

LEGISLATIVE ASSEMBLY DEBATES

MONDAY, 13th AUGUST, 1934

Vol. VII—No. 5

OFFICIAL REPORT



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SIMLA : PRINTED BY THE MANAGER
GOVERNMENT OF INDIA PRESS : 1934

Price Five Annas.

LEGISLATIVE ASSEMBLY.

Monday, 13th August, 1934.

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

MEMBER SWORN :

Lieut.-Colonel Arthur Friedrich Rawson Lumby, C.I.E., O.B.E., M.L.A. (Army Secretary).

QUESTIONS AND ANSWERS.

INSPECTION BY AN INCOME-TAX PAYER OF HIS ASSESSMENT RECORD.

515. *Khan Bahadur Haji Wajihuddin : (a) Will Government please state whether there is any provision in Income-tax Law or Rules providing for inspection by a tax-payer of his assessment record ?

(b) Do Government propose to take immediate steps to provide to the assessee the right of inspecting their records according to their requirements, just like the records of all revenue and civil cases ?

The Honourable Sir James Grigg : (a) and (b). I would refer the Honourable Member to the answer given in reply to Mr. Sitakanta Mahapatra's question No. 317 on the 31st July, 1934.

RE-EMPLOYMENT OF RETRENCHED PERSONNEL.

516. *Khan Bahadur Haji Wajihuddin : Will Government please state whether they are under any statutory obligations to provide the retrenched personnel with employment ? If so, what are the orders on the subject ?

The Honourable Sir James Grigg : Government are under no statutory obligation in the matter.

Maulvi Muhammad Shafee Daoodi : Is there no moral obligation ?

The Honourable Sir James Grigg : I had better have notice of that.

Dr. Ziauddin Ahmad : Is it not a fact that Government promised on the floor of the House that retrenched persons would be re-employed ?

The Honourable Sir James Grigg : I should require notice of that.

SUPERANNUATED OFFICERS UNDER THE RAILWAY ADMINISTRATIONS.

517. *Mr. K. P. Thampan : (a) Will Government be pleased to lay on the table a statement showing the number of superannuated officers in permanent and temporary employ under the various Railway Administrations ?

(1335)

(b) Do Government propose to take early steps to stop the continued employment of superannuated officers ? If not, why not ?

Mr. P. B. Rau : (a) So far as the State-managed Railways are concerned, there is only one officer employed on the Great Indian Peninsula Railway who has been allowed an extension beyond 55 for one year as a special case in the interests of the administration.

(b) State Railway officers, subject to the Fundamental Rules, are required to retire compulsorily at 55.

Mr. K. P. Thampan : Has the Honourable Member got the information about the Company-managed Railways ?

Mr. P. B. Rau : No, Sir.

Mr. K. P. Thampan : Will he kindly get it ?

Mr. P. B. Rau : The Government have no control over the staff of the Company-managed Railways.

**FREIGHT AGREEMENT BETWEEN THE TATA IRON AND STEEL COMPANY, LIMITED,
AND THE BENGAL NAGPUR RAILWAY.**

518. ***Mr. K. P. Thampan :** (a) Will Government be pleased to place on the table a copy of the terms of the new freight agreement between the Tata Iron and Steel Company, Limited, and the Bengal Nagpur Railway ?

(b) In what respect do they differ from the terms contained in the expired contract ?

(c) Did the Tata Iron and Steel Company, Limited, make any representations to Government, protesting against the enhanced rates ? If so, what action did Government take on those representations ?

Mr. P. B. Rau : (a) A formal agreement has not yet been entered into.

(b) I place a statement on the table giving the main features of the old and the new agreements.

(c) Yes. The question was primarily for negotiation between the Tata Iron and Steel Company and the Bengal Nagpur Railway, but Government took some part in these negotiations at different stages. The final result will be embodied in the fresh agreement which is to be entered into with the Company, the main terms of which are given in the statement I have just laid on the table.

Statement.

Under the old agreement, raw materials for the manufacture of iron and steel and finished products and bye-products of cooking ovens from Tatanagar to Calcutta intended for shipment were charged at a rate of one-fifteenth pie per maund per mile, and other articles at the minimum rates applicable, i.e., one-tenth pie per maund per mile for articles, shown in the Railways Classification in 1905, as special class, and one-sixth pie per maund per mile for articles, shown in the Classification, as 1st to 5th classes. These rates were subject to various conditions, the more important of which was that the minimum ton mileage on which freight had to be paid in any calendar year was 30 millions.

Under the revised arrangement the bases of the rates charged generally, are as follows:

(4), for coal, the same rates as are applicable for public coal;	
	Pie per maund per mile.
(ii) for iron ore, limestone and pig iron for export	0.12
(iii) for manganese pre	0.14
(iv) for manufactured products of the Coy., a telescopic scale as follows:	
for the first 299 miles	0.166
for additional distances from 300—499 miles ..	0.13
for additional distances beyond 499 miles ..	0.10

On these rates a rebate of 25 per cent. is given subject to certain conditions, the more important of which is that the minimum ton mileage on which freight has to be paid, in any calendar year is 300 millions.

Mr. H. P. Thampan : Arising out of the answer to part (c), may I know whether the Government are satisfied that the Bengal Nagpur Railway was justified in increasing their rate of freight ?

Mr. P. R. Rau : I think I have already told the House that the agreement was finally entered into with the approval of the Government.

Mr. B. Das : Is it a fact the Tatas will be paying nearly 40 lakhs more to the Bengal Nagpur Railway and East Indian Railway by this new arrangement ?

Mr. P. R. Rau : The figure of 40 lakhs is not correct. I think it has been variously estimated at about 22 to 27 lakhs.

Dr. Ziauddin Ahmad : Is the question of the fixation of rates left to private arrangements between the Tatas and the railway company or is it done by the Railway Board ? Where do the Government of India come in ?

Mr. P. R. Rau : The Government of India have laid down maximum and minimum fares.

Dr. Ziauddin Ahmad : What are the limits of the maximum and minimum ? How many times is the maximum greater than the minimum ?

Mr. P. R. Rau : I am afraid I must ask for notice of that question.

Mr. H. P. Thampan : What was the reason advanced by the railway company for enhancing the rate ?

Mr. P. R. Rau : The reason was that under the old rates the traffic was not carried at remunerative rates.

Dr. Ziauddin Ahmad : Is it not a fact that the maximum and the minimum are so wide apart that, as Mr. Mudaliar said once, even an elephant can pass through ?

Mr. P. R. Rau : It all depends upon the size of the elephant.
(Laughter.)

Maulvi Muhammad Shafee Daoodi : Do the Government realise that this arrangement of freights between the Tatas and the railways has deprived the people of Bihar and Orissa from carrying on business in pig iron in their own land, because they do not get the advantage of the railway freight for themselves ?

Mr. P. B. Rau : I am sorry I did not follow the question.

Maulvi Muhammad Shafee Daoodi : The point is, this, that the people of Bihar and Orissa, where the Tata Company is situated, are not getting advantage of the raw materials produced by the Tatas because of the railway concessions given to the Tatas for long distance places ?

Mr. P. B. Rau : Am I correct in understanding my Honourable friend as protesting against the low freights given to the Tatas ?

Maulvi Muhammad Shafee Daoodi : The freight disadvantage concession given to Tatas is detrimental to the people of Bihar and Orissa.

Mr. P. B. Rau : Then my Honourable friend will be satisfied now as the rates have been increased ?

Maulvi Muhammad Shafee Daoodi : I would like to put it this way, that though the raw materials are produced in Bihar and Orissa, yet the people there are deprived of the advantages of the Tatas being in their midst, because the freights for short distances are much more than for long distances.

Mr. Gaya Prasad Singh : May I know whether the question of freights does not come within the purview of the Railway Rates Advisory Committee, and was this question referred to that Committee for opinion ?

Mr. P. B. Rau : The Railway Rates Advisory Committee takes cognizance only of questions that are referred to it, and the ordinary procedure is that any person who feels aggrieved at any rates refers the matter to the Railway Board for reference to the Railway Rates Advisory Committee.

Mr. Gaya Prasad Singh : Do I understand that it is open to private individuals to refer any particular question to the Railway Rates Advisory Committee ?

Mr. P. B. Rau : Through the Railway Board, yes.

Dr. Ziauddin Ahmad : Does the Railway Board, on its own initiative, refer any matter to this Committee ?

Mr. P. B. Rau : I do not think they have done it so far.

Dr. Ziauddin Ahmad : Is it within their purview to do it ?

Mr. P. B. Rau : It has not yet been considered.

Dr. Ziauddin Ahmad : Will the Government refer the case of this arbitration between the Tatas and the railway authorities to the Railway Rates Advisory Committee ?

Mr. P. B. Rau : Government do not consider there is any necessity for it.

Mr. Gaya Prasad Singh : What is the use of such a costly paraphernalia as Railway Rates Advisory Committee if important questions are not referred to them ?

Mr. P. R. Rau : This question has been settled in agreement between the Tata Iron and Steel Company and the railway company with the approval of the Government, and the Government do not consider there is any necessity to refer the matter to the Railway Rates Advisory Committee.

Dr. Ziauddin Ahmad : In view of the fact that the tax-payers are also interested in this arrangement, is it not desirable that the arrangement entered into between the Tatas and the railway companies should be referred to the Railway Rates Advisory Committee to see whether the arrangement is a reasonable one ?

Mr. P. R. Rau : The Railway Board are satisfied that the arrangement is a reasonable one.

Dr. Ziauddin Ahmad : The Railway Board have not yet examined the agreement between the railway companies and the Tatas, and how can they say they are satisfied ?

Mr. P. R. Rau : Unless the Government of India had been satisfied, they would not have approved of the agreement.

SUITS FILED BY THE EMPLOYEES OF THE MADRAS AND SOUTHERN MAHRATTA RAILWAY AGAINST THE ADMINISTRATION.

519. ***Mr. K. P. Thampan :** (a) Will Government be pleased to state how many suits, filed by employees of the Madras and Southern Mahratta Railway against the Administration, are now pending in the Madras High Court and the City Civil Court ?

(b) What is the total expenditure, including lawyers' fees, incurred on account of these suits up to now ?

(c) What is the total expenditure incurred in the suit filed by Mr. Campbell against the Madras and Southern Mahratta Railway ?

(d) What is the amount of the costs and damages paid to the plaintiff in Mr. Campbell's case ?

(e) Was the opinion of Messrs. King and Partridge, solicitors, taken before the suit of Mr. Campbell was contested ?

Mr. P. R. Rau : (a) The Agent, Madras and Southern Mahratta Railway, has reported that seven suits, of which five are *in forma pauperis*, have been filed by *ex-employees* and are pending in High Court. Two of these have been filed by the same plaintiff who has also filed a suit in the Civil Court. No other suits are pending in the Civil Court.

(b) Government are informed that no accounts have yet been received by the Administration.

(c) Rs. 12,462-4-0.

(d) Costs amounted to Rs. 5,483-12-0. This has been included in the figure given in reply to (c) of this question.

Damages decreed for amount to Rs. 7,857 but have not yet been paid.

(e) The reply is in the affirmative.

PROTECTION OF COCOANUTS AGAINST CEYLON COMPETITION.

520. ***Mr. K. P. Thampan** : (a) Will Government be pleased to state whether they have received from the cocoanut growers' association of Cochin a memorial for protection against Ceylon competition ?

(b) If the reply to part (a) be in the affirmative, what action have Government taken on that memorial ?

The Honourable Sir Joseph Bhoré : (a) Yes, Sir.

(b) The matter is receiving the consideration of Government.

Mr. K. P. Thampan : Is it a fact that Ceylon has not yet ratified the Ottawa Agreement and that, therefore, there is no necessity to extend those privileges to that country ?

The Honourable Sir Joseph Bhoré : Oh, yes : Ceylon is honouring the Ottawa Pact in respect of a large number of items.

Mr. K. P. Thampan : Has she fully ratified the Ottawa Agreement ?

The Honourable Sir Joseph Bhoré : Not entirely, Sir.

Mr. K. P. Thampan : Then, is it obligatory on us to give effect to the agreement in its entirety ?

The Honourable Sir Joseph Bhoré : I think so, Sir, because if we take action without information to do away with this preference, Ceylon might very well refuse to give effect to those preferences which she is already giving effect to.

Mr. K. P. Thampan : Is the Honourable Member aware that on account of the reduction of the tariff value of cocoanuts and cocoanut products, the cocoanut growers are subject to additional hardship ?

The Honourable Sir Joseph Bhoré : I must have notice of that question.

Diwan Bahadur A. Ramaswami Mudaliar : Is it a fact that Ceylon has imposed new duties on vegetables, on ghee and on eggs imported into that country from India, and that these duties have actually come into force from the 27th of last month ?

The Honourable Sir Joseph Bhoré : That is so, and we have already made representations to the Ceylon Government.

Mr. B. Sitaramaraju : What was the reason for Ceylon not accepting the other parts of the Agreement ?

The Honourable Sir Joseph Bhoré : I think the main reason was that the acceptance of all the items would mean an increase of cost to the consumer which Ceylon was not prepared to face in all the circumstances.

Mr. B. Sitaramaraju : Were they not aware at that time that the consumers would be affected ? What new circumstances have since arisen ?

The Honourable Sir Joseph Bhoré : My Honourable friend seems to have overlooked the fact that when the original Agreement was come to, the Ceylon Legislature had not had an opportunity of expressing its opinion in the matter.

Diwan Bahadur A. Ramaswami Mudaliar : With reference to the statement of my Honourable friend that representations have been made, may I know whether these representations were made when the duties were proposed or after they have actually come into existence ?

The Honourable Sir Joseph Bhoze : We had no information as regards the proposal to impose these duties. We only became aware of them after they had been passed by the Ceylon Legislature.

REPORT OF THE SPECIAL OFFICER DEPUTED TO INVESTIGATE THE CONDITION OF THE COCOANUT INDUSTRY.

521. ***Mr. K. P. Thampan :** Will Government be pleased to state when they propose to release the Report of the Special Officer, Dr. Patel, who was deputed to investigate the condition of the cocoanut industry in India ?

