

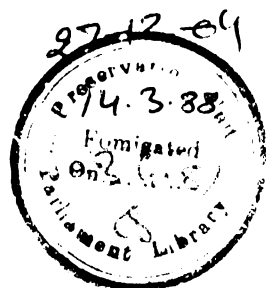
Tuesday, 11th March, 1941

THE
COUNCIL OF STATE DEBATES

VOLUME I, 1941

(19th February to 4th April, 1941)

NINTH SESSION
OF THE
FOURTH COUNCIL OF STATE, 1941



PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI.
PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, NEW DELHI.
1941.

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COUNCIL OF STATE.

Tuesday, 11th March, 1941.

The Council met in the Council Chamber of the Council House at Eleven of the Clock, the Honourable the President in the Chair.

STATEMENTS, ETC., LAID ON THE TABLE.

THE HONOURABLE MR. E. CONRAN-SMITH (Home Secretary): Sir, I lay on the table a copy of the declaration of exemption under section 6 of the Registration of Foreigners Act, 1939, as published with the Notification of the Government of India in the Home Department No. 1/1/41-Political (E), dated the 5th March, 1941.

Declaration of Exemption.

No. 1/1/41-Political (E), dated the 5th March, 1941.—In exercise of the powers conferred by section 6 of the Registration of Foreigners Act, 1939 (XVI of 1939), the Central Government is pleased to declare that the provisions of the Registration of Foreigners Rules, 1939, except rule 8 and such of the provisions of rules 4, 14, 15 and 16 as apply to, or in relation to, passengers and visitors who are not foreigners, shall not apply to, or in relation to Mr. Kazuo Suto, an official attached to the Japanese Consulate General at Calcutta, so long as he holds a post in that Consulate-General.

(Sd.) H. J. FRAMPTON,

Deputy Secretary to the Government of India.

CENTRAL ADVISORY COUNCIL FOR RAILWAYS.

THE HONOURABLE MR. L. WILSON (Chief Commissioner for Railways): Sir, I move:—

“That this Council do proceed to elect, in such manner as may be approved by the Honourable the President, six non-official Members from the Council who shall be required to serve on the Central Advisory Council for Railways for the year commencing 1st April, 1941.”

The Motion was adopted.

STANDING COMMITTEE FOR ROADS, 1941-42.

THE HONOURABLE MR. S. N. ROY (Communications Secretary): Sir, I move:—

“That this Council do proceed to elect, in such manner as the Honourable the President may direct, three Members to serve on the Standing Committee for Roads which will be constituted to advise the Governor General in Council in the administration of the Central Road Fund during the financial year 1941-42.”

The Motion was adopted.

STANDING COMMITTEE FOR THE DEPARTMENT OF COMMUNICATIONS.

THE HONOURABLE MR. S. N. ROY (Communications Secretary): Sir, I move :—

“That this Council do proceed to elect, in such manner as the Honourable the President may direct, three non-official Members to serve on a Standing Committee to advise on subjects, other than ‘Roads’, dealt with in the Department of Communications, during the year 1941-42.”

The Motion was adopted.

THE HONOURABLE THE PRESIDENT: With reference to the three Motions which have just been adopted by the Council, I have to announce that nominations will be received by the Secretary up to 11 A.M. on Monday, the 17th March, 1941 and the dates of election, if necessary, will be announced later.

PETROLEUM (AMENDMENT) BILL.

THE HONOURABLE MR. H. C. PRIOR (Labour Secretary): Sir, I move :—

“That the Bill further to amend the Petroleum Act, 1934, as passed by the Legislative Assembly, be taken into consideration.”

Sir, this is a short Bill which I think Honourable Members will not find in any way controversial. There are various forms of licences under the Petroleum Act, licences to import, licenses to store and licenses to store for purposes of sale. It is this last form of license with which we are particularly concerned today and which has given rise to this Bill, that is, licenses to store for the purpose of sale. Such a license is given only to the owner of the pump and the owner is, under the law at present, the only person who remains liable for any breach in the terms of the license. It has recently been found that it is difficult in certain cases to obtain a conviction against the owner. The owner appoints a person to act as agent, but as the law stands at present that agent cannot be prosecuted. But the license contains terms of various descriptions, terms which refer to structural matters connected with the pump and in such matters the owner is the person liable and who should ordinarily, be prosecuted. But there are other terms in the license, such for instance, that the agent cannot deliver petrol to a car while the engine is going and in that case it is difficult to hold the owner of the pump liable and it would be the agent who actually breaks the condition of a license and who should be prosecuted. Now that term has a considerable danger significance and it is advisable that the agents in charge of pumps should follow the conditions laid down in the license. The Bill has been introduced for the purpose of making not only the owner but also the agent put in charge of a pump by the owner liable. It remains merely to add a few words regarding the drafting. The agent before he becomes liable must have been placed in charge of the place by the licensee. No attempt has been made in the draft Bill to lay down the qualifications of an agent. That will be prescribed by the rules. Otherwise the drafting of the Bill is fairly wide and covers every breach of a license that might occur—every breach of the terms of any existing form of license and of any forms of license that may be approved in the future. It covers

not only breaches in connection with storage and import but also breaches in connection with transport, because cases might arise in which a person has been placed in charge of a particular place by the owner and petrol might be there in course of transit and breach of the license might occur in connection with such petrol.

Sir, I move.

The Motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. H. C. PRIOR : Sir, I move :—

“ That the Bill, as passed by the Legislative Assembly, be passed.”

The Motion was adopted.

BERAR LAWS BILL.

THE HONOURABLE MR. SHAVAX A. LAL (Nominated Official) : Sir, I move :—

“ That the Bill to extend certain Acts to Berar, as passed by the Legislative Assembly, be taken into consideration.”

Sir, this measure is purely formal in character and it makes no change of substance in the laws now in force in Berar. The sole object of this Bill is to eliminate certain administrative inconveniences resulting from the existing legal position, which briefly stated is this. Before the commencement of the new Government of India Act, Berar was not deemed to be part of British India and neither the Indian Legislature nor the Legislature of the Central Provinces had any power to legislate for that area. Consequently, the laws in force in the Central Provinces had to be applied to Berar by notification under the Indian (Foreign Jurisdiction) Order in Council. When the new Government of India Act came into operation on the 1st April, 1937, Berar was, by virtue of section 47 of that Act, deemed to be part of British India and the Indian Legislature as well as the Legislature of the Central Provinces was empowered to legislate for that area. The laws previously applied under the Foreign Jurisdiction Order in Council, however, continued to be in force in that area. Those laws, however, were in the contemplation of law treated as distinct from the laws *proprio vigore* in force in the Central Provinces. One result of this dual system of laws is that notifications and statutory rules issued under identical provisions, operative both in British India and in Berar have to be issued separately for British India and for Berar. To take one instance, all rules and notifications issued under the Indian Electricity Act *proprio vigore* in British India have to be issued all over again under the Foreign Jurisdiction Order in Council. This, as Honourable Members will no doubt agree, is very inconvenient both to Government and to the public. This Bill proposes to eliminate that inconvenience by applying all laws in force in the Central Provinces to Berar.

Sir, I move.

The Motion was adopted.

The First, Second and Third Schedules were added to the Bill.

[Mr. Shavax A. Lal.]

Clauses 2 and 3 were added to the Bill.

The Fourth Schedule was added to the Bill.

Clause 4 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. SHAVAX A. LAL: Sir, I move:—

“That the Bill, as passed by the Legislative Assembly, be passed.”

The Motion was adopted.

ASSAM RIFLES BILL.

THE HONOURABLE SIB GIRJA SHANKAR BAJPAI (Education, Health and Lands Member): Sir, I move:—

“That the Bill to provide for the regulation of and maintenance of discipline in the Assam Rifles, as passed by the Legislative Assembly, be taken into consideration”.

