Delhi, within the British territory, with the knowledge or without the knowledge of the British Police at Delhi?

Mr. H. A. F. Metcalfe: I have no information on that point, Sir, and I am unable to answer the question.

Sardar Sant Singh: Will the Honourable Member be pleased to collect information in this respect especially in view of the fact that even the police of a different district cannot carry on an investigation in another district without the co-operation and knowledge of the local police officials?

Mr. H. A. F. Metcalfe: I think that a separate question on this point has already been put down on the paper to be answered subsequently. It is not a matter which really concerns the Foreign and Political Department. It is one of internal police administration in British India.

Mr. Gaya Prasad Singh: Is it in contemplation to give compensation to Sardar Diwan Singh for having been falsely implicated in this case?

Mr. H. A. F. Metcalfe: That, Sir, appears to be a matter for Sardar Diwan Singh to deal with, not for me.

Mr. B. Das: With reference to reply to part (*c*) of the question, is it not a fact that the Honourable Member's Department gave sanction to the Bhopal Durbar to prosecute Sardar Diwan Singh and is it not also based on a similar fact as is contained here, namely, the crippling of the *Riyasat*?

Mr. H. A. F. Metcalfe: I believe not. But, I should like to have a notice of that question if the Honourable Member wants a complete reply to it.

Mr. C. S. Ranga Iyer: May I ask the Honourable Member what protection do the Government propose to give against the conspiracies of certain Princes to cripple newspapers in British India?

Mr H. A. F. Metcalfe: I am not prepared to admit that there has been any conspiracy in this case. The question, therefore, does not arise.

Mr. C. S. Ranga Iyer: Have Government really given serious consideration to the nature of the prosecution witnesses and their evidence? It seems to me that if there is any conspiracy in this case, it was on the part of the Bhopal Police, the object being to incriminate Sardar Diwan Singh and to cripple the *Riyasat*. Will Government be prepared to investigate the matter and place the facts before this House?

Mr. H. A. F. Metcalfe: That opinion has been expressed by the Court, but I do not think we need necessarily investigate the matter. At any rate it is a matter rather for the Home Department than the Foreign and Political Department.

Mr. C. S. Ranga Iyer: Is it not a matter of sufficient importance for the Government, when the Court has expressed itself in that manner, to investigate the matter in the interests of the liberty of the Press?

Mr. H. A. F. Metcalfe: I think the Honourable Member is asking for an expression of opinion which I am not prepared to give.

Mr. C. S. Ranga Iyer: What steps do Government propose to take in the light of the revelation made by the Court in regard to the protection of the liberty of the Press?

Mr. H. A. F. Metcalfe: So far as I know, Government are taking no steps, but I must ask for notice of a question of that importance.

Mr. C. S. Ranga Iyer: Will Government be pleased to state why they are not taking any steps?

Mr. H. A. F. Metcalfe: So far as I know, the question has not yet been considered. In any case, as I said before, I must ask for notice if the Honourable Member wants to know what steps the Government are going to take and why they have not taken any steps.

Mr. C. S. Ranga Iyer: Will Government be pleased to consider the advisability of considering this matter?

Mr. H. A. F. Metcalfe: Certainly, Sir, and that is why I have asked for notice of this question.

Sardar Sant Singh: May I ask the Honourable Member if it is a fact that the acquittal has been upheld by the High Court of Lahore?

Mr. H. A. F. Metcalfe: I have already answered part (*d*) of the question.

Sardar Sant Singh: What is the policy of the Government in such cases when, after due deliberation of the facts, they sanction the prosecution of a particular newspaper and at the end find that that sanction was either wrongly given or not given on good facts? What steps do Government propose to take to look into the matter and to give compensation or to adopt a future policy in such matters?

Mr. H. A. F. Metcalfe: As I have already said, I am not prepared to make a statement of policy in reply to supplementary questions.

Sardar Sant Singh: Am I to understand that such sanctions are given by the Government in a very light-hearted manner?

Mr. H. A. F. Metcalfe: As I have already said, no sanction was given by the Government in this case. It was purely a private prosecution undertaken under the Indian Penal Code by the Durbar.

Mr. Muhammad Muazzam Sahib Bahadur: Is it not a fact that Sardar Diwan Singh can have his remedy in one of the Civil Courts?

Mr. H. A. F. Metcalfe: As I have, I think, already said, if Sardar Diwan Singh wants a remedy, he can obtain it under the ordinary law.

GRIEVANCES OF MUSLIM CLERKS OF THE PRODUCTION LOCOMOTIVE WORKSHOP STAFF, MOGALPURA, NORTH WESTERN RAILWAY.

1116. ***Mr. M. Maswood Ahmad:** (*a*) Is it a fact that 11 Muslim clerks of the Production Locomotive Workshop Staff, Mogalpura, submitted a memorial to the Superintendent, Mechanical Workshops, North Western Railway, Mogalpura, on the 10th December, 1932?

(*b*) Has the Agent, North Western Railway, received a copy of the memorial?

(*c*) Have Government received a copy of the memorial?

(*d*) Will Government be pleased to lay on the table a copy of the memorial?

(*e*) Will Government be pleased to state whether the allegations made and facts mentioned in the memorial were substantially correct?

(*f*) What action has been taken by the immediate officer, and what orders have been passed on the memorial?

(*g*) Are Government aware that all the eleven Muslim clerks are harassed for submitting the memorial?

Mr. P. R. Rau: With your permission, Sir, I propose to reply to questions Nos. 1116 and 1117 together. Government have no information. A copy of the question has been sent to the Agent, North Western Railway, who is competent to deal with the allegations made in it, for such action as he may consider necessary.

GRIEVANCES OF MUSLIM CLERKS OF THE PRODUCTION LOCOMOTIVE WORKSHOP STAFF, MOGALPURA, NORTH WESTERN RAILWAY.

†1117. ***Mr. M. Maswood Ahmad:** (*a*) Is it a fact that 11 Muslim clerks of the Production Locomotive Workshop, Mogalpura, North Western Railway, in a memorial to the Superintendent, Mechanical Workshop, North Western Railway, Mogalpura, on the 10th December, requested for an independent enquiry into the favouritism done to the Hindu community and the discriminatory action done to Muslim community?

(*b*) Is it a fact that no enquiry was ordered but the memorial was given to Mr. S. D. Khanna, labour warden, Loco., and Mr. Gurbaksh Singh, clerk of efficiency section, against whom the memorial was submitted?

(*c*) Will Government be pleased to state whether any European officer was not available to make an independent enquiry into the matter?

(*d*) Are Government aware that all the Muslim clerks are ready to prove the allegations, but that no enquiry is being held?

NEW RULES FOR ALLOTMENT OF QUARTERS IN NEW DELHI.

1118. ***Pandit Satyendra Nath Sen:** (*a*) Will Government please refer to the new rules regarding the allotment of residences in New Delhi to officers whose emoluments are less than Rs. 600 p. m. as published at pages 64—75 of the Gazette of India, January 28, 1933?

(*b*) Is it a fact that unmarried officers with or without dependants have been debarred from getting any quarters?

(*c*) Is it a fact that hitherto no distinction has been made between married and unmarried officers in respect of allotment of quarters and many unmarried officers have acquired liens on quarters?

(*d*) Do Government make any distinction between married and unmarried officers in respect of pay and allowances and other conditions of service, and do they propose to make such distinction in future?

(*e*) Why has no such distinction been made in respect of officers drawing pay more than Rs. 600 p. m.?

(*f*) Is it a fact that the rent for the Chummery rooms which are proposed to be allotted to the unmarried officers is the same as those of the married officers' quarters? Is it a fact that the accommodation in the Chummery is much less than that in married officers' quarters?

(*g*) Are Government aware that in the case of Indians the term family is not always limited to wife and children alone, but consists of other dependants as well?

(*h*) How many times have changes been made in these rules since the quarters were built?

†For answer to this question, *see* answer to question No. 1116.

(*i*) Is it not the policy of the Government to secure the accrued rights and privileges of officials when any change is made in any rules? If so, are Government prepared to see that those unmarried officers who have been occupying quarters are allowed to continue to occupy quarters?

The Honourable Sir Frank Noyce: (*a*) Certainly.

(*b*) Unmarried male clerks are eligible for quarters in chummeries. They are eligible for married quarters only if any remain unallotted after satisfying the claims of married clerks.

(*c*) Under the old rules, married clerks and single clerks with dependants received preference over other single clerks.

(*d*) Distinctions are made between married and unmarried officers in the case of certain allowances, *e.g.*, the Simla and the Delhi House Allowances.

(*e*) The distinction made in the Simla House Allowance applies also to officers drawing over Rs. 600 per month.

(*f*) The rent for rooms in the orthodox chummeries is less than that for orthodox married quarters. The reply to the latter part of the question is in the affirmative.

(*g*) Yes.

(*h*) Three times.

(*i*) The rights and privileges of officers in regard to residences are governed by the rules in force for the time being, and Government adhere to their decision that generally married clerks have a better claim to married quarters than single clerks with dependants.

Pandit Satyendra Nath Sen: Is it the policy of Government to discourage celibacy? Otherwise why this differential treatment?

(No answer was given.)

Pandit Satyendra Nath Sen: Why are these unmarried officers required to pay the same rent for lesser accommodation in the Chummeries?

The Honourable Sir Frank Noyce: They are not I said that the rent of rooms in the orthodox Chummeries is less than that for orthodox married quarters.

CASUALTIES DUE TO RASH DRIVING IN NEW DELHI AND DELHI CITY.

1119. ***Mr. Muhammad Muazzam Sahib Bahadur:** (*a*) Will Government be pleased to state the number of casualties in New Delhi and Delhi City in the years 1930, 1931 and 1932? How many of them were due to rash driving?

(*b*) Have there been any cases of rash driving as such which have been prosecuted during the above mentioned years and which have not been attended with untoward results?

(*c*) Is it a fact that traffic control in the areas pointed out is much below the standard attained in Presidency towns? If so, do Government consider it advisable to have the local traffic police trained at Calcutta or Bombay to make them more efficient?

(*d*) Is it a fact that in the enlistment of constables, the inhabitants of Delhi are, as a rule, avoided? If so, why?

The Honourable Sir Harry Haig: (*a*) and (*b*). The number of accidents involving deaths or injuries in New Delhi and Delhi City during the three years in question were:

	Deaths.	Injuries.
1930	27	197
1931	22	245
1932	17	231

Figures regarding casualties from rash driving and those regarding prosecutions for such driving have been called for from the Chief Commissioner, Delhi, and will be laid on the table when received.

(*c*) Government do not consider that the standard of traffic control in Delhi is defective, except in so far as it is hampered by the small numbers of the sanctioned staff. They do not consider it necessary to have the Delhi Traffic Police trained at Calcutta or Bombay.

(*d*) The enlistment of constables in Delhi is governed by the Punjab Police Rules which lay down that "recruits shall be of good character and shall, as far as possible, be selected from agricultural classes and castes". Out of 1,535 constables sanctioned for duty in the Delhi Province, 342 are residents of the Delhi Province. Residents of Delhi itself are usually not enlisted, because the greater part of a constable's service is spent at headquarters and experience has shown that constables do not usually make efficient officers when posted in their home jurisdictions.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): I have received a representation signed by the Hindu Members of the House, and it has been further represented to me that the requisition has the signature of almost every Hindu Member present here in the Assembly. In that representation my attention has been drawn to the fact that tomorrow is *Ram Navami* which is a very important Hindu festival, and, under those circumstances, I have directed that the House will not sit tomorrow.

STATEMENTS LAID ON THE TABLE.

The Honourable Sir Harry Haig (Home Member): Sir, I lay on the table the information promised in reply to starred question No. 715, asked by Mr. M. Maswood Ahmad, on the 13th March, 1933.

CONVICTIONS IN THE NORTH-WEST FRONTIER PROVINCE IN CONNECTION WITH THE RED SHIRT MOVEMENT.

*715. (*a*) 1,227.

(*b*) 2.

(*c*) A, 3; B, 43.

Sir Thomas Ryan (Director General of Posts and Telegraphs): Sir, I lay on the table the information promised in reply to starred question No. 666, asked by Bhai Parma Nand, on the 7th March, 1933.

APPEALS PREFERRED TO THE POST MASTER GENERAL, PUNJAB, AND NORTH-WEST FRONTIER CIRCLE, BY THE HINDU AND SIKH POSTAL OFFICIALS AGAINST THE ORDERS OF THE SUPERINTENDENT OF POST OFFICES, MUZAFFARGARH DIVISION.

*666. The number is twelve. In the majority of the cases the appeals were admitted either wholly or in part. The Postmaster General has already taken sufficient notice of the matter.

THE INDIAN TARIFF (OTTAWA TRADE AGREEMENT) SUPPLEMENTARY AMENDMENT BILL.

The Honourable Sir Joseph Bhore (Member for Commerce and Railways): Sir, I move:

"That the Bill to supplement the Indian Tariff (Ottawa Trade Agreement) Amendment Act, 1932, be taken into consideration."

I tried to the best of my ability, Sir, to be as detailed and explicit as I could in the Statement of Objects and Reasons to enable Honourable Members at their convenience to examine the various items and to satisfy themselves as to the correctness of the statement that the object of this Bill is to remove inaccuracies, ambiguities, anomalies and mistakes which have been brought to light as a result of experience of the new tariffs. As I have stated, I have endeavoured to deal very fully with the separate items, and it is perhaps unnecessary for me to waste the time of the House going over those items at any length. But I think I ought to explain generally the character of the alterations which we are proposing to make in this amending Bill.

Now, Sir, one class of cases consists of corrections of palpable errors and anomalies. An instance of that is the case of ferrous sulphate. Ferrous sulphate was one of the items definitely excluded from preference, and we thereupon entered ferrous sulphate in part 5 of Schedule II, namely, among the articles which are dutiable at the ordinary revenue duty. But, unfortunately, Sir, we overlooked the fact that ferrous sulphate is only another name for green copperas, and green copperas has always been entered in part 3 of Schedule II and is dutiable at a very much lower rate. What we have, therefore, been forced to do is to remove ferrous sulphate from part 5 and put it with green copperas so that the two may now become dutiable at the same rate of duty.

Another class consists of items to which preference was never intended to be given, but to which preference has resulted as a consequence of the entries which have been made in the various Schedules. An example of that is the case of moist white lead. In the Trade Agreement, certain painters' materials were definitely excluded from preference. Now, we entered white lead under a head which would definitely exclude it from preference, but we omitted specific reference to moist white lead which is a painters' material. We are now putting moist white lead by the side of white lead so that it will now become dutiable under the ordinary non-preferential rates.

Then, Sir, another class consists of cases in which changes are made to clarify the position and to remove ambiguities. I take as an instance the case of tea chests and parts and fittings thereof. It was never intended, of course, to give preference to this article. I should make it clear that this particular article, though it appears in our trade returns, is not specifically shown in our Tariff Schedule, and unless a specific entry is made in respect thereof, it might be treated as falling under another heading which might perhaps give it preference. We are, therefore, now specifically entering this item "Tea Chests, parts and fittings thereof" in order firstly to make it perfectly clear that parts and fittings of tea chests are to be treated as tea chests themselves and that these come under the ordinary non-preferential rate.

Then, Sir, there is the case of liquid gold and glass crucibles. This falls in a category by itself. Those Members of this House who were Members of the Select Committee will remember that certain Members laid very great stress upon the necessity of not raising the duty in respect of the materials for glass-making. I think we gave the assurance to my Honourable friends, Mr. Mitra and Mr. Sitaramaraju, that we would endeavour to see that the 10 per cent. preference was given entirely by lowering the duty and not partly raising it and partly lowering it. We adopted that policy in regard to other materials for glass-making, but we were not then in a position to do the same in respect of liquid gold and glass crucibles, because we were not then sure whether it was possible from the customs point of view to distinguish these articles. We now find that it is, and we are, therefore, making an entry giving the whole preference in a downward direction. I do not propose to go individually into each item. They have all been dealt with in the Statement of Objects and Reasons, as I have said already, at some length, but I have merely made this general statement to indicate the intention lying behind this amending Bill.

Sir, I move.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): The question is:

"That the Bill to supplement the Indian Tariff (Ottawa Trade Agreement) Amendment Act, 1932, be taken into consideration."

The motion was adopted.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): The question is that the Schedule do stand part of the Bill. Mr. Raisman.

Mr. A. Raisman (Government of India: Nominated Official): Sir, I move:

"That in the Schedule to the Bill, for the proposed amendment No. 2, the following be substituted:

'2. In Item No. 88, for the words 'ferrous sulphate', the words and brackets 'alum (namely, potash alum, soda alum and ammonia alum)' shall be substituted'."

Sir, the proposal to omit ferrous sulphate from item 88 is already fully explained in the Statement of Objects and Reasons attached to the Bill. The present amendment seeks to add "Alum" to Item No. 88. Now, alum is one of the chemicals on which protective duties were imposed by the

[Mr. A. Raisman.]

Heavy Chemical Industry (Protection) Act, which was passed in September, 1931. Section 3 of that Act provided that these duties, with the exception of the duty on Magnesium Chloride, would have effect only up to the 31st March, 1933. These protective duties have, therefore, now lapsed and the chemicals in question have become liable to the ordinary revenue duties and will resume their places in the Import Tariff Schedule in the items under which they can normally be classified.

Now, Sir, some of these items fall in that part of Schedule II to the Tariff Act which contains the items in respect of which there is a preference in favour of the United Kingdom and the British Colonies. Other items, again, fall in the non-preferential Part of that Schedule. It, therefore, became necessary to examine and see whether the results obtained by the inclusion of these chemicals in non-protective items of the Tariff Schedule were in accordance with the Ottawa Trade Agreement. This examination has been carried out and it has been found that, in the case of all the chemicals except alum, this requirement is satisfied. Alum, however, in the ordinary course falls under Item No 181, which reads:

"Chemicals, drugs and medicines, all sorts not otherwise specified".