Mr. G. S. Bajpai : Subject to the approval of the Advisory Board of the Imperial Council of Agricultural Research, the report will be published soon after its meeting on the 3rd September.

Mr. B. Das : Why not make a copy of that report available to the Commerce Member ?

Mr. G. S. Bajpai : The report at the present moment is only in proof form, but, as soon as it is finally printed up, we shall send copies to the Commerce Department.

Mr. B. Das : Why not make the tentative proposals available to the Commerce Department, so that they may start taking action ?

Mr. G. S. Bajpai : For the simple reason that the Commerce Department would expect to have the views of the Advisory Board of the Imperial Council of Agricultural Research before them before they can form any views of their own.

Mr. K. P. Thampan : May I know when Dr. Patel submitted his report ?

Mr. G. S. Bajpai : The report was submitted in March, 1934.

Mr. K. P. Thampan : Then, why was there such inordinate delay in considering this matter ?

Mr. G. S. Bajpai : I do not think there has been an inordinate delay. I have the dates before me here. The report was submitted in March, then it was checked by the Imperial Council of Agricultural Research and sent to the press in April. The first proof was received in May, the second in June, and the third in July.

Dr. Ziauddin Ahmad : May I ask, how many more proofs are to follow ?

Mr. G. S. Bajpai : I think the third is the last.

Mr. K. P. Thampan : May I know whether Government will give us an opportunity to discuss this report before this Assembly is dispersed ?

Mr. G. S. Bajpai : I was under the impression, Sir, that Honourable Members are anxious to go away before the end of this month, and the Advisory Board does not meet till September.

APPOINTMENT OF INDIANS AS MEMBERS OF THE RAILWAY BOARD,

522. *Mr. A. H. Ghuznavi : (a) Are Government aware of the feelings of resentment expressed by this House off and on against them for not appointing Indians as Members of the Railway Board ?

(b) Are Government aware that one of the main arguments adduced by them in this House on various occasions against the appointment of Indians to the posts of Members of the Railway Board was that no senior Indian officer holding sufficiently higher rank amongst the officers of the Railways, was available in the past for being promoted to the post of a Member of the Railway Board ?

(c) Is it a fact that in pursuance of such persistent demand from this House and the public outside, assurances were given from time to time in the past by Government that Indians would be appointed as Members of the Railway Board as soon as suitable Indian officers, holding higher appointments in the different Railways, would be available ?

(d) Is it a fact that to meet the wishes of this House, Government appointed an Indian, Mr. P. R. Rau, as Financial Commissioner of Railways ?

(e) Is it a fact that to meet the wishes of this House, Mr. Hayman was appointed by Government as Labour Member of the Railway Board ?

(f) Is it a fact that Government at the time of appointing Mr. Hayman declared him to be an Indian ?

(g) Is it a fact that the appointments of Indian Financial Commissioner and Indian Labour Member of the Railway Board were made in the past as part of the general programme of Indianisation of the higher Railway services like all other services ?

(h) Is it a fact that there was a vacancy recently on the Railway Board, *vice* Mr. Colvins, retired ? Is it a fact that a European has been appointed in that vacancy instead of an Indian, and that the result is that not a single member of the Railway Board at present is an Indian ?

(i) Will Government be pleased to state the reasons for retracing their steps from the declared policy of Indianisation of the Memberships of the Board ?

(j) Are Government aware of their assurances to this House, given at the time when Mr. Hayman was appointed, that one of the appointments on the Railway Board was being reserved for Indians ?

(k) Is it a fact that when Mr. Hayman retired before his term, Mr. Colvin was brought to fill up the temporary vacancy thus caused ? If so, why have Government not appointed an Indian in the vacancy caused by the retirement of Mr. Colvin ?

The Honourable Sir Joseph Bhoré : (a), (b) and (c). As I explained recently, in reply to a similar question by Mr. Bhuput Sing, Government are aware that opinions have been expressed during the discussion of the Railway Budget on various occasions, in favour of the appointment of Indians as Members of the Railway Board, but Government have more than once explained that these appointments must be filled by selection of the most suitable candidates irrespective of nationality.

(d), (e) and (g). These appointments were made by Government, as all other similar appointments, on considerations of suitability and after taking into account all relevant factors.

(f) Mr. Hayman was a statutory Indian. He was not declared as such by Government at the time of appointment.

(h) Mr. Colvin will retire in November and will be replaced by Mr. Tylden Pattenson. The result will not be that not a single Member of the Railway Board will be an Indian. The present Financial Commissioner is an Indian.

(i) The present appointment involves no departure whatsoever from the consistent policy of Government.

(j) I have not been able to discover that any assurance of this sort was given at the time the appointment was made. On the other hand, Sir George Rainy definitely stated at the time as follows :

“ I fully understand the view expressed, not only by my Honourable friend, Mr. Jayakar, but by other Members, and the ardent desire which the Honourable Members opposite have to see their own countrymen appointed to the existing Membership of the Railway Board. I respect that desire, but at the same time I want to see them appointed on their merits.”

(k) It is a fact that Mr. Colvin was appointed to succeed Mr. Hayman, but the vacancy was not temporary in any sense.

Maulvi Sayyid Murtuza Saheb Bahadur : May I know if the Financial Commissioner is one of the Members of the Railway Board ?

The Honourable Sir Joseph Bore : Most certainly, Sir.

Maulvi Sayyid Murtuza Saheb Bahadur : Has he got the right of voting in matters connected with the Railway Board ?

The Honourable Sir Joseph Bore : Votes are not taken, but he has as much right to express his views as other Members of the Railway Board.

Mr. S. C. Mitra : Will the Honourable Member tell this House what advance has been made since the declaration made by Sir George Rainy on the 23rd February, 1929, as regards further Indianisation of the Railway Board. Sir George expressed his desire that in future the question of further Indianisation would not be lost sight of.

The Honourable Sir Joseph Bore : It may be helpful, Sir, if I once for all explain our position in this matter. We cannot possibly make appointments to selection posts on grounds of race or community. If we once did so, we should entirely destroy the morale and the efficiency of the services. But other things being equal, we may be fully justified in taking racial and communal considerations into account. I hope, Sir, that that statement of the case will explain the position of Government quite clearly.

Mr. Gaya Prasad Singh : May I know if racial and communal considerations will weigh with Government in making appointments to other Departments of the public service ?

The Honourable Sir Joseph Bore : I am not in a position to speak about other Departments ; I am only speaking of my own Department.

Mr. Gaya Prasad Singh : So far as the Railway Department is concerned, may I take it that it is the definite policy of Government to appoint persons on merit only without reference to any racial or communal considerations or preferences ?

The Honourable Sir Joseph Bhoré : My Honourable friend has not done me the honour of listening to my reply. My reply had reference to selection posts, and I said that so far as appointments to selection posts were concerned, they were made on the basis of merit.

Mr. B. Das : Have Government given facilities to Indian officials to occupy posts of Agents and Deputy Agents of Railways, so that they can come into selection posts in the Railway Board ?

The Honourable Sir Joseph Bhoré : I do not know what my Honourable friend means by facilities. They have a right to be appointed if they are fit and suitable for the posts.

Mr. B. Das : Do I take it that no Indian is fit to be made an Agent or Deputy Agent of Railways ?

The Honourable Sir Joseph Bhoré : I cannot justify the making of any such deductions.

Mr. K. C. Neogy : Is the Honourable Member in a position to give us an idea as to the number of Indian officers who have been superseded in point of seniority by the latest selection ?

The Honourable Sir Joseph Bhoré : I shall have to ask for notice of that question, but I think the next question deals with that to some extent.

Mr. S. G. Jog : Is there any probability in the near future of any Indian being taken in the Railway Board ?

The Honourable Sir Joseph Bhoré : I am afraid I cannot possibly give my Honourable friend a reply to that.

Dr. Ziauddin Ahmad : Is it the intention of Government to increase the number of Members of the Railway Board on which, besides the Chief Commissioner and the Financial Commissioner, there is only one ?

The Honourable Sir Joseph Bhoré : That I am not in a position to say.

Mr. M. Maswood Ahmad : Is it a fact that the Members of the Railway Board are taken from amongst the Agents and Deputy Agents ?

The Honourable Sir Joseph Bhoré : My Honourable friend must refer to the answer which I have already given to Mr. Bhuput Singh's question the other day on that point.

APPOINTMENT OF INDIANS AS MEMBERS OF THE RAILWAY BOARD.

523. ***Mr. A. H. Ghuznavi :** (a) Will Government be pleased to state the number of Indians holding posts of heads of Railways or as heads of different branches of the Railway administration ?

(b) Are Government aware that the appointment of Europeans superseding senior Indian officers, holding very high posts in the different Railways, is being construed by such officers as their condemnation ?

(c) Will Government be pleased to state whether they have condemned such senior Indian officers? If not, what are the reasons for such condemnation of Indian officers?

(f) If they have not been condemned, will Government be pleased to state the reasons why their claims for appointment as Members of the Railway Board have been overlooked by Government?

The Honourable Sir Joseph Bhoré : (a) The number of Indians, holding posts of Heads of Railways or as Heads of different branches of Railway administrations on the State-managed Railways, is five, namely, one Agent, two Chief Accounts Officers and two Chief Medical Officers.

(b), (c) and (d). These questions cannot possibly be answered without reference to individual officers and Government consider it highly inexpedient to discuss the merits and qualifications of individual officers on the floor of the House.

REDUCTION OF THIRD CLASS FARES ON THE EASTERN BENGAL RAILWAY.

524. ***Mr. A. H. Ghuznavi :** (a) Is it a fact that in 1931, the third class Railway fare on the Eastern Bengal Railway, was increased by one pie for distance between 151—300 miles, and by half a pie on 301 miles and over?

(b) Is it a fact that this increase in the third class fare was introduced owing to the unprecedented fall in Railway earnings?

(c) Is it a fact that the Eastern Bengal Railway earnings have increased by about nine per cent. between the 1st April, and the 16th June, 1934, as compared with the earnings of the same period last year?

(d) Is it a fact that the third class Railway fare has already been reduced on the North Western Railway?

(e) Are Government aware that the third class passengers on the Eastern-Bengal Railway are generally the poorer classes of East Bengal?

(f) Do Government propose to reduce the increased rates of third class fares introduced in 1931? If so, when? If not, why not?

Mr. P. R. Rau : (a) and (b). Yes.

(c) No. The increase in the gross earnings has been a little less than one per cent. My Honourable friend has apparently moved the decimal point one place to the right.

(d) Yes, as an experimental measure, for a period of twelve months, in an attempt to ascertain whether a reduction of fares will stimulate traffic to such an extent as to result in increased net earnings.

(e) I agree with my Honourable friend, but this is not a phenomenon peculiar to the Eastern Bengal Railway.

(f) Government propose to await the results of the experiment on the North Western Railway, before considering whether a general reduction of third class fares is feasible. But I may inform my Honourable friend that it is proposed to start, as an experimental measure, the issue of third class return tickets at 1-2/3 fares on the Eastern Bengal Railway, in a similar attempt to see how far passenger traffic responds to this stimulus.

Mr. Bhuput Sing : Do Government propose to introduce the same facilities for third class passengers on the East Indian Railway ?

Mr. P. R. Rau : No. We are introducing it as an experimental measure on the Eastern Bengal Railway.

Mr. M. Maswood Ahmad : Are Government prepared to introduce this as an experimental measure on the East Indian Railway also ?

Mr. P. R. Rau : No. Government prefer to await the results on the Eastern Bengal Railway before extending it to other railways.

ACQUISITION OF LANDS FOR THE RAILWAYS.

525. ***Mr. A. H. Ghuznavi :** (a) Will Government be pleased to state the conditions on which they acquired lands from private owners and handed over the same to the Railways in India as they were opened ?

(b) Is it a fact that there is always a condition imposed by Government on the Railway authorities to the effect that all surplus lands not required by the Railways would be returned to the owners from whom they were taken ?

(c) Is it a fact that there was a stipulation to the effect that the terms on which the lands are to be restored to private owners by the Railways should be acceptable to both the Railways and the private owners ?

(d) Is it a fact that lands acquired by Government on both sides of certain sections of the Assam-Bengal Railway have been restored to the cultivators and agriculturists ?

(e) Are Government aware that the vast stretches of fertile land, on both sides of the Railway lines in Bengal, have been acquired by Government for Railways, and that they have been lying as waste lands inside the Railway fencings ?

(f) Will Government be pleased to state the reasons for wasting so much of fertile and arable land in Bengal ? Are Government aware that there is very great demand for such land for cultivation and other productive purposes ?

(g) Do Government propose to sell off these waste lands to private persons or corporate bodies for agricultural and dwelling house purposes ? If not, why not ?

Mr. P. R. Rau : (a) Land for railway purposes is acquired under the provisions of the Land Acquisition Act, 1894, and in accordance with the " Revised rules relating to the Acquisition of Land for Railway Purposes, 1918 ", copies of which are available in the Library of the House.

The conditions, on which land is handed over to Railway Companies, are given in the contracts entered into with those Companies, copies of which are also available in the Library of the House. Briefly the position is, that in most cases land has been provided free of cost to the Companies, while in some cases it has been provided at the cost of capital. The contracts generally provide for the relinquishment of such lands as may become surplus to requirements. In the event of the contracts being determined, and the railways taken over by Government,

the land is received back by Government along with the other assets of the Railway.

(b) The Rules, referred to above, provide that all lands surplus to requirements should, wherever possible, be surrendered, and that in the case of *agricultural or pastoral land*, all proprietary rights and all rights of occupancy, which were extinguished by the acquisition, should be first offered to the persons from whom they were acquired or to their heirs if discoverable.

(c) The Rules also provide that the price at which these rights are offered should be the amount of compensation originally paid for them, less 15 per cent. in excess of the value which will have been paid if the acquisition was compulsory. This price may be reduced, if necessary, on account of any deterioration that may have taken place in the fitness of the land for agricultural or pastoral purposes, while it was in the occupation of Government, but it should not ordinarily be increased on account of any rise in its market value during that period.

(d) I am making enquiries from the Railway Administration and shall lay a reply on the table in due course.

(e) No.

(f) and (g). I would invite the attention of the Honourable Member to the reply to starred question No. 1501 put in the House on the 22nd December, 1933, by Mr. Nabakumar Singh Dudhoria.