Honourable Members will find a fairly full indication of the purpose of this Bill in the Statement of Objects and Reasons and I do not think that I would be justified in recapitulating what is contained in that Statement in all its completeness. Briefly stated, the purpose of this measure is to rectify what is a constitutional anomaly. This force is primarily designed for watch and ward purposes on the north-eastern frontier of India, a frontier happily not quite so conspicuous in the news as the north-western frontier but nevertheless having on its border tribes who occasionally indulge in such sanguinary pastimes as head-hunting. The Central Government have the disposal of the Assam Rifles in the main, though the Provincial Government pay a certain contribution because a fraction of this force is supposed to be at their disposal. The Auditor General in India has held that, considering that the Central Government make the main contribution (I think it is 43/58ths of the total cost), the force should be made entirely Central. Now, the revenues of Assam will benefit by this to the extent of 15/58ths. On the other hand, the Provincial Government would not in any way be deprived of such services as this force has been able to render to them in the past. I think the House will agree that this is constitutionally a proper and financially and administratively an equitable measure and lend its support to it.

Sir, I move.

The Motion was adopted.

Clauses 2 to 6 were added to the Bill.

Clauses 7 to 13 were added to the Bill.

The Schedule was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE SIB GIRJA SHANKAR RAJPAI: Sir, I move:—

“That the Bill, as passed by the Legislative Assembly, be passed.”

The Motion was adopted.

INDIAN RAILWAYS (AMENDMENT) BILL.

THE HONOURABLE MR. L. WILSON (Chief Commissioner for Railways):
Sir, I move :—

“ That the Bill further to amend the Indian Railways Act, 1890, as passed by the Legislative Assembly, be taken into consideration.”

Sir, this Bill seeks to make more deterrent the provisions of the Indian Railways Act relating to ticketless travel. For many years Railways have felt that the existing provisions are inadequate for the purpose. In 1939-40 the number of passengers detected without proper tickets was 3,850,000 of which about 1½ million were mendicants and *sadhus*. This indicates the magnitude of the problem which Railways have to face.

THE HONOURABLE RAI BAHADUR SRI NARAIN MAHTHA : Can the Honourable Member give some figures for previous years ? He quoted figures for 1939-40. Will he please give figures for any other year ?

THE HONOURABLE THE PRESIDENT : That is not necessary at this stage. He can only state what is relevant to this debate.

THE HONOURABLE RAI BAHADUR SRI NARAIN MAHTHA : Unless he gives us some comparative figures, how can we know whether the evil is increasing or decreasing ?

THE HONOURABLE THE PRESIDENT : It is part of your duties to find that out from the relevant reports of the Railways.

THE HONOURABLE MR. L. WILSON : This indicates the magnitude of the problem which Railways have to face. We realize that the problem cannot be solved by legislative action alone. But the fear of greater punishment than can at present be imposed and an increase in the excess charges to be levied will doubtless have a good effect. The Bill deals with no offence which is not already covered in the existing Act and the distinctions existing between sections 112 and 113 of the Act have been maintained. The proposed amendments of the Act deal mainly with more appropriate punishment than at present, treatment of a person who remains in a carriage without a proper ticket in the same way as a person entering a carriage without a proper ticket and the removal of ticketless travellers from carriages.

Sir, I move.

THE HONOURABLE RAI BAHADUR SRI NARAIN MAHTHA (Bihar : Non-Muhammadan) : Sir, I thought that the Honourable Mover of this Bill will throw some light by quoting some figures which will show to the House whether the evil of ticketless travel was appreciating or depreciating, because unless we know that, it is not possible for us to say or to come to the conclusion that the present provisions of the Act are proving inadequate for their purpose. I think the legislator should only come into play when he finds that the present provisions of an Act have either proved inadequate or infructuous. The Honourable Mr. Wilson has not done anything to help us in that direction. Of course in spite of that I would like to assure him that there is no Member of this House,

[Rai Bahadur Sri Narain Mahtha.]

and I should think no sensible and responsible person outside this House who would like to support ticketless travel. But there is considerable difference of opinion between the Members on this side of the House and on the Government benches with regard to the method which is to be adopted in dealing with ticketless travel. I clearly think that the evil of ticketless travel has been greatly exaggerated; because, I find from the figures just quoted by the Honourable Mr. Wilson that out of 3,850,000 persons, 185,000 were mendicants. From these figures alone we cannot know if it is the criminal propensity of the citizen that has developed or whether the evil is growing on account of the growing poverty of the people. I would not, however, on the ground of poverty even, like to defend the ticketless traveller. But, I should like to say that the provisions of the present Bill are far more drastic than the exigencies of the present situation seem to require. Sir, in my opinion far more necessary than punishment is the detection of the ticketless traveller and, I think, it is necessary to make checking more effective so that every ticketless traveller could be detected. I strongly believe that if you can make your method of checking so effective as to find out every person who is travelling without a ticket and if you can take action against him under the existing laws, you can very effectively cope with the evil of ticketless travel, whether it is at present growing or depreciating. I should think, Sir, that the defect lies in the effectiveness of checking. If you can find out every ticketless traveller and if you can take action against him under the existing provisions of the Act you would certainly be able to check the evil of ticketless travel. If you only did this and did this well, I am quite sure that the present legislation would be wholly uncalled for. Sir, I am not a lawyer. But, I think the most wholesome principle of law is to prefer to let nine persons who are criminals go unpunished than to punish one innocent person. By the present legislation, particularly by section 3 (1) (b) of this Bill which makes imprisonment substantively possible, we are placing too much scope for harassment in the hands of the under-paid railway staff who would initially be the people who will prepare the cases and on whose evidence cases will be decided.

THE HONOURABLE MR. L. WILSON : I rise to a point of explanation, Sir. The low paid staff do not impose imprisonment. It is the Magistrate.

THE HONOURABLE RAI BAHADUR SRI NARAIN MAHTHA : I quite see that. But the Honourable Member must not forget that I used the word "initially" and said that it will be this staff on whose evidence the cases will have to be built up and decided. Therefore, Sir, I am particularly and wholly opposed to clause 3 (1) (b) which provides for imprisonment substantively. If the provision for imprisonment were in default of payment of charges and fines, the sting would have gone off the tail. I can understand measures being adopted to realize legal charges, i.e., liabilities incurred by a person by travelling on the train. I can also understand fines being imposed on the person who does so. I can further understand that a person being sent to jail if he fails to pay the fine imposed and if he fails to pay the proper charges. But, I can not understand the mentality of Government in one respect, which is this, that he should be sent to jail straightaway in spite of his ability and willingness to pay the fine and the charges. I do not know what particular pleasure this Government takes in sending people to jail and what particular pleasure they take in turning civil liabilities into criminal liabilities.

I would like at this stage to remind Honourable Members of the difficulties that people have in obtaining tickets. I should like to inform the Railway Member and the Chief Commissioner for Railways that nowhere in this world

is the doctrine of the survival of the fittest more in evidence than at a third class booking office, particularly during *melas*. There is one provision in the Bill, section 4(3), which I think is bound to act very unjustifiably against a person who has made a genuine attempt to purchase a ticket, but on account of the rush at the booking office has failed to do so, and who has for want of time not been able to inform a railway official, who, we all know, is not always easily available on every platform. If such a traveller of his own accord at a later stage informs a railway official that he did make a genuine attempt to obtain a ticket and further that he could not find a railway official to obtain a certificate from him earlier and has therefore now come forward again and wants to be granted a proper certificate. I cannot understand why in a case like that he should be asked to pay a penalty. I know that even in the existing Act there is a provision for a penalty in such a case, but the existence of a wrong does not justify its continuance or its aggravation.

I found on reading the speeches made in the other House that one or two Members made suggestions with regard to corridor trains, but I failed to find any reference to this suggestion in the reply of the Railway Member in the other House and to know to what extent it would be expected to serve to check ticketless travel.

I should like to raise one important question while this Bill is before us. Evidently, one of the main intentions of the Bill is to stop leakage of revenue, and, therefore, I cannot, in relation to that, satisfy myself as to the justice of granting passes to railway servants. I think perhaps I will be incurring the grave displeasure of all the railway staff who enjoy these passes by raising this question here.

THE HONOURABLE THE PRESIDENT : That question has nothing to do with this Bill.