This item is in the preferential Part of the Tariff Schedule. But, under the Ottawa Trade Agreement, alum along with certain other chemicals was specifically excluded from preference. We have, therefore, to take special action to remove alum from the preferential Part of the Tariff Schedule in order to avoid giving in respect of it a preference that was not asked for and was not intended. This, Sir, is the object of the present revised amendment.

Sir, I move.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): The question is:

"That in the Schedule to the Bill, for the proposed amendment No. 2, the following be substituted:

'2. In Item No. 88, for the words 'ferrous sulphate', the words and brackets 'alum (namely, potash alum, soda alum and ammonia alum)' shall be substituted'."

The motion was adopted.

Mr. F. E. James (Madras: European): Sir, I beg to move:

"That in the Schedule to the Bill, for the proposed amendment No. 7, the following be substituted:

'7. After Item No. 58-A, the following shall be inserted, namely:

'58-B. Tea Chests and parts and fittings thereof'."

Sir, I am aware that the object of this Bill is to remove intended preference. My object is to take advantage of this proposal; first of all, to call attention to the recent abolition of the drawback on imported tea chests which was enjoyed by the industry in South India till last September and, secondly, to call attention to the need for a reduction of the surcharge on this essential article to one of India's main exports. The proposal in the Bill is that this item should be included in Part V of the Import Schedule specifically, thus making them subject to the ordinarily known preferential rates of duty of 15 per cent. *plus* five per cent. surcharge, *plus* an additional five per cent surcharge making the total duty of 25 per cent. The effect of

my amendment would be to place this item in Part IV instead of in Part V of the Schedule, immediately after Item 58A. Its effect would be to subject tea chests to a basic duty of 10 per cent. on which there is a surcharge of 2½ per cent., and a further surcharge of 3⅛ per cent. making a total duty including surcharges of 15⅝ per cent. This would involve a reduction of nearly 10 per cent. in the duty which would be paid and has been paid hitherto.

I shall have to weary the House for a few minutes in describing what has taken place in regard to the removal of the drawback on tea chests. This drawback has been enjoyed for a long time by the interests in South India. We have always been aware that the customs authorities have taken the view that drawbacks should only be given in the case of what is described as the *entrepot* trade, and, as a result of that view, we have formed the impression that the customs authorities have not been willing to come to a satisfactory arrangement whereby to have machinery for the payment of drawbacks on panels and fittings from which tea chests are made which are imported into this country and re-exported with the tea inside. It has always seemed to us to be unfair that we should have to pay the duty on those articles which are so essential to an export trade. In other words, it is in effect a tax on one of India's chief exports. We enjoyed in South India this arrangement up to last September. In North India, owing to the difficulties which the customs authorities placed in the way of giving drawbacks, the tea interests have not enjoyed this privilege for many years; but in South India we have enjoyed this privilege and we were informed in June last that this privilege would be withdrawn as from the 1st of September. I made immediate representations to the Board of Revenue and they were good enough to extend the order by one month in order that the matter might be discussed. I represented the position, but unfortunately the Board of Revenue has a stony heart and my representations were of no avail and the drawback was withdrawn as from the 1st of October. Now, I should like to emphasise the fact that the tea interests have done everything in their power to meet the customs authorities. They have made special arrangements with regard to the identification of panels coming into this country, so that there should be no question of any benefit accruing to interests which do not in effect export these panels in the shape of chests. I may inform the Honourable the Commerce Member, in fact, that the machinery set up by the tea interests has cost a good deal of money. In the case of one company alone, the marking of panels cost Rs. 7,000 in one year. Therefore, I think I can claim that we have done everything in our power to meet whatever administrative difficulties the customs authorities might find in agreeing to a continuation of the drawback. As I have said, the customs authorities for some reasons or other held the view that it was undesirable to continue this particular privilege and the drawback was withdrawn from the 1st of October. In round figures, the withdrawal of this drawback has involved the tea industry at the present moment in South India in an additional burden on its costs of production of a little over one rupee an acre, at a time when owing to tremendous competition in the world's markets and owing to the low prices of tea it has been essential for the costs of production to be cut as low as possible. Now, Sir, my proposal which in effect reduces the duty paid on panels and fittings by a little less than 10 per cent. roughly works out at a saving to the industry of the rupee an acre

[Mr. F. E. James.]

which it loses by the withdrawal of the drawback, and I put it forward to the Honourable Member that this is a most reasonable suggestion. I am aware that my amendment may be opposed on the ground that the purpose of this Bill is merely to rectify a mistake which was made by this House in passing the original Tariff Bill under the Ottawa Agreement. But I want to put forward to the Honourable the Commerce Member a very strong plea for a consideration of this matter by one of two methods: I would point out to him that on the authority of the Finance Minister himself it is of the utmost importance that India's exports of tea *vis a vis* other tea producing countries should be encouraged as much as possible. I would remind him that the interests in Ceylon and Java do not have to pay this burden which is placed upon the tea producers in this country in regard to a heavy revenue *plus* a surcharge tariff on this essential part of their export trade. I am aware that there are in North India certain indigenous firms which are producing tea chests; but I would point out that they have not up to the present produced either in quantity or quality anything like what is required or the type of chest required for this industry; and whatever may be done in North India, we have found it quite impossible to secure supplies of that article in the South owing to freight charges, etc., at a cost which is comparable to the cost of importing these articles from abroad.

The two suggestions that I make to the Honourable the Commerce Member as to how he can help the industry are these: first of all, that he should consider the possibility of giving back the privilege that has been enjoyed of the drawback. I am aware that the customs authorities have regarded the difficulties so far as being insurmountable; but those who are in the industry do not believe that those difficulties are insurmountable. We have from time to time put forward to the customs authorities proposals which in our view if they had been carried out by the customs authorities, would have enabled a very easy machinery to have been set up whereby the identification of tea chests could have been achieved. As I have said, we have all along formed the impression that the customs authorities were determined to abolish this particular drawback. Therefore, my first suggestion is that the question of drawback be reopened, that the customs authorities hold a conference with the representatives of the tea industry for the definite purpose of devising some fairly easy machinery, which, I am convinced, is possible. Now, it may be argued against that proposal that the principle of drawback is not desirable and should be limited merely to *entrepot* trade. Of course one could refer to the drawback given on motor cars and on films both of which could hardly be regarded as cases of *entrepot* trade; but there is considerable force in that particular argument, and, therefore, my second suggestion is, if it is not possible to grant a reconsideration of the question of drawback, that the Honourable the Commerce Member, in consultation with the Honourable the Finance Member, should consider the abolition of the surcharges on tea chests, or tea panels used for tea chests which are imported into this country. We claim that the surcharges are at present a definite handicap to the industry in this country, an industry which is very important from the point of view of India's export trade, and I, therefore, wish to place before the Commerce Member a very strong plea for a sympathetic consideration of the matter and for an examination of the possibility of accepting one or other of my two suggestions.

Dr. Ziauddin Ahmad (United Provinces Southern Divisions: Muhammadan Rural): May I ask the Honourable Member to let us know what will be the financial effect on the revenues if either of these two alternatives are accepted? That will help us very much.

Mr. F. E. James: I think perhaps the Honourable the Commerce Member will be able to give those figures. I am not in a position to give them accurately, although I have some idea in my mind as to the actual cost, but I believe the Honourable the Commerce Member is in a position to give those figures to the House. My point is this that although I am aware that immediately there may be a reduction of revenues as a result of this, it must not be forgotten that there has been, by the abolition of the drawback, a corresponding increase in the revenues. I am only asking for a *quid pro quo*. If the withdrawal of the drawback is not agreed to, then, I suggest that, as a set off against the additional revenue accruing to the State through the additional burden on the industry which the withdrawal of the drawback has caused, there should be a reduction in the surcharge which would roughly cancel out the additional amount of revenue obtained. It is a perfectly reasonable plea, and, I hope, the Honourable the Commerce Member will be good enough to give his sympathetic consideration to the matter.

Mr. President. (The Honourable Mr. R. K. Shanmukham Chetty): Amendment moved:

"That in the Schedule to the Bill, for the proposed amendment No. 7, the following be substituted:

'7. After Item No. 58-A, the following shall be inserted, namely:

'58-B. Tea Chests and parts and fittings thereof'."

Mr. B. Das (Orissa Division: Non-Muhammadan): Sir, I rise to oppose the motion moved by my friend, Mr. James. I am surprised that a gentleman who was a party to the Ottawa Agreement should bring forward a motion to improve the situation of any particular industry. Whether the situation will improve or not, I am not concerned, but I am surprised that after due deliberation, after the sitting of the Ottawa Committee, of which my friend, Mr. James, himself was a member and, then, when after long discussions on the floor of this House, the Ottawa Agreement was passed, a motion should be brought forward by a Non-Official Member of this House to amend the same. Sir, what was the Ottawa Agreement? The Ottawa Agreement, as it came out from Ottawa, wanted that this Legislature after six months could bring forward an amendment to take out any item from the preferential treatment granted by the Ottawa Agreement. Has this House become so incompetent? I was very happy at the time, Sir, that I was not present on the floor of the House, because the Members felt so much overwhelmed with their sense of responsibility that they could not vitiate the Ottawa Agreement that you, Sir, brought out from Ottawa and they said "we will work this Agreement for three years; we cannot understand what is contained in the Schedule, let the Government do what they like for three years; let the Government collect as much revenue as they can", and, after three years, the Honourable Members know that they would not be present on the floor of this House. Those who would succeed them after three years

[Mr. B. Das.]

will face the situation, and if they would want to do away either with the whole of the Ottawa Agreement or part of it, they could do so. Sir, I would like my friends to be logical.

My friend, Mr. James, may ask why I did not oppose my friend, Mr. Raisman. My friend, Mr. Raisman, explained the point very well. He said the Government assured the House at the time that they would examine certain aspects of the chemical industry and I accept that explanation about alum, because Government then said that they wanted to examine the position about certain chemicals. But is it not a fact, I ask my friend, Mr. James, and the representatives of the tea industry,—now tea has become an industry,—that they sent a large delegation to Ottawa? Did they not also send two or three Bengalee gentlemen who suddenly came out as representatives of a Bengali Association of tea planters, and one of those gentlemen went about hobnobbing at Ottawa for some time? Sir, I know you are compelled to observe silence on this question by your elevation to your present dignified office, and I find my friend, Sir George Schuster, is not also here, but my friend, Sir Joseph Bhore, will recall to his memory and say whether or not the representatives of the tea industry, both European tea industry and also the Bengali tea industry associations, —if I can rely on newspaper reports,—were subsidised by the European tea planters to go to Ottawa. My friend, Mr. James, did not bring forward these logical explanations. I see there are a good many points in what my friend, Mr. James, has said in giving relief to the tea industry, but I am not here to look at those points. Why is it that their representatives did not represent the case at Ottawa? I want, Sir, the Government to be honest or dishonest.

An Honourable Member: Both? (Laughter.)

Mr. B. Das: All right, they are both. (Laughter.) But if they dishonestly persuade the Members of this House to confess their ineptitude, to confess that they swallowed the pill not for six months as you, Sir, brought out, but for three years, knowing full well that they would not be present here on the floor of the House to stand the racket, they require to be censured. My friend, Mr. James, said that it will help the tea industry by Rs. 1-8-0 per tea chest. Was it brought before the Ottawa Conference? Did he bring it before the Committee of which he was a member, or before the House while the House was discussing the Ottawa Agreement? I want my friends, the Europeans, to realise the plain truth. I did oppose the Ottawa Agreement, and I cleared out, but some of us had grave doubts whether any benefits would at all accrue to India. I should have been very pleased to hear from my friend, Sir Joseph Bhore, if he had told us how the Indian wheat has flooded the British market, how the Indian cotton has flooded the Lancashire cotton market, so that Lancashire need not buy any more Egyptian or American cotton, or how the coffee that is grown Mysore and Malabar, of which my friend, Dr. DeSouza, is such an ardent advocate, has improved its position, how the European representatives, who control the shipping freights for transporting goods from India to England, have reduced those freights so that it will have a bearing on the good intentions of the Ottawa Agreement. My friend, Sir Joseph Bhore, kept quiet. It is only three months now since this House swallowed the big dose of poison in the shape of the Ottawa Agreement, and now I find that

my friends, the European interests, who have very large interests in the tea industry come forward and say; "Allow the drawback, it will bring to the industry so much improvement." Tomorrow my friend, Mr. Mackenzie, will rise on behalf of the Burma Oil Company and ask for drawbacks. I want to know on what logical ground my friend, Mr. James, based his amendment? Was he a party to the three years' agreement? Did he not have a small share in the Ottawa Agreement when certain gentlemen wrote out that sensible or insensible note in the Committee to the effect that after three years only they would look at the Ottawa Agreement. I cannot understand how the brain has become clear so soon, and he is not able to appreciate the intentions of the Ottawa Agreement. I am not surprised that my friend should have swallowed that pill. If you have swallowed it, then lie in the bed you made for yourself quietly for three years. If it is the intention of Government to give early relief to those who are suffering through the Ottawa Agreement, let them announce it by notification, let them circulate letters to the various Indian Chambers of Commerce, let the Indian merchants consider what damage has been done to Indian Commerce and the Indian industry through this Ottawa Agreement and then let us have a Bill to bring relief. But today to squeak is rather very ungenerous on the part of my friends of the European Group. They are the inspirers of the Ottawa Agreement. Whether they are in India or in England, they all work as one and if the non-commercial Indian politicians, that sit here, swallowed the big pill, with the sweet smiles of my friends, Mr. James and Mr. Morgan, the lawyer politicians, not having understood the economic interest of their motherland. Let them abide by the pact that was entered into in November last and not squeak till three years pass. Sir, I oppose the amendment.

Mr. S. C. Mitra (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): My sympathies are with Mr. James in his amendment for seeking a little redress for the tea industry. I do not know what the attitude of the Government will be, but I think they will not stand on any technical ground if they consider that they can really render some assistance, but I feel that the amendment is rather premature now. Mr. James himself said that there is some industry in Northern India that manufactures tea chests, panels and fittings. Certainly Government cannot have any customs arrangements, one for North India and another for South India and we had also no representation from any industry anywhere. So, to speak of the tea industry as purely a European industry is not even correct, because there are not only Indians, interested largely in labour, but there are some Indian tea planters as well, and everybody knows that the tea industry is now passing through very bad times and they deserve some sort of assistance from Government. I do not still know why India cannot produce these tea chests, panels and fittings for the tea industry. In these circumstances, I think Mr. James will do well to wait and press for it later on when we have better information on these matters.

The Honourable Sir Joseph Bhore: Sir, I am sorry I have to oppose this amendment, the more so, because having listened carefully to Mr. James, I have arrived at the same conclusion as that which Mr. Mitra has arrived at. I feel that he has made out a case which merits *prima facie* careful examination, but I am afraid that my opposition is one of principle at this stage. I have endeavoured to make it clear that the object of this Bill is merely to remedy ambiguities, remove inaccuracies

[Sir Joseph Bhore.]

and that it is not our intention to introduce any matter of substance. My Honourable friend, Mr. James' amendment goes far beyond that. His amendment strives to take this opportunity to introduce a measure, it may be a very small measure but nonetheless, a measure of assistance to the tea industry or I might put it in another way. It seeks to remove or reduce what at this time appears to be a burden which bears somewhat hardly on the industry. Now, I sympathise very greatly with Mr. James, but at the same time I feel myself quite unable to accept an amendment which introduces an entirely new principle into this Bill. The case of liquid gold and glass crucibles stands entirely on a different basis. We gave a very definite assurance during the Select Committee stage of the Bill that we would examine the case of these articles and we are merely implementing that promise in so far as these two items are concerned. At the same time I would like to assure my friend, Mr. James, that the case that he has put forward is a case which does seem to me *prima facie* to merit examination and I shall give him this assurance that I shall endeavour during the period, between this meeting of the Assembly and the next, to go carefully into the matter with my Honourable colleague, the Finance Member. In the meantime I must oppose the amendment.

Mr. B. Das: Is this not part of the Ottawa Pact?

The Honourable Sir Joseph Bhore: This has got nothing to do with the Ottawa Pact.

Dr. Ziauddin Ahmad: I am in great sympathy with Mr. James and, on the merits of the case, I entirely support his motion. The tea industry at present is very hard hit on account of world depression and any aid, however slight, to the tea industry will be most welcome. I would even go further. I would recommend that a subsidy should be given to the tea industry in order to save this important industry from ruin. Some speakers suggested that this industry was entirely in the hands of Europeans. There is a very large number of Indians who own tea estates and, even in the European-managed estates, a very large number of Indians have got shares. So, about 50 per cent, or it may be two-thirds, I do not know exactly, of the industry is owned by Indians in one form or other. This is just the time to help this industry and we could give slight help by reducing the duty in some shape or other.

Mr. Gaya Prasad Singh (Muzaffarpur *cum* Champaran: Non-Muhammadan): Why did you not suggest it in the Committee of which you were a member?

Dr. Ziauddin Ahmad: The scope of the Bill was limited to certain things and this particular suggestion does not come under the Ottawa Pact. It has been introduced in the present Bill and that is the only point of connection. Otherwise it has absolutely nothing to do with the Ottawa Agreement and it is a question of protection of home industry. I think it is really the duty of the Government to accept the suggestion, but there is one principle which I would not like to uphold and which I am forced to emphasise and it is that the changes in the Schedules of the Tariff Pact should be left to the Government alone. If this is left to individual

Members, we will land ourselves in enormous difficulties which may possibly create an unhealthy atmosphere which will not be desirable. No doubt we should be in a position to explain our difficulties and to mention on the floor of the House and discuss the manner in which particular industries are being affected by customs policy of the Government. I utilised the opportunity during the discussion on the Finance Bill to ventilate my grievances about two particular industries, that is hides and skins and sugar candy.