Mr. S. G. Jog : May I know whether the Pope Committee made any recommendations as regards waste lands near-about railways ?

Mr. P. R. Rau : Yes. A reference to that will be found in the reply to starred question No. 1501, that I have just referred to.

PROPOSALS TO SUPPLEMENT THE OTTAWA AGREEMENT RELATING TO INDIAN PROTECTIVE DUTIES.

526. ***Mr. K. P. Thampan :** Will Government be pleased to state :

- (a) whether their attention has been drawn to a Reuter's message, dated July, 27, London, about the announcement made in the House of Commons, by Lieut.-Colonel John Colville, regarding the opening of certain negotiations to bring the Indian Protective Duties within the Ottawa agreements ;
- (b) what were the negotiations referred to in it as having taken place early in the year ;
- (c) whether the preference given to British and other Empire countries under the Ottawa agreements was not distinctly subject to the fiscal and revenue requirements of India ; and if so, what these negotiations mean ; and
- (d) when they will place these proposals before the Indian Legislature for their ratification ?

The Honourable Sir Joseph Bhoré : (a) Yes, Sir.

(b) and (c). The negotiations referred to are the outcome of the visit of the United Kingdom Textile Delegation to India, and in this connection, I would refer the Honourable Member to paragraphs 3 and 4

of my letter, dated the 25th October, 1933, to Sir William Clark-Lees, Chairman of the United Kingdom Textile Delegation, copies of which are in the Library.

(d) The negotiations are in progress and no question of ratification arises at this stage.

Mr. B. Das : Has not the problem arisen in connection with the Indo-British Trade agreement which the Secretary of State announced in the House of Commons last March ?

The Honourable Sir Joseph Bhowe : I do not quite follow my Honourable friend : this is undoubtedly an agreement contemplated between this Government and the Government of the United Kingdom.

Mr. B. Das : Do I take it that it will only refer to the Indian textile industry or to all industries ?

The Honourable Sir Joseph Bhowe : It will refer, I think, to certain general principles which will be equally applicable to the cotton textile industry as to other industries.

Mr. B. Das : May I inquire at what stage these negotiations stand at present ?

The Honourable Sir Joseph Bhowe : At the stage of negotiations. (Laughter.)

Mr. B. Das : How long will it take to materialise and when will the Honourable Member be able to place the report on the table of the House ?

The Honourable Sir Joseph Bhowe : That is a matter upon which I can express no view at the present moment ; but certainly as soon as an agreement is arrived at, it will be placed before the House for its consideration ?

Diwan Bahadur A. Ramaswami Mudaliar : Are any Indian commercial bodies being consulted during this stage of these negotiations ?

The Honourable Sir Joseph Bhowe : No commercial interests have been consulted.

Diwan Bahadur A. Ramaswami Mudaliar : May I take it that at some stage before the negotiations are completed, commercial interests—and I am referring to Indian commercial interests—will be consulted ?

The Honourable Sir Joseph Bhowe : I am not in a position to bind myself in regard to that. But I have no doubt that Government have an opportunity of knowing what the views of the commercial interests in this country are on the various questions that are under discussion.

Diwan Bahadur A. Ramaswami Mudaliar : Before they have made up their mind or come to an agreement ?

The Honourable Sir Joseph Bhowe : I said that I have no doubt that Government will be in a position to appreciate and know what the views of the commercial community are in regard to the various questions under discussion.

Mr. K. P. Thampai : Will they do it before they decide the question ?

The Honourable Sir Joseph Bhowe : I am not in a position to give any assurance on that point.

Mr. K. P. Thampan : May I know whether it was, as a result of these negotiations, that the Government decided to drop even the revenue duty in regard to steel products ?

The Honourable Sir Joseph Bhowe : It has absolutely nothing to do with it.

Diwan Bahadur A. Ramaswami Mudaliar : It has been restored.

Mr. K. P. Thampan : By whom ? I ask the question whether it was, as a result of these negotiations, that the Government have decided to drop the revenue duty on steel in the Steel Protection Bill, as introduced by the Government in the Assembly ?

The Honourable Sir Joseph Bhowe : My Honourable friend is a little mixed with regard to details, but I have already answered the question, that the two have absolutely no connection with each other.

Mr. S. C. Mitra : Is the Honourable Member in a position to give some idea as to the means by which he intends to consult commercial opinion ?

The Honourable Sir Joseph Bhowe : I never said that I was going to consult commercial opinion ; I merely said that I have no doubt that I shall be in a position to know what the views of the commercial community are in such matters.

Mr. S. C. Mitra : Are we to take it that you are always in a position to know commercial views and when there is no necessity to consult commercial opinion ?

The Honourable Sir Joseph Bhowe : Commercial opinion has expressed itself on more than one occasion in regard to matters connected with these negotiations.

Mr. B. Das : May I know who represents the Government of India in this matter of negotiations with the British Government ? Is it the Secretary of State or has anybody been deputed by the Government of India to London ?

The Honourable Sir Joseph Bhowe : Nobody has been deputed : the negotiations are carried on between the Government of India and His Majesty's Government through the Secretary of State.

Mr. B. Das : There is no direct negotiation across the table ?

The Honourable Sir Joseph Bhowe : Direct negotiations, but over the telegraph wires. (Laughter.)

ENROLMENTS IN THE INDIAN ARMY CORPS OF CLERKS.

527. ***Maulvi Sayyid Murtaza Sahab Bahadur :** (a) Will Government please state whether the candidates who were successful at the Ministerial Service Examination of 1932, were at the time of announcement of the said examination given to understand by the Public Service Commission that they will be required to enrol themselves for a period of ten years under the India Army Act ?

(b) Will Government please state if the said successful candidates were warned of their enrolment under India Army Act by the Public Ser-

vice Commission at the time they were offered the appointments in the offices of the Army and Royal Air Force Headquarters ?

(c) Will Government please inform this House what justification they have for forcing these candidates to enrol and for issuing such a letter after a period of about eight months after their appointments ?

Lieut.-Colonel A. F. R. Lumby : (a) No, Sir.

(b) and (c). The attention of the Honourable Member is drawn to reply given in the Legislative Assembly on the 2nd March, 1934, to Mr. Uppi Saheb Bahadur's starred question No. 304.

ENROLMENTS IN THE INDIAN ARMY CORPS OF CLERKS.

528. ***Maulvi Sayyid Murtuza Saheb Bahadur :** (a) Will Government please state the privileges attached to the personnel that is proposed to be enrolled in the Indian Army Corps of Clerks, and the hardships involved by the enforcement of the Indian Army Act ?

(b) Will Government please inform this House whether the said successful candidates, even after enrolment under the India Army Act, will be allowed to appear at higher competitive examinations, e.g., I.C.S., I.A. and A. S., P.C.S., etc. ?

(c) If the answer to part (b) be in the negative, will Government please state whether the civilian un-enrolled personnel in the Army and Royal Air Force Headquarters and the Civil Offices of the Government of India, who are selected and appointed on the results of the same examination are allowed to appear at higher competitive examinations, and if so, why the successful candidates who are appointed in the Army and Royal Air Force Headquarters, should be debarred from the privilege ?

(d) Will Government please inform this House whether the privileges of free rations, free quarters, free clothing, free conservancy, and various other allowances, admissible to the personnel of the British Wing of the Indian Army Corps of Clerks, will be admissible to the personnel of the Indian Wing of the Indian Army Corps of Clerks, even on comparative scales ? If not, why not ?

(e) If the answer to part (d) be in the negative, will the Army Secretary please state, if they mean only to subject the Indian personnel to all the hardships of court-martials, and military discipline, and intend to deprive them of all the privileges of a military status which are admissible to the Britishers of the same Indian Army Corps of Clerks ?

Lieut.-Colonel A. F. R. Lumby : (a) A statement is laid on the table, showing the more important of the privileges conferred on persons subject to the Indian Army Act. Government do not consider that enrolment under the Indian Army Act involves any hardship.

(b) It is within the power of the Head of the Office concerned to permit an enrolled clerk to appear at an outside competitive examination.

(c) Does not arise.

(d) and (e). The attention of the Honourable Member is drawn to the reply given in the Legislative Assembly on the 7th August, 1934, to Mr. Gya Prasad Singh's supplementary question to starred question No. 465. In actual fact, the British Soldier of the Indian Army Corps

of Clerks, serving at Army Headquarters, gets exactly the same pay, allowances and concessions, as he would get if he were serving in a lower formation, while the Indian member of the Corps serving in Simla, receives precisely the same as if he were serving in a lower formation, plus a 20 per cent. addition to his pay.

Statement showing the more important of the privileges conferred on persons subject to the Indian Army Act.

The more important of the privileges conferred on persons subject to the Indian Army Act are as follows :

- (i) The pay of an officer or soldier is protected from any deductions other than those authorised by Royal Warrant or by Act of the Governor General in Council. Penal deductions are legalised by the Indian Army Act, and other deductions by Royal Warrant.
- (ii) All Government pensions (including military pensions) are protected from attachment in the execution of decrees of Civil Courts.
- (iii) An officer or soldier serving in a military capacity who is a party to a suit and cannot obtain leave of absence may authorise any person, in writing, to sue or defend in his stead.
- (iv) A power of attorney to institute or defend a suit is exempt from fees under the Court Fees Act.
- (v) When serving under war conditions, persons subject to the Indian Army Act are protected in respect of civil and revenue litigation under the provisions of the Indian Soldiers' Litigation Act, 1918.
- (vi) Persons subject to the Indian Army Act on duty or on the march, as well as their authorised followers families (including families of such followers), horses, baggage and transport, are exempt from all tolls, except certain tolls for the transit of barges, etc., along canals.

LEAVE AND PENSION FOR THE NEW ENTRANTS TO THE ARMY AND ROYAL AIR FORCE HEADQUARTERS.

529. *Maulvi Sayyid Murtuza Saheb Bahadur : Will Government please state whether they propose to cut down the leave and pension for the new entrants to the Army and Royal Air Force Headquarters, who joined Government service before July, 1934, whilst the leave and pension rules for similar entrants to the civil offices will remain unaltered ?

Lieut.-Colonel A. F. R. Lumby : As regards the first portion of the question, the revised leave and pension rules will be applicable to the personnel appointed on or after 28th September, 1931. The second portion of the question is based on incorrect information. Revised leave rules have already been issued for new entrants into civil offices, and revised pension rules are under consideration for them.

EMOLUMENTS FOR THE NEW ENTRANTS TO THE ARMY AND ROYAL AIR FORCE HEADQUARTERS.

530. *Maulvi Sayyid Murtuza Saheb Bahadur : Will Government please state whether the status of the Army and Royal Air Force Headquarters in regard to pay, etc., has in the past been always higher than that of Civil Attached Offices ? Is it a fact that the Civil Attached Offices and the Civil Secretariat have been brought at par in regard to pay and allowances, and, if so, what is the Government's justification for

their placing the Army and Royal Air Force Headquarters' personnel lower than the Attached Offices in total emoluments ?

Lieut.-Colonel A. F. B. Lumby : The reply to the first portion of the question is in the affirmative. As regards the last portion of the question, attention is drawn to my reply to Mr. S. C. Mitra's starred question No. 469 in the Legislative Assembly on the 7th August, 1934.

MAIL BAG DESTINED FOR CALCUTTA MISSED BETWEEN SIMLA AND KALKA.

531. ***Mr. Gaya Prasad Singh** (on behalf of Mr. Lalchand Navalrao) : (a) Will Government be pleased to state if on the 7th June, 1934, a mail bag destined for Calcutta was missed between Simla and Kalka ? If so, who was in charge of the mail that day and what explanation has he given for the loss ?

(b) Is it a fact that one Superintendent of Railway Mail Service was travelling by the same car which carried the mail, and if so, what explanation does he give as to the loss ?

(c) Where was it for the first time observed that the bag was missing, and who observed it ?

(d) Was information lodged with the police ? If so, where ?

(e) What efforts have the Postal Department made to find out the bag and the culprit ? What progress have the police made in that direction ?

(f) Has the case been entrusted to the Criminal Investigation Department Police ? If not, why not ? If so, what progress have they made ?

(g) Do Government propose to take some drastic measures to unearth this case ?

The Honourable Sir Frank Noyce : Information has been called for and a reply will be placed on the table of the House in due course.

TAXING OF LETTERS WEIGHING A LITTLE MORE THAN HALF A TOLA.

532. ***Rao Bahadur S. R. Pandit** (on behalf of Sardar G. N. Mujumdar) : With reference to the assurance given by the Honourable the Finance Member, Sir George Schuster, in his last Budget speech, that the postal officials will not be too strict in taxing letters weighing only a little more than half a tola, will Government please lay on the table a copy of the instructions issued by them to the Postal Department ? If no instructions were issued, will Government please state why they failed to do so, and whether they propose to rectify the mistake now ? If not, why not ?

The Honourable Sir Frank Noyce : No such assurance, as stated by the Honourable Member, was given by the Honourable Sir George Schuster. The latter parts of the question do not, therefore, arise.

Pandit Satyendra Nath Sen : May I know, Sir, if some extra hands have been employed in some important post offices to detect the one anna envelopes which exceed their proper weight ?

The Honourable Frank Noyce : I am sorry I did not catch the Honourable Member's question. Will he kindly repeat it ?

Pandit Satyendra Nath Sen : Is it a fact that some extra hands have been employed in some important post offices merely to detect one anna envelopes which exceed their proper weight of half a tola ?

The Honourable Sir Frank Noyce : I have no information on that point, Sir.

Maulvi Muhammad Shafee Daoodi : Are Government aware that a very large number of letters are charged extra as a result of the slight difference between letters weighing half a tola and more than one tola ?

The Honourable Sir Frank Noyce : Sir, as I know the House is very interested in this matter, I may perhaps be permitted to make a short explanation. So far as I can understand the purport of the figures which I have been able to obtain on this point, there has been no very marked increase in the revenue from deficit postage,—certainly not more than one could expect to follow from a change in rates. We have received no special reports from Heads of Circles on this point, as we did when the change in the rates for postcards came about. We are, in the course of this month, having the usual enumeration of letters and other articles which pass through the post offices, and special attention will be directed to this point of deficit postage. I am also calling for information from certain selected post offices regarding the amount of deficit postage which has been collected, and I would only add for the information of the House that our policy in regard to future rates will be framed in the light of the information obtained from these sources.