THE HONOURABLE RAI BAHADUR SRI NARAIN MAHTHA : It has, Sir, in this respect that I consider that too as vicious as ticketless travel and that is the main policy involved in this Bill. What I was going to say is this—and I assure you that my argument will be very brief—you do not allow that kind of facility to any other kind of Government servants, why then allow it to railway servants only. A man serving in the post office is not allowed to post a certain number of letters free every year; a man serving in the telegraph department is not allowed to send two or three telegrams free every year; a man employed in a civil court is not allowed to file a couple of civil suits free every year. Why then is it necessary in the case of railway servants to favour them specially? Besides, this practice results in unnecessary overcrowding of trains and causes inconvenience to travellers.

THE HONOURABLE MR. L. WILSON : I do not think this has anything to do with the Bill.

THE HONOURABLE THE PRESIDENT : I have told the Honourable Member that. He can deal with that point by way of a Resolution if he wishes. It has no connection whatsoever with this Bill.

THE HONOURABLE RAI BAHADUR SRI NARAIN MAHTHA : It has got a great deal to do with this Bill in that you have a penalty in this Bill for a person who occupies a higher class of compartment than he holds a ticket for and, therefore, Sir, I claim that you have no right to overcrowd the compartments. You have provisions for overcrowding in the Railway Act. The

[Rai Bahadur Sri Narain Mahtha.]

Honourable the Railway Member might in his reply give me information with regard to sections 93 and 95 of the Railway Act. Section 93 relates to the maximum load to be carried in each wagon and truck, and section 95 relates to the reservation of compartments for females, etc. I would like to know if Government ever had any occasion to take action on any of the railways for delinquencies in these two respects.

THE HONOURABLE THE PRESIDENT : We are dealing with the Bill now and not with questions relating to other sections of the Railway Act.

THE HONOURABLE RAI BAHADUR SRI NARAIN MAHTHA : Sir, I am putting these two questions because I want to know if the railways themselves are discharging their own obligations to the public. Before they attempt to condemn the travelling public, I want to be satisfied that the railways are discharging their liabilities and obligations to the public properly. That is all I want to say on this Bill, which I oppose as unnecessary, unreasonable, and capable of causing unjustified hardship to innocent and well intentioned people.

(At this stage the Honourable the President vacated the Chair, which was taken by the Honourable Sir David Devadoss.)

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : Sir, I agree generally with the observations which my Honourable friend Mr. Mahtha has made. My opinion is that the Railways must make adequate arrangements to stop the evil of ticketless travel. My information is that since the inauguration of travelling ticket collectors and flying squads a great deal of ticketless travelling has been curtailed, and if these squads are strengthened ticketless travel will still fall very much. I would like the Chief Commissioner for Railways to kindly tell us whether the proposed imprisonment clause exists anywhere else in the world. I agree that ticketless travel must stop, but whatever legislation you may be armed with ticketless travel will go on. We find that notwithstanding many penal laws, murders, theft, dacoities, and other crimes are going on increasing. You can minimize the number but you cannot positively stop the evil. Why not introduce corridor carriages and let there be a ticket collector or checker on every train? He must see that no ticketless person enters the carriage and no ticketless person gets exit from that carriage. By doing that, ticketless travelling will be reduced to the minimum. Decent lorries are now running on various routes wherein every sort of comfort is provided. The imprisonment clause will in my opinion divert passenger traffic more and more to the lorries, particularly to those lorries which have cushions and other amenities. I also ask why should one carrier, whether he carries goods or passengers, should be given preference over another? The railway earnings admit of increase in the number of travelling ticket collectors or flying squads. As I travel a lot I know how these squads work. I must tell the House that if there are more people like Mr. Bahadur Singh who is a chief travelling ticket examiner on the North Western Railway, Delhi Division, the number of ticketless travellers will be reduced to the minimum. I mention the name because I have found him a typical sort of a supervising travelling ticket examiner. Sometimes in travelling a person drops his ticket; it is mislaid, and suddenly he is found travelling without a ticket. Will you send him to jail? How will you decide between an honest and a dishonest person? Now, with the introduction of bigger engines, you have long trains and it is impossible for a

passenger travelling in a carriage nearer the engine to reach the guard and to get a certificate. It is a practical difficulty. In theory everything seems possible, but when you translate it into practice you will find that it is not easily workable. As my Honourable friend Mr. Mahtha has observed, the Railways should not transfer one's civil liability to a criminal one in order to find a suitable remedy for ticketless travel and thus ask Government to make ticketless travel a criminal offence. Under the present law it is a civil liability. As the Honourable the Chief Commissioner has explained in his Blue Book and in his speeches, most of the ticketless travellers are either mendicants, *fakirs* or *sadhus*. A *fakir* or a *sadhu* can easily be recognized on any platform and everybody knows that these fellows who are penniless generally travel on the railways without tickets. If you send them to jail they don't mind it; rather prefer it and say, "We have to work hard in our homes; if we work hard in the jail, where lies the difference". On the other hand, they get free ready food in the jail. They say that at home too they have to work hard and even then go without food sometimes. How will you deal with such people and what justification will the Railways have to saddle all the taxpayers in general with increased taxation for want of provision of adequate staff by the Railways? Is that just? Is that fair? Why to tax the general taxpayer who seldom travels on the Railways? If for want of adequate establishment, the railways fail to stop ticketless travel, they must blame themselves. Railway is a business and in business you should attract traffic, whether it is passenger or goods traffic. By the introduction of this penal imprisonment clause you do not attract traffic, but, on the other hand, you discourage it. As far as upper class passengers are concerned, I presume that there is no ticketless travel. The present first class fare is equal to the expense of your motor car replacing railway journey. I find that one or two friends of mine prefer to travel in their own car than by railway—for short distances anyhow. You will thus divert short distance traffic of higher classes to one's own car. Although the number of second class passengers is many times higher than the first class passengers, you are practically giving second class the same accommodation as first class and thus discouraging and forcing the second class traveller to travel in a lower class, inter or third; and thus the railway administration is not doing their duty as regards earning the increased revenue is concerned. I therefore oppose strongly the imprisonment clause. Government should increase their travelling ticket collectors or flying squads and thereby reduce ticketless travel to a minimum. As far as *fakirs*, *sadhus* and mendicants are concerned, they ought not to be allowed on the platform. Why are they allowed on the platform? Everybody can recognize them by their robes or dress. How do they get on the platform? Who is responsible for allowing them on the platform? Surely somebody is to blame. Whether you send them to jail or give them regular imprisonment for life, they do not care; there is no deterring sentence on them; they are habitual offenders. Once you begin to send them to jail, they will become jail birds as other habitual criminals are. Therefore, Sir, I think the Railways are wrong in thinking that by sending these ticketless travellers to jail they will materially increase their income. On the other hand they will add to the burden of the general taxpayer and thus add to the discontent. Before, Sir, giving any imprisonment or inserting such a penal clause, Government would be well advised to take out that clause and increase travelling ticket examining staff and try another experiment by having corridor trains in which at the entrance or exit of the coach there should be a special employee to check incomers and outgoers.

With these remarks, Sir, I oppose the consideration of this Bill. •

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR (Madras : Muhammadan) : Sir, there is no doubt that much of the rigour of the Bill as originally introduced in the Legislative Assembly has been softened in its passage through the other House, but still, Sir, there are provisions in the Bill which are obviously unfair and highly repugnant. As regards some of the improvements that have been effected in the other House, I might mention the provision that women and children who are not accompanied by adult male members will not be allowed to be removed from the Railways between the hours of 6 P.M. and 6 A.M. That is a step, Sir, in the right direction. There is also an amendment as regards section 4 of the Bill.

(At this stage the Honourable the President resumed the Chair.)

That is in regard to the way in which the magistrate comes in for helping the railway servant to realize the money recoverable from the passenger who travels without a ticket or who has got to pay an excess charge. In that section as it originally stood, the magistrate on the report of the railway servant, had straightaway to take steps to realize the fine and in default of the payment the magistrate had to give a sentence of imprisonment to the passenger. Well, this thing has been removed and new a provision has been inserted to the effect that the magistrate before taking steps must satisfy himself that the charge made against the person is correct. However, Sir, no steps have been taken to make it clear in the section which of the railway servants would be given this authority. It all depends upon the person who approaches the magistrate. If he is to be a very low-paid servant, a very small subordinate, it is quite likely, Sir, that these provisions of the Act may be very seriously abused. Therefore, in order to avoid any misuse of the powers which would vest in the railway servants, the railway authority should take care that the man who is empowered to make the complaint to the magistrate should be one occupying a place of responsibility in the railway administration.