12 NOON. But, at the same time, I say that it would not be very wise, and I may say, dangerous, if individual Members are canvassed by interested merchants and they tampered with the schedules attached to a tariff Act. This thing ought to be examined by the Government, either through the Tariff Board or by some other methods at their disposal, and, when they are convinced, the proposal ought to be initiated by them. Our business here really is to draw attention to the difficulties under which particular industries are labouring, and it should be for the Government to carefully consider them. Of course when their own opinions come before the Assembly, we will then again have the right to criticize them and say whether the remedies adopted by the Government have really relieved the industries to the extent to which they are entitled. Therefore, though I agree with the substance of this motion, I am sorry I consider that a motion of this kind ought to have been initiated by the Government. As regards the question of Ottawa, I think this particular question is as far removed from Ottawa as the Earth is from Mars.

Mr. K. P. Thampan (West Coast and Nilgiris: Non-Muhammadan Rural): Sir, I quite agree with Dr. Ziauddin Ahmad and others that the time is not yet for us to bring forward amendments of this kind and it is not fair to avail of this opportunity to make radical alterations. (*An Honourable Member*: "Please speak up.") Sir, a Committee of the House will be appointed within a few months to examine the effect of the Act (*An Honourable Member*: "We cannot hear you"), and Mr. James and his friends should approach that Committee with facts and figures of the kind which he has now brought forward. Speaking on the merits of the question itself, I remember that during the war time and for some time afterwards there was an enormous business in the West Coast in the making of packing cases and such things. In Malabar, several kinds of lightwood and timber are available and they were made use of for these packing chests. I am sure, this additional duty will help to revive that industry, and I request the Honourable the Commerce Member not to forget that aspect of the question when he will take into consideration the desirability of abolishing it in the promised enquiry. If this duty will in any way help the industry, as I trust it will, I shall strongly oppose this amendment.

Mr. Gaya Prasad Singh: Sir, I am not surprised that the way in which the Ottawa Agreement was smuggled through this House should have landed the Government in this position. Sir, the opening sentence of the Statement of Objects and Reasons says:

"A few inaccuracies and discrepancies in the Indian Tariff (Ottawa Trade Agreement) Amendment Act, 1932, have been brought to light by a further scrutiny of the Schedules to that Act and by practical experience of the new tariffs, and the object of this Bill is to correct them."

My Honourable friend, Sir Joseph Bhore, has also said that there have been "ambiguities, anomalies and mistakes", and I do not know what other adjectives he used in this connection.

The Honourable Sir Joseph Bhore: Excuse me, Sir,—they are not adjectives.

Mr. Gaya Prasad Singh: I am glad, my friend still carries with him a very brilliant memory of the grammar which he read many years ago,—but I am not surprised that all these encomiums have been heaped upon the Agreement which was passed by this House in December last. At that time, it may be recalled, my friends who made their opening speeches criticized very strongly the Ottawa Trade Agreement, but, somehow or other, by some mysterious process—I am not going to be more explicit (Laughter) on that point—the brilliant idea flashed across their minds that it was very good in the interests of the country, and they came round to support that Agreement. It may also be recalled, Sir, that at that time many of us consistently held that this Trade Agreement at Ottawa was not to the advantage of this country, and we pointed out various defects in that Agreement. But our cry was a cry in the wilderness. Now, I am glad that even the Government have realized that there have been inaccuracies, discrepancies and all that in the measure that they rushed through this House in December last.

My Honourable friend, Dr. Ziauddin Ahmad, said that the tea industry was mostly an Indian industry. Now, there are two industries in this country which cannot claim to be purely or mainly Indian. One is the tea industry and the other is the indigo industry, and in respect of these two industries India holds almost a monopoly, barring the jute industry of Bengal about which I have nothing to say now. With regard to the tea industry in India, the doings of the tea planters of Assam are well-known, and I have no desire to rake up the history of the way in which the tea industry came to establish itself in this country, and with the help of the Government of that day, and how the coolies from different parts of the country, especially from my province and the neighbouring province of Bengal, were drafted to Assam on conditions virtually amounting to slavery. It was only last year that we passed a measure, at the instance of my Honourable friend, Sir Frank Noyce, giving some relief to the coolies who are sent to Assam. Then, my Honourable friend, Dr. Ziauddin Ahmad, referred to the canvassing of votes. Well, I do not know what he meant by the canvassing of votes, but I know how votes were canvassed, and how hopes were dangled before some of us when that Ottawa Trade Agreement was under discussion in December last. I do not know whether my Honourable friend, Dr. Ziauddin Ahmad, supported this motion of Mr. James, or opposed it. In any case, Sir, he will have ample opportunity, if he has the opportunity of going to England in the near future, of studying this question in a bracing climate, and giving us his opinion on his return. (Laughter.) Therefore, I say, Sir, that this Indian Tariff (Ottawa Trade Agreement) Supplementary Amendment Bill should not have been brought before us at this time, and I do not know what led Government to bring it up before us just now. They should have been more careful in examining the situation in the light of longer experience of the working of the Act which we passed last year. I do not know what representations, if any, have been received from the representatives of the tea industries regarding the matters mentioned in this amendment. If any representations have been received, it was up to the Government to have made available to us those papers, and, therefore, Sir, I do not think that the amendment of my Honourable friend, Mr. James, is quite opportune, because no

opportunity has been given to the country or to the House to examine the position and find out whether this amendment, which my Honourable friend seeks to introduce, is needed at all or not. Therefore, Sir, I disagree with that amendment. With these few words, I resume my seat.

Mr. F. E. James: Sir, I very much appreciate the assurance that the Honourable the Commerce Member will look into this matter between now and the September Session. My only purpose in tabling this amendment was to ventilate on the floor of the House what we consider to be a grievance from which the industry is suffering and I appreciate the remarks made by Dr. Ziauddin Ahmad that it should not be left to private motions to alter tariff arrangements under ordinary circumstances. I entirely agree with that view. Therefore, Sir, in those circumstances, I would beg leave of the House to withdraw my amendment on the assurance given by the Honourable the Commerce Member.

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

The Schedule, as amended, was added to the Bill.

Clause 2 was added to the Bill.

Mr. F. E. James: Mr. President, I beg to move:

"That after clause 2 of the Bill, the following new clause be added:

'3. Item No. 99 of the Second Schedule to the Indian Tariff Act, 1894, as inserted by Item 5 of the Schedule to this Act, shall in so far as it relates to printing paper which is not the produce or manufacture of the United Kingdom, be deemed to have come into force on the first day of January, 1933, and a refund of any excess duty paid between the said date and the commencement of this Act may be made accordingly'."

Refund of excess duty on news-print.

Sir, perhaps the fact that I am moving this amendment will prove to my Honourable friend, Mr. B. Das, my *bona fides*, because what has happened is that, although newsprint was expressly excluded by the Indian Delegation from the list of goods entitled to preference, in fact, owing to a small mistake for which this House was responsible when we passed the Bill, a preference has indeed been given to newsprint coming from the United Kingdom. Of course, my Honourable friend, Mr. Das, was not present in the House at that time. He was in another place making the new province of Orissa safe for the Telugus and trying to get into his new province many Telugus who had no other desire but to live in peace and harmony in the Madras Presidency! Therefore, we cannot saddle him with responsibility for this particular thing. But, Sir, I would ask him to support this amendment, because it suggests that the House should, in rectifying this mistake, re-imburse newspapers with the additional customs duty which they have paid on their newsprint as a result of a mistake which the House has committed. That is all that this amendment seeks to do.

I am quite sure that the Government will say that it is a well-established principle that law regulating the customs duty cannot be given retrospective effect without great difficulty, yet I would suggest that if this House is responsible for the original mistake, it will be quite proper for this House to take responsibility on itself for authorising a payment of the refund. And this amount that has been collected from newspapers owing to this mistake is not inconsiderable. I have taken the trouble to ascertain from certain newspapers in different parts

[Mr. F. E. James.]

of the country the actual amount involved. In the case of one paper in Calcutta, the amount is over Rs. 3,000 and, in the case of one paper in Madras.—this time an Indian paper,—the amount is in the neighbourhood of Rs. 2,000 to Rs. 2,500. I have been assured by Honourable Members, who are interested in the Indian Press and who import newsprint from foreign countries, that they also have had to pay amounts varying from Rs. 500 to nearly Rs. 2,000 excess duty owing to the mistake which this House made and which it did not intend to make at the time. Therefore, I do hope that the Honourable the Commerce Member will be able to help the papers in this connection.

There is one other point I should like to draw his attention to. His Bill is to correct anomalies. Now, there is one anomaly which exists in regard to newsprint. Newsprint is imported in sheets and in reels. The cost of the reels is obviously less than the cost of sheets and yet we find that the tariff valuation is the same. If he desires to correct anomalies in the Act, may I suggest to him that he may also inquire into this matter and see whether he cannot also correct anomalies in the tariff valuation.

Sir, I move.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): Amendment moved:

"That after clause 2 of the Bill, the following new clause be added:

'3. Item No. 99 of the Second Schedule to the Indian Tariff Act, 1894, as inserted by Item 5 of the Schedule to this Act, shall in so far as it relates to printing paper which is not the produce or manufacture of the United Kingdom, be deemed to have come into force on the first day of January, 1933, and a refund of any excess duty paid between the said date and the commencement of this Act may be made accordingly'."

Refund of excess duty on news-print.

Mr. K. P. Thampan: Sir, I have great pleasure to support this motion. I believe it was a culpable error to have included this item or rather omitted its exclusion from the list of articles in favour of which preference was given in the Tariff Act. It was not deliberately intended to do so, but was only a mistake, as it was said in reply by the Honourable Member in charge of the Bill to a question put by me the other day. Sir, papers like the *Statesman* and others to which reference was made by my Honourable friend, Mr. James, can very well afford to pay this additional duty, but what about the innumerable number of Indian papers which carry on a hand to mouth existence? I am afraid they will be very much handicapped. No one had the least desire to make this an additional burden on them. If it was through a mistake that we imposed this burden on them, it is only fair and proper that we should rectify it. I, therefore, strongly urge on the Government and on the House to give this relief which, I am sure, will go a long way to help the poor journals in these hard days.

Diwan Bahadur A. Ramaswami Mudaliar (Madras City: Non-Muhammadan Urban): Mr. President, while I sympathise very largely with this amendment, I am afraid I am unable to support it for a very simple reason. This amendment is intended not indeed to remove a duty that has been imposed by the Government, but to give retrospective effect and to give refund to those who imported from 1st January. Now, I ask my Honourable friend, Mr. James, to whom is this refund to be given?

It is perfectly true that some newspapers are the direct importers of this newsprint and the refund will go to them. But there are hundreds of newspapers who buy their newsprint from various agencies. The newspapers can get the benefit of it only when they are directly importing the newsprint, but there are hundreds of newspapers who buy in the retail and are not direct importers of newsprint. That is my strong objection for giving any such refund, for the result of it is that the direct importer gets the benefit of it at the expense of the Government and does not pass on the benefit to various newspapers. Let me not be misunderstood as having no sympathy with newspapers. There are a few English newspapers and also a few Indian newspapers which have got such financial resource as to be able to import direct this newsprint and, therefore, they can get the benefit. But, as against them, there are hundreds of newspapers which can only buy the newsprint in the Indian market from those who have imported it. Anybody who knows the sale of this newsprint must be aware that it passes from hand to hand and dealer to dealer till it comes to the retailer and then it passes on to the newspaper owners who publish their weeklies and dailies, and so on. Therefore, it seems to me that the refund will benefit a class of persons who do not deserve to be benefited and who will take the profit at the expense of the newspaper owners. On that short ground, I oppose this amendment.

Mr. K. C. Neogy (Dacca Division: Non-Muhammadan Rural): Sir, this Bill is primarily intended to remove certain anomalies and correct certain mistakes. But there are many of us who think that the entire Ottawa Agreement was an anomaly and a mistake; and, from that point of view, I am not very anxious to assist my Honourable friend, Mr. James, in correcting a particular error for the purpose of benefiting a particular section of the Press. Sir, I remember that the leading newspapers, representing the views generally represented by my Honourable friend, Mr. James, and who are the principal parties to benefit by his amendment, were so wild with enthusiasm over the Ottawa Agreement that they had no leisure or opportunity to examine the details of the proposals of the Bill as it emerged from the Committee of this House, even in respect of a matter which was going to affect them materially. Therefore, I say, Sir, that those newspapers have to thank themselves for any inconvenience that may result from this particular measure; and, from that point of view, I do not think the class of newspapers which the Honourable Member represents deserves any sympathy in this House. And besides, my Honourable friend and several others who were in the Committee were expected to bear in mind the interests of the various newspapers as of other interests in the country; and, if they misled this House in their report into adopting an incorrect measure, it is not for the Honourable Member now to foist that mistake on this House itself. Because, I understand that, in passing this measure, no amendment was carried at the instance of this House, that is to say, the report, as it emerged from the Committee, was substantially adopted. From that point of view also, I do not think that my Honourable friend is entitled to any consideration.

Mr. C. S. Ranga Iyer (Rohilkund and Kumaon Divisions: Non-Muhammadan Rural): Sir, after hearing the speech of Mr. Neogy, I am constrained to support my Honourable friend on the European Benches.

Mr. B. Das: You agreed with Mr. James all throughout.

Mr. C. S. Ranga Iyer: My Honourable friend, Mr. Das, is singularly lacking in humour this morning.

Sir, as a newspaper man, I believe that I may extend my support to the proposition that has been placed before this House. Mr. Neogy was saying that this House accepted the recommendations of the Committee and that, if the Committee made a mistake, we must persist in that mistake. That is an extremely unwise proposition for any individual or administration to follow. Administration is carried on by men, and men are not infallible. The Committee made a mistake and, as the mistake was committed and is being rectified, it is but proper that it must be rectified with retrospective effect, so that the newspapers must not be punished for the mistake of the Administration. And, Sir, it is not only the big newspapers, who directly import, that are affected, but also the small newspapers who purchase from merchants. And when they book their next order they will insist when the merchants get refunds that this should be taken into consideration, and merchants do take these things into consideration, so that they will be paid back what, owing to the mistake of Government, they had been made to pay. For these reasons, Sir, I think it is but proper that Government do not take a cheeseparing attitude in the matter or follow the philosophy of Mr. Neogy in persisting in punishing those who are not responsible for the mistake for which Government are responsible.

Mr. B. Das: Sir, it is no wonder that my friend, Mr. Ranga Iyer, found me lacking in humour this morning. In the earlier debate this morning, when he was absent, I did see very much humour flying all over the House. I am not one of those, Sir, who after swallowing an elephant will strain at a gnat. But my friend, after swallowing the whole Ottawa Pact, would strain at a few thousand rupees. Sir, I am myself a journalist, and if I may voice the view-point of the Indian journalists, Indian publicists would rather pay one or two pies more than come and humiliate themselves and beg the removal of the tax, as they opposed throughout the unholy recommendations of the Ottawa Agreement. My friend, Mr. James, laid a charge against the Commerce Member that the mistake has been intentional. I hope my Honourable friend, Sir Joseph Bhore, will clear the point whether the mistake was intentional on the part of the Commerce Member or on the part of the representatives of the Press as Mr. Neogy pointed out.

Mr. F. E. James: I did not say that: I did not say it was intentional.

Mr. B. Das: On the part of this House.

Mr. F. E. James: No, neither; it was an unfortunate mistake.

Mr. B. Das: Sir, I do not think any mistake has been made; if at all any mistake was made, it has been deliberately made. As we have deliberately made the big mistake of swallowing the Ottawa pill, I will swallow this small pill also.

Dr. Ziauddin Ahmad: Sir, my position about this amendment is practically the same as it was on the last occasion: I admit that its nature is quite different from the previous motion moved by my Honourable friend, Mr. James. First, I will say just a few words about the insinuations which my friend, Mr. Gaya Prasad Singh, made about some of my arguments. He said that he did not even understand whether I was supporting or whether I was opposing Mr. James in spite of the fact that Mr. James replied my arguments. Sir, I can give my poor reasons here on the floor of this House, but it is beyond my power to ensure that every Honourable Member understands them. As regards insinuations, I have been accustomed to them for the last 18 years. There has not been a single post going in the Government of India or elsewhere in connection with which my name has not been mentioned. For the benefit of my friend, Mr. Gaya Prasad Singh, I may say that Government have offered me the Presidentship of a commission which I have accepted. The purpose of the commission is to provide relief to the over flowing population of India for whom there is not sufficient land on this planet, called Earth, and so they have appointed a Royal Commission to find out the possibility of colonisation for super population of India on the planet of Mars. I have been calculating in my own mind how to establish a means of communication between this earth and the planet of Mars, and as soon as I have solved the Partial Differential Equation of infinite order which is necessary and solve this important problem, I shall start the work and I can assure my friend, Mr. Gaya Prasad Singh, that I will take him on this Commission as Secretary and Chief Adviser. I admit very frankly that I have got one weakness. My weakness is that I do not leave my sense of reasoning at my house when I come to this Assembly Chamber; I bring unfortunately my reasoning sense with me. If I am convinced that two and two is equal to four, I will always say so. I will not refuse to admit its truth only on the ground that my Honourable friend, Sir Joseph Bhore, or my Honourable friend, Sir Harry Haig, also admit that two and two is equal to four. I will not begin to call that two and two is equal to five, because the Members of the Treasury Benches say that two and two is equal to four. I am for the truth. I am always prepared to admit truth from whatever source it comes, because I am a great believer in that Arabic proverb "Consider what has been said and not who said it". (*Unzur ma Qala, wa latunzur man Qala.*) A politician or a historian admits or rejects a statement on the authority of persons whom he believes or disbelieves. Personal equation has no place in the minds of scientists.

As regards this particular amendment, I have great sympathy with what my friend, Diwan Bahadur Mudaliar, has said that it is very difficult to decide to whom this money will be refunded, and I think that, in case of doubt, the money should remain with the State.