Mr. Gaya Prasad Singh : If the public take to writing postcards more extensively than at present, will not the object of the Government be frustrated ?

Mr. President (The Honourable Sir Shanmukham Chetty) : The answer is contained in the question.

RATE REGISTERS EXPERIMENT ON THE NORTH WESTERN RAILWAY.

533. ***Kumar Gupteshwar Prasad Singh :** (a) Is it a fact that foreign outward goods booking over the North Western Railway is being done with the help of Rate Registers for the last four years ? If so, is the Railway convinced of its utility by its four years practical working ?

(b) Is it a fact that the Railway Board has decided to continue the experiment for another two years ? Is it not uneconomical to continue it as an experiment ?

(c) What is the sanctioned strength of the establishment employed on the experiment ? How many men of the Railway Clearing Accounts Office are on deputation for that work and how many men are there on the supervising staff of that work ?

Mr. P. E. Rau : (a) and (b). I would refer the Honourable Member to the reply I gave to Mr. D. K. Lahiri Chandhury's starred question No. 433 on the 7th August, 1934.

(c) The sanctioned strength of the establishment, on transfer from the Railway Clearing Accounts Office to the North Western Rail-

way, was one Accountant and 31 clerks. No information is available as regards the number of men of the Railway Clearing Accounts Office now on deputation.

PROMOTION OF STAFF HELD UP ON THEIR MAXIMUM ON STATE RAILWAYS.

534. *Mr. Gaya Prasad Singh (on behalf of Rai Bahadur Lala Briji Kishore) : (a) Will Government be pleased to state what action has been taken by them on paragraph 153, on page 44, of Volume I to Mr. Hassan's report, in which he brought it to the notice of the Railway Board the fact that the staff, in certain categories, are unduly held up on their maximum, where the promotion of higher grade posts is small or non-existent, and thus an obvious injustice is done to staff who happen to be posted in such categories, in comparison to those fortunate staff who get rapid promotions due to a larger proportion of higher posts existing in their categories ?

(b) Were any instructions issued to the Agents of State Railways on this subject ? If so, do Government propose to lay a copy of the same on the table of this House ?

(c) Will Government be pleased to state how many Number-Takers, working as Trains Clerk, in each grade, are held up on their maximum since the last five years on the East Indian Railway for want of higher posts in their categories ?

(d) If the reply to part (b) be in the negative, are Government prepared to issue explicit instructions to the Agents now ?

Mr. P. R. Rau : (a), (b) and (d). A copy of the orders issued in August, 1933, is laid on the table.

(c) Government have no information.

GOVERNMENT OF INDIA.
RAILWAY DEPARTMENT.
(RAILWAY BOARD.)

No. 660-E.G.,

Simla, the 31st August, 1933.

To

The Agent, Eastern Bengal Railway.
East Indian Railway.
North Western Railway.
Great Indian Peninsula Railway.

Dear Sir.

Representation of Muslims and other minority communities in the subordinate Railway Services.

With reference to the correspondence resting with your letter (1) No. 185-E.18, dated 13th July, 1933.
(2) No. A.E. 840/1, dated 22nd June, 1933.
(3) No. 831-E.1281/II, dated 20th June, 1933. I am directed to state that after
(4) No. 21239-R., dated 5th June, 1933.

considering the views furnished by the various State-managed Railways, the Railway Board have decided that the following action should be taken on the recommendations made by Mr. Hassan in his report on the "Representation of Muslims and

other minority communities in the subordinate Railway Services " except recommendations Nos. 7 to 13 which are still under consideration and on which orders will issue in due course.

Recommendation No. 1.—The Divisional Selection Boards should be held on different dates to enable a candidate rejected in one Division to try in another, or Divisions where members of minority communities are available in large numbers should be asked to recommend candidates of these communities in such numbers to the Central Selection Board that if there is any deficiency in one Division it may be made up by excess in the other.

Decision.—(*In the case of Railways where final appointments are made by a Central Selection Board, the Divisional or District Selection Boards should, where candidates of minority communities are available in large numbers, recommend candidates in such numbers that if there is a deficiency in any other Division or District, it might be met by candidates from these Divisions. Similarly, on Railways where final appointments are made by Divisional or District Selection Board, should there be any difficulty in selecting the required number of candidates of minority community in any Division or District a requisition for the remaining number should be placed on those Divisions or Districts where the candidates of that minority community are available in larger numbers). (†If one Division has a number of candidates belonging to the minority communities who pass the Selection Board and who are in excess of the number required on that Division, the Divisional Superintendent should offer them to other divisions on the distinct understanding that they will be posted to and remain on the Division or District where they are appointed to work.)

Recommendation No. 2.—The rule that preference should be given to sons and relatives of Railway employees should be suitably amended so as not to affect the Muslim interests adversely.

Decision.—It is noted that the operation of Rule 63 of the " Rules for the recruitment and training of subordinate staff on State-managed Railways does not act detrimentally to the interests of the minority communities as 1/3rd of the vacancies are reserved for the redress of marked communal inequalities. In view of this, the Railway Board do not consider any further orders are necessary.

Recommendation No. 3.—Provision should be made for the redress of communal inequalities in the rules of recruitment relating to Apprentice Mechanics.

Decision.—Necessary provision has been made in this respect in the " Rules for recruitment and training of Apprentice Mechanics and Trade Apprentices in the Mechanical Workshops of State-managed Railways ", vide this office letter No. 2434-E, dated the 23rd March, 1933.

Recommendation No. 4.—In cases in which promotion is given by branches of an office necessary adjustment should be made to see that the subordinate staff in each branch have fair chances of promotion to the higher grades.

Decision.—The Railway Board desire that the subordinate staff in each branch of an office where promotion is given by branches, irrespective of the community to which they may belong, should have reasonable chances for promotion to the higher grades. (†In this connection, I am to point out that para. 2 of this office letter No. 917-E.G., dated the 6th August, 1931, to which you refer in your reply does not affect this recommendation, the object of which as explained in para. 153 of the report is that in cases in which promotion is given by branches of an office the distribution of the staff should be made in such a manner that each member of the staff may have a reasonable chance of promotion to rise to the higher grades.)

Recommendations Nos. 5 and 14.—

5. The attention of all the Railway Administrations should again be drawn to the fact that it is the intention of the Railway Board to provide special training facilities for Muslims, which will in the course of time fit them for higher posts and

* () To G. I. P., N. W. and E. B. Rlys. only.

† () To E. I. Rly. only.

‡ () To N. W. Rly. only.

they should be asked to inform the Railway Board at the end of each year what definite action has been taken by them in the matter.

14. Muslims with the requisite qualifications should be selected from among those already in service and given special facilities for training for the higher posts.

Decision.—The Railway Board are averse to adopting any arrangement which may savour of communal discrimination in respect of existing employees. They consider it of importance that no man's claim to promotion should be overlooked because he belongs to a particular community and special consideration should be given to the provision of training facilities for higher posts for all communities. Particular care should be taken to see that communities that are inadequately represented in the higher posts are given careful consideration and adequate training to fit them for higher posts.

Recommendation No. 6.—Action should be taken to increase the number of Muslims in the Establishment sections of Railway Offices.

Decision.—The Board consider that it is important to ensure that particular communities are not handicapped by the preponderance of any one community in the Establishment branches of Railway Offices and leave it to you to take whatever steps may be necessary for this purpose.

Recommendation No. 15.—A Special organization, the duration of which will depend on the extent to which the Railway Board are prepared to accept my recommendations should be set up at the headquarters of the Railway Board to assist and advise the Railway Administrations in carrying out the orders that the Railway Board may be pleased to pass on this report. If for any reasons it is not considered necessary to have a special organization this work should be entrusted to the Deputy Director, Establishment, Railway Board and should form part of his regular duties.

Decision.—The Railway Board do not propose to take any special action in this direction as they consider that this work should form part of the normal duties of the organization provided for Establishment work. The Board expect that you and the officers subordinate to you will give due consideration to the orders issued in this connection.

Yours faithfully,

K. M. HASSAN,

Deputy Director, Railway Board.

PROMOTION OF NUMBER-TAKERS ON THE EAST INDIAN RAILWAY.

535. *Mr. Gaya Prasad Singh (on behalf of Rai Bahadur Lala Brij Kishore) : (a) Will Government be pleased to state if any instructions were issued to the Agents of State Railways in connection with Mr. Haymen's speech in this House as quoted in paragraph 155, on page 45, Volume 1 of Mr. Hassan's report, in which he assured this House that Railway subordinates in the lower grade of all class and communities, which are not properly represented in the upper grades, will be admitted into the Railway Training Schools and given proper technical training so as to make them fit within the quickest possible time to fill the higher posts that fall vacant ?

(b) If the reply to part (a) be in the affirmative, do Government propose to lay on the table of this House a copy of the instructions issued ?

(c) Will Government be pleased to state how they reconcile with this declared policy their answer to starred question No. 391, dated the 6th March, 1934, in which the Agent, East Indian Railway, has expressed his unwillingness to provide special facilities to the staff in the Number-Takers categories for promotion to the posts of Yard Masters, Assistant Yard Masters and Yard Foreman ?

(d) How do Government reconcile this policy with the refusal of the East Indian Railway administration to examine the staff employed in the Number-Taker's categories for qualifying examinations for higher posts ?

(e) If the answer to part (d) be in the negative, do Government propose to issue necessary instructions and also see that proper steps are taken to train staff in each category, specially those in which chances for promotion to higher posts do not exist, and to promote men from that category and to see that all orders which are in conflict with this declared policy are cancelled ?

Mr. P. B. Rau : (a) and (b). I would invite the Honourable Member's attention to the orders I have just placed on the table.

(c), (d) and (e). The Agent, East Indian Railway, has been asked to consider the question in the light of the policy of Government as laid down in their orders of August, 1933.

INADEQUATE REPRESENTATION OF INDIANS IN HIGHER POSTS IN THE TRAFFIC DEPARTMENT OF THE EAST INDIAN RAILWAY.

536. ***Mr. Gaya Prasad Singh** (on behalf of Rai Bahadur Lala Brij Kishore) : (a) Will Government be pleased to state if they are not aware of the inadequate representation of Hindus and Muslims in the higher posts in the Traffic Department of the East Indian Railway, carrying a salary of Rs. 150 per mensem, as given in paragraph 204, page 64, of Volume 1 of Mr. Hassan's report, the same being limited to 47 posts and on percentage basis 13.54 per cent. and in comparison to European and Anglo-Indian representation of 298 posts or 85.88 per cent. of the total number of posts, regard being had to the fact that on lower posts Hindus and Muslims form a majority of 51.42 or 84.36 per cent. as against 902 or 14.8 of Europeans and Anglo-Indians ?

(b) Will Government be pleased to state what steps have been taken by them and the Agent, East Indian Railway, to increase the proportion of Indians in the higher posts in the Traffic Department of the East Indian Railway ?

Mr. P. B. Rau : With your permission, Sir, I propose to reply to questions Nos. 536 and 537 together.

(a) The figures have been correctly quoted by my Honourable friend from Mr. Hassan's Report.

(b) I would invite the Honourable Member's attention to paragraph 3 of the Railway Board's letter No. 2395-E., dated the 23rd May, 1929, to the Agents of all State-managed Railways,—a copy of which is in the Library of the House—in which they were instructed that, in those branches of the service in which a preponderant share of the appointments has fallen to Anglo-Indians in the past, opportunities must be given to members of other communities to show their fitness. In view of the increasing number of Indians, who are now being employed in each category of the Traffic Department on all the State-managed Railways, the percentage of Indians will, I have no doubt, increase in the course of time in the posts referred to by the Honourable Member.

INADEQUATE REPRESENTATION OF INDIANS IN THE POSTS OF YARD MASTERS, YARD FOREMEN, ETC., ON THE EAST INDIAN RAILWAY.

†537. ***Mr. Gaya Prasad Singh** (on behalf of Rai Bahadur Lala Brij Kishore) : (a) Will Government be pleased to state if they are not aware of the inadequate representation of Hindus and Muslims in the posts of Chief Yard Masters, Yard Masters, Assisant Yard Masters, and Yard Foreman, in grades ranging from 280 to 530 on the East Indian Railway as given on page 94, Volume III of Mr. Hassan's Report, in which he states that out of 80 such posts existing Hindus and Muslims share only two posts as against 78 held by Europeans and Anglo-Indians ?

(b) Will Government be pleased to state what steps they and the Agent, East Indian Railway have taken and propose to take, to see that Indians are promoted to these posts ?

PROMOTION OF NUMBER-TAKERS AND TRAIN CLERKS ON THE EAST INDIAN RAILWAY.

538. ***Mr. Gaya Prasad Singh** (on behalf of Rai Bahadur Lala Brij Kishore) : (a) Will Government be pleased to state if the following statements, made in Mr. Hassan's Report, are correct :

(i) Page 19, Volume II, referring to recruitments of Guards on the North Western Railway :

“ The number to be recruited direct will be fixed in each division after considering the claims for promotion of deserving Ticket Collectors and Trains clerks.”

Posts will be filled (in Guard Grade III) by promotion from Grade II or by selection of outstanding men in other classes whose pay is too high for them to be fitted into Grade II and by direct recruitment.”

(ii) Para. 100, page 27, Volume I, referring to promotions of Number-Takers on the Great Indian Peninsula Railway, in which he states that Number-Takers are promoted as Guards and from there to all the posts open to Guards and to the posts of Yard Supervisors and Yard Foremen ;

(iii) Pages 6, 30, and 94 of Volume III, in which it is stated that Trains clerks in their own category get promoted to Rs. 145 grade on the Eastern Bengal Railway (page 6), to Rs. 190 grade on the North Western Railway (page 30) and only Rs. 110 or 120 on the East Indian Railway (page 94) †

(b) Will Government state if it is a fact that Yard Foremen and Yard Supervisors on the North Western Railway who perform duties identical with those of Yard Foreman and Assistant Yard Masters of the East Indian Railway are in many instances recruited from the category of Number-Takers, and Trains Clerks ?