THE HONOURABLE THE PRESIDENT : As a lawyer have you ever found any Act perfect ?

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR : No, Sir, but it should be our endeavour to make the law as flawless as is humanly possible. My point is that to give a free hand to railway servants of whatever rank to make a complaint to the magistrate would be to invite misuse of the Act, and there should be some rule that the authority should vest only in servants of a certain rank and above that rank.

Again, Sir, as has been observed by my Honourable friends who preceded me, it is a very strange provision that is embodied in this legislation, the provision of imprisonment for a person travelling on the railway without a ticket. This kind of legislation, Sir, so far as I know, does not exist in any of the countries of the west. They are highly civilized countries and it is quite natural that, if such a step had been really advisable and fair, those countries would have taken care to legislate on those lines. The fact, Sir, that no such provision exists at all in any of those countries goes to show that this is quite a novel kind of punishment and, as we all know, the object of this legislation, so far as the railway is concerned, is merely to prevent leakage, is merely to prevent persons depriving the railways of the money which is due to them for carrying these persons to their destinations. If that is the object, and that alone can be the object of the railway administration, there is no reason why the railway should go in for such things which, on the very face of them, appear to be rather vindictive. As has been observed by the Honourable the Leader of the Progressive Party, no rigour in the punishment, not even the extreme

penalty of death, could deter persons from committing offences. All that we have got to do is to see that the object that we have in view is achieved. Now, your object is to try and see that the people who travel on the railway do not do it without making the necessary payment for being carried on the trains. If that is your object, Sir, your first endeavour should be to try and recover the money from them and if in spite of all your honest endeavours you fail to do so so then alone should you resort to more drastic measures. Sir, this is the feature of the Bill which is most objectionable and it is very difficult for Members on this side of the House to give it their support.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non-Muhammadan) : Sir, I was rather disappointed with the speech of my Honourable friend Mr. Wilson. He did not throw much light on this Bill and he did not, as far as I could see, make out a case for it. Sir, the Bill has a certain history behind it. I will not go into all that history at length but I will remind the House that a Bill was introduced in 1936, then it was circulated for public opinion, opinions were received in 1937, the Bill was referred to a select committee and I believe the select committee never reported. The Bill was dropped and now again it has been reintroduced in a modified form. I admit that the modified Bill is better than the original Bill in certain respects. It was reintroduced in a modified form in November last.

Sir, so far as the principal aim of the Bill is concerned, there can be no difference of opinion. The principal aim of the Bill is to deter persons from using railways without proper tickets and passes. Now, my friend the Honourable Mr. Mahtha, who is very well known in this House for lucidity and eloquence, has dealt with great ability with the various clauses of the Bill. I will not repeat the able arguments which he has already advanced. But I will say this, that no doubt ticketless travelling is improper. So many things are improper. It is improper to go to a restaurant without having money in your pocket and then, when the bill comes, refuse to pay.

12 NOON. This is a case of pure civil liability. If I go to the Imperial

Hotel and if I order a good meal there, and after having a good meal I say to the Imperial Hotel people, " Well, I am very sorry I have not got any money with me ; I will try and see if I can send it to you " they cannot surely arrest me for not paying the bill. I incur a civil liability. They may put me into court and try to recover through the civil process the sum due to them or they may write off the whole sum as a bad debt. Morally, a thing like that is most reprehensible. But all moral wrongs are not wrongs which ought to be recognized by the criminal courts as fit objects of punishment. It is wrong for me to invite a person to dinner and then tell him, " I am very very sorry I invited you to dinner, but please clear out of my house ". The law will take no notice of such action on my part—

THE HONOURABLE THE PRESIDENT : Do you know of any case where a man has been willing to pay the money and yet has been prosecuted ?

THE HONOURABLE MR. P. N. SAPRU : I have not investigated all the cases.

THE HONOURABLE THE PRESIDENT : Do you know of a single case in which a man who has been willing to pay has been prosecuted by the railway companies ?

THE HONOURABLE MR. P. N. SAPRU : I know this, Sir, that the subordinate staff in our country unfortunately is not yet up to the mark. Sometimes one bears a grudge against a person ; he finds him in difficulties and he tries to harass him. I know, Sir, that endeavours have been made to improve the conditions of service in certain services. But still, the standard of the subordinate service is not as high as it should be or as it might well be. Therefore, it is quite conceivable that a case such as you contemplate might have occurred. I am not aware of any such case myself but I would not exclude the possibility of a case such as you contemplate having occurred.

Sir, before we commit ourselves to a change of the character recommended by the Honourable Mr. Wilson we are entitled to ask ourselves whether the evil is as great as the Railway Companies make it out to be. I am sure that Sir Muhammad Yakub will say that the evil is much greater than the Government makes it out to be, loyal as he is to everything that the British Government stands for in this country. But that is not my mentality. I have not been indebted to the Government for anything in life so far. I can approach this question from a more detached point of view. Sir, it has not been shown that a large proportion of the travelling public travels without tickets. We have not been supplied with any figures on the question so directly put by the Honourable Rai Bahadur Sri Narain Mahtha as to the number of people who travel without tickets year after year.

THE HONOURABLE MR. L. WILSON : Might I give them now, Sir ?

	Millions.
1928	2.42
1933	2.9
1934	2.7
1935	2.9
1936	3.2
1937	3.1
1938	3.3
and for the last year, 1939-40	3.85

So, you will see, Sir, they have increased.

THE HONOURABLE MR. P. N. SAPRU : Take the railway traffic. Has it also been increasing and is the increase in proportion to the increase in railway traffic ? What was the total number of passengers and what was the ratio of the ticketless traveller to the total number of passengers ?

THE HONOURABLE THE PRESIDENT : You are entitled to put a question, but the Honourable Rai Bahadur Sri Narain Mahtha asked a simple question, "How many travelled without tickets ?"

THE HONOURABLE MR. P. N. SAPRU : I am just now asking, Sir, the comparative figures for the number of people who travelled and the number of people who travelled without tickets.

THE HONOURABLE MR. L. WILSON : Numbers detected per lakh of passengers travelling :—

1928	391
1933	591
1934	545
1935	571
1936	628
1937	593
1938	616

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Does it mean that the flying squad and travelling ticket examiners have not been able to effect any decrease in the number of ticketless travellers.

THE HONOURABLE MR. P. N. SAPRU : I take these figures as they are. According to the latest figure, the number of passengers who travelled by the Railways was—

THE HONOURABLE MR. L. WILSON : The number detected per lakh of passengers travelling in 1928 was 391 and in 1938 was 616.

THE HONOURABLE MR. P. N. SAPRU : I assume that one of the arguments of my Honourable friend Mr. Wilson will be that figures for undetected passengers are not available. Sir, how do we know in the first instance that there are undetected passengers? If the figures for undetected passengers are not available, how do we know in the first instance that there are undetected ticketless passengers?

The second point is this. Assuming that there are undetected ticketless passengers, then the proposition follows that the system of checking and issuing tickets of the Railway Administration is defective. That means that the staff employed by the Railway Administration for checking and issuing tickets are inadequate and incompetent, that supervision over the checking staff is defective and needs to be considerably improved and that the staff is not doing its duty properly. Well, you, Sir, have been pleased to ask me about my personal experience and I will tell you my experience.

THE HONOURABLE THE PRESIDENT : I say this, assuming all that you say is true, is that any reason for cheating the railway?

THE HONOURABLE MR. P. N. SAPRU : No, no. There is nothing which we hate more than cheating. But, Sir, if the public is to be expected to do its duty and if the Legislature is expected to do its duty by the railway administration, then the railway administration also must do its duty to the public and to the Legislature. Before you ask the Legislature for a change in the law you must show that you have perfected your machinery and that after so perfecting it you have come to the conclusion that some other method is necessary in order to check the evil. You want to modify the existing law. Therefore the burden of proving that a vital change in the existing law is needed is upon you. You have to convince us that the present law is inadequate to deal with the evil which exists, that you have tried other indirect methods which we are suggesting for dealing with this trouble and that those indirect methods have failed. After you have made out that case, certainly you will be in a better position to ask the Legislature to help you.