Mr. K. C. Neogy: Why not distribute it amongst members of the Ottawa Committee?

Dr. Ziauddin Ahmad: My friend suggests it to be distributed amongst the members of the Ottawa Committee, and I would certainly have agreed to it had I left my reasoning sense at home. Sir, I do not support the amendment for the reasons I have just given.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): Sir Honourable Members behind me have raised the larger issue and not confined themselves to the particular amendment with which we are concerned. I feel constrained to offer a few observations, especially in view of the fact that my Honourable friend, Mr. K. C. Neogy, accuses the Ottawa Committee of having committed a mistake and, with some levity, suggested the distribution of the proceeds of the amendment to the Members of this Committee. My Honourable friend has been in this House since its inception and if there is one Member in this House it is he who ought to know that it is not the function of the Select Committee to legislate. It is the business of this House, and the Ottawa Agreement and its consequential legislation was not the work of the Select Committee, but was the business of this House, and every Member, whether he occupies the Treasury Benches or the official seats or the Opposition Benches, is equally responsible for that piece of legislation into which these anomalies have crept in. My friend was not in the House at the time. He was not even in India but was carrying on his duties elsewhere, and when my friend, Mr. B. Das, rises and says that this agreement is of doubtful advantage, surely, Sir, I should have expected Mr. B. Das, who was appointed a member of this Committee, to forego his other parochial interest and serve thereon as a Member of this House. He withdrew his service of this House for purpose of his own, and it certainly does not lie in his mouth now to come back and oppose this amendment, or to say that the Ottawa Compromise is of doubtful value. That, again, shows that my Honourable friend has not read the amendment, which this House has passed, and, if my friend had given this House the courtesy to look into the Agreement, he would not have permitted himself to launch a general diatribe against the Ottawa Select Committee.

Mr. friend, Mr. Gaya Prasad Singh, for whom I have a tender corner in my heart, gives expression to similar views and makes interjection on the Ottawa Agreement so often and on so many occasions that I have ceased to take him seriously. I am not, therefore, going to measure swords with him, but I will ask him only one question and that question is that numerous Bills, Resolutions, amendments and measures are passed in this House from day to day, upon which Members on both sides are sharply divided, but once they go on to the Statute-book, we do not ascribe motives to one another for voting for or against a particular amendment, because do not Members equally differ when, impelled by a sense of public duty, they come to a judgment, come to a decision in which they may not see eye to eye with a few of their dissentient friends?

Turning to this Ottawa Agreement, every step and every stage of the discussion of the Select Committee was known to my friend, Mr. Gaya Prasad Singh. It was subjected to scrutiny by every member of the Party to which he and I have the honour to belong and it was subjected to the unfettered judgment of everybody outside of that Party. The subject was discussed in a Party meeting and members were given their freedom of vote. After that, what complaint has he or his colleagues to adopt their present attitude on the amendment finally discussed, debated and decided on the floor of this House? There was no secrecy about the arrangement. Everything was published in the newspapers, and opinions invited and received and all the witnesses questioned on the points later focussed in the amendment.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): The Chair has allowed a certain amount of latitude in this debate, especially on this amendment, but it cannot allow a general discussion on the policy of the Ottawa Agreement Bill which is coming to the forefront in this debate. This is properly not a debate of this nature. The Chair has allowed it so far to the Honourable Member, because he has been the target of attack by certain Members. The Chair cannot allow the discussion to extend to the whole policy of the Ottawa Trade Agreement, but it should be confined to the four corners of the proposed amendment.

Sir Hari Singh Gour: I thank you for having permitted me to say what I have done. I may also say that, although there is no direct accusation, and only an insinuation, but an insinuation is far more damaging than a direct accusation, I would prefer the latter for I shall then know how to act.

Now, turning to the amendment before us, the question is a very short one. It is a very narrow one. It is not true that it was the mistake of the Select Committee. It is not equally true that it was the mistake of any section of the House. What is true is that it is a mistake of the Legislative Assembly that passed the motion, and the whole question before the House is—is this House, which is collectively responsible for the enactment of the measure, prepared to reconsider its verdict, when it is shown that that verdict was reached after immature and insufficient consideration? That is the only short question with which we are concerned. My friend, Mr. James, says—you have levied this duty under a misapprehension. There was a mistake. My friend, Diwan Bahadur Mudaliar, will not challenge the major issue, but says that the benefit of refund may not reach the people from whom this tax is extracted. My Honourable friend, Mr. Ranga Iyer, has effectively dealt with that question. He has pointed out that if once an amount has been received from a person from whom it was not due, then the utmost that the Legislature can do is to place the parties in the *status quo ante* and if, by so doing, they rectify the mistake, we have done our duty. Our moral obligation no doubt remains to see that other people do not profit by the mistake that has been made in so far as we are able to prevent that abuse. Mr. Ranga Iyer has effectively disposed of the objection that the refund will remain with the middleman and will not pass on to the consumer. He has shown that the consumer will turn round to the middleman and obtain the amount not due. Consequently the amount must be refunded, since they will have a very good cause of action against the people who have received the benefit to which the purchasers were ultimately entitled. I cannot see any insurmountable difficulty in the way of righting the wrong and I, therefore, support the amendment.

Mr. Gaya Prasad Singh: Sir, I thank my revered Leader, Sir Hari Singh Gour, for saying that he has a tender corner in his heart for me. I hope I will do nothing to dislodge myself from that tender position. (Laughter).

My Honourable friend said that there was a mistake in the original Act, and that the amendment of Mr. James was going to rectify that mistake. My Honourable friend, Mr. Ranga Iyer, also admitted that it was a mistake, and he, as a newspaper man, was anxious to secure relief which the passing of this amendment will afford. I should have thought

[Mr. Gaya Prasad Singh.]

that my friend, Mr. Ranga Iyer, a journalist as he is, should have bestowed some thought on the matter in the Ottawa Committee of which he was a distinguished member. Probably he was the only journalist in that Committee, and at least the interests of his own profession should have weighed with him more than any other consideration. I did not quite catch my Honourable friend, Mr. James, when he said that it was not a mistake of the Committee, but a mistake of the House. I do not know. However, Mr. James was also a member of that Committee, and he also now perceives that a mistake was committed. It is somewhat surprising that all these friends who were members of that somewhat mysterious Committee should have been blind to that mistake at that time—my revered Leader, my revered Deputy Leader, Mr. James and Dr. Ziauddin Ahmad—they were all asleep when this culpable or palpable mistake (Laughter) was committed in the Ottawa Committee; and it was only at the instance of my Honourable friend, Mr. Arthur Moore, whom I do not find in this House and whose cause has been championed by Mr. James, that this mistake has been discovered.

I understand from my friend, Dr. Ziauddin Ahmad, that he is going to make a very long journey to the planet Mars: I only credited him with the idea of going to England as many of us do these hot days when India ceases to be a very pleasant country, and I think many of my friends will have that pleasant opportunity of going to England. I do not think there was any insinuation—of course if the cap fits any Honourable gentleman of this House, he is quite entitled to wear it; but, so far as I can conceive, a mere trip to England is not ascribing any bad motive: if anybody says I am going to England, I would be pleased, and I will not say that there was some sort of motive hidden behind the suggestion. These gentlemen are quite aware of their own minds; I do not know what is going on behind the scenes. However, as regards the amendment itself, I am afraid, I cannot give support to it: and one reason, as has been mentioned by my Honourable friend, Mr. Mudaliar, is this: if there are only certain newspapers which import their requirements directly from England, there are a large number of persons who purchase their supplies in the local market. What about those people if refund is allowed to the importers? It will go mostly to those who import directly from England or elsewhere: but what about the retail purchasers in the market? The benefit will not accrue to them, and they are pre-eminently the class of people to whom any relief, if relief is to be given, should be given. As regards the *Statesman*, I understand from my friend, Mr. James, that it is about Rs. 3,000 which it will receive, by way of refund if this amendment is carried . . . .

Mr. F. E. James: I should like to make it clear that I made no reference to any paper whatsoever: I merely enumerated one or two instances, one from Madras, one from Bombay and one from Calcutta as to the amounts which might be paid.

Mr. Gaya Prasad Singh: I did not say that he made reference to the *Statesman* in that sense, but my information is that a considerable sum of money will be refunded to the *Statesman*: I do not know how far it is correct. The *Statesman* should console itself by remembering the fact

that it does recoup itself and that it will recoup itself amply by getting advertisements from the Government on a lavish scale, as it has been doing, and also from the Port Commissioners of Calcutta. I do not think that so soon, after the passage of the Ottawa Agreement in December last, we should do anything to disturb the arrangement. It was, as my friend, Mr. Neogy, has suggested, a mistake to have passed that Ottawa Agreement. It will be a double mistake if we go on accepting amendment after amendment at this rate, until the whole thing will verge on the ridiculous. I, therefore, oppose this amendment.

The Honourable Sir Joseph Bhore: Sir, I am afraid that I must oppose this amendment . . . . .

Mr. Gaya Prasad Singh: So we have been supporting Government unwittingly!

The Honourable Sir Joseph Bhore: . . . . though I do recognise that the reasons which have been urged in support of the amendment have some force in them. If I oppose the amendment, it is on the ground of principle because Government cannot countenance restrospective legislation without exceptional reasons. I find that a similar amendment to that moved by my Honourable friend, Mr. James, stands in the name of Mr. Arthur Moore; and for the position which I am taking I find support from an opinion expressed in the report of a Select Committee of which Mr. Arthur Moore was a member some time ago. In the report of the Select Committee, appointed by this House, to consider the Bill to amend the law relating to the Bamboo Paper industry in 1927, occurs the following passage:

" We have considered whether in this case also retrospective effect should be given to the amendment of the law so as to enable refunds to be made to importers of the difference between the duty at the protective rate and duty at the revenue rate; but in our view the exceptional circumstances which alone can justify fiscal legislation with retrospective effect are absent ".

My object in quoting that is merely to say that I entirely agree with the view that, if retrospective effect is given to legislation, it must be supported by extremely strong reasons; and I confess that in this particular case I cannot find that such strong reasons exist. Then, Sir, apart from the question of principle, there are other subsidiary reasons for not accepting this amendment. I submit that we could not give retrospective effect to just one single item in the Bill. It would be necessary to extend that effect to other items to which it is extendable; and if we once started doing that, I am afraid that there would be very considerable administrative difficulties and inconveniences. Thirdly, there is another reason, the reason to which my Honourable friend, Diwan Bahadur Ramaswami Mudaliar, referred; and to my mind that does afford a very strong ground for not agreeing to the amendment. I think it is extremely doubtful whether the small buyers of paper would be enabled to get the benefit of this refund if it were sanctioned under this amendment. For all these reasons, I think that a case has not been made out to give retrospective effect to the change and I must oppose the amendment.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): Does the Honourable Member wish to press the amendment?

Mr. F. E. James: Yes, Sir.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): The question is:

"That after clause 2 of the Bill, the following new clause be added:

'3. Item No. 99 of the Second Schedule to the Indian Tariff Act, 1894, as inserted by Item 5 of the Schedule to this Act, shall in so far as it relates to printing paper which is not the produce or manufacture of the United Kingdom be deemed to have come into force on the 1st of January 1933, and a refund of any excess duty paid between the said date and the commencement of this Act may be made accordingly'."

Refund of excess duty on news-print.

The motion was negatived.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): The question is that clause 1 stand part of the Bill.

The motion was adopted.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

The Honourable Sir Joseph Bhore: Sir, I move that the Bill, as amended, be passed.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): The question is:

"That the Bill to supplement the Indian Tariff (Ottawa Trade Agreemen Amendment Act, 1932, as amended, be passed.

The motion was adopted.

THE PROVINCIAL CRIMINAL LAW SUPPLEMENTING BILL.

The Honourable Sir Harry Haig (Home Member): Sir, I rise to move:

"That the Bill to supplement the provisions of the Bengal Public Security Act, 1932, the Bihar and Orissa Public Safety Act, 1933, the Bombay Special (Emergency) Powers Act, 1932, the United Provinces Special Powers Act, 1932, and the Punjab Criminal Law (Amendment) Act, 1932, for certain purposes, be taken into consideration".

The House, Sir, will remember that when the Government introduced the Criminal Law Amendment Bill last autumn, I made it clear that we were including in that Bill only those powers which general review of the situation showed to be required for the whole of India and that we were leaving it to Local Governments to supplement those provisions by local legislation in order to meet local conditions. Since then local legislation has been passed by a number of local Councils, and this Bill is intended to supplement that local legislation only on points where the Local Legislature had not jurisdiction to carry out in full the provisions which the Local Governments considered necessary.

The present Bill deals with the following points. In the first place, it is proposed to grant a right of appeal to the High Court of Calcutta from certain sentences passed by Special Magistrates in Bengal. That provision is beyond the powers of the Bengal Legislature. The reason why

this provision is confined to Bengal is that the Bengal Legislature is the only Legislature which has provided in its special Act for a system of Special Magistrates. In the next place, we have certain provisions which are directed to barring the jurisdiction of High Courts in certain respects. In the first place, provisions have been inserted in a number of the special local Acts providing protection for acts done or intended to be done in good faith under those Acts. Provisions of this nature are included in the Acts in Bihar and Orissa, Bombay, the United Provinces and Bengal. These provisions, however, as they stand in the local Acts, can only apply to the Courts subordinate to the High Courts and cannot bind the High Courts. We propose that these provisions should extend also to the High Courts.

In the second place, provisions have been inserted in certain of these local Acts that proceedings or orders purporting to be taken or made under the Act should not be called in question by any Court. Provisions of that kind exist in the Acts in Bombay, the United Provinces and Bengal, and just as in the case of what I might call the indemnity provisions, it is proposed by this legislation to extend that bar of jurisdiction beyond the subordinate Courts and to apply it also to the High Courts. I may perhaps explain as a matter of drafting why we have inserted a special clause, clause 4, dealing with the Bengal Public Security Act. It is not that the substance of the section in the Bengal Act differs from the substance of other local Acts, but that at the end of their section (section 27) a proviso was inserted—"provided that nothing in this section shall affect the jurisdiction of the High Court". Now, Sir, it was explained at the time that proviso was inserted, that the object was merely to make it clear (a doubt on the point having been raised) that it was not within the jurisdiction of the local Legislative Council to affect the powers of the High Court. It was only to clear up that doubt, to make it perfectly plain that the local Legislature was not enacting a provision *ultra vires* that this proviso was inserted and the Government spokesman at the time spoke as follows. He said:

"I would also make another thing clear. It must be clearly understood that this proviso is not to be interpreted as interfering with the freedom of the local Government to obtain the introduction of legislation subsequently by which the jurisdiction of the High Court may be barred in the same way as subsequent legislation will be introduced in order to supplement clause 18 in respect of appeals".

But owing to the particular form which this section took in Bengal, it was not possible to include the reference to the Bengal section in clause 3, and we, therefore, thought it better to put it separately in clause 4. It is simply a drafting point.

And finally in clause 5 we have a proposal that the *Habeas Corpus* provisions of the Criminal Procedure Code should not be exercised in respect of persons committed to or detained in custody under the provisions of the Punjab Criminal Law (Amendment) Act. That is in fact a more limited provision than the general provision which we have in the case of certain other provincial Acts that proceedings or orders purporting to be taken or made under the Act should not be called in question by any Court, but the Government of the Punjab whose special powers in this respect were to a large extent directed against terrorism expressed the view that this provision would be sufficient to meet the practical conditions in the Punjab. Sir, I move.

Sardar Sant Singh (West Punjab: Sikh): Sir, this is a Bill which purports to touch at one stroke four provinces of India. The Local Legislatures in each Province have decided wisely or unwisely to enact measures of a highly repressive nature. That controversy is probably at an end when finally the measures have come to us as a passed measure. In order to deal with this measure, I will, with your permission, Sir, go into certain details of those measures, not questioning the jurisdiction of the Legislature except in so far as they are relevant to the measure now before this Honourable House.

1 P.M.

The first thing that I want to raise in this connection is a question of principle, whether these measures are *intra vires* of the Legislatures that enacted them or are *ultra vires*. In looking to the preamble of this measure, we know that all these measures have definite scopes. Taking first, the Bengal Public Security Act. In its preamble, it is enacted:

"Whereas it is expedient to provide for the maintenance of the public security in case of emergency and for the trial of certain offences by special magistrates in such emergency".

Looking to the Punjab Act, we find the scope given as:

"Whereas it is expedient to supplement the criminal law for the purpose hereinafter appearing".

The preamble of the U. P. Act reads:

"Whereas it is expedient to make provision against and to take powers to deal with instigation to the illegal refusal of the payment of certain liabilities".

The Bombay Act says in its preamble:

"Whereas it is expedient to confer special powers upon Government and upon its officers for the maintenance of public security in case of emergency".

While the Bihar and Orissa Act says:

"Whereas it is expedient to confer special power on Government and its officers for the purpose of maintaining law and order".

Now, these preambles go to show the scope of the Act and, on this scope of the Act, as represented by this preamble, it seems that sanction was sought of the Governor General in Council in accordance with the provisions of section 80-A of the Government of India Act. My submission in this case is, if you look to the body of these enactments, you will find, Sir, that the provisions enacted in that Act itself are much more extensive than the preamble supposes them to be, my objection is, Sir, that the scope of the Act was restricted by the terms of the preamble, but the Legislatures proceeded to enact provisions beyond the scope. I anticipate the objection which may be taken by the Honourable the Law Member by saying that the preamble of the Act does not control the scope of the provisions of the Act itself. Probably in this connection "Maxwell on the Interpretation of Statutes" may be quoted. I am quite aware of what this author of the book states:

"But the preamble cannot either restrict or extend the enacting power when the language and the object and scope of the Act are not open to doubt. It is not unusual to find that the enacting part is not exactly co-extensive with the preamble".