(c) Will Government be pleased to state whether they are prepared to issue explicit instructions to the Agent, East Indian Railway, to provide some avenue of promotion to staff in this category with a view to remove a genuine hardship ?

Mr. P. B. Rau : (a) Government regret they are unable to undertake an investigation to check the correctness of the statements in question.

(b) Government have no information on this point.

(c) A copy of this question is being sent to the Agent, East Indian Railway, for consideration of the suggestion made therein.

†For answer to this question, see answer to question No. 536.

ORGANISATION OF THE PERSONNEL DEPARTMENTS ON STATE RAILWAYS.

539. ***Mr. Gaya Prasad Singh** (on behalf of Rai Bahadur Lala Brij Kishore) : Will Government be pleased to state if they agree with the statements made in paragraph 133, page 38, Volume I of Mr. Hassan's Report that " The North Western Railway is probably the best organised of all the State-managed Railways so far as the staff problem are concerned, and it is possible here more than elsewhere to trace a definite policy in handling staff questions " ? If so, why are the personnel departments on other State Railways not being organised on the same lines ?

Mr. P. E. Rau : Government are not prepared to express an opinion on the quotations referred to. The personnel organisations on the State-managed Railways are generally on the same lines though there may be slight differences of detail. Government do not consider it necessary to achieve absolute uniformity in such matters.

Sardar Sant Singh : Do the Government endorse the fact that the North Western Railway is the best managed Railway in India ?

Mr. P. E. Rau : I said that Government were not prepared to express an opinion on it.

CONSULTATION OF LOCAL GOVERNMENTS FOR THE SELECTION OF DELEGATES TO THE LEAGUE OF NATIONS.

540. ***Mr. Bhuput Sing** : Will Government please state whether Local Governments are consulted when Indian Delegates to the League of Nations are selected ?

The Honourable Sir Nripendra Sircar : The Honourable Member is aware that the delegates are appointed by the Secretary of State acting in consultation with the Government of India. The latter hold themselves free to consult Local Governments if and when occasion arises.

Mr. Bhuput Singh : Was there any occasion on which the Local Governments were at all consulted before the Government of India sent their recommendations to the Secretary of State ?

The Honourable Sir Nripendra Sircar : Sir, the proposals for selections being the subject of confidential communications. I am not in a position to add anything to the reply I have already given.

Mr. Gaya Prasad Singh : The question was not asked for disclosing the contents of any confidential communications, but the question was whether the Government of India had ever consulted the Local Government in the matter of selection of delegates to the League ?

The Honourable Sir Nripendra Sircar : As I have said, the Government of India is quite free to consult the Local Governments. They consult the Local Governments whenever occasion arises. As regards the actual communications, I am not prepared to make any statement.

Mr. Gaya Prasad Singh : Was there any occasion at all for the Government of India to consult the Local Governments ? Did they, as a matter of fact, ever consult the Local Governments or not ?

The Honourable Sir Nripendra Sircar : Not in my time.

Mr. Bhuput Sing : My question is whether in past years the Government of India ever consulted the Local Governments in the selection of delegates ?

The Honourable Sir Nripendra Sircar : If the question goes back to all past years, I would ask my friend to give me notice.

Mr. Bhuput Sing : I put the question the other day, and the Honourable Member wanted notice, and so I have asked whether Local Governments were ever consulted at all ? Was there any occasion on which the Government of India consulted the Local Governments in the past in regard to the selection of delegates ?

The Honourable Sir Nripendra Sircar : If my Honourable friend means whether, during all these years in the past at any time, the Local Governments were consulted, the answer is in the affirmative.

Mr. Bhuput Sing : How many times, may I know ?

The Honourable Sir Nripendra Sircar : As my friend's inquisitiveness is increasing, I would ask for notice.

RETRENCHMENT IN THE BENGAL AND ASSAM POSTAL CIRCLE.

541. ***Mr. S. C. Mitra :** (a) Is it a fact that the Post Master General, Bengal and Assam, has been issuing orders every month, retrenching clerks and postmen in the Circle before completion of their service ?

(b) Is it a fact that those orders will spread over a number of months ?

(c) Is it a fact that the postmen and clerks with services ranging from one to less than ten years are also being selected for retrenchment ? If so, why ?

The Honourable Sir Frank Noyce : (a) It is a fact that the retrenchment of surplus posts of all categories is still being given effect to in all Circles of the Posts and Telegraphs Department, including the Bengal and Assam Circle.

(b) Yes.

(c) Government have no precise information, but if the facts are as alleged by the Honourable Member the procedure would not be in conflict with the orders of Government laying down the method of retrenchment.

Mr. S. C. Mitra : Sir, arising out of (c), may I take it that the other two categories of lists relating to people whose service was unsatisfactory or those who are superannuated have been exhausted before this category of officers are selected for retrenchment ?

The Honourable Sir Frank Noyce : I presume that the orders regarding the order in which personnel should be retrenched are being duly followed.

RETRENCHMENT IN THE BENGAL AND ASSAM POSTAL CIRCLE.

542. ***Mr. S. C. Mitra :** (a) Is it a fact that the procedure laid down by the Government of India, Finance Department, for selecting personnel for retrenchment is not strictly followed in the Postal Department ?

(b) Is it a fact that the officials with services ranging from one to less than ten years are under orders of retrenchment in Bengal and Assam Circle in preference to those who are above 30 years of service ?

(c) If the answer to parts (a) and (b) be in the affirmative, will Government please state the reasons therefor ?

The Honourable Sir Frank Noyce : (a) No.

(b) Government have no information. I may, however, state for the Honourable Member's information, that the occurrence of such cases is possible, as, according to the prescribed procedure referred to in part (a) of the question, retrenchment of personnel is subject to the condition that the existing ratio between the communities, in each category of service, is maintained as far as practicable.

(c) Does not arise.

RETRENCHMENT OF STAFF IN THE POSTAL DEPARTMENT.

543. ***Mr. S. C. Mitra :** (a) Is it a fact that for the purpose of retrenchment of staff in the Postal Department, each Superintendent's Division is treated as one unit ?

(b) Is it a fact that the surplus staff of one unit are not allowed to be absorbed in the vacancies existing in another unit ?

(c) Is it a fact that in the ordinary course the officials of one division are always posted in another division ?

(d) Is it a fact that as a result of this compartment system, a clerk or a selection grade supervisor or a divisional inspector who happens to be in a division where retrenchment is necessary, was retrenched though his seniors are left out, being in another division where retrenchment of personnel is not necessary ?

(e) Do Government contemplate issuing revised orders for rectifying these anomalies ?

The Honourable Sir Frank Noyce : (a) The present orders of Government are that all posts in clerical grades of an establishment or office shall, for the purpose of retrenchment, be treated as forming one cadre. It has, however, come to the notice of Government that a uniform procedure has not been followed in this respect in all Circles.

(b) Yes.

(c) If officials, not above the rank of clerks in the ordinary time-scale, are meant, the reply is in the negative.

(d) Government have no information.

(e) Government are considering the question of laying down a uniform procedure relating to the grouping of posts in clerical grades for purposes of retrenchment.

Mr. S. C. Mitra : I could not follow the answer to part (b) of the question. Will the Honourable Member kindly repeat it ?

The Honourable Sir Frank Noyce : The answer to (b) is " Yes ".

Mr. S. C. Mitra : Will the Honourable Member kindly explain why they make these smaller units by which justice is denied in specific

instances ? I think the Honourable Member has understood the implication of the question. If there are smaller divisions and people are retrenched without reference to bigger divisions, there would be individual cases of great hardship.

The Honourable Sir Frank Noyce : That, Sir, unfortunately is inevitable owing to the fact that the retrenchment is made for units. That has been the procedure so far, and there does not seem to be any reason for changing it now.

Mr. S. C. Mitra : My question was this. In this particular case, they take the Postal Superintendent's jurisdiction as a single unit, and retrenchment is confined to that particular unit. But if they take a bigger unit, say, the whole division, particular individuals may not suffer so much.

The Honourable Sir Frank Noyce : I think, Sir, it will be better for the Honourable Member to put down a question on that subject. I cannot say offhand on what principles the unit was fixed.

Mr. S. C. Mitra : That is clear from part (a) of my question :

“ Is it a fact that for the purpose of retrenchment of staff in the Postal Department, each Superintendent's Division is treated as one unit ? ”

When they really cut the whole division into separate units and apply the rules of retrenchment to each unit, it involves great hardship to many individuals.

The Honourable Sir Frank Noyce : I have already said that I cannot say offhand on what principle the unit was fixed. But I am aware that if the unit is a Superintendent's division and retrenchment is made within the division, some cases of hardship may arise. If the retrenched man had been serving in another division, he would perhaps not have been retrenched. Some unit had to be fixed and the Superintendent's division was chosen. The same hardship would arise if you had a bigger unit.

Mr. S. C. Mitra : May I take it that the Honourable Member will make enquiries and see that the unit is not too small in order to avoid numerous cases of hardship ?

The Honourable Sir Frank Noyce : I shall be glad to make an enquiry on the subject, but I very much hope that retrenchment in the Posts and Telegraphs Department is coming to an end.

Mr. S. C. Mitra : My point is that it has not ceased in this Department, and unlike in the other Departments of the Government, retrenchment is going on in the Postal Department even today and will continue for another one or two years. I think that is known to the Honourable Member.

The Honourable Sir Frank Noyce : I hope, Sir, not for years. I hope it will soon come to an end.

Mr. S. C. Mitra : Is it not a fact that the Honourable Member himself has sanctioned and extended the period for this Department, so that the retrenched officers may get their gratuity of forced retirement ?

The Honourable Sir Frank Noyce : Yes, but I cannot say offhand for what extended period we have allowed it, but I think it is for the current year.

Dr. Ziauddin Ahmad : The Honourable Member said that the retrenchment will soon come to an end. What is the meaning of "soon"? Six months or one year?

The Honourable Sir Frank Noyce : I merely expressed the hope that it would soon come to an end.

RETRENCHMENT IN THE BENGAL AND ASSAM POSTAL CIRCLE.

544. ***Mr. S. C. Mitra :** (a) Is it a fact that for the purpose of retrenchment of personnel in the Postal Department, the time-scale clerks and non-gazetted selection grade officials, are treated as belonging to one category?

(b) Is it a fact that the posts of Office Superintendent of the Post Master General's Office, Bengal and Assam Circle, and of the Manager, Dead Letter Office, Calcutta, are non-gazetted posts?

(c) Is it a fact that according to Government orders, officials are to be retrenched, when necessary, according to length of service?

(d) Is it a fact that the Manager, Dead Letter Office, Calcutta, having 32 years' service at his back, has been left out, and the officials with less service have been retrenched?

The Honourable Sir Frank Noyce : (a) Yes.

(b) Yes.

(c) The fact is not as stated by the Honourable Member. In this connection, his attention is invited to a copy of the order regulating the selection of individuals for discharge, which was laid on the table of the House, in reply to part (a) of Dr. Ziauddin Ahmad's starred question No. 84 on the 19th of July last.

(d) Government have no information.

UNSTARRED QUESTIONS AND ANSWERS.

STAFF RETRENCHED AND RE-EMPLOYED.

44. **Khan Bahadur Haji Wajihuddin :** Will Government please state the number of ministerial servants and gazetted officers who have been retrenched since 1931 and who have been re-employed or re-instated so far, and give details of employment given to them with special reference to the difference in pay and status?

The Honourable Sir James Grigg : The information desired could not be furnished without a special investigation involving a very large expenditure of time and labour which the results of the investigation could not possibly justify.

SURPLUS PROFITS DERIVED FROM STATE RAILWAYS.

45. **Mr. K. P. Thampan :** Will Government be pleased to state the amount of surplus profits derived from State-owned but Company-managed railways during the last five years?

Mr. P. B. Rau : The information required by the Honourable Member will be found on page 7 of the booklet named " Results of working of Indian Railways for 1933-34 ", copies of which were circulated to the Members of the House early last month.

LETTERS EXCEEDING THE WEIGHT LIMIT.

46. **Mr. Bhuput Sing :** Will Government be pleased to state the total number of letters which exceeded the weight limit during the periods April to June, 1933, and April to June, 1934 ?

The Honourable Sir Frank Noyce : I presume that by " weight limit ", the Honourable Member means the limit of weight admissible for a letter with reference to the postage stamps it bears. No separate statistics of letters, which are taxed owing to their being insufficiently stamped, are maintained in post offices, and it is not, therefore, possible to furnish the information for which he asks.

CLERKS AND POSTMEN RETRENCHED IN EACH POSTAL CIRCLE.

47. **Mr. S. C. Mitra :** Will Government please lay on the table a statement showing, Circle by Circle, (i) the number of postmen retrenched up to 30th June, 1934, (ii) the number of postmen to be retrenched up to 30th October, 1934, (iii) the number of clerks with services ranging from one to less than ten years retrenched up to 30th June, 1934, (iv) the number of such clerks to be retrenched up to 30th October, 1934, (v) the number of clerks and non-gazetted selection grade officials retrenched up to the 30th June, 1934, and (vi) the number of clerks and non-gazetted selection grade officials to be retrenched till the 30th October, 1934 ?

The Honourable Sir Frank Noyce : Government regret that they are unable to furnish the information as its collection would involve an undue expenditure of time and labour.

ALLEGATIONS AGAINST THE ACCOUNTANT AND THE ESTABLISHMENT CLERKS OF THE GOVERNMENT OF INDIA PRESS, ALIGARH.

48. **Kunwar Hajee Ismail Ali Khan :** (a) Are Government aware that two brothers, Messrs. Bhawani Charan (Accountant) and Kamaka Charan (Establishment clerk) of the Government of India Press, Aligarh, are running their own press namely " Rose Press " at the Railway Road, Aligarh ?

(b) Are Government aware that they are taking honorary labour from the poor employees of the Government of India Press, Aligarh, and if they (employees) refuse, they have to suffer much at their hands in the office ?

(c) Are Government aware that the men working in their Press (Rose Press) are assured that they will be provided first in the Government of India Press, Aligarh, when opportunity arises ?

(d) Is it a fact that Bhawani Charan (Accountant) is always insisting and compelling the authorities to provide them first ?