[Mr. P. N. Saprū.]

Sir, I will come now to another line of argument. Will the Bill meet the desired end? Will it stop ticketless travel, assuming that ticketless travel exists? You have heavy penalties for dacoities, for theft, for robbery, for murder, for forgery, for crimes of passion and violence, and what is our experience? Read the administration reports of various Provincial Governments. Has crime been on the increase or on the decrease in various parts of the country? I have been reading some of the administration reports of Provincial Governments and I can say this, that there has been a tendency in this country for crime to increase. Why is there this tendency for crime to increase? It has been increasing in Sind, in the North West Frontier Province; it has increased in the United Provinces; it has increased in other provinces.

THE HONOURABLE MR. L. WILSON: Unless the Honourable Member is suggesting that it is the fault of the Railways that crime has increased, I do not know what it has to do with this Bill.

THE HONOURABLE MR. P. N. SAPRŪ: The point I am making is this. The penal laws in this country are very severe. You have the maximum penalty for murder; you have a very severe penalty for dacoity, for robbery, and other crimes of passion and violence, and yet these crimes, in spite of these deterrent punishments have been on the increase. By merely converting a mild sentence of fine into a sentence of imprisonment you will not be able to deter people from travelling without tickets if they want to do so. Therefore my proposition is that the method suggested by you is no solution of the problem. By the method suggested by you, namely, as was pointed out by Mr. Mahtha by making imprisonment a substantive punishment you will not deter people who want to travel without tickets from doing so. You will not solve the problem of ticketless travel by that method. As a matter of fact the pauper will welcome that sentence. If he has nothing with which to pay what does it matter to him if he has to go to jail as His Majesty's guest for 15 to 30 days or even for three months? The cash penalty is in many cases a greater deterrent, and I would have preferred your raising of the maximum fine from one hundred to two or three hundred rupees. That might have proved to be a greater deterrent than the punishment of imprisonment. You may say that the change in section 112 does not mean that the magistrate must necessarily send the man to prison; but when you make a change in the law magistrates then take to considering the reason for the change; they think that probably the Legislature intends them to pass the severer sentence of imprisonment and therefore there will be a bias in the mind of the magistrate in favour of sending people to prison. Then, so far as the public revenue is concerned, it will not gain by this method. Therefore the point I wish to make is that this stiffening of the provisions regarding ticketless travelling will not solve the problem. Is it not a fact that even highly placed officers sometimes carry persons in their saloons without tickets? I will tell you an experience of my own. I am a very conscientious and honest man, I can assure the House, so far as the Railways are concerned, and I never care to cheat anybody. I will tell you this experience of mine without mentioning the name of the officer but he was a high railway officer. He and I were travelling together from a certain railway station. I had a return ticket but I arrived very late and I had not time to purchase my servant's ticket. I was rather worried about it but this officer said, "Don't you worry; it is all right; I am with you here". He and I were travelling in the same compartment and when I got down at Agra he spoke to the ticket collector and told him that my servant was his

man and to pass him out. Well, I did not want to put him in an awkward position, but it worried me a lot that I should be cheating the railway though it did not worry the officer at all. He said I could go without paying and I have never paid the railway for that poor servant of mine. Now, Sir, I can assure my friend Mr. Wilson that this gentleman was a highly placed railway official, and if he has such a comfortable conscience why blame the ordinary mendicant who has no conscience and no money. Therefore—I hope my friend the Honourable Mr. Wilson will not mind my speaking frankly—a higher standard is needed on the part of the officials and the railway servants also in this matter. Railway servants use the railways as if they were family concerns. Before I commit myself to this Bill, before I give my blessing to this Bill, I should like to see an improvement in the morale of the railway administration, of the railway staff, in this respect.

There is another consideration which weighs with me so far as this Bill is concerned. Facilities for the purchase of tickets are very bad in wayside stations. At small stations one person has to perform the duties of train receiving; he has to perform the duty of train despatching; he books luggage and parcels, he issues tickets and he collects tickets. In these small stations you have very few trains running. I think you have a train once in 12 or 14 hours. Men who come from the villages have to wait for hours before they can get tickets and those who come late often fail to get tickets as the babu is busy with other duties. What happens is this. A passenger has some urgent work; his mother is probably very seriously ill; his father is probably dying; his brother is involved in a criminal case and he must be in the High Court to look after his brother's case. Such urgent work the poor fellow has got. He cannot get hold of the babu. He cannot see the guard; the guard is invisible. Lighting arrangements at these small stations are very bad. He must somehow get to Allahabad, or to Sir Muhammad Yakub's place, Moradabad, by a certain time—

THE HONOURABLE SIR GIRJA SHANKAR BAJPAI (Leader of the House): I do submit, Sir, whatever the sence of humour of my Honourable friend speaking opposite might be, there is no justification for referring to any Honourable Member by name too often.

THE HONOURABLE MR. P. N. SAPRU: I was only referring to his place Moradabad. He has got to go there. He must take the risk and he gets into the train and then he is found travelling without a ticket; then the babu comes and bullys him because he has not paid for his fare. The poor man does not know any accounts. He cannot even read and write. The babu gives him some fanciful figure and he comes out with that fanciful figure and on the top of it he pays him a rupee or two because otherwise he thinks he would be put in prison. That is what happens every day in life. We have got to deal in this country with a vast illiterate population and as we have got to deal with staff upon whose character we cannot always implicitly rely, we have to be careful to see that people are not subjected to unnecessary humiliation.

Sir, I would like the House to consider the question from another aspect also. Personally I look upon the Railways as a public utility concern which ought not to be run strictly according to commercial principles; but that is not exactly the point of view of Government. Their view is that Railways ought to be run principally as a commercial concern. Now, Sir, we have got two competitors here; we have got the motor bus and we have got the railway, and often you find people going into a motor bus without paying for the motor bus. If you were to examine the figures of ticketless motor bus travel and

[Mr. P. N. Sapru.]

ticketless railway travellers, you would find that the number of men who travel without tickets on motor buses is greater than the number of men who travel without tickets on railway trains. You are not enacting a law similar to the law in regard to the Railways so far as motor buses are concerned. There are these two competitors, and in areas where you have this competition between railways and buses, I am not sure that the poor man will not hereafter prefer the bus to the railway. He will say, "I will be more safe with the bus, I will be able to save my *izzat* if I travel by the bus. I may or may not be able to purchase a ticket ; if I travel by the bus I shall be certain of not going to jail".

THE HONOURABLE THE PRESIDENT : The private individual must look after his own interest ; we must look after public revenues.

THE HONOURABLE MR. P. N. SAPRU : Therefore I prefaced my remarks by asking either you look upon the Railways as a public utility concern, in which case you must run them on a different principle altogether or you look upon them as a commercial concern. So far as I have been able to study the Government of India Act, I find that the justification for the statutory railway authority is that the framers of the Government of India Act intended the Railways to be treated as a commercial concern. Therefore the analogy which I have just ventured to suggest is a right analogy.

I will now come to the clauses of the Bill. After making these general observations, I will come, Sir, to the clauses of the Bill—

THE HONOURABLE SIR ANDREW CLOW : I suggest that the discussion of the clauses might be left over until the clauses are taken up.

THE HONOURABLE MR. P. N. SAPRU : I will indicate in a general way what the objections to some of the clauses are. To take, Sir, clause 2, a new sub-section is to be added here, namely :—

"A railway servant when granting the permission referred to in sub-section (1) shall ordinarily if empowered in this behalf by the railway administration grant to the passenger a certificate that the passenger has been permitted to travel in such carriage upon condition that he subsequently pays the fare payable for the distance to be travelled".