The author quotes numerous authorities in support of his view. My submission in this respect is that this interpretation of Statutes as laid down by "Maxwell on the Interpretation of Statutes" does not apply to

the case of Indian Legislatures and that is a distinguishing point which I want to make out so far as this particular portion of my speech is concerned. The only enactments quoted therein are enactments passed by a Sovereign Legislature like both Houses of Parliament.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): Order, order. The Chair does not follow the Honourable Member's speech quite well. Is he attempting to argue whether these local Acts referred to are *ultra vires* of those Local Legislatures.

Sardar Sant Singh: Yes.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): The Chair would like to know how it is relevant to the present Bill.

Sardar Sant Singh: The relevancy comes in in this way. If the Act itself is *ultra vires*, you cannot supplement that Act by any measures brought forward in this House.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): Is it then that the Honourable Member is raising a point of order whether the present Bill is *ultra vires* or *intra vires* of this Legislature.

Sardar Sant Singh: The position, as I understand it, is this. If the Act itself is *ultra vires*, then we cannot supplement it by legislation in this House.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): Is the Honourable Member raising a definite point of order?

Sardar Sant Singh: It may be taken in that light.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): Order, order. If the Honourable Member is raising that as a point of order, he must have commenced his speech by raising that point of order, but if he is simply arguing the point whether a certain local Act is *ultra vires* of the Local Legislature, then the Chair cannot allow that discussion to take place on the floor of this House, because this House is not a competent body to discuss whether a particular Act passed by a Local Legislature is *ultra vires* or *intra vires* of that Legislature.

Sardar Sant Singh: May I explain what I mean by placing this as an argument before the Honourable Members of this House? My argument in connection with the preamble to those Acts is that those Acts were not passed in accordance with the sanction.

Mr. C. C. Biswas (Calcutta: Non-Muhammadan Urban): On a point of order. The Chair has given a ruling that it is not permissible to the Honourable Member to argue that these local Acts were *ultra vires* of the Local Legislatures, unless he wishes to raise a definite point of order that this Bill to supplement the provisions of those Acts is *ultra vires* of this Legislature. In view of that ruling, is it open to the Honourable Member to argue the matter still further?

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): If the Honourable Member wants to raise a point of order and argue that the present Bill is *ultra vires* of this Legislature, he is perfectly at liberty to do so, and I would like him to inform the Chair directly whether that is his object.

Sardar Sant Singh: Sir, I was explaining myself, when my Honourable friend from Bengal, Mr. Biswas, objected to my discussing this point and thus fully explaining my view to you. Probably, he did not like his local patriotism to be questioned . . . . .

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): Order, order. The Chair has put a question to the Honourable Member and expects an answer.

Sardar Sant Singh: Sir, my object is that if I succeed in persuading this House to this view that this Legislature is not competent . . . . .

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): Order, order. The Honourable Member has perhaps understood the point raised by the Chair. He must say directly whether it is his object in raising the point of order to show that this proposed legislation is *ultra vires* of this House.

Sardar Sant Singh: My submission, Sir, is that, unless I explain myself, how can I bring out my point? But in one word I may say that this measure is *ultra vires*.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): Is it the contention of the Honourable Member, in raising that point of order, that this measure is *ultra vires* of this House?

Sardar Sant Singh: Yes, Sir.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): The Honourable Member will raise that point of order after Lunch.

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 Mr. R. K. Shanmukham Chetty) in the Chair.

Sardar Sant Singh: With your permission, Sir, I would like to explain my position with regard to the point that was under discussion. My position is that I know it perfectly well that this House is not in any position to declare that a particular enactment of the Local Legislature is invalid. This House cannot make any such declaration. Neither do I want the House to do that. But I want to use this as an argument that this House should not be a party to the enactment of a measure to supplement local Acts which some competent authority may declare to be an invalid enactment. This House should not place its stamp of validity without fully appreciating its implications.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): So, the Honourable Member is not raising a point of order.

Sardar Sant Singh: In that sense, I am not raising a point of order. That is so.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): A point of order has got only one sense. A point of order raises some question on which the Chair is called upon to give a ruling. Before we adjourned for Lunch, the Chair put a specific question to the Honourable Member, namely, whether he was raising a point of order that the present measure was *ultra vires* of this Legislature? And he said, yes. Is the Chair to understand that he has abandoned that position now and that he is not raising a point of order?

Sardar Sant Singh: I am not raising that point of order.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): The Honourable Member, then, is not raising any point of order.

Sardar Sant Singh: Yes, Sir, I am not raising any point of order. May I proceed, Sir, with my main speech?

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): Yes.

Sardar Sant Singh: My position, therefore, is that all these Local Acts go beyond the scope of the preamble and I was submitting before this Honourable House that the cases of those enactments which are quoted by Mr. Maxwell in his book on the "Interpretation of Statutes" are cases of those enactments which are passed by Parliament which is the sovereign body. In this case, the local Legislature in certain respects is controlled by another authority, namely, the Governor General. The power being restricted to the sanction to be granted or withheld by the Governor General, it is clear, then, that no legislation can be passed beyond the scope of the sanction granted by the Governor General.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): The Chair is very sorry that the Honourable Member, who is himself a distinguished lawyer, should so persistently ignore the point, to which his attention has been drawn by the Chair repeatedly, that it is not competent for any Honourable Member to discuss on the floor of this House whether a local Legislature was competent to enact a certain legislation, and the Honourable Member is still giving arguments in support of that contention.

Sardar Sant Singh: I am sorry, Sir, I have not been able to put forward the view that I was expressing in that clear manner as to take the Chair with me on that argument. My argument only extended so far that this House should take into consideration this aspect of the case as well before giving their vote in support of this measure. I go only so far and no further. Therefore, I will submit that the provisions of this enactment, being beyond the scope of the preamble, require to be looked into before any support could be forthcoming for it in this House. Take, for instance, the Act passed by the local Legislature of the United Provinces of Agra and Oudh. This was especially confined to the powers to deal with instigation to the illegal refusal of the payment of certain liabilities.

The Honourable Sir Brojendra Mitter (Law Member): I rise on a point of order, Sir. May I ask, Sir, whether what the Honourable Member is now arguing is not covered by the ruling given by the Chair?

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): The Chair is sorry that an experienced Member should persist on a point like this. It is a very regretful fact indeed. The Chair has repeatedly said and would repeat it once again that it is not open to any Honourable Member of this House to question the validity of the enactment of a local Legislature. Is the Honourable Member attempting to do that?

Sardar Sant Singh: All right, Sir, I will give up this point. I will proceed to my next point. My next point is with regard to clause 2 of the Bill. Coming to clause 2 of this Bill, we find that this clause purports to concede the right of appeal to the High Court of Judicature at Fort William in cases of certain sentences having been passed under the Bengal Public Security Act; and, in this clause, what we find is that instead of allowing the period of appeal to be the same as it is allowed in ordinary cases, the limitation of the period has been restricted to 30 days, while in ordinary cases, as I understand it, the period allowed for a direct appeal to the High Court is 60 days. I do not understand why this period should be restricted in this particular instance.

Clause 3 of the Bill is far reaching in its effects. Very wide powers are given under these local Acts in the sections mentioned in this clause to the executive. I presume, Sir, that these powers will be exercised in accordance with the provisions of the Acts passed in these local Legislatures. This is the least we are entitled to expect. There is no doubt that these powers are very vast and extensive. They are of the nature which restrict not only the liberty of speech, but also the liberty of person as well as of property. If such vast powers are given to the executive, it is but fair to expect that the executive will exercise those powers in accordance with the provisions laid down in the enacting measure itself. But if these powers are exercised in a manner which is not contemplated by the provisions of these Acts, my submission is that the jurisdiction of the Civil Courts, and specially of the High Court, should be kept open to examine the acts of the executive. But here, not content with barring the jurisdiction of the subordinate Civil Courts, the Government, through this Bill, proceed further to grant them protection even from the jurisdiction of the High Courts. This particular aspect has its own moral and that is that the executive authorities in India seem not to repose that confidence in the Judges of the High Court while daily preaching respect for law. This untiring effort to inculcate respect for law is very admirable, but the executive should understand that respect for law can only be inculcated if the country is governed by rule of law. However, this is beside the point. Resuming my argument, let us consider section 15 of the Bihar and Orissa Act. This section reads as follows:

"No suit, prosecution, or other legal act or proceeding shall lie against any person for anything which is done in good faith or intended to be done under this Act."

But in other Acts, for instance, in section 29 of the Bombay Act, we find:

"Except as provided under this Act no proceeding or order taken or made or purporting to be taken or made ..... shall be called in question by any court, and no civil or criminal proceeding shall be instituted against any person for anything done"

This Honourable House will notice that good faith is omitted:

"or in good faith intended to be done under this Act."

That is to say, this section extends protection to the official for everything done, whether done in a legal manner or in an illegal manner, done within his jurisdiction or in excess of his jurisdiction or even without any jurisdiction. The position is that while, in the Bihar and Orissa Act, there is a restriction placed that the act should only be protected, if it is done in good faith, in the Bombay Act, this qualification does not exist. Similarly, in section 14 of the U. P. Act, the same phraseology is used and here too the slight protection given by the words "in good faith" does not find any place. Apart from the objection whether the protection extended is full or slightly qualified, the most crucial objection to such provisions is that such provisions grant indemnity for acts which, at the time of granting indemnity, had not been committed. The principle of granting indemnity to those officials, who may have been called upon to act in an emergency, is that such officials were called upon to meet an unusual, probably ugly, situation. Before the Legislature puts its seal of approval to the Indemnity Act, the Legislature has the fullest opportunity to examine the situation that had arisen and which the servants of the State had been called upon to handle. Thus indemnity always follows the emergency that called forth the doing of the acts to be indemnified. But this Bill gives a blank cheque to the executive authority; protection is given to him before he has done any act. Man is man, Sir; when he knows that his acts are protected, this very knowledge will, in all probability, make him irresponsible. There will be practically no control over him. The present measure practically bars the jurisdiction of the High Courts to question these illegal acts. How far it is desirable that such a protection should be extended specially in these cases where the measure is an extraordinary measure and places vast powers in the hands of an irresponsible executive, is for this House to determine. Coming to clause 4, it is said:

"No proceeding or order purporting to be taken or made under the Bengal Public Security Act, 1932, shall be called in question by any Court, and no civil or criminal proceeding shall be instituted against any person for anything in good faith done or intended to be done under the said Act or against any person for any loss or damage caused to or in respect of any property whereof possession has been taken under this Act."

This clause, Sir, is divisible into two parts. The first part bars the jurisdiction of all Courts from examining the legality or otherwise of the proceedings taken or order purporting to be made under the Bengal Public Security Act. Now, looking at the wording of this clause, it is clear that even the phrase "proceedings or order" is not preceded by a qualifying word "lawful". If it is said that "no proceedings or order purporting to be taken or made under the Bengal Public Security Act shall be called in question by any Court", then there should be some qualifying phrase "in the discharge of lawful duty" or some similar expression which would restrict the provision to the official act of the person doing it. There is no such restriction, so that the Court is deprived even in those cases where the executive authority goes beyond its power in enforcing the provisions of the Bengal Public Security Act. Similarly, Sir, the second part is open to the same objection which I levelled when discussing clause 3, in that there is no restricted protection, but very wide protection is afforded.

[Sardar Sant Singh.]

Now, I come, Sir, to clause 5. The powers of the High Court of Judicature at Lahore are to be restricted under this clause. There is only one provision in the Criminal Procedure Code and that is section 491 which gives a remedy to the subject to question the right of the Executive interning or arresting a person without any lawful reason. Section 491 of the Criminal Procedure Code reads, Sir:

"Any High Court may, whenever it thinks fit, direct—

(*a*) that a person within the limits of its appellate criminal jurisdiction be brought up before the Court to be dealt with according to law;

(*b*) that a person illegally or improperly detained in public or private custody with in such limits be set at liberty;"

These are the only two provisions relevant to my argument. Now, here, if the detention of the person under the Public Security Act is lawful, certainly High Courts cannot interfere under sections 491 of the Code of Criminal Procedure, but if the detention is illegal, I see no reason why the jurisdiction of the High Court should be barred by enactment of such a provision in this Act. The most important provisions in all the Provincial Acts are those where the executive is authorised to arrest any persons, to detain them without trial for 15 days, and under certain circumstances such detention can be extended up to two months without any trial, release them under certain conditions, such as, reporting to the police and so forth, etc., which are very humiliating conditions indeed. This extensive power of detention without trial for such a long period as two months requires to be checked by some competent authority. The only competent authority is the authority of the High Court. I do not think that this provision can control the power possessed by the Calcutta, Bombay and Madras High Courts. These High Courts can issue writs of *habeas corpus* without any reference to section 491 of the Criminal Procedure Code. But the only provision under which the writ of *habeas corpus* can be issued by the Lahore High Court is section 491 alone. Why this step-motherly treatment with this province, the Punjab. If a person is detained illegally or improperly in Bengal, he has a right to move the High Court in spite of the restrictions contained, in this clause, but if the unfortunate man happens to belong to the Punjab, then this special provision will exclude all remedies. Therefore, Sir, I strongly protest against the enactment of such a provision in the present Bill. Looking at the provisions of this Bill, Sir, as I have tried to explain to the Honourable Members of this House, my submission is that, with the exception of one healthy provision, and that is clause 2, where the right of appeal is allowed to the High Court, the rest of the Bill is of a highly repressive character. The Government of India decided to bring a restrictive measure before this House which was passed in the November Session. The remaining provisions of the Ordinances were left to be enacted by the local Legislatures. The Government of India want to enact another repressive measure under the guise of a supplementing Bill. My submission is that this House will be betraying itself before the public if it becomes a party to enacting such a repressive measure. Therefore, Sir, I oppose this Bill.

Mr. S. G. Jog (Berar Representative): Sir, I find I am in no way concerned very materially with the measure which is before the House. This Bill is meant to supplement the provisions of the Bengal Public Security Act, 1932, the Bihar and Orissa Public Safety Act, 1933, the Bombay Special (Emergency) Powers Act, 1932, the United

3 P.M.

Provinces Special Powers Act, 1932, and the Punjab Criminal Law (Amendment) Act, 1932, for certain purposes. I must congratulate myself that the Central Provinces as well as my province of Berar are outside the scope of these provisions. I must in a way congratulate my province that there is absolutely no necessity for these special measures there and I must thank the Government of the Central Provinces and Berar that my province is saved the trouble of coming up before this House for any such supplementary legislation. I cannot understand why my friend, Sardar Sant Singh, has taken objection to certain provision in this Bill. This provision wants to give powers to High Courts in appeal. I think whatever may be the propriety of the measures that have been introduced in the several provinces, as we are prohibited from starting any discussion of those provisions, I think the scope of our discussion is now limited only to the measure that is before this House at present; and as it gives a right of appeal, I think it is a very salutary provision that has been made in this Bill. As regards clause 4 in which jurisdiction is barred, I would like to take serious objection to it. These special laws take away the rights of the people in many ways; and it is possible that in many cases highhandedness is likely to take place. I see no reason why the ordinary indemnity should be taken away from the people. It is possible in many cases that the provisions of the law are not taken into account and in which lawlessness may be indulged in; and, if there are any irregularities or acts of wanton negligence or bad faith, I do not see any reason why the right of the people to take proceedings against the officers concerned should be taken away.

Coming to clause 5, as my friend, Sardar Sant Singh, has pointed out, there is no reason why his province should be treated in a different manner and why discretion should be utilised against his province. I see no reason why they have taken the case of the Punjab Criminal Law Amendment Act for exclusion for barring the issue of a writ of *habeas corpus*. There is no material before us to justify the provisions of this section. From the notes on clauses I find it is said there:

"This clause, on the analogy of section 491 (3) of the Criminal Procedure Code, bars jurisdiction under the powers conferred by that section in respect of action taken under section 2 of the Punjab Criminal Law (Amendment) Act, 1932."

I think, if this Bill is to be passed, the Punjab should be treated alike with the other provinces.

As regards the other provisions, I have to say that the right of *habeas corpus* is one of the fundamental rights which the people have got in this country and, before any right of *habeas corpus* is taken away, I think this House should consider twice and even thrice. It is a fundamental right and should not be lightly treated. If these provisions are taken away, including this one as regards the Punjab and also clause 4 which takes away the jurisdiction in regard to indemnity, I for one would like to support the Bill. But if these objectionable portions of the measure are allowed to remain, I have no alternative but to oppose the consideration of the Bill.

Mr. S. C. Mitra (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I oppose this motion, and my main reason is that the jurisdiction of Civil and Criminal Courts under clauses 3 and 4 are going to be ousted. Clause 3 reads:

"Section 15 of the Bihar and Orissa Public Safety Act, 1933, section 29 of the Bombay Special (Emergency) Powers Act, 1932, and section 14 of the United Provinces Special Powers Act, 1932, shall have effect as if these sections had been enacted by the Indian Legislature."

[Mr. S. C. Mitra.]

I shall refer to only one of those Acts to show what they mean. Section 29 of the Bombay Act, XVI of 1932, runs thus:

"Except as provided in this Act, no proceeding or order taken or made or purporting to be taken or made or deemed to have been so taken or made under this Act, shall be called in question by any Court, and no civil or criminal proceeding shall be instituted against any person for anything done or in good faith intended to be done under this Act or against any person for any loss or damage caused to or in respect of any property whereof possession has been taken under this Act."

The corresponding sections in other provinces provide for similar things. Clause 4 deals with a similar case for the province of Bengal. Yesterday, when we were discussing about the arrests in Bengal, the Honourable the Home Member made a very bold assertion. He stood up and said that there were the law Courts open. If these arrests are illegal, why do these people, who have been arrested illegally, if they consider to be so, not go to the Courts for getting any redress? Sir, the House will judge of the sincerity of the statement of the Honourable the Home Member when only within twenty-four hours he comes here and asks us to pass legislation that the Courts, whether Civil or Criminal, should have no jurisdiction to enter into the merits of these arrests.