The Honourable Sir Frank Noyce : (a) My information is that Messrs. Bhawani Charan and Kamaka Charan are not in any way connected with the Rose Press.

(b), (c) and (d). Do not arise.

MUSLIMS AND NON-MUSLIMS IN THE CLERICAL BRANCH OF THE GOVERNMENT OF INDIA PRESS, ALIGARH.

49. **Kunwar Hajee Ismail Ali Khan** : (a) Will Government be pleased to lay on the table a statement showing the percentage of Muslims and non-Muslims in the clerical branch of the Government of India Press at Aligarh ?

(b) Are Government aware that the percentage of Muslims employed in the clerical branch is far below the sanctioned limit ?

(c) Are Government prepared to take measures to make up their deficiency ?

The Honourable Sir Frank Noyce : (a) According to the latest information I have, the percentage on the 31st December, 1933, was—

Muslims	..	..	..	..	17
Non-Muslims	..	..	..	..	83

(b) and (c). No minimum proportion of Muslims in any office has been prescribed. The recent orders of the Government of India, which prescribe a minimum percentage of 25 for the recruitment of Muslims, apply only to recruitment from the date of those orders. These orders will be followed in making future recruitment.

CONVEYANCE ALLOWANCE PAID TO THE HEAD CLERK AND CASHIER OF THE GOVERNMENT OF INDIA PRESS, SIMLA, FOR RECEIVING PAYMENTS OF BILLS FROM THE BANK.

50. **Mr. S. G. Jog** : (a) Is it a fact that the Head Clerk and Cashier of the Government of India Press, Simla, is allowed to draw conveyance allowance for receiving payments of the bills from the Bank and the Treasury ?

(b) If the reply to above is in the affirmative, will Government please lay a statement showing the amount paid to him as conveyance allowance, month by month, during the last three months and state the rate for every trip ?

(c) Is it a fact that the Treasury and the Bank are on his way to the Office and he gets the bills passed and cashed while going to the office ?

(d) Is it also a fact that on the first of every month an upper grade clerk and a peon accompany him to the bank to draw payments ? If so, will Government please state the amount of conveyance allowance admissible to them ?

(e) If the reply to part (c) be in the affirmative, are Government prepared to consider the desirability of minimising it specially in these days of financial stringency ?

The Honourable Sir Frank Noyce : (a) Yes

(b) May 1934, Rs. 27-0-0.

June, 1934, Rs. 19-8-0.

July, 1934, Rs. 22-8-0.

The rate for each trip is Rs. 1|8|0.

(c) The reply to the first part is in the affirmative, and to the second part in the negative.

(d) Yes. The upper grade clerk is paid conveyance hire at the rate mentioned in (b) above. No conveyance hire is paid to the peon.

(e) The Controller of Printing and Stationery is investigating the question of reducing expenditure on conveyance hire.

ALLEGATIONS AGAINST THE HEAD CLERK OF THE GOVERNMENT OF INDIA PRESS, SIMLA.

51. **Mr. S. G. Jog :** (a) Are Government aware that the behaviour and treatment of the Head Clerk of the Government of India Press, Simla, towards his subordinates is very unsatisfactory ?

(b) Is it a fact that two or three employees dared to bring this to the notice of the Manager of the Press, but they were threatened by the Head Clerk to withdraw their complaints, as otherwise he will put them to great trouble and inconvenience ?

(c) Is it a fact that due to the Head Clerk's threats they could not submit their grievances even to the Manager ?

(d) Is it a fact that a senior reader (Mr. E. B. Murray) applied to the Manager to permit him to sue in the Court the Head Clerk for some incorrect remarks passed by him against the said Reader on certain papers ?

(e) Is it a fact that the Manager of the Press compelled him to withdraw his application ?

(f) If the reply to part (a) be in the negative and replies to parts (d) and (e) in the affirmative, do Government propose to appoint an Enquiry Committee to investigate into the matter ? If not, why not ?

The Honourable Sir Frank Noyce : (a) The facts are still as stated by me in the reply which I gave on the 11th December, 1933, to Sardar Sant Singh's unstarred question, No. 302

(b) and (c). Government have no information.

(d) Mr. Murray made a complaint against the head clerk under a misunderstanding. The complaint was subsequently withdrawn.

(e) No.

(f) Does not arise.

RELATIVES OF THE HEAD CLERK OF THE GOVERNMENT OF INDIA PRESS, SIMLA, PROVIDED WITH QUARTERS.

52. **Mr. S. G. Jog :** (a) Will Government please state the number of employees in the Government of India Press, Simla, and how many of them are far and near relatives of the Head Clerk of the Press ?

(b) Will Government please state the number of employees who have been provided with Government Clerks' Quarters and how many of them are relatives of the Head Clerk ?

(c) Will Government please state how many of the Head Clerks' relatives were in possession of such quarters prior to his taking charge of the Press ?

The Honourable Sir Frank Noyce : (a) The sanctioned strength is 353. There are five relatives of the head clerk.

(b) 21, of whom three are relatives of the head clerk.

(c) one.

**STATUS OF OFFICERS PASSING OUT OF THE INDIAN MILITARY ACADEMY,
DEHRA DUN.**

53. Mr. Bhuput Singh : (a) Will Government please state whether under the proposed Indian Army Act (Amendment) Bill, officers passing out of the I. M. A., Dehra Dun, will be granted the *same form of commission* as is now issued to British and Indian officers trained at Sandhurst or Woolwich? If not, will Government please state the points of difference between the two kinds of commissions?

(b) Will Government please state the reason against the grant, to the Dehra Dun officers, of the form of commission now granted to British officers of the Indian Army?

(c) Has the attention of Government been drawn to the following paragraph which appeared in the *Statesman* of the 18th July, 1934 :

“ Captain Sher Mohammed Khan said the Bill merely introduced into the Army Act the term Indian King’s commissioned officer, which did not exist before, but there would be absolutely no difference between such officers and British officers in the matter of command and status. He welcomed the abolition of Viceroy’s Commission officers as hitherto a recruit to the Army aspired only to the position of Subedar-Major. After the passage of the Bill a recruit could aspire to the position of Commander-in-Chief ” ?

(d) If so, will Government please state whether the above paragraph correctly represents the Government’s policy?

Lieut.-Colonel A. F. R. Lumby : (a) and (b). Cadets from Woolwich and Sandhurst receive commissions in His Majesty’s Land Forces. Cadets from the Indian Military Academy will receive commissions in His Majesty’s Indian Land Forces in the same form as those given to officers of the Indian Air Force and officers of the Canadian Forces. I would invite the attention of the Honourable Member in this connection to the Press communiqué on the subject, issued on the 8th July, 1932.

(c) and (d). It is quite clear from the context, that my Honourable friend, Captain Sher Muhammad Khan, was referring to the Indian Army Act. In so far as he was referring to officers and men of the Indian Army, he correctly stated the policy of Government; for there will be complete reciprocity of command and equality of status between King’s commissioned officers and the new Indian commissioned officers within the Indian Army. It is rather early to consider what chances Indian Commissioned Officers will have of rising to the position of Commander-in-Chief; but the Government’s policy of complete Indianization of the Army surely presupposes that such officers will ultimately be able to aspire to that position.

I shall try to make the whole position clear when the Indian Army (Amendment) Bill comes before this House again in a few days’ time.

**TECHNICAL MILITARY CLERKS EMPLOYED IN THE MASTER-GENERAL OF THE
ORDNANCE BRANCH.**

54. **Mr. Bhuput Sing :** (a) Is it a fact that in the M. G. O. Branch of the Army Headquarters a technical military clerk, drawing pay at Rs. 600 per mensem, is employed as a general telephone clerk ? If so, why ?

(b) Are Government prepared to institute an inquiry to see whether in the M. G. O. Branch, technical military clerks drawing high pay are employed on purely routine non-technical duties ? If not, why not ?

(c) Will Government please state the duties of M. G. 5 in the M. G. O. Branch, and the total *monthly bill* including officers' salaries, for running this Section ?

Lieut.-Colonel A. F. R. Lumby : (a) I am afraid the Honourable Member has again been misinformed regarding this Branch of Army Headquarters.

(b) No, Sir. No technical military clerk is employed in the M. G. O. Branch on purely routine non-technical duties.

(c) A statement is attached showing the duties of Section M. G. 5. The total monthly cost, including officers' salaries for running that Section, is approximately Rs. 6,000.

Statement showing details of duties of M. G.-5 in the M. G. O. Branch, referred to in part (c) of unstarred question No. 54 in the Legislative Assembly.

Section M. G.-5.

Details of duties.

- (1) Questions of general policy affecting more than one directorate of the Master-General of the Ordnance Branch and Co-ordination between branches and directorates.
- (2) Representation of the Master-General of the Ordnance Branch on Army Headquarters. Exercises, so far as staff work is concerned and on Committees dealing with the branch as a whole.
- (3) Co-ordination of replies to Legislative Assembly and Council questions affecting policy in the Master-General of the Ordnance Branch.
- (4) Distribution of information from other branches of Army Headquarters.
- (5) Matters affecting the branch at Principal Staff Officers, Military Council and Mobilization Committee Meetings.
- (6) (a) Calculation of war wastages and fixation of peace holdings of Ordnance stores and clothing, and in the case of Lethal stores and ammunition submission of these calculations to the Mobilization Committee and Principal Staff Officers, where necessary.
(b) Responsibility for representing to the General Staff, Mobilization Committee or Principal Staff Officers the Branch requirements in money to make good shortages in peace holdings for mobilization, and for expending funds allotted accordingly.
- (c) Notification to Ordnance factories of output required from them in war. Co-ordination of arrangements for supply from other sources of requirements which cannot be met by the Ordnance factories. This includes the preparation and distribution to all concerned of standing war indents for Home, India Store Department (India), Ordnance Factory and trade items.
- (7) Maintenance of the Branch War Books.
- (8) Distribution and Annual return of Secret documents.

- (9) Based upon information from Director of Ordnance Services, Director of Ordnance Factories and Director of Contracts maintenance of "form at a glance" statements showing the position as regards meeting the ordnance requirements of the Army in the case of New Demands or special purchases for other Branches and in time or war of items of vital importance.
- (10) Preparation of weekly reports for His Excellency the Commander-in-Chief and other branches of important letters and important decisions during the week.
- (11) Co-ordination of new demands for the Branch.
- (12) Arranging Master-General of the Ordnance's tours (excluding matters connected with Travelling Allowances, etc.) and action on tour notes.

**IMPORTATION OF SUPPLIES OF ARMS AND AMMUNITION BY LICENSED DEALERS
FROM ONE PLACE TO ANOTHER.**

55. **Khan Bahadur Haji Wajihuddin :** (a) Is it a fact that licensed dealers in arms and ammunition, who keep for sale their stock of Arms and Ammunition, are *not* allowed to import their supplies from one place to another without an export license which is only granted on payment of Rs. 10 ?

(b) Is it a fact that Shikari license holders in British India are allowed to get their supplies from other stations in British India without an export license or payment of any fee ?

(c) If replies to the above questions be in the affirmative, are Government prepared to consider the advisability to apply one and the same principle in both the cases ?

The Honourable Sir Henry Craik : (a) It is presumed that the Honourable Member is referring to the transport of stocks of arms and ammunition by licensed dealers from one place in British India to another. Such transactions have to be covered by a transport license the cost of which is Rs. 10.

(b) A private licensee can obtain arms and ammunition in reasonable quantities for his personal use from any place in British India without taking out a transport license.

(c) No. The two transactions are different in nature. The licensed dealer transports stocks of arms and ammunition usually in bulk, for the purpose of sale for profit : the private licensee obtains supplies in small quantities for his own use.

SHORT NOTICE QUESTIONS AND ANSWERS.

MOVEMENTS AND WHEREABOUTS OF MR. R. N. CHAWLA, INDIAN AVIATOR.

Mr. S. G. Jog : (a) Are Government aware that Mr. R. N. Chawla, aviator of great fame, left India for a world flight ?

(b) Are Government aware that his recent movements and whereabouts are not known ?

(c) Are Government aware that the whole of India is anxious to know of his whereabouts ?

(d) Do Government propose to make prompt inquiries about his whereabouts and inform this House and the public about his whereabouts,

and henceforth to keep the public in touch with his movements from time to time ?

The Honourable Sir Frank Noyce : The statement which has appeared in the Press this morning, to the effect that Mr. Chawla arrived in London on August the 5th, renders a detailed reply unnecessary, but I wish to take this opportunity of stating that the anxiety which was expressed on Mr. Chawla's behalf was quite unnecessary.

Government made enquiries of the other Governments on the route and ascertained that Mr. Chawla left Alexandria on the 30th July, having failed to notify any authority that he had changed his original plan to fly *via* Cairo. Mr. Chawla has just flown over a well-organised air route, which has been flown by hundreds of similar small aircraft during the last seven years and most of which is traversed by pilots of the regular air services almost every day. The route is equipped with wireless stations and it is not possible for an aeroplane to disappear or to remain out of touch with civilisation without the aviation authorities and the Press in the locality being aware of the fact. Had there been any necessity, the aviation authorities concerned would have communicated with the Government of India.

It will be understood that Mr. Chawla's movements hardly arouse the same interest outside India, as they do in this country. Consequently, his failure to inform any one, until six days after his arrival in London, has caused a great deal of unnecessary trouble to the administrations of several countries on the England-India route.

RELEASE OF PANDIT JAWAHAR LAL NEHRU.