Now, Sir, I would like to ask the Honourable Sir Andrew Clow and the Honourable Mr. Wilson, what the word "ordinarily" means here? I think, Sir, that the word "ordinarily" gives far too much discretion to the railway servant. The granting of certificates should be compulsory. If a man goes and says : "Well, I am travelling here without any railway ticket and I am prepared to pay for the ticket", then the railway servant ought to have no discretion in the matter. Well, if you give discretion you give scope also for abuse of that discretion and I very much regret that the word "ordinarily" occurs here in this clause. It will enable the railway servant or railway employee to charge something before he issues the certificate. He will say : "Oh yes, I will give you the certificate, but . . . but . . . but . . ." and the "but" will mean that you must give him a tip of eight annas or a rupee or two rupees as the case may be before the certificate will be issued. Well, Sir, I do not want that kind of thing to be encouraged and I am very sorry that this word "ordinarily" occurs here. I think it is liable to great abuse. The Honourable Sir David Devadoss is a great authority here on legal matters and he will be able to say whether my interpretation of the word "ordinarily" is correct or not. My suggestion, therefore, Sir, is that the granting of certificates should be compulsory.

In section 3(b) we read—

“after the words ‘shall be punished’ the words ‘with imprisonment for a term which may extend to three months or’ shall be inserted”.

THE HONOURABLE THE PRESIDENT: You have not given any notice of amendment for the deletion of those words. So this is a useless discussion.

THE HONOURABLE MR. P. N. SAPRU: Very well, Sir. I am opposed, as I said before, to the imprisonment clause. I would not mind making the fine sentence a heavier one. If you think that Rs. 100 is too small, you could raise it to Rs. 200 or to Rs. 300, but I am opposed to the imprisonment clause. After all, the main consideration here is the public revenue and I do not see that you gain anything so far as public revenues are concerned by sending people to jail. As I said before, if I travel in a steamer and do not pay my fare, I do not go to jail, but if I travel by rail and do not purchase a ticket, I can go to jail. I do not see why there should be a distinction between a steamer and the railway and I do not see the distinction between a bus or lorry and a railway, and I therefore find myself unable to support the clause which gives authority to the magistrates to inflict a sentence of imprisonment straightaway.

Then, Sir, I do not also quite like this clause, clause 4, which seeks to amend section 113 of the Act—

“(3) The excess charge referred to in sub-section (1) and sub-section (2) shall be a sum equivalent to the amount otherwise payable under those sub-sections, or eight annas, whichever is greater :

Provided that where the passenger has immediately after incurring the charge and before being detected by a railway servant notified to the railway servant on duty with the train the fact of the charge having been incurred, the excess charge shall be one-sixth of the excess charge otherwise payable calculated to the nearest anna, or two annas, whichever is greater :

Provided further that if the passenger has with him a certificate granted under sub-section (2) of section 68, no excess charge shall be payable”.

But if I am travelling by a particular train and I happen to arrive late and I cannot get into communication with the guard or with the station master—it has happened with me myself—and I inform them at the next railway station that I happen to be travelling by this train and here is the money, I don't see any reason why I should be made to pay an extra sum which is in the nature of a penalty. I have not been able to discover the ethical justification, if I may use the term here, for this clause. You may say that I should have come earlier. But sometimes a man is not master of his circumstances. I leave my house. My motor car breaks down on the way. I arrive on the railway platform just about the time that the train is going to leave ; I cannot get a ticket and I am an honest man I go and tell the guard on duty or I go and tell the station master, whoever is the right person, at the next station : “ Look here, I am travelling without a ticket ; I could not purchase a ticket under these circumstances ”. It happened with me once. I was travelling from Allahabad to Calcutta. I arrived just two or three minutes before the train left. I could not get my ticket. As a matter of fact, my servant had taken the precaution of sending a telegram to the station master at Mirzapore. The station master said it was perfectly all right and he did not give me any trouble. But, Sir, unfortunately the average man in this country is not as intelligent as Members of this Council and if a situation like that arose, I do not know what the average man here in this country would do.

THE HONOURABLE MR. L. WILSON : Might I point out, Sir, that there is already in the existing Act a provision for an excess charge in such circumstances ?

THE HONOURABLE MR. P. N. SAPRU : I would like to say, Sir, that in the first place that is no ground for continuing it. In the second place, I think the charge has been increased. Under the existing Act, if I am not mistaken, you charge a rupee and two annas or something like that. But here you will charge a certain fixed proportion. And therefore the penalty hereafter will be greater.

Then, Sir, I do not like the clause about ejection also, although I think there has been some improvement in this clause. We know, Sir, that women and children in this country have often to travel under difficult circumstances. I know that the hours will be between 6 A.M. and 6 P.M. and they can only be ejected at a junction or terminal station or station at the headquarters of a civil district, but even so, Sir, I am not satisfied in my mind that inconvenience will not be caused to women and children by this clause. I am apprehensive, Sir, that other evils may creep in. Therefore, I do not feel happy over this clause either.

We hear a good deal about ticketless travel and so on. But we never hear about passes which are so freely given to railway servants who often prove a nuisance to *bona fide* travellers in railway compartments. If a railway servant uses a pass issued for his wife, not for his wife but for his mother or sister or cousin—and he is free to do any thing that he likes—

THE HONOURABLE MR. L. WILSON : Is this relevant, Sir ?

THE HONOURABLE THE PRESIDENT : This is not relevant. The Honourable Member is entitled to bring in a Bill, if he likes, for the removal of the grant of all these passes, and then to discuss the whole thing. But it is not relevant at this stage.

THE HONOURABLE MR. P. N. SAPRU : May I just explain, Sir, how this is relevant ? The object of the Bill, as I understand it, is to improve railway revenues. One of the measures by which railway revenues can be improved is by curtailing the number of passes that are issued to railway servants. That is how the issue is relevant and that is why I have ventured to comment on this practice.

Sir, the suggestion was made by my respected leader, the Honourable Rai Bahadur Lala Ram Saran Das, that we should have corridor trains in this country. I do not know whether it would be possible for us to have corridor trains immediately. But we can certainly make a move in that direction. If we have a better class of persons for our railway servants, if we pay them a little more adequately than we are doing, if we devise more effective methods of supervision and control, if we devise a better method of checking and re-checking tickets, and if we are not always so particular about the comforts of upper class passengers as we are today, I think we may be able to check this evil without the aid of any special law.

Sir, no particular case has been made out for this measure and therefore I feel that I cannot lend my support to it.

THE HONOURABLE SIR MUHAMMAD YAKUB (Nominated Non-Official) : Mr. President, I had no mind to intervene in this debate, but the

spoil child of my esteemed friend the Right Honourable Sir Tej Bahadur Sapru has provoked me to stand upon my legs. Sir—

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Is any Honourable Member entitled to abuse his brother Honourable Member like that?

THE HONOURABLE THE PRESIDENT: You exchange courtesies with him so often.

THE HONOURABLE MR. P. N. SAPRU: I enjoy the remarks of my Honourable friend!

THE HONOURABLE SIR MUHAMMAD YAKUB: I am making these remarks because you enjoy them. Sir, the other day, he called me a Rip van Winkle—

THE HONOURABLE MR. P. N. SAPRU: Because my friend was sleeping, therefore, I called him a Rip van Winkle.

THE HONOURABLE SIR MUHAMMAD YAKUB: I quite appreciate his remarks, because myself and his father belong to the same generation and probably have the same ideas, and—

THE HONOURABLE MR. P. N. SAPRU: No, no.

THE HONOURABLE SIR MUHAMMAD YAKUB:—I think that he looks upon him with the same contempt with which he looks upon me, and, therefore, I think he deserves the contempt which should befall a man like him.

Mr. President, I will now make a few observations about the Bill which is under discussion. It has already been proved that the menace and the mania, to travel without tickets, is increasing every day. Probably it is like the mania of purchasing cheap popularity by making irrelevant speeches in this House: I think that both these crimes come in the same category. Mr. President, it has been shown that the existing law relating to ticketless travel has not proved effective. The only objection that has been raised by several speakers against the present penalty clause is that deterrent punishments do not stop crime in the country. If that be true, then it follows that the whole of the Indian Penal Code should be repealed and there should be no penal law in the country. I do not think that any civilized society would approve of this idea. It has been said that in spite of deterrent sentences, crime is increasing in the country. I think, Sir, that this increase in crime is mostly due to the fact that our political agitators have made going to jail a passport for becoming a leader. The people who are sent to jail are garlanded, they are looked upon as patriots and leaders and therefore the stigma which was attached to going to jail has now been removed and the crime is increasing—

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Therefore you agree that the present measure will not be deterrent.

THE HONOURABLE THE PRESIDENT: Will you please set an example by not referring to irrelevant matters?