I now refer to the Bengal Act, XXII of 1932. In section 1 (4) it says:

"The Local Government may by notification in the Calcutta Gazette, direct that all or any of the provisions of Chapters II, III and IV shall come into force in any area on such date as may be specified in the notification:

Provided that the Local Government shall not direct that any provision of those Chapters shall come into force in any area unless it is satisfied that by reason of a movement subversive of law and order a state of emergency has arisen in that area of such a kind that the existing powers of Government are inadequate for the maintenance of the public security."

Though under this Statute it is clear that only in case of emergency this legislation can be applied, we know for certain, that there was no case of emergency for banning the holding of the Congress in Calcutta. Even if Government think that they were called upon to take some steps, there were the ordinary sections, sections like 144 of the Criminal Procedure Code, by which they could adequately deal with it. We maintain that there was no emergency and now, if anybody has to go to a Court of law, whether it is a Civil Court or a Criminal Court, he would be precluded by the present Bill to show that there was no emergency and as such the application of the Public Security Act, 1932, was illegal and unwarranted.

Now, by these peculiar laws which the Honourable the Home Member asked us within 24 hours to pass, they will have no right to go before any Court to seek redress against the illegalities of the Police. I hope the House will judge for itself the assertions of the Honourable the Home Member if he cannot properly satisfy them that these safeguards, that we have, are really illusory and now the executive here in India are determined to do anything they like most arbitrarily without caring in the least for the Courts of law or for the Legislature. They know that they can get anything passed in this House, and there is no safeguard. If there are any necessity for safeguards for anybody, I think the judiciary in India require to be protected from the onslaught of the arbitrariness of the executive. If this House willingly passes a law like this against which there will be no remedy, a law against which we cannot even have a judgment from the Courts to rectify the lawlessness of the executive,

I do not know where we are being driven to. We have discussed more than once here about the right of *habeas corpus* of the High Court. In clause 5, that power is being denied to the province of the Punjab, and I know that our leaders in this House, who are well versed in International Jurisprudence, will argue that point, but looking merely from a common sense point of view, I feel that the Government should see that the law should not be degraded to such a position that no man will have any respect for it. Already under the provisions of these sections of the Public Security enactments in different provinces, people are imprisoned for six months and are fined Rs. 50 and more. Sir, this is a supplementary measure, and so I think I shall not be out of court to discuss some of the provisions of this enactment. I could not clearly follow your ruling. If it is to that purpose, I shall not in any way deal with those sections, and I shall abide by your ruling . . . .

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): The Honourable Member is at perfect liberty to discuss the sections of a local Act so far as they are relevant to the present Bill. The ruling given by the Chair was that the validity of any Act passed by the local Legislature could not be questioned.

Mr. S. C. Mitra: I am glad to have your ruling, but as regards the validity, I was looking through the Manual of Business and Procedure carefully, and I could not find anywhere that this House was debarred by the rules and regulations from criticising any law already passed by any Provincial Legislature. However, I bow to your ruling, and I shall not discuss that matter. But may I draw your attention, Sir, to the fact that there is no provision anywhere to show that this House is debarred from criticising the Acts passed by any Legislature . . . .

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): The Honourable Member is at liberty to criticise the sections.

Mr. S. C. Mitra: But I cannot say that they are *ultra vires*. I hope that is the position. My contention was that from the very beginning there was no necessity for passing such a drastic legislation as this, thus lowering the prestige of the law itself. When a man is sent to jail, it is not the hardship that he is afraid of, but the moral degradation which such a sentence attaches to the man is the thing that one is afraid of. Now, Sir, if very respectable and Honourable gentlemen with most honest intentions want to discharge their public duties, and if they differ from the executive under these peculiar laws now enacted everywhere, they are sent to jail, and if ever they make an attempt to show that there is nothing wrong in their action, the executive is providing legislation to see that they do not get any remedy from any Court, Civil or Criminal, in the country. Whatever is done by the executive must be taken as sacrosanct, and nobody can question the correctness or legality of these sections. I maintain, Sir, that by passing such legislation, the main purpose of enacting laws is being frustrated. For these reasons, Sir, I oppose the consideration of this Bill.

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): Sir, I will approach this measure from an entirely legal aspect. I find that in clause 4 of this Bill it is intended to safeguard the executive against any action being taken by a person who has suffered unjustly at their hands.

[Mr. Lalchand Navalrai.]

This is really against the very fundamental principle of law, in fact it is against all canons of British justice, or for the matter of that, the justice of any civilized country, that the aggrieved person should not be given a chance to vindicate himself. If an enactment like this is passed, Sir, I submit, you will be doing a thing which will be unprecedented in the annals of any country. This is so far as the legal aspect is concerned, but so far as the social life is concerned, I submit that, by enacting a provision like this, the Government will be striking at the very root of all social order, and it will certainly recoil on the Government themselves. Now, in clause 4 of this Bill it is stated:

"No proceeding or order purporting to be taken or made under the Bengal Public Security Act, 1932, shall be called in question by any Court, and no civil or criminal proceeding shall be instituted against any person for anything in good faith done or intended to be done under the said Act or against any person for any loss or damage caused to or in respect of any property whereof possession has been taken under the said Act."

It may be urged that Government are always fair in these matters. But it is stated here "if any act is done in good faith",—what is the implication of it? Supposing a person has been injured, and he wants to vindicate and wishes to go to Court. How can he do that? He can go to the Court only in two ways—either he will have to go to a Civil Court and question the validity of the act done. This man will be the plaintiff there, and when the question is raised whether the act done was in good faith or not, I would ask the Honourable the Law Member to say if the burden would not be on the plaintiff. The Government will of course urge that they have done the act in good faith, and, therefore, in the first place, the burden will be on the poor plaintiff to prove that it was not done in good faith. He will be put to prove the negative. How hard? Then, Sir, coming to the question of proof itself, how difficult will it be for a man to prove the negative. It would be easy for the Government to put one or two officers into the box and say that they had done it with due care and caution which is the meaning of good faith. Thus there will be so much harm done to the public and I think it will be worth while for Government to reconsider their position and not press such a measure.

Coming to clause 3, it affects my own Presidency of Bombay as well. In that clause it is said that section 29 of the Bombay Special Emergency Powers Act shall have effect as if these sections had been enacted by the Indian Legislature. Now, going through that section 29 of the Bombay Act, we find,—I will not read the whole section, but only a portion which appears to me to be technically wrong—there also it is said that no action in respect of any civil or criminal proceeding shall be instituted for any damage or loss. I understand that the object of the present Bill is only to bar the jurisdiction of the Bombay High Court to take proceedings in respect of any harm done to any particular person. Now, in the first place, I submit, it is absolutely wrong to deprive the High Court of its powers. Secondly, the High Court is going to be reduced to the position of being dominated by the Provincial Government. I know, in the new Constitution also the High Court is not subject to the domination of the Provincial Government. Therefore, the attempt to make the High Courts subservient to the Provincial Governments is absolutely wrong and uncalled for.

Then, coming to clause 4, I find, it says that no civil or criminal proceeding shall be instituted against any person for anything in good faith done or intended to be done under the said Act or against any person for

any loss or damage, and so on. This would mean that if an Act is done or intended to be done in good faith, the Government will remain protected. So far as Bengal and other provinces are concerned, their local Acts provide similar terms, *viz.*, good faith will be a condition precedent in both cases when an act is done or is intended to be done. So far as Bombay is concerned, the local Act gives shelter to acts done or in good faith intended to be done, meaning that in case of act done even *mala fide* the protection exists. I think this could not be the intention of the local Legislature. Possibly the words have been wrongly used in drafting. At any rate when this section of the local Act is going to be adopted as a measure of this Indian Legislature, Government should be very careful to see that the intention to require good faith in acts done also is clearly brought out, and I hope the Honourable the Law Member will give me a very explicit and definite reply as to whether it is really the intention of this section to require *bonâ fides* for an act done as well.

Then comes clause 5. I think such a clause has been debated in this House so often that it is not necessary to take up the time of the House by repeating those arguments. To put the matter in a nutshell, my submission is, that under that section powers given by section 491, Code of Criminal Procedure, are being taken away from the High Court. So far as that section 491 of the Criminal Procedure Code is concerned, it is an enactment made by the Government of India and no doubt that enactment can be changed by the Government of India, but it is quite plain that as already pointed out under section 107 of the Government of India Act, the High Court has similar power to interfere and use *habeas corpus* procedure, apart from and in spite of a section like this barring the remedy of the High Court under section 491, Code of Criminal Procedure. It was for this reason that in the former Bill as regards the terrorists an amendment was made that the provisions of section 107 of the Government of India Act were not superseded by an enactment like this. I should like to have a clear statement from the Honourable the Law Member on this point also. What I submit is this that section 107 of the Government of India Act is one which cannot be superseded by the present proposed enactment. We do not, however, find such a reservation in this Bill. So we want to know clearly whether the intention is that section 107 of the Government of India Act will be affected or will remain intact.

With regard to the Punjab and Sind, section 107 of the Government of India Act does not apply to Courts which are not chartered High Courts. Of Course the Punjab Court is a Chartered Court now, but when section 107 was made, that Court was, I believe, not a Chartered High Court. So far as Sind is concerned, where we have got no Chartered High Court, as the High Court of Bombay is at a distance from Sind, powers have been given to the Judicial Commissioner's Court there to do all the acts more or less of the High Court; and so far as certain remedies are concerned, the Sind Court is considered to be a High Court, and it exercises many of the provisions of law; but so far as this *habeas corpus* is concerned, it has got no power under section 107, Government of India Act, but has power under section 491, Code of Criminal Procedure. Therefore, I should feel aggrieved because this provision is being extended to the Bombay Presidency also,—and then, the Bombay Act can be extended to Sind. I do not know whether it has been by this time extended or not, but if this Bombay Act is extended to Sind, we will be put to very great difficulty indeed, as the High Court will be really a name-sake High Court so far as *habeas corpus* proceedings are concerned. The High Court in

[Mr. Lalchand Navalrai.]

Sind will not then be able to give any relief to any man who is arrested wrongly. I would, therefore, humbly submit that so far as this section is concerned, it should not be made applicable to Bombay. With these words, Sir, I resume my seat.

Sir Abdur Rahim (Calcutta and Suburbs: Muhammadan Urban): Mr. President, the main questions of principle raised by this Bill have been very fully debated on a previous occasion, and if I rise to speak now, I do so simply to register a protest on behalf of Honourable Members on this side of the House on the ground that the conditions in India have not changed so as to necessitate the passing of this measure. We contended before that the provisions of the character embodied in the Bill are so wide and sweeping as to destroy the ordinary rights and liberties of citizens of this country, and that they are not justified by any movements like the civil disobedience movement or the terrorist movement of Bengal.

Sir, we have been told, at any rate we were told on previous occasions by the Honourable the Home Member, that the Government were pursuing a dual policy. At that time I ventured to point out that there could be no such thing as a dual policy. Either you are pursuing a policy of repression, by tightening the laws and narrowing the liberties of the people, or you should pursue a policy of conceding greater liberties and rights to the people. Either one or the other. Since then, we have had the White Paper presented to this House; and, if there is in these laws the policy of repression in evidence, I think the Honourable the Home Member will find it very difficult to satisfy the House that the other complement of the dual policy is that contained in the White Paper, namely, a policy of conciliation, and of granting self-government to the people. Unless he justifies the proposals of the White Paper as the sister policy—the policy of widening the liberties of the people, of widening the bounds of self-government, the whole argument of the so-called dual policy at once falls to the ground. I wonder if the Honourable the Home Member is prepared to assure us that this White Paper is not all, there is the Joint Select Committee, there is the Parliament, so that we still may have some measure far more liberal than the proposals contained in the White Paper. I am afraid the position is not at all satisfactory, and I do not think the Honourable Member will take up an attitude of that character. Now, it is for some time that India has been passing through what is called emergencies. I do not know when India will emerge from it, but I do repeat once again what I have said repeatedly before, that there is no justification for passing measures of this sweeping character. The other day, we had one signal instance in which a large number of very well-known and eminent citizens of India going to Calcutta to attend a meeting of the Congress were arrested on their way, and I then put the question whether those arrests were justified by law. Sir, section 3 (*3*) of the Bengal Security Act, which was referred to by the Honourable the Home Member, to my mind does not justify the arrests, because there was no question of there being any proof that these gentlemen were proceeding to Calcutta or proceeding to the meeting with the intention of committing an offence. Now, Sir, arrests of that character are in fact not justified by law whether these gentlemen belonging to the Congress raised the point in a Court of law or not. I know that as a matter of fact, they do not like to enter upon any defence, but that can make no difference

to the case. The question is whether the arrests were legal or not. Now, it is law of this vague and sweeping character that permits arrests of this kind—arrests which really no Court of law would, under the provisions of this short Bill, be able to say whether they were really justified or not. Take clause 4 of this Bill. The jurisdiction of the High Court, for instance, to revise an order, an order which is not appealable, is taken away. The Honourable the Leader of the House and the Law Member will, I am sure, advise the Honourable the Home Member that it is these orders, these sentences and convictions which are not appealable that often involve most important questions of law and jurisdiction. The High Court will be unable, under this provision, to revise any order, conviction, or sentence, which does not come within the category of clause 2 that gives the right of appeal in a certain class of cases. For all effective purposes, it is only when an order or sentence is passed by a Presidency Magistrate that there will be any appeal. In the other cases, that is to say, cases tried outside the jurisdiction of the Calcutta High Court, an appeal lies only when a sentence above four years is passed by a Special Magistrate and those must be in very few cases indeed. But in the other cases there is no right of appeal and the right to invoke the revisional jurisdiction of the High Court, a most important and useful jurisdiction, has been taken away.

Now, Sir, the principle underlying clause 5 was also fully discussed on the previous occasion. What I wish now to point out is this. The objection which, I believe, I took at that time was that, suppose an order or sentence was passed which was not in accordance with the provisions of this Act, in other words, it did not conform to the provisions of this Act, would it be open to the High Court, under section 491 of the Criminal Procedure Code, to revise such an order?

[At this stage Mr. President (The Honourable Mr. R. K. Shanmukham Chetty) vacated the Chair which was occupied by Mr. Deputy President (Mr. Abdul Matin Chaudhury).]

If an order is passed which does not conform to the provisions of any of these Local Acts, will it be open to the High Court to revise that order, to set it aside, for instance, an order detaining a person for 15 days or for two months? If the conditions precedent to the passing of such an order were not satisfied, would it then be open to the High Court to set aside the order?

The Honourable Sir Brojendra Mitter: Undoubtedly.

Sir Abdur Rahim: Then, according to the terms of clause 5, the High Court could not exercise its powers under section 491 of the Criminal Procedure Code, because that is expressly taken away. I think a similar point was raised on the other occasion as well and the same difficulty will be repeated if clause 5 is retained in its present form. I know it will serve no useful purpose by debating this Bill any further in this House. I simply wanted to enter my protest making it clear that the conditions have not so changed that we should be justified in revising our opinion on this or similar measures.

Sir, I oppose the motion.

Mr. C. C. Biswas: Sir, I regret I cannot agree with some of my Honourable friends who have spoken before me. Sir, it seems to me we have travelled very far away from the point which is before us. The question in my judgment which the House is called upon to consider is a comparatively narrow one. We have got to take note of certain facts. The most important of these is that the local Legislatures in different provinces have accepted responsibility for the legislation which you find embodied in the local Acts, copies of which have been circulated. The question of policy underlying those enactments is not one which it is necessary for us to discuss. All that we are concerned with is whether or not this House should agree to implement and supplement the provisions of those local enactments in the way suggested in this Bill.

Sir, let us turn to the provisions of the Bill before us and let us see what it seeks to do. In the first place, you will find in clause 2 that a right of appeal is given to the High Court in certain specified cases against sentences passed by Special Magistrates. As the Honourable the Home Member pointed out, this is a provision peculiar to Bengal, because if you study the provisions of the local Acts, you will find that the Bengal Act is the only one which has provided for trial by a certain class of Special Magistrates. You will not find this in the Bihar and Orissa Act, in the Bombay Act, in the Punjab Act or in the United Provinces Act. I ask my friends whether this is or is not for the benefit of the persons who may be tried, found guilty and sentenced under this Act. I should be sorry to think that by our action here we should be doing something to deprive these persons of a right of appeal. The only complaint which I heard about this clause is that the period of appeal was limited to 30 days. After all, Sir, that is not a very serious grievance. We must not forget the object of this special legislation. The whole idea is to secure a speedy trial, and, if that be so, I for one see no objection, if we restrict the period of appeal to 30 days only.

Then, Sir, I come to the next two clauses, clauses 3 and 4. I will take the liberty to point out at once that clauses 3 and 4, although they are separate clauses, really cover the same ground. As the Honourable the Home Member pointed out, it was necessary to enact clause 4 separately because of the special proviso which was embodied in the Bengal Act (section 27), the proviso being that nothing in this section shall affect the jurisdiction of the High Court. That proviso does not find a place in the other local Acts. Although that proviso was there, it was made perfectly clear in the Bengal Legislative Council that the Government of Bengal would seek powers from this House to bar the jurisdiction of the High Court. Now, Sir, let us see if there is any special objection to taking away jurisdiction from the High Court. Well, the High Court exercises original jurisdiction and appellate jurisdiction. So far as appellate jurisdiction is concerned, it arises only out of proceedings taken in the subordinate Courts in the districts. If no proceedings are or can be initiated in those Courts, there is no occasion for the exercise of the appellate or revisional powers by the High Court. Now, Sir, suppose this Bill was not passed at all, and we were confined to the local Acts, what would have been the position? The local Acts, as they stand, are quite effective for the purpose of taking away the jurisdiction of the district Courts, that is to say, the Courts in respect of which the Provincial Legislatures are competent to legislate. There can be no proceedings in

these Courts, Civil or Criminal, in respect of the acts which those enactments are intended to protect. If that be so, it follows that there can be no question of involving the original or appellate jurisdiction of the High Court.