Mr. Gaya Prasad Singh : Do Government propose to take any step to release Pandit Jawahar Lal Nehru, in view of the serious illness of his wife, Mrs. Kamla Nehru, about which I have received the following telegram, dated the 10th August, 1934, from Dr. Atal, Anand Bhawan, Allahabad, which I am forwarding in original to the Honourable the Home Member :

“ I have sent the following wires to the Home Member United Provinces Government and Home Member Government of India (stop) I was sent for from Lucknow where I ordinarily practise to treat Mrs. Kamla Nehru who is wife to Pandit Jawahar Lal Nehru, and is also related to me (stop) Local Doctor Jairaj Behari and I am clearly of opinion that owing to complications her illness which is of pleurisy has already become serious. I am wiring to inform you so that you may take whatever action you may deem fit and proper under the circumstances (stop) Further she had severe coughing bout yesterday and heart attack today which assumed alarming aspect (stop) As her husband is political prisoner I have considered it my duty to inform you. My colleague Doctor Jairaj Behari agrees with me. ”

The Honourable Sir Henry Craik : The question is really one for the Local Government to decide, but the Government of India are in communication with the United Provinces Government on the subject. The Local Government's answer is still awaited, but, by the courtesy of the Simla representatives of the Associated Press, I am in a position to inform the House that the Associated Press, Allahabad, was informed late last night by the District Magistrate of Allahabad, that Pandit Jawahar Lal Nehru had been released temporarily on account of his wife's

illness. (Applause.) It appears that Pandit Jawahar Lal Nehru arrived at Allahabad last night, and went to the house in which his wife is lying.

Mr. S. G. Jog : May I know whether his release is temporary ?

The Honourable Sir Henry Craik : Yes, temporary.

THE INDIAN IRON AND STEEL DUTIES BILL.

PRESENTATION OF THE REPORT OF THE SELECT COMMITTEE.

The Honourable Sir Joseph Bore (Member for Commerce and Railways) : Sir, I beg to present the Report of the Select Committee on the Bill to provide for the modification and continuance of the protection afforded to the iron and steel industry in British India, and to impose an excise duty for revenue purposes upon certain steel.

THE ASSAM CRIMINAL LAW AMENDMENT (SUPPLEMENTARY) BILL.

Mr. President (The Honourable Sir Shanmukham Chetty) : The House will now resume consideration of the following motion moved by the Honourable Sir Henry Craik on the 7th August, 1934 :

“ That the Bill to supplement the Assam Criminal Law Amendment Act, 1934, be taken into consideration.”

The Chair takes it that all Honourable Members have now been supplied with copies of the Assam Criminal Law Amendment Act. (*Voices* : “ Yes.”) In order to avoid the kind of difficulty that has been experienced by Honourable Members in the past, the Chair has arranged, in consultation with the Legislative Department, that in future, whenever there is a Bill to amend or supplement a local Act, the Legislative Department will supply to the Assembly Department a copy of the original local Act, which will be printed and supplied as an annexure to the Bill before the House. (Applause.)

Mr. T. R. Phookun (Assam Valley : Non-Muhammadan) : Sir, I rise to oppose the motion. In doing so, I have no intention of inflicting a speech on you at this fag end of my legislative career.

Some Honourable Members : No, no.

Mr. T. R. Phookun : I oppose the Bill on two grounds. In the first place, it is against the spirit of law and sense of justice. My second ground is that it is absolutely unnecessary, having regard to the facts that are mentioned. Sir, my Honourable friend, Sir Syed Saadulla, has trotted out the familiar argument that is generally done in introducing repressive measures of this kind. “ In the public interest ”—that is the reason put forward, not in the interest of the Government, nor it is merely the intention of the Government—but they say “ in the public interest ”. He said further : “ I cannot divulge either the quantum or the quality of the evidence which was placed before us ”, that has always been the Government excuse. Now, Sir, however clever a judge might be, and however efficient an officer may be, or whatever his position might be, it is almost impossible for them to distinguish between fabricated and genuine evidence unless it is carefully

[Mr. T. R. Phookun.]

tested by clever cross-examination. The Honourable the Home Member was visibly perturbed when he controverted the truth of the statement made by my Honourable friend, Mr. Neogy, regarding the affairs of the Dacca riots. May I ask why he could not calmly accept the evidence tendered by such an honourable gentlemen as Mr. Neogy? I suppose he found it very difficult to accept it unless it was tested by cross-examination, and he must have considered that this is not the right place either to proceed to test it or that he was not personally very competent to do so. Why could not the Honourable the Home Member accept the challenge which had been thrown and which was thrown to publish the Nelson report? There, again, I presume, he thought that there were certain materials which, if tested by cross-examination, will not stand and there might be other evidence which, when tested, will go to support the statement made by my Honourable friend. In these circumstances, it is always unfair to the person to presume that there is sufficient evidence for detention where we are not competent to judge it without cross-examination. Two judges or high officials are unable to distinguish between fabricated evidence and genuine evidence, unless tested. It offends the very principle of law and sense of justice that a man should be imprisoned, detained for all times on the evidence that is tendered and which is not tested. If you have sufficient evidence, if you are absolutely convinced of the nature and the quality of the evidence, why cannot you place it before a judge? You say you cannot do it in the public interest.

Khan Bahadur Mian Abdul Aziz (Punjab : Nominated Official) : It is done because of the safety of the witnesses. So many witnesses have been done to death.

Several Honourable Members : How many?

Mr. S. C. Mitra (Chittagong and Rajshahi Divisions : Non-Muhammadan Rural) : Will the Honourable gentleman please read the Act before he says anything? It is provided in the Assam Criminal Law Amendment Act itself that the witnesses may be protected by taking the evidence *in camera*. Please read the Act before you criticise others.

Khan Bahadur Mian Abdul Aziz : I was not referring to that. I was only answering the question about the disclosing of the names of witnesses and why those people were not brought forward. I give only one instance. In one day a released Babbar Akali convict shot eight people within a few minutes including three who had given evidence against him. This was after his release.

Mr. T. R. Phookun : May I tell my Honourable friend that evidence is tendered times without number before Special Tribunals, and, I ask, in how many cases accidents or incidents like the one he has described have happened? Very few. If Government cannot disclose the evidence, there is bound to be honest suspicion in the minds of the people. You do not want to give out the evidence, because you find that it will not be sufficient and that it will not be enough to secure a conviction. Clever lawyers might dissect it and tear it into pieces. I concede it may not be so. It may be that the evidence is true, but until it is tested, we lawyers are bound to look upon it with suspicion and that is possibly the reason why High Court judges have refused to have anything to do with giving a verdict

on untested evidence. Sir, it is not a question whether the Habeas Corpus Act or the jurisdiction of the High Court can be curtailed. Certainly, it is within the competency of this House to do so. It has been done in this country. It has been done elsewhere, but my question is,—is it right, is it necessary, to curtail the power, because there have been a few dacoities? I think it is a bad principle. It makes the people suspicious, and the suspicion leads to mischievous acts. This practice is not followed in many countries. It is only in India that this practice has been generally adopted. We are told that, if you disclose the name of the witness, the accused will come and shoot him. There have been one or two instances of this kind in India, and that has happened not only in India, but elsewhere also, but that does not justify a general action of this nature which I consider to be very very repressive in its nature. To detain a man for any length of time without any trial whatsoever, is very offensive to the general sense of justice. Sir, I take it that there is a provision for *camera* trial in the Assam Act also. Why is that not availed of in which case the witnesses will be safe?

Sir, coming to the facts, I may say that, so far as my part of the country is concerned, in regard to political agitation, we have been worse than school boys—not even gone to the extent of frightening anybody who has dared to differ from us in their views (showing a toy pistol) even by a show of this tiny little thing which is sold in the market. This is a thing which I picked up here somewhere. I have not even heard a cracker drawn across the table even during the Christmas week to frighten a nervous Government official, and yet Government have thought it fit that we should be repressed by this repressive measure. Well, Sir, I thought always that it is best to allow sleeping dogs lie, lest exaggerated and enthusiastic feelings lead to disastrous results. I shall try to illustrate it by a common story which is current in Assam. There was a party, consisting of men, women and children, who were crossing the Brahmaputra in a rather small-sized craft. In the company and on that boat was a man who was slightly demented. When everything was going on smoothly, when he was quite happy in his own meditation, a garrulous old lady, unable to resist the temptation of talking, addressed that man and said,—“ My dear man, I hope you will not over-turn the boat ”. On that the man said,—“ Well reminded, my lady ” and so saying he over-turned the boat. (Laughter.) So over-enthusiasm does not always lead to the expected results. I think that Government might have waited before they produced this piece of repressive legislation. Now, if you say, “ well, so far as your part of Assam is concerned, it is all right, but what about the other part of Assam, that is, Sylhet, where my Honourable friend, Mr. Abdul Matin Chowdhury, hails from ”—no aspersion on him though Government do insinuate that “ we cannot divide the Province into two parts and make one law for one part and another for another part ”. That means—“ give the dog a bad name and hang him ”. So far as we are concerned, if you really think that things are so dangerous in these other parts, why not separate those parts that lie contiguous to Bengal? Bengal, I take it, will then be very much pleased to have them. (Hear, hear.) Why not do that? Some people from Sylhet, who had been very anxious at one time for their being joined to Bengal, have now realised that they are better off in Assam than they might be in Bengal. (Laughter.) They are I daresay, by culture, more allied to Bengal and would be better placed there.

[Mr. T. R. Phookun.]

I think we have given very little trouble to the Government so far, but I sometimes begin to feel that perhaps if we gave them as much trouble as Bengal did, we might have got what we wanted,—anyhow that is the spirit which sometimes comes to me, because we have mostly behaved like quiet school children so far and that we will be given good conduct prizes. Sir, I am one of those Congressmen who have always been against any violence and this has been the case with my valley people generally, yet — because the Congress in Bengal was declared illegal, the Assam Government extended the courtesy to Assam also, inspite of the fact that there was no violence whatsoever there. Coming to the merits of the case, what are the facts? There were a few dacoities, and that is all. But, Sir, I do not know how these dacoities can be called political. The reason insinuated is that they are committed by the *Bhadralog* class. Now, how are they connected with the *Bhadralog* classes? Oh, because the dacoits were dressed in “clean clothes, they must be *Bhadralogs*”, as if dacoits could not use clean clothes to pass themselves off as *Bhadralogs* and, as if some members of the *Bhadralog* classes could not commit such offences under the stress of economic depression or through criminal intention or through criminal tendencies. I find no good reason why such dacoities should be labelled as “political”. What is more, Government call these political dacoities because they are committed with the help of revolvers and other dangerous weapons! Sir, I think, it is a sign of civilization in all countries to commit dacoities with guns and revolvers, and, where dacoities are perpetrated, they usually do use offensive and defensive weapons,—and they will unfortunately not be deterred by the fact that people sleep with revolvers under their pillows, or adopt repressive measures. Sir, wherever there is a dacoity, there is bound to be violence; otherwise it will surely be called a “theft”, and so the mere fact of the use of a revolver or a spear or some other dangerous weapon in the commission of a dacoity would not *ipso facto* make that a “political” offence. There is nothing I find in the Assam Provincial Council debates to show that there have been any political dacoities. If that is so, the ordinary law should be quite enough to tackle the ordinary dacoity cases just as they were done in other parts of India and elsewhere. Why should you consider such offences to be invariably political offences necessitating the bringing in of such a drastic measure as this?

My friend, the Honourable the Home Member, might say, “well, my friend, if you do not want the Bill, you lose the right of appeal; we are giving that to you”. To that I say, “the sting of the scorpion is always in the tail” and that does not make the insect any the less dangerous. While you are giving that right of appeal, which we think you ought to, you are also introducing another clause which deprives us of a fundamental right, and, therefore, Sir, I am bound to oppose it, otherwise I certainly would have welcomed the first portion where you give a right which you ought to do in the ordinary course. Sir, I say the non-official view has been entirely against this measure. There have been, Sir, a few dacoities, that is all, and no wonder, they have only recently unhappily started in these times of economic stress, but there is no reason why they should all be dubbed as “political” crimes. Reference is made to “subversive movements”. Such dacoities do not lead to subversion of the Government—for bombs were not used, not an official was attacked, nothing very outrageous was committed. They are, to my mind, mere dacoities for per-

sonal gain. Sir, these dacoities are enumerated within the space of a mere paragraph. On page 2 of the Assam proceedings, it is said :

“ Since 1931, a *regular series* ”—*not a series merely*—“ of crimes perpetrated by a party of terrorists have disfigured the fair name of the Province, and since that year, the number of guns stolen have reached very high limits ”—

With these guns, they have not, it would appear, shot anybody *who was against the Government*—they have simply committed dacoities with them—how do you then call all these political dacoities ?

“ Then, in January, 1931, there was a mail robbery or a dacoity in which Rs. 3,420 were stolen.”

Now, it alarms the Government that such an amount of money is collected ! That this money must have been,—thanks to the unselfishness of these dacoits and the lack of any motive of personal gain,—must have been utilized for the country's cause, that it must be utilized for the purposes of some Association having subversive movements as their objects ! Sir, these are the all too easy conclusions drawn from the mere fact that there have been a few dacoities.

An Honourable Member : Who was speaking on behalf of Government ?

Mr. T. R. Phookun : Sir Muhammad Asaadullah, the Judicial and Home Member of Government.

Then, in 1932, four masked men entered the mail van of a passenger train of the Assam Bengal Railway, they over-powered the attendant with daggers and iron bars and looted all the mail bags.

Sir, these are all the instances—these are the three or four dacoities, in which the largest amount stolen was Rs. 3,000 odd !

I say, Sir, there is not the least justification for this measure on such grounds merely. If there had been any iota of evidence to connect these dacoities with political or subversive movements or such-like purposes, that would have been mentioned. We do not find anything here ; there was just this much in the general discussion to show that there were a few dacoities, and the fair name of Assam was being tarnished, and, therefore, there was urgent necessity for bringing in this measure—I suppose that will enhance the fair name of the Assam Government. The Bengal Government have done it, and, therefore, Assam must be saved by the introduction of such a measure to save her fair name ! What logic ! By its introduction, I take it, Government expect that all dacoities will cease. I am afraid that is expecting too much. Sir, as promised, I would not detain the House for long. Sir, the argument that would possibly be adduced for suspending the writ of Habeas Corpus is that it is not possible for them to disclose the names, because they are afraid that the witnesses may be murdered. Government will assure the House that the evidence before them had been carefully sifted and that they were convinced that the case was a true one, but they cannot let you see it. As an evidence of good faith, my friend, Mr. Neogy, suggested that the Law Member, who is a Government Member and who cannot be suspected by Government, might be deputed. But, I suppose the Government's idea is that after all he is an Indian, and if you scratch him a little deeper, you would find him to be a nationalist. The Law Member may be competent enough to give legal opinion, but in judging his countrymen he may not be trusted to that extent. So, Sir, even he is not trusted by Government.