THE HONOURABLE SIR MUHAMMAD YAKUB: I am not referring to irrelevant matters, but I am giving a reply to the arguments which have been

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adduced from the other side. Therefore, I submit that if crime is increasing in the country, that is no reason why the punishment for ticketless travel should not be enhanced.

While I support this Bill, Sir, I also agree with my Honourable friends, who have spoken from the other side, that more stringent measures should be adopted to supervise the checking of the tickets and more facilities should be provided for the booking of passengers. I have myself seen that at small stations, particularly at night, when the train arrives, there is not a single soul on the platform to guide the passengers into trains or to show them where to go. Also, on account of, what we call economy or retrenchment, the number of the staff on the railways has been very much reduced and the booking clerks have some times to work for 24 hours, day and night, and it is impossible for them to keep awake the whole night. The result is that at small stations, where trains stop for only two or three minutes, the booking clerk is sleeping at his table, and when the train arrives, knocks are given at his table saying, "Wake up, wake up". He will not wake up, and when he wakes up, he cannot sometimes issue tickets to all the travellers who want to travel. Therefore I submit that while the railway authorities are making provision for giving enhanced punishment to ticketless travellers they should also see that proper arrangements are being made for checking of tickets. It also happens that some of the railway ticket checkers are religious minded and they consider it a sacred duty to allow mendicants and *fakirs* to travel without a ticket. I think the railway authorities should also keep an eye upon this matter. It is also a fact that sometimes the dependants of railway servants travel without tickets, particularly between small stations and between adjacent large towns. For instance, between Delhi and Ghaziabad the dependants of railway servants usually travel without tickets because the ticket collectors and checkers are their friends and nobody challenges them. These are all things of which note should be taken.

I think the best thing would be to introduce the system of having a conductor on every train. I have seen a conductor travelling on the B., B. & C. I. R. mail and he is very helpful to the passengers. I think that if there was a conductor on every train, instead of these travelling ticket checkers, he would be in a better position to stop travelling without tickets.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : A conductor is useful only for upper class passengers.

THE HONOURABLE SIR MUHAMMAD YAKUB : If a conductor is attached to every train he can help all classes of passengers at all stations where the train stops. With these remarks I lend my support to the Bill.

THE HONOURABLE MR. V. V. KALIKAR (Central Provinces : General) : Sir, I do not support the indulgence of free travel throughout the railway system. Nobody will support ticketless travel and I fully agree with Government that ticketless travel has to be checked. But I want to know how far the remedies proposed under this Bill will end this evil. My Honourable friend the Chief Commissioner for Railways has not made out a case for legislation of this character in which a civil liability has been changed into a criminal liability. My objection to this Bill is against this principle. If travel on steamers and buses without paying fares is a civil liability and not a criminal liability, how is it a criminal liability only on the railway? You can take

something by way of damages to recompense you for the trouble involved. I think that is the clear principle in the Railway Act as it stands in those sections where a fine is imposed on a ticketless traveller.

Sir, I do not want to take the time of the House by advancing irrelevant arguments, but I want to submit that, though the Legislature has power to change a civil liability into a criminal liability, they ought to be very careful to see whether there is sufficient necessity for the exercise of that power. Sir, there is no doubt that the number of passengers who travel without tickets is increasing, but the number of passengers as a whole is also increasing. I want the railways to put their own house in order first before coming to us with legislation of this kind. The grievances which have been ventilated by my friends in this House today are real and genuine grievances. If the railways would exercise more stringent control over their staff and also give greater facilities to passengers to purchase tickets, then I think this evil will to some extent disappear.

Then, Sir, I see from the Note of Dissent attached to the Bill that some members of the Select Committee of the other House wanted to discuss certain things with the representatives of the railways. In their Note of Dissent they say, "We wish we could have had a discussion with the representatives of the railway authorities as to the re-selling and re-using of tickets." I do not know why the railway representatives refused to discuss those points with them. If that discussion had taken place some agreement might have been reached and I think the Government would have found some way out of this difficulty.

Then, Sir, the third point that I want to bring to the notice of this House is about clause 112 sub-clauses (a) and (b). In both these sub-clauses the offence is treated on the same level. In the one clause the reference is to a passenger who enters a compartment and in the other to a passenger who uses a used ticket or pass. Both these offences are regarded by the railway authorities as constituting an equal offence, but there is a lot of difference between the two. In the latter case the man deliberately wants to cheat the railway by using a ticket which has already been used.

I submit, Sir, that instead of bringing forward legislation of this kind the proper way for the railways to proceed is to give more facilities to passengers for purchasing tickets and to put their own house in order.

THE HONOURABLE MR. L. WILSON : Sir, I have listened with considerable interest to the criticisms of the proposed Bill and
 1 P. M. I have taken note of the constructive criticisms which have fallen from the lips of Honourable Members. Most of what I have heard is destructive criticism of a kind which I cannot appreciate. The argument that deterrent punishments are no longer deterrent in this country I cannot believe. The fact that despite severe deterrent punishments crime is increasing does not, in my opinion, make this Bill any the less necessary. I would remind Honourable Members that it is not the railway or the railway servant who is given the power to impose imprisonment in place of fine. The power still remains, as it always has, with the magistrate, with the court. If the magistrate is not satisfied that the crime deserves imprisonment, he obviously will not impose imprisonment. One of the Honourable Members suggested that to put our house in order we might adopt corridor trains. Some years back we did decide to vestibule our third class carriages and all constructed since that date have been vestibuled. But on Class I Railways we have about 33,000 carriages and the life of a carriage is 30 years. So it will be some time before all such carriages are vestibuled. The object of vestibuling is, amongst other

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things, to enable the ticket checking staff to get through the train whilst it is in motion. It has been suggested that in no other country is imprisonment imposed for ticketless travel. This is not correct. Imprisonment is imposed in Ceylon, in Kenya, in the Federated Malay States, in South Africa and even in England. The Honourable Rai Bahadur Ram Saran Das suggested that there were more mendicant than other ticketless travellers. This is also not correct, as I have shown from the figures which I gave you in my opening remarks.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : My point was that these mendicants will welcome the change, because they will have no trouble.

THE HONOURABLE THE PRESIDENT : The Honourable Member cannot make another speech at this stage. Will the Honourable the Chief Commissioner please proceed ?

THE HONOURABLE MR. L. WILSON : Another argument I could not understand was that I have given no reason for putting the Bill before the House. Surely the very fact that in 1939-40 there were so many ticketless travellers is a reason for taking more stringent action and I have already, during one of the Honourable Member's speeches, referred to the increase in the number of passengers detected per lakh of passengers travelling from 391 to 616 in 10 years. I contend that that is an additional reason for bringing forward this measure. The Honourable Mr. Sapru, despite his criticism of the Railways and their method, was quite unable to give a case of reputable gentleman found without a ticket being punished by being taken to court and I hope that no such case will happen despite the amendment of the Act. It is not proposed that the court should be resorted to in any such case where an honest passenger is found travelling without a ticket and is prepared to pay at once or at a time more suitable to himself if he is without money at the time, if the passenger is able to satisfy the railway servant that he is giving a *bona fide* address and wishes to pay at a later date, he will not be dragged before the court, so that I feel that the fears which have been expressed are groundless.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : That should be embodied in this Bill.

THE HONOURABLE MR. L. WILSON : In my opening remarks, I did say that this problem cannot be solved by legislative enactment alone and nobody is more aware than I am that it is the duty of the railway to prevent ticketless travel as far as possible. Honourable Members all know the difficulties that are involved in tackling this question within the expenditure which can be afforded ; but nevertheless improvement is necessary and I trust improvement will year by year be obtained. One Honourable Member suggested that the word ordinarily had some sinister meaning. "A railway servant when granting the permission referred to in sub-section (1) shall ordinarily if empowered in this behalf by the railway administration . . ." The Honourable Member suggested that ordinarily meant he would not issue a certificate unless he received one or two rupees bribe. I do not put that interpretation on the term myself.

THE HONOURABLE MR. P. N. SAPRU : On a point of personal explanation, Sir, What I said was the word "ordinarily" gives a discretion to the

railway servant and that discretion might be used by the railway servant to extort some money before he issued a certificate.