An Honourable Member: Why not?

Mr. C. C. Biswas: Because, Sir, unless there are proceedings in the lower Courts, there is no occasion for the High Court to interfere by way of appeal or by way of revision. Appeal means appeal against a judgment or order passed by an inferior subordinate Court; revision means revision of an order passed by an inferior or subordinate Court. If the inferior or subordinate Courts are debarred from entertaining suits or proceedings of the description contemplated in the various sections of the local Acts which are referred to in clauses 3 and 4 of the Bill, how can the High Court possibly come in?

Mr. Lalchand Navalrai: My Honourable friend knows that there is section 439 in the Criminal Procedure Code which gives power to the High Court to call for papers or proceedings from any Court.

Mr. C. C. Biswas: Quite right; I do not forget that for a moment. If there is a proceeding possible in a lower Court, the High Court can no doubt step in in proper cases, either under section 435 or under section 439. I do not at all dispute that proposition, but what I am suggesting is that there can be no occasion for the exercise of the High Court's appellate or revisional authority, if by virtue of local Acts there can be no proceedings at all in the lower Courts in respect of the matters dealt with in those sections of the local Acts.

An Honourable Member: There is section 622.

Mr. C. C. Biswas: I do not forget that either. But there is no section 622 in the present Civil Procedure Code.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): Section 115.

Mr. C. C. Biswas: Yes, section 115. That, again, presupposes that there must be some proceeding pending in the subordinate Civil Court. The High Court cannot act *in vacuo*, in the air. There must be something pending in the inferior or subordinate Courts, and then the High Court may either *suo motu* or, at the instance of the aggrieved party, call for the proceedings, revise the orders, or pass such other orders as the High Court may think fit. That is the position, but the point I wish to make is this. We cannot here question for one moment the factum or validity of the local Acts. The local Acts are there, and the local Acts being there, we have got to face the fact that no proceedings can be taken in the district Courts against any person for any act done or purporting to be done under these Acts. If that be so, that automatically takes away the appellate and revisional jurisdiction of the High Court. Then the question remains,—granted that is so, why go further? Why take

[Mr. C. C. Biswas.]

away the original jurisdiction of the High Court also? Sir, that may be a good debating point, but I ask you seriously to consider whether there would be any justification for making a differentiation between cases which would come within the purview of the original jurisdiction of the High Courts and cases arising outside such jurisdiction. Sir, if these acts are committed, if the arrests or detentions, for instance, take place, within the jurisdiction of the mufassil Courts,—I do not know if this word "mufassil" is used in the other provinces but it is used in Bengal to denote jurisdiction outside the Presidency town,—if, I say, such cases arise within the mufassil, and the jurisdiction of the mufassil Courts is barred to entertain any suits or proceedings in respect thereof, I ask, why should you make a differentiation in favour of similar cases which may arise within the original jurisdiction of the High Courts in the Presidency towns themselves?

Mr. Lalchand Navalrai: Then, I ask, why this section?

Mr. C. C. Biswas: My friend asks, why this section then? I believe the remarks I have made offer an answer. The object is to remove such differentiation. The object is to place cases arising within the jurisdiction of these Presidency towns on the same footing as those outside those towns. That is all. If, in the mufassil, the Courts are debarred from interfering, so also must the Court be debarred from interfering within the Presidency towns. That, I submit, is the position which is obvious on the surface. And if you accept the position which you find created by the local Acts, there is no answer to this provision which only seeks to assimilate the position in regard to Presidency towns to that in the rest of the provinces.

Then, Sir, coming to clause 5, that takes away the power of the High Court under section 491, the *habeas corpus* section. Sir, as speakers who have gone before me have pointed out, this question of *habeas corpus* has been discussed on the floor of the House times without number, and I do not propose to go into the legal aspect of the matter again. But it seems to be rather curious that you have this provision only regarding the Punjab. As a matter of fact, attention was drawn to this by some of my friends. I do not know what the explanation is, but possibly it is this that so far as the Calcutta High Court is concerned, various applications under section 491 were made to that High Court under the Public Security Act and also under similar enactments prior to that Act; and in every instance, I can say without fear of contradiction, in every instance the High Court has held that section 491 had no application. Whenever an application was made, they often issued a rule no doubt, but invariably and without exception, the rules were discharged on the ground that section 491 did not apply. Possibly, Sir, there is no such authoritative judicial pronouncement in the Punjab, and that is why special statutory provision has been found necessary for that province.

Sir, as a matter of fact, you will find that the immunity granted by this Bill as well as by the local Acts is simply this. It is an immunity in respect of acts done under the local enactments. My friend, Sir Abdur Rahim, asked, if the act is illegal, for instance, if the arrest is illegal, what happens? If it is illegal, it is not covered by the enactment at all. It is

something outside the scope of the Act, and, therefore, the jurisdiction of the High Court, the jurisdiction of the Civil Courts, will be still open. If the act is done or purports to be done *under the Act*, then and then only the immunity comes into operation.

Mr. K. C. Neogy: Will the Honourable Member give us an imaginary instance in which such a thing is possible?

Mr. C. C. Biswas: Suppose the question is raised that this local enactment is outside the jurisdiction of the local Legislature, the question which my friend, Sardar Sant Singh, raised. There, I submit, notwithstanding these clauses, notwithstanding the provisions of the local Acts, the Courts will be entitled to go into the question, and if the Court came to the conclusion that the Act was really *ultra vires*, then the proceedings would be illegal and they would be devoid of legal justification.

Mr. K. C. Neogy: Is that all?

Mr. C. C. Biswas: My Honourable friend asked for an instance: I gave him one.

Mr. K. C. Neogy: Can you conceive of a few more? This gives scope for only one suit.

Mr. C. C. Biswas: All that I am concerned to show at this moment is this, that it is only in respect of acts done or purporting to be done *under the Act* that this immunity clause is meant to operate. If the act is not one under the enactment, then of course the jurisdiction of the Courts is not taken away. I may be wrong, but that is the view I hold. As I began by saying, the responsibility for these local enactments has been taken by the Provincial Legislatures. Rightly or wrongly, they have passed these Acts. The sole question is, whether we are going to make those provisions effective. In regard to certain matters they could not legislate, because they affected the jurisdiction of the High Courts. Therefore this House is called upon to intervene. That is all. If we were discussing this question for the first time here, if this House were a Local Legislature, we should no doubt have been justified in discussing the question of policy. I think, Sir, in every one of the Provinces the question of policy was fully discussed and discussed at great length, and these Acts were passed after such discussion by a majority. If, then, these Acts are there, should we or should we not be justified in withholding our assent to the present Bill which seeks no more than to supplement those provisions—in order to make them effective, in order to make the position uniform in regard to certain matters and in order also to provide a right of appeal in certain cases. I shall refuse to be tempted, though the temptation is very great—to go into the question of policy.

4 P. M.

An Honourable Member: It is a reversion of social order.

Mr. C. C. Biswas: This Bill, it is said, is a reversion of social order. But we have got to face the facts. Who are the persons, Sir, who are responsible for producing a reversion of social order, a state of social anarchy in some of these provinces? It may be very well here to stand

[Mr. C. C. Biswas.]

up in your place, Sir, and say: "This Bill represents a negation of liberty, a negation of social order", and so on. But what led to these enactments? What is the situation, and who created that situation, which these Acts are intended to meet? That is the question we have got to face, and face squarely. I do not wish to go into the dark and dismal chapter of Bengal's history—I do not know as much about the other provinces,—but, Sir, the sooner we can draw a veil over it, the better it is for all concerned. (Applause from the Official Benches.)

Mr. Muhammad Muazzam Sahib Bahadur (North Madras: Muhammadan): Sir, it seems that we have been travelling outside the limits of the present debate. As I can see this Bill, it is intended to supplement certain enactments which have been passed in five of the local Legislatures. So far as territories directly administered by the Government of India themselves are concerned, we have already provisions of this type prevailing in those territories. But so far as these five provinces are concerned, these local enactments want additional powers, so that they may be in a position to derogate, as it were, from the powers vested in the High Courts in the respective provinces. That is the attempt which is sought to be made by the present Bill.

So far as the question whether this House has powers to derogate from the powers of the High Court, there has already been a definite decision to that effect, and it was clearly pointed out by the Honourable the Leader of the House that the High Courts possessed derivative powers and not Sovereign powers. They derive their powers from three different sources, from the Criminal Procedure Code, the Letters Patent and the Government of India Act. In regard to the first, the Code of Criminal Procedure, he had pointed out that it was an enactment of this Legislature and, as such, it can be repealed, altered or modified in any way this Legislature liked. With regard to the second, the Letters Patent, it was also pointed out by the Leader of the House that the Letters Patent themselves gave to the Indian Legislature the power to alter the Letters Patent. Lastly, it was pointed out that the powers conferred by section 107 of the Government of India Act were powers which gave the High Court superintendence over all the Courts subordinate to it, and a provision of the kind which found a place in the Ordinance Bill which came up before this House in November, rather was passed in December, was not a violation of section 107 of the Government of India Act, in view of the fact that section 65 of the Government of India Act conferred very wide powers on this House to pass legislation of this type. Therefore, I need not enter into the propriety for the enactment which we are called upon to apply to certain provinces. The only question is whether there is a necessity for supplementing or rather implementing the local provisions by extending to them the powers which they seek from this Legislature. Sir, it was pointed out by my Honourable friend, Mr. Lalchand Navalrai, that the power of *habeas corpus* was a power inherent in the High Courts, and as such it could not be taken away. My submission is that that is a power which has been specifically granted to High Courts by section 491 of the Criminal Procedure Code and that is an enactment which is the creation of this Legislature and as such this Legislature has got perfect liberty to take away the power which it has granted.

Mr. Lalchand Navalrai: My Honourable friend will excuse me if I say that what I referred to was with regard to section 107 of the Government of India Act. With regard to section 491, Criminal Procedure Code, I myself said that that power could be restricted by this House, but not that of section 107 of the Government of India Act.

Mr. Muhammad Muazzam Sahib Bahadur: I beg my Honourable friend's pardon if I misunderstood him in that way. I thought he was referring to the powers of *habeas corpus*. Then, Sir, my Honourable friend, Mr. Biswas, to my mind, was mixing up executive acts with judicial acts. So far as I can construe the present Bill, I think the object of the present Bill is to exclude from the cognizance of all Courts executive acts which are done or purported to be done under this Bill. So far as judicial acts are concerned, they stand on a different footing. It is the appellate jurisdiction of the High Courts alone which is being excluded, and not the revisional jurisdiction. The revisional jurisdiction is there. If, under this Act, there is a prosecution for any offence punishable thereunder and that offence is tried by a subordinate Court, although the sections which are now sought to be enacted may derogate from the powers of the High Court, so far as the powers of appeal are concerned, the powers of revision, which are inherent in the High Court to call for the records of the inferior Courts and examine them, still remain and they continue.

Mr. S. C. Mitra: Do they?

Mr. Muhammad Muazzam Sahib Bahadur: That is how I consider them—I may be wrong. But so far as executive acts are concerned, they are absolutely outside the purview of the Courts. They cannot be decided upon in any Court.

Mr. C. C. Biswas: That is exactly what I stated.

Mr. Muhammad Muazzam Sahib Bahadur: Then, as regards the absence of "good faith" in the Bombay enactment, this is how section 29 reads:

"Except as provided in this Act, no proceeding or order taken or made or purporting to be taken or made or deemed to have been so taken or made under this Act, shall be called in question by any Court, and no civil or criminal proceeding shall be instituted against any person for anything done or in good faith intended to be done under this Act or against any person for any loss or damage caused to or in respect of any property whereof possession has been taken under this Act."

The words which have come in for criticism are these—, "for anything done or in good faith intended to be done". My submission is that those words apply as much to acts intended to be done as to acts done, because every act connotes intention and if you can prove that, so far as the intention was concerned, it had not the element of good faith attached to it, then the act itself is punishable as wanting in good faith, and, as I understand the legal definition of good faith, it is, as in the Penal Code, something which is done with due care and attention. That is the legal aspect of acts done in good faith. If the aggrieved party can prove to the Court that the intention which actuated the act of any public servant in respect of acts done under this enactment was wanting in good faith and if the public servant, when called upon to prove good faith, so far as his intention is concerned, is unable to do

[Mr. Muhammad Muazzam Sahib Bahadur.]

so, then, in the ordinary course of things, he would be liable to be charged for not having exercised good faith. If he does prove, then he escapes: so that the position is that the repetition of the words "good faith" or the placing of those words before "done" and not as they are before the word "intended" does not make any difference. With these words, I support the motion.

Mr. S. C. Sen (Bengal National Chamber of Commerce: Indian Commerce): Sir, I had no intention of intervening in this debate: and specially because when the Bill to supplement the Bengal Terrorist Act came before this House I took a very great part in that debate and said what was to be said in this matter. But I have to rise to congratulate my friend, Mr. Biswas, though I do not know whether my congratulations should go to Mr. Biswas or to the Home Member for having found so able an ally to espouse his cause.

This Bill can be divided into two parts: one which gives a power of appeal to the Higt Court from certain sentences and the second is the barring of jurisdiction of the High Court. As regards the first, I think it was not necessary as, in my reading, no offences, which the Special Magistrates will ordinarily be required to deal with, will not attract heavier punishments than two years. The Bill itself provides for offences under which six months' imprisonment can be inflicted. The Special Magistrates may also deal with offences against public security which is the same as public tranquillity as defined in the Indian Penal Code, but the highest punishment under that Chapter of the Penal Code dealing with public tranquillity does not exceed two years. However, as this clause is in favour of the accused, I do not object to its being in the Bill. But, Sir, as regards clauses 3 and 4. . . . .

The Honourable Sir Brojendra Mitter: Will the Honourable Member speak up a bit? I cannot follow at all.

Mr. S. C. Sen: Now, Sir, as regards clauses 3 and 4, the Honourable the Home Member made a distinction between the two clauses, though they amount to the same thing. He wanted to bar the jurisdiction of the High Court so far as regards suits or proceedings for illegal or unlawful exercise of the powers given under the local Acts. It is not a case, as Mr. Biswas pointed out, where you impugn a local Act altogether as being *ultra vires* of the Legislature, but these clauses are put in to protect officers of Government even against illegal exercise of the powers conferred upon them by the Act. The local Acts have barred the jurisdiction of the local Courts, but the clauses in the Bill have been put to bar especially the jurisdiction of the High Court as regards such acts. So far as regards the Patna High Court or the Allahabad High Court, I do not think it matters much, because they have not got any original jurisdiction. But so far as regards the Bombay High Court, it has original jurisdiction, and, by this clause 3, it is intended to take out of the jurisdiction of that High Court cases arising out of or regarding the excesses committed by the illegal exercise of the powers.

As regards clause 4, as far as I understood the Honourable the Home Member, it is because there is a provision in the Bengal Act that the clause does not affect the power of the High Court, therefore he had to

put it in a separate clause. Now, let us understand what is meant by this clause 4: Mr. Biswas has said that as by the local Act the jurisdiction of the local Courts has been taken away—so far as regards claims or prosecution by the public is concerned,—therefore there is no reason why the jurisdiction of the High Court should not also be taken away. I do not understand the argument or the force of logic in that. There are many reasons why a local Court should not have any jurisdiction in a matter where big and intricate questions of constitutional law may arise, where the question of law as to whether a particular person has exceeded his jurisdiction or not will arise, but why should that not be left to the High Court? Not only the High Court is competent to deal with such matters far better than the local Courts, as a matter of fact, in the past, similar cases, though filed in the mufassil Courts, were transferred to the High Court under its extraordinary jurisdiction, and, therefore, I say that what is good for the local Courts may not be good for the High Court. Under these circumstances, I do not agree with Mr. Biswas that, because a local Act has barred the jurisdiction of the local Courts, therefore this House will follow the local Legislature and also bar the jurisdiction of the High Court.

Now, so far as regards the barring of the jurisdiction of the High Court, that has been done in a thorough manner and every matter, even section 107 of the Government of India Act is barred; and I say it is illegal and even *ultra vires* of this House to pass an enactment to that effect.

[At this stage Mr. President (The Honourable Mr. R. K. Shanmukham Chetty) resumed the Chair.]

That question was discussed at the time when the Bill to supplement the Bengal Terrorist Act was taken up in this House; and your predecessor, Sir, held that it would be *ultra vires* of this Legislature to bar the jurisdiction of the High Court so far as conferred by the Government of India Act, and, for that purpose and to meet that point, the Leader of the House had to amend his Bill and had to add in section 5 of that Act the following proviso:

"Provided always that nothing herein contained shall affect the powers of the High Court under section 107 of the Government of India Act."

But that has not been done in this case and, therefore, my point is this: that so far as this clause is concerned, *i.e.*, clause 4—it is *ultra vires* of this Legislature even to entertain this Bill, and, until that clause is omitted or deleted, you, Sir, will not allow that clause being debated in this House.

Then, Sir, the whole jurisdiction of the High Court is being barred. We all know the present state of things in Bengal. The Congress was to have held their meeting in Bengal. A month before we were told in this House that the Government of India, with the consent of the Secretary of State, had barred or was going to bar the holding of the meeting of the Congress in Calcutta. It was also asked how the Government were going to do it, and the Honourable the Home Member, if I remember aright, stated that it would be barred under the ordinary law. Is that correct, Sir?

The Honourable Sir Harry Haig: That is not my precise recollection of what I said. I said that I thought that it would have to be left to the discretion of the Local Government, but off hand I cannot be quite positive of what I said.

Mr. S. C. Sen: That is my recollection, Sir, that action would be taken by the Local Government under the ordinary law.

The Honourable Sir Harry Haig: Under such powers as they have.