[Mr. T. R. Phookun.]

Sir, we suggested the name of a person with a big reputation and whose legal intelligence cannot be challenged and who might have been able to find out the truth even without cross-examination, but our suggestion has not been accepted. Of course, we are out of the question. It would have given us some satisfaction if our suggestion had been accepted and, instead of giving it to the official Sessions Judges, it might have been given to a lawyer. Sir, a judge may or may not be a lawyer, but a lawyer who is independent in his views would certainly be able to scrutinize and sift the evidence better. Therefore, our suspicions will continue to remain there as long as you do not do away with this practice.

I, therefore, on behalf of my country and on my own behalf, oppose this Bill which is repressive in its nature and which is against the principles of law and justice. I am sure, my Honourable friends will extend their sympathy to Assam and discuss this measure. I would have continued for a little longer more, but I know that Government are in no mood to listen to friends. I, therefore, consider it an absolute waste of time and energy to try and convince the Government, or the gentlemen who have subscribed to the principle of the Government of terrorising the people lest they should become terrorists. (Non-Official Applause.)

Mr. K. C. Neogy (Dacca Division : Non-Muhammadan Rural) : Sir, it was somewhat touching to hear the Honourable the Home Member's concern, which he expressed on Tuesday last, for the right of appeal of people who have already been convicted by Special Tribunals of heinous offences. His attitude on that occasion was in strange contrast to that which he displayed on the previous day, that is to say, on Monday, when he asked this House to pass a measure perpetuating a system of banishment for people who are incarcerated on the merest suspicion and who are not given a proper chance of having their say before a properly constituted Tribunal or Committee. In the present instance, the House must remember that we are dealing with the right of appeal of persons who have been convicted of heinous offences mentioned in the Schedule to the main Act, and in the other case we were dealing merely with suspects. I do not know on what grounds my Honourable friend is going to justify the disparity in his interest as between these two classes of people. They have set up Special Tribunals consisting of three judicial officers, who are very competent, I take it, from the Government point of view.

I am not going to criticise the constitution of the Special Tribunals, though I remember the somewhat irreverent language that was used for the purpose of describing them in the Bengal Legislative Council by a very prominent Muslim Member not very long ago. I am not prepared to discriminate in this manner between these two classes of people, the first class being of persons who are merely suspected of complicity in the terrorist movement, and the other class consisting of people who have been convicted by a very competent body of Commissioners and convicted of definite overt acts in furtherance of their policy of terrorism. Now, Sir, judging from the practical point of view, again, is this right of appeal a very valued one? I do not know whether there have been many cases yet in Assam under the new law, but if our experience of what has taken place in Bengal is of any use to us, I can tell this House that if any judicial Court were to pronounce a verdict of "not guilty" in favour of a person accused of a terrorist crime, he would almost invariably be pounced upon on his acquittal by the police and incarcerated for an

indefinite period of time. Perhaps my Honourable friend is in a position to give this House the number of cases in which people who have been acquitted after proper trial, either before Special Commissioners or before other Courts of justice in Bengal, during the last few years, have not been dealt with under what they call the preventive sections of the law and detained for an indefinite period as suspects? Now, Sir, I do not know whether, while providing this right of appeal for the benefit of the accused persons, who have already had a regular trial before a body of Special Commissioners, we are doing any good to them, because, if they are convicted and sentenced, the sentence, unless it is a capital sentence, is to run up to a particular point of time and the persons against whom the sentence is pronounced know that they will be in the jail for a definite period of time and that they can look forward to their liberty after that period is over. But supposing any such person succeeds in appeal, and that, I take it, is the main reason or justification for providing an appeal in such cases, that is to say, we want to give the best chance to the accused person, supposing he is in a position to get an acquittal from the appellate Court, which is the High Court in this particular case, can my Honourable friend give us a guarantee that a person so acquitted on appeal shall be allowed to enjoy his liberty? I do not know whether, so far, anybody has at all been acquitted on appeal by the High Courts, but it has become almost the rule rather than the exception to immediately arrest a man on his acquittal and then spirit him away for an indefinite length of time. It was only the other day, three or four days ago, that we were reading in the newspapers that a particular man had been acquitted by a body of Special Commissioners in Bengal, and that, immediately after his acquittal, he was re-arrested under the so-called preventive provisions of the Criminal Law Amendment Act.

Now, Sir, I had the opportunity of having a talk with a judicial officer who has since retired. He said that never before in his life did he feel so humiliated as he did when, on a particular occasion, after he had acquitted a person, implicated in a terrorist crime, he was re-arrested to be spirited away for an indefinite length of time. That is the way in which the Honourable Member's Government and the Provincial Governments have been undermining the people's respect for the British judicial system which had so far acted as the bulwark of the British Government in this country. Now, Sir, I want to save the High Court from this humiliation. It is enough that the subordinate judiciary has to suffer this humiliation, and I should do nothing, if I could help it, to put the High Court to the same humiliating conditions to which the Government are almost everyday subjecting the subordinate judiciary in this matter. I want to raise another point. Are we so very sure of the independence of the High Court itself in regard to political cases? I speak with great trepidation in this matter when I refer to the Calcutta High Court, but I have the definite authority of my Honourable friends, Mr. Mitra, Mr. S. C. Sen and Pandit Sen, who are all present here, to say that since Sir Lawrence Jenkins left the Calcutta High Court, it does not enjoy the same amount of public confidence, at least in political cases, as it did before. (Hear, hear.) Now, Sir, I am further reinforced in this particular point by the discussions which I saw in the proceedings of the Bengal Legislative Council when an eminent lawyer of the name of Mr. N. K. BANU—the President of the Bar Association—questioned the independence of the High Court as at present constituted. I notice my Honourable friend,

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the Home Member, taking very diligent notes of this particular point (Laughter), and I am going immediately to ask him his assistance in understanding a very significant speech which was made by Sir Shadi Lal on the day he retired from the Bench of the Lahore High Court, and I am going to quote a few sentences from that speech, and I should like my Honourable friend, the Home Member, to assist me in understanding the real import of that speech. I think the Honourable the Home Member is the best qualified man to do that because of his long association with the Punjab. Here I may assure the House that what I am going to read out was not stated by Sir Shadi Lal on an after-dinner occasion. It was not the post-prandial kind of pleasantry which is sometimes uttered under spirituous influence. This was a very serious occasion. The Honourable the Chief Justice was retiring on that very day after a very meritorious career as the Chief Justice of the Lahore High Court, and all the Judges were assembled in the Court Room and all the members of the Bar were assembled there. It was in reply to the addresses that were presented to him on that occasion that he made this speech, and I am assured that he spoke from written notes.

The Honourable Sir Henry Craik (Home Member) : What was the date ?

Mr. K. C. Neogy : I am reading from a newspaper, dated 9th May, 1934, probably the speech was made on 7th May. It was a long speech, and I do not want to trouble the House with the whole of it, but I shall refer only to certain portions. Sir Shadi Lal referred to certain statements made by Sir John Simon with reference to a political case in England where Sir John Simon stated that that case afforded an illustration of the liberty enjoyed by the British people. Then, Sir John Simon goes on to say :

“ Here was a man ”

—all this is taken from the speech of Sir Shadi Lal,—

“ Here was a man who had been sentenced and who was opposed to the whole system of the Government of his country, but who, none the less had a perfect right to resort to the ordinary courts of the land against a high official whose subordinate had made what in my view was only a mistake without malicious intent : and yet, without question, the law of England, which is administered impartially for everybody, awards him a compensation in exactly the same way as though he was a favoured member of society.”

This was what Sir John Simon stated, and after giving this quotation, this is how Sir Shadi Lal proceeded :

“ Would it be improper to ask what would be thought of a Judge in India who, imbued with the traditions of British justice, acted in a similar manner ? Would he not, thereby,”

—I want my Honourable friend's particular attention to this,—

“ Would he not, thereby, subject himself to disfavour, and even resentment, which would be manifested in no uncertain manner ? These and other disadvantages have sometimes to be borne *sub silentio* by a person who is true to the oath which he solemnly takes on accepting the office of His Majesty's Judge.”

Shall I repeat the last sentence again for the benefit of my Honourable friend ?

“ These and other disadvantages have sometimes to be borne *sub silentio* by a person, who is true to the oath which he solemnly takes on accepting the office of His Majesty's Judge.”

Then, he proceeds :

“ He has to follow the doctrines of the British Justice embodied in the memorandum which was prepared about two years ago by the Judges of His Majesty's Supreme Court of Judicature in England. The Judges ‘ occupy ’, states the memorandum, ”

—This is a quotation from the memorandum—

“ a vital place in the constitution of this country. They stand equally between the Crown and the Executive, and between the Executive and the subject. They have to discharge the gravest and most responsible duties. It has for two centuries been considered essential that their security and independence should be maintained inviolate. It was long ago said that there can be no true liberty in a country where the Judges are not entirely independent of the Government and the soundness of the remark has never been questioned.”

Here ends the quotation from the memorandum of the Judges of the Supreme Court in England. Now, Sir Shadi Lal proceeds as follows :

“ This is an authoritative pronouncement to which no reasonable person can take any exception. It is, however, said, ”

—I do not know by whom,—

“ that these doctrines of the English constitution cannot find full scope in this country where there are peculiar circumstances which tend to impair the independence of the Judiciary. On principle I am unable to see any valid ground for making such distinction, and I trust that no Judge of this Court will ever depart, in the slightest degree, from the solemn promise which he makes before entering upon the execution of the duties of his office, even if he is subjected to personal disadvantages.”

I do not want to give any further quotation from his speech, but if my Honourable friend wants the full text, I am prepared to send it across the floor of the House. What interpretation are we to put upon some of the significant passages of this speech ? That is what I want my Honourable friend to tell this House. Now, Sir, as to what interpretation responsible opinion in the country places upon the speech would appear indirectly from the fact that at the very next Session of the Punjab Legislative Council, which was held on the 27th June, 1934, in this very Chamber, a friendly Non-Official Member, I should not like to name him, was asked to put some kind of what we call leading questions, and this is his first question :

“ Will the Honourable Member for Finance, ”

—I do not know what concern this question has with Finance, however,—

“ Will the Honourable Member for Finance please state whether Government are aware that on 7th May, 1934, Sir Shadi Lal, lately Chief Justice of the Lahore High Court had in reply to the addresses of farewell presented to him on behalf of the Bench and the Bar mentioned certain difficulties of the Judges ? ”

Answer—“ The reply is in the affirmative.”

Then followed some more questions as to whether these allegations were true, and things like that. I need not trouble the House by going into these questions; and the answers, as expected and perhaps as arranged, were in the negative; that is, that there was no such interference so far as the Government of the Punjab were concerned.

Now, Sir, that is not the way to dispose of such a matter,—it is not such a simple thing. Here was a man who had been chosen very deliberately to occupy the very responsible position of the Chief Justice, and he was the first Indian to be chosen for a permanent appointment of Chief Justice. And there is no doubt about it that so long as he was on

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the Bench, Sir Shadi Lal did the fullest justice to the confidence that was placed in him. And it was after the completion of his term of office when he was chosen to occupy a far more responsible position, that of one of His Majesty's Privy Councillors, that he made those statements. It will not do for my Honourable friend to get up and say, "Well, these are malicious lies; these are wicked lies". I think my Honourable friend's parliamentary training tells him that these expressions are to be used, and can be used with impunity, only with reference to Non-Official Members, and I daresay he is not going to use such language with reference to Sir Shadi Lal. I should very much like to know from him what interpretation he is going to put upon it. The country at large has put one definite interpretation, and that is that you cannot definitely say today that in regard to political cases the High Court enjoys the same kind of independence perhaps as in tuppenny-hapenny matters of civil litigation or other cases of a similar character. Sir, as for all these various reasons I do not consider the right of appeal to be a valued right, I am not prepared to support such a measure.

Mr. Abdul Matin Chaudhury (Assam : Muhammadan) : Sir, like my Honourable friend, Mr. Phookun, I am also opposed to this motion. Generally speaking, I should be inclined to give my support to any measure that Government may choose to bring forward to combat terrorism in this country. But I am opposed to this measure, particularly because I think that circumstances in Assam did not justify the passing of that Assam Criminal Law Amendment Act, nor does it justify the passing of this measure which is before us today. Assam, Sir, is more or less a very peaceful Province. Unlike Bengal, our Province is not saturated with terrorism. I think Government themselves will admit that, in the whole of the Assam Valley Division from which my Honourable friend, Mr. Phookun, comes, the entire population, both Hindus and Muslims, have scrupulously kept away from participating in the terrorist movement. Mr. Phookun says that they have been behaving like schoolboys, and the implication probably is that people from my part of the country, Sylhet, are not behaving as they are expected to behave. Sir, these Assam Valley districts comprise six out of the eight plains districts of Assam, and all the hill districts are absolutely immune from all traces of terrorism. I admit that it is only my own district of Sylhet where the terrorists have been able to secure a few recruits. But for dealing with this handful of young men to bring in a measure like this one, trenching upon the personal liberties and rights of the entire population of the Province is absolutely unwarranted. It is like bringing a Nasmyth hammer to crush a fly. The enactment of extraordinary measures like the present one presupposes conditions which are absolutely absent from Assam. You can justify extraordinary measures on the ground that the situation is abnormal, but I maintain, Sir, that the situation in Assam is practically normal. Unlike the Province of Bengal where the district officials like the District Magistrate and the District Superintendent of Police and other officials live in constant danger of their lives, do not usually stir out unless accompanied by armed guards and whose bungalows are guarded like castles, in our Province the officials live a fairly tranquil life. No route march by the military is necessary in our Province. No vigilance committee is necessary in our province. It is only, as I said, my own district of Sylhet

where they have been able to secure a few recruits. But, that extraordinary precaution, which is necessary to be observed in Bengal for the safety of the officials, is not necessary to be observed even in that district. I will give you one or two very simple instances. Last time when I was at home, the District Magistrate of Sylhet came to our village to preside over a prize distribution ceremony. He travelled by road unaccompanied even by a *chaprasi*, in broad daylight, without the least fear of molestation ; and he is doing it every day of his life. Then on another occasion, there was a tornado