THE HONOURABLE MR. L. WILSON : The word "ordinarily" in my opinion is necessary because it will not be possible in every case to give such a certificate. The train might be on the point of starting. That I think is quite sufficient to justify the inclusion of the word in this clause.

As regards the Honourable Mr. Kalikar's suggestion that methods to improve the checking of ticketless travellers should have been discussed with Members of the Legislative Assembly, I would say that it is proposed to put the administration of this Act on the agenda of the Central Advisory Council so that we may have a discussion which I trust will lead to better administrative measures being taken for preventing ticketless travel.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Discuss after passing the Bill ?

THE HONOURABLE MR. L. WILSON : After passing the Bill. With these words, Sir, I move.

THE HONOURABLE THE PRESIDENT : Do you wish to address the House, Sir Andrew Clow ?

THE HONOURABLE SIR ANDREW CLOW (Communications Member) : I did not intend to, Sir, but your invitation is difficult to resist.

I listened with some interest to a number of the speeches and also with a considerable amount of confusion. The main argument seemed to me that the Bill was not in the least going to be deterrent, but Honourable Members seemed extraordinarily apprehensive of its effects, which struck me as rather a contradiction. We were told that the very thought of a railway servant coming up to a man and saying, "You will be put in jail" would at once induce that man to bring out a substantial bribe, but on the other hand that he would not be deterred at least by the thought that he might go to jail. The two lines are not at all consistent. Some of the arguments, it struck me, might have been used for the reduction of an enormous number of penalties in the Penal Code, and the Honourable Mr. Sapru in particular seemed to be asking us for perfection. He insisted that we should perfect our system for checking tickets before we asked for fresh legislation. Well, nothing in this world is perfect, not even this Bill. If we wait until we are perfect, we shall never be able to approach this House on any subject whatever. He said this Bill would not solve the problem of ticketless travel. I quite agree. But it will help us a little nearer checking this manifest abuse.

Then he said that, if there are undetected ticketless travellers, that proves that you are completely inefficient, that your staff is corrupt, that your administration is bad, that your supervision is inadequate. Well, there are undetected crimes in other directions but is that given as a reason for failing to have a sufficiently stringent law or for failing to invest the authorities responsible for law and order with adequate powers? The Honourable Mr. Sapru suggested that an enhanced fine would be more deterrent than a sentence of imprisonment, though I think I detected in his speech an undertone of doubt on the point. But an enhanced fine would only have an influence on a man of means and he is not normally a ticketless traveller. The men who defraud the railway, such as the mendicant and the *sadhu*, about whom we heard so much,

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are not going to be deterred by the threat of an enhanced fine of Rs. 200 or Rs. 300 that they have no intention of paying. On the other hand, a very important change in the Bill is that imprisonment in default can be rigorous. All those magistrates who are specially concerned in this Act seem to agree that one of the great weaknesses of the present law is that the gentleman who has no money and who is travelling without a ticket can only be given a free rest in jail and cannot be required to do any work ; and although the Honourable the Leader of the Opposition seemed to think that even the prospect of working would not be much of a deterrent, I believe that with some of those whom we have in mind, who are not accustomed to contribute to the hard labour of the country, it may prove a quite adequate check on their activities.

I was not able to follow the argument of the Honourable the Leader of the Opposition as regards the diversion of passengers to the road, and the same argument was used by the Honourable Mr. Sapru. He seemed to be afraid that, if we made a demand for tickets, the ticketless travellers would rush into motor lorries and buses. In fact, I think he said his friends, rather than face the demand for tickets or the possibility of going to jail, would travel by private cars.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : What I said was that the beggars and mendicant would very much like to go to jail because they would get their food without any trouble and so the penal clause of imprisonment will no longer be deterrent upon the class of mendicants ; who comprise most of the ticketless travellers.

THE HONOURABLE SIR ANDREW CLOW : Yes, but I thought my Honourable friend also referred to certain higher class passengers who would prefer to travel by car rather than travel on the railways if this Bill is passed. Well, if they are honest persons, the Bill should not make the least difference to them. But if they do not want to pay us the fare, I am quite content that they should travel by car. In fact, I should prefer it.

In conclusion, Sir, there is a misapprehension on a point to which the Honourable the Leader of the Opposition referred in his speech. He said we were giving this matter a criminal shape. As the Chief Commissioner said earlier, we are not creating a new offence. We still maintain the distinction—not perhaps a very logical distinction—between the man who is attempting to defraud and the man who has forgotten to buy a ticket. It is not a distinction maintained in other countries but we have it here and we have agreed to maintain it. All that we are striving to do is to arrange that the punishment shall be a little more fitting to the crime. I would ask the House to consider whether three months' imprisonment as a penalty for the most aggravated type of offence—it may be a second or a third offence or it may be committed by a large body of men, as we occasionally find—whether three months for ticketless travelling involving a fraud on the community is such an excessive penalty.

THE HONOURABLE THE PRESIDENT : Motion made :

“ That the Bill further to amend the Indian Railways Act, 1890, as passed by the Legislative Assembly, be taken into consideration ”.

Question put and Motion adopted.

Clauses 2 to 5 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. L. WILSON : Sir, I move :—

“That the Bill, as passed by the Legislative Assembly, be passed.”

The Motion was adopted.

RESOLUTION *RE* PAYMENT OF COMPENSATION IN RESPECT OF WAR INJURIES, ETC., SUSTAINED BY INDIAN SEAMEN.

THE HONOURABLE MR. H. C. PRIOR (Labour Secretary) : Sir, I move :

“That this Council recommends to the Governor General in Council to take steps to establish schemes providing for the payment from Central Revenues of compensation in respect of war injuries and war damage to effects sustained during the period of the present emergency by masters and seamen employed on sea-going service on ships registered in British India under the Bombay Coasting Vessels Act, 1838, or under the Indian Registration of Ships Act, 1841”.

Sir, this Resolution refers to one class of Indian seamen. Indian seamen fall into two main classes. The first are those who go to sea in the larger ocean-going steamers. These steamers are all registered under the British Merchant Shipping Act of 1894. Some of them are borne on the British register and some on the Indian register, but all are registered under that Act. At the beginning of the war, His Majesty's Government introduced schemes to provide compensation for seamen serving on all such ships, and the Government of India have joined in those schemes so that all Indian seamen serving in ships registered under that Act (whether they are borne on the United Kingdom or the Indian register) are eligible for compensation under those schemes both in respect of war injuries and war damage to effects. Nothing further is required in regard to this class of seamen, and the House has already approved of the principle underlying that scheme by approving in 1939 a short Bill to amend the Workmen's Compensation Act so as to relieve employers from the obligation to provide compensation for war damage to such seamen.

It is to the second class of Indian seamen that my Resolution refers, that is, to that large body of men who serve in vessels registered under two Indian Acts—the Bombay Coasting Vessels Act and the Indian Registration of Ships Act. Registration under these Acts has only a limited application, but there are over 70,000 vessels registered under them,—small vessels, mostly fishing vessels or other sailing vessels of about 3 to 600 tons but yet employing a relatively large number of men. These vessels do not ordinarily go so far afield as the larger vessels and the risks from the war to Indian seamen serving on them are not as great as those which Indian seamen on ocean-going vessels have to face. But some risks there are, and it is equally necessary that Government should shoulder the responsibility of initiating schemes to provide compensation in respect of war injuries or war damage. Such war injuries or war damage have not yet occurred but it is well to be prepared, so that these Indian seamen may know that their interests will be as fully protected as those of their brother seamen on the larger ships.

It would have been possible for Government to have introduced by executive action schemes of compensation to this class of seamen relying on the Legislature to provide the necessary funds in the annual budgets. But, as such schemes of compensation involve a long term commitment, it is desirable that the Legislature should express its general approval of the proposal before the schemes are initiated. After such general approval has been given, details

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of the schemes will be worked out and the Standing Finance Committee consulted and that Committee will have full opportunity of considering the details of the schemes.

Today my Resolution only asks for the general approval of the House to the initiation by the Government of India of these schemes.

Sir, I move.

The Motion was adopted.

The Council then adjourned till Eleven of the Clock on Monday, the 17th March, 1941.