Mr. S. C. Sen: Of course it is so, and they are not to invoke any new or special power. Now, we know what is contained in the local Act. Mr. Mitra has pointed out the circumstances under which the local Act, I mean Chapters II and III could be brought into play. I understand, certain persons have been arrested and these Chapters have been proclaimed in certain areas. Now, the proviso says that the Local Government shall not direct that any provision of these Chapters, namely, Chapters II, III and IV:

"shall come into force in any area unless it is satisfied that by reason of a movement subversive of law and order a state of emergency has arisen",—(*not likely to arise or will arise in the future*),—"has arisen in that area of such a kind that the existing powers of Government are inadequate for the maintenance of public security".

I do not know,—I hope the Honourable the Home Member will be able to answer that question,—whether the situation in Bengal is such at the present moment or was such at the time when that declaration was made under this section by the Government of Bengal as to justify the promulgation of the provisions of these Chapters in strict accordance with the local Act. I may say that there was no evidence at least before the public that the condition of the country was such as to necessitate the Government of Bengal to invoke these powers, and that consequently the arrests which have been made in pursuance of section 8 of the Act are illegal and *ultra vires*. How am I going to get redress? The whole procedure to obtain any relief has been barred. The Civil Courts in the local areas have been barred their jurisdiction. I could have done it in the High Courts so far as the persons who have been wrongfully arrested in Calcutta. I see the Honourable the Law Member is shaking his head, and I infer that he considers my argument wrong and that I can appeal to the High Court even now. I gather from his shaking of head that I can even now go before the High Court of Calcutta or before the Civil Courts and file a suit against the Secretary of State or his servants for their illegal action even though expressly their jurisdiction to entertain the suits is barred. I regret I cannot agree to that. If that be the position of law, then what is the necessity of putting these clauses barring jurisdiction of the Civil Courts. I can get no redress even if I prove that the action was an illegality. I shall have to prove that the action complained of was taken maliciously. That is the difference I want to point out, and I would ask the Honourable the Law Member when he replies to enunciate his proposition and show that I am wrong. In these circumstances, I submit that this House should refuse to accord its approval at least to sections 3 and 4 of this Bill. With these remarks, I oppose this measure.

The Honourable Sir Brojendra Mitter: Sir, as has been pointed out by my friend, Mr. Biswas, this Bill is intended to supplement the five Provincial Acts which are mentioned in the Bill. There is, I find, a certain amount of misconception as to the scope of these Provincial Acts. Broadly speaking, these Provincial Acts have three divisions: first, that certain powers have been given to the executive authorities; second, that certain new offences have been created, and the third division provides a machinery for the trial of those offences. Now, those Acts provide for the trial and punishment of the offences mentioned in those Acts, but with regard to certain cases, there is no power in the local Legislature to provide for appeals, and that is why clause 2 of the present Bill has become necessary. I shall explain that more fully later. The three divisions are: executive powers, new offences and provision for the trial of those offences. Sir, so far as offences and trials of offences are concerned, there is no bar whatsoever to appeals, revisions, reviews, and what not. All the existing rights are left absolutely intact . . . .

Mr. S. C. Sen: Not reviews.

The Honourable Sir Brojendra Mitter: If the Honourable Member will not interrupt me, I shall be able to explain the case more briefly. So far as Bihar and Orissa, United Provinces, Punjab and Bombay are concerned, the ordinary Courts will try those cases, and, therefore, the appeals and revisions given by the Criminal Procedure Code are available to the accused in those cases. Therefore, nothing has been taken away. So far as Bengal is concerned, Special Magistrates have been created under the Bengal Act. These Special Magistrates in Bengal do not come under the Criminal Procedure Code, and, therefore, it is necessary to provide for appeals to the High Court from the orders passed by them. That is the justification for clause 2, and, so far as I have been able to follow the debate, no Honourable Member has quarrelled with clause 2, except Mr. Sen with a fantastic argument to which I shall refer presently. Mr. Sen says that clause 2 is unnecessary, because, under the Bengal Act, there is no sentence higher than a sentence of six months that can be inflicted.

Mr. S. C. Sen: No, Sir, I do not think I said that considering that sub-clause (*a*) of clause 2 is perfectly necessary, and as regards (*b*), there are no offences for which can . . . .

The Honourable Sir Brojendra Mitter: That is why I say fantastic. If my friend had looked at section 16 of the Bengal Act, he would have seen:

"A Special Magistrate may pass any sentence authorised by law except a sentence of death or transportation or of imprisonment exceeding seven years."

Therefore, a Special Magistrate has been empowered to inflict a sentence up to seven years. Then, what about sentences between four and seven years, and, for that purpose, (*b*) is necessary . . . .

Mr. S. C. Sen: Are these Special Magistrates empowered to pass sentences exceeding those prescribed for offences in the penal laws?

The Honourable Sir Brojendra Mitter: Sir, in Chapter III of the Bengal Act, section 13 provides this:

"Any Presidency Magistrate or Magistrate of the first class who has exercised power as such for a period of not less than four years may be invested by the Local Government with the powers of a Special Magistrate under this Act."

Section 14 says this:

"Subject to the provisions of section 18 a Special Magistrate shall try such offences other than offences punishable with death, as the Local Government or an officer empowered by the Local Government in this behalf may, by general or special order in writing, direct."

Therefore, a Special Magistrate can, under the Bengal Act, try any offence which is not punishable with death or transportation for life. That being so, he can inflict punishment up to seven years. Supposing a Special Magistrate in a particular area is given jurisdiction to try all offences under the Penal Code not punishable with death or transportation for life. He, as Special Magistrate, tries those cases. There is no appeal under the Criminal Procedure Code.

Mr. S. C. Sen: What about section 18? That is the power which Special Magistrates have got?

The Honourable Sir Brojendra Mitter: Section 18 says this:

"A Special Magistrate shall not try any offence unless it is an offence punishable under this Act or was committed in furtherance of a movement prejudicial to the public security."

Supposing, in furtherance of such a movement, a murder is committed. What then? Supposing, in furtherance of such a movement, a dacoity is committed. We know of political dacoities. We know of political arson. We know various offences are committed in furtherance of subversive movements. A Special Magistrate will be empowered to try those cases and he would be empowered to inflict punishment over four years and in such cases an appeal is necessary and that is what clause 2 (*b*) provides for.

Sir, I am straying from the main argument. It has been suggested by a number of Honourable Members that there is no remedy against illegal acts. Sir, I submit that that argument is based upon a misconception. As I have said, if there be a prosecution in any Court, the right of appeal and revision has been left intact. Now, leaving aside matters before Courts, let us come to executive acts. Supposing there is an illegal arrest, that arrest, as has been already pointed out by my friend, Mr. Biswas, is not an arrest under the Act. (Laughter.) It is not a laughing matter. I will explain it by way of illustration. Take any of these Acts. Take the Bombay Act. Section 3 says:

"Any officer of Government, authorised in this behalf by general or special order of the Governor in Council, may, if satisfied that there are reasonable grounds for believing that any person has acted or is about to act in a manner prejudicial to public safety, arrest such person without warrant."

Supposing an officer arrests; but he was not authorised to do so. If an unauthorised officer arrests, that arrest is not an arrest under this Act. Therefore, every remedy which is now available to the arrested person will be available to him after this Bill is passed. That is by way of illustration.

Rao Bahadur B. L. Patil (Bombay Southern Division: Non-Muhammadan Rural): If the order is unreasonable?

The Honourable Sir Brojendra Mitter: I am dealing with illegality. Reasonableness or unreasonableness is a matter of opinion. I am not worried about that. What I am dealing with is the question of illegality. This point has been made by several Honourable Members. Sardar Sant Singh said that if the detention was illegal, the jurisdiction of the Courts was taken away. Then Mr. Mitra said that nobody could question the legality of an arrest. Mr. Navalrai said that the High Courts would be under the domination of the Provincial Governments, and, lastly, I was surprised to hear Sir Abdur Rahim say that the jurisdiction of the High Court to revise was taken away. What I say is this. For the case of prosecution before a Court, nothing further need be said. I have already said what I had to say. With regard to executive action, if it is strictly legal under the Act, then there is no remedy. That is quite true; but if that executive action be illegal or be irregular, then every remedy which is now available to an aggrieved person will be available to him after this Bill is passed.

Sir Abdur Rahim: Will there be any remedy under 491?

The Honourable Sir Brojendra Mitter: Sections 3 and 4 are more or less the same. Section 3 refers to some of the Provincial Acts. Section 4 gives the purport of those sections independently and says this:

"No civil or criminal proceeding shall be instituted against any person for anything in good faith done or intended to be done under the said Act or against any person for any loss or damage,"

and so on.

Whether the good faith comes before or after the word "done"—I shall deal with that in a minute. But apart from that, an act, which is contemplated under clauses 3 and 4 of this Bill, is an act under the Provincial Acts. Therefore, anything which is illegally done cannot, by any stretch of imagination, be said to come under the category of act done under any of the Acts. Sir, there cannot be any legitimate ground of grievance on this score.

Sir, in some of these Provincial Acts, the language used is this: anything done or, in good faith intended to be done, and in other Acts, it is in good faith done or intended to be done. There is a difference in phraseology, in drafting. In substance it means the same thing; but the point is this—whether what is done or what is intended to be done in all these cases, that act is governed all the time by the qualification that that act must be under the Act, that is to say, in exercise of the powers which the Act gives the executive officers. If it be in excess of those powers or in derogation of those powers, then that act cannot be an act under these Provincial Acts, whether they are done in good faith or done in bad faith.

An Honourable Member: What about "purports to be under the Act".

The Honourable Sir Brojendra Mitter: Now, clause 5 refers to Punjab and clause 3 refers to Bihar and Orissa, Bombay and the United Provinces. The effect of both these clauses is the same, because clause 3 says this:

"These particular sections of the Provincial Acts shall have effect as if these sections had been enacted by the Indian Legislature."

Sir, these Provincial Acts bar the jurisdiction of the Courts and if it be enacted by the Indian Legislature, it will bar the jurisdiction of the

[Sir Brojendra Mitter.]

Courts including High Courts, whereas the Provincial Legislatures could not affect the jurisdiction of the High Courts. Clause 8 is really wider than clause 5. Clause 5 deals only with 491. Clause 3 deals with all jurisdictions of the Courts and, if clause 3 be enacted by this Legislature, then the High Courts will come within its scope. Therefore, there is no differentiation, as Sardar Sant Singh seems to imagine, between Punjab and the other four provinces mentioned in this Bill. 491 is taken away. In the previous special laws, which were passed by this House, there was a similar provision taking away the *habeas corpus* section and this Bill only repeats the same provision. The power under secton 491 is taken away. If by an executive act, an arrest is made legally under any of these Provincial Acts, section 491 is of little avail even at the present moment. Supposing nothing was said about 491 and a person is arrested under one of these Provincial Acts, as Congress people were arrested recently. I am assuming that they were arrested under the provisions of some of the Provincial Acts. If they were arrested under the provisions of any of these Acts, and if an application were made before a High Court under 491, what would be the result of that application? It would be thrown out summarily, because the first question the High Court would ask is this: "Are you, the applicant, under arrest under any law or without any law?" He will have to say: "Well, I am arrested under section 8 of the Bengal Security Act." The High Court will say: "We do not interfere, because you are not under illegal arrest. It is only in case of illegal arrest that the High Court interferes." I am only giving an illustration. Sir, if you come to examine specific cases, you will find that very little difference is made by the Bill, because, in practice, if a person is arrested by virtue of powers given by any Act, Provincial or Central, then the High Court will not interfere. It is only in cases of illegal detention or illegal arrest that the High Court interferes.

Sir Hari Singh Gour: Therefore, clause 5 is superfluous? Take it away!

The Honourable Sir Brojendra Mitter: Superfluous or not superfluous, we think, for the sake of greater caution, it is necessary. Sir, my first point is to meet my Honourable friend, Sardar Sant Singh's argument that there is no differentiation between the Punjab and the other provinces, and, secondly, I say frankly that the powers under section 491 are taken away. Now, I come to my Honourable friend, Sir Abdur Rahim's point—and I thiuk my Honourable friend, Mr. Sen, also repeated that point about section 107 of the Government of India Act. Sir, the powers under section 107 of the Government of India Act have been conferred by Parliament. We have not the competence to touch those powers. Section 65 of the Government of India Act makes it perfectly plain that the Central Legislature will not have the power to make any law repealing or affecting any Act of Parliament passed after the year 1860 extending to British India. Therefore, whatever we may do, we cannot take away the powers of the High Court under section 107 of the Government of India Act. Sir, I do not know whether Sir Abdur Rahim, in his political preoccupations, has now the time to read law reports, but I can tell him that recently two very important judgments have been delivered—one by Sir George Rankin in Calcutta and the other by Sir John Beaumont in Bombay dealing with section 107. What they have said is this,—that their powers under section 107 cannot be taken away by the Indian Legislature, and they

go further and discuss the scope of section 107 as to what the powers of superintendence over inferior Courts mean. I need not go into that, but I say this that both the Calcutta and the Bombay High Courts have held that there are powers of superintendence including revisional powers in certain cases. Sir, my point is this that, however much we may try to take away the revisional powers from the High Court, which we have not done, we cannot do so. (*Sir Abdur Rahim*: "Why try?") Sir, I repeat, we have not attempted to do so; all these appellate and revisionary powers have been left absolutely untouched by the present Bill. Sir, there is one other point raised by Sardar Sant Singh about the period of appeal. Under the Bill, the time for appeal is 30 days, whereas in other cases the period of appeal is longer. I refer him to section 17 of the Bengal Act. The period of appeal there also is 30 days:

"An appeal under sub-section (*1*) shall be presented within thirty days from the date of the sentence."

So, this is only in accord with what the Bengal Legislature has already passed. We are not restricting the period of appeal which might otherwise have been allowed, because this class of Special Magistrates does not exist in Bengal. New Courts are set up, and new powers have been given to them. The Bengal Act has given 30 days when the appeal is to the Sessions Court, and, similarly, we have given 30 days when the appeal is to the High Court. That depends, Sir, upon the length of the sentence. If the sentence be, say, a year or so, an appeal will lie to the Sessions Court within 30 days. If the sentence be more, the period is still 30 days. It makes no difference, so far as the time for appeal is concerned, whether the sentence is one year or five years.

Sardar Sant Singh: May I ask, is it not a fact that under the ordinary law the period of limitation for an appeal to the Sessions Court is 30 days while that for an appeal to the High Court is 60 days?

The Honourable Sir Brojendra Mitter: Sir, my Honourable friend, Sardar Sant Singh, ought to remember that appeals under clause 2 (1) (*a*) are from Presidency Magistrates' Courts.

Mr. S. C. Sen: Clause (*b*) refers to appeals from the mufassil?

The Honourable Sir Brojendra Mitter: So far as the appeal is from a Presidency Magistrate's Court, 30 days is certainly not too little. But the complaint is that 30 days may be too little when the appeal lies from a district. That, I understand, is the argument. Well, that is a matter of opinion; and since these special laws are designed to meet an emergent situation, where speedy trial is an absolute necessity, in our opinion, 30 days is not too short.

Sardar Sant Singh: With your permission, Sir, may I say one word? In the Punjab, there are Magistrates invested with section 30 powers and they are empowered to inflict a sentence up to seven years. Appeals from those Magistrates will lie direct to the High Court if the sentences are for over four years, and the period of limitation is *60* days.

The Honourable Sir Brojendra Mitter: Very well, then you have no grievance. In your province you already have got 60 days. You are now talking of my province; well, I am quite content with 30 days for my province. There is no terrorism in the Punjab, as there is in Bengal. Something special is obviously needed for Bengal. (Hear, hear.) I think, Sir, these are all the legal points which have been raised. To sum up,

[Sir Brojendra Mitter.]

I submit that Honourable Members will kindly not entertain the idea that when a man is prosecuted, any of his existing rights have been taken away. All the rights under the existing law are still preserved to him. The only case in which you may say that the right of the citizen has been restricted is in the case of special powers with which the executive have been invested. That, Sir, is a matter of policy which the needs of the moment warrant and I do not wish to go into questions of policy now. All I need say is this that the only criticism which can legitimately be levelled against this Bill is the criticism directed towards the exercise of the executive powers. But even then the executive powers must be exercised under the Act and in accordance with the provisions of the Act. If those powers are exercised in excess of the Act or in abrogation of the Act or in contravention of the Act, then every remedy is open to the aggrieved person. Therefore, the fears that the rights of the citizens are taken away and every body will be at the mercy of the police and the executive are unnecessary and imaginary.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): Does the Chair understand the Honourable Member, Mr. S. C. Sen, to raise a point of order that clause 4 contravenes the provisions of section 107 of the Government of India Act?

Mr. S. C. Sen: That is what I said, Sir.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): On that point the position is analogous to the situation with which this House was faced when considering clause 5 of the Bengal Suppression of Terrorist Bill. On that occasion also, the Honourable the Law Member explained that it was not the intention of Government to take away any powers vested in the High Court under section 107 of the Government of India Act. Even on this occasion the Honourable the Law Member says that it is not the intention of the Government to ask this House to take away the powers of the High Court by clause 4 of this Bill. But when a definite point of order has been raised, it is not for the Chair simply to be satisfied that it is not the intention of the Government to do a particular act.

The Honourable Sir Brojendra Mitter: I said that this was not the intention of the Government nor is it within the competence of the Legislature.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): Even if it is the intention of the Government to take away a power, it will not be competent for the House to take away that power. But when a definite point of order has been raised, the Chair has to decide whether the wording of a particular section gives scope for the misunderstanding that it seeks to take away certain powers conferred under the Government of India Act. If it clearly gives room for that interpretation, the Chair cannot allow a clause of that nature to go through leaving the High Courts concerned to say that, even though the section is wide, the Legislature has not got the power. The Chair would, therefore, advise that the day after tomorrow when this Bill is taken up, Government would do well to propose a suitable proviso making the position clear.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 5th April, 1933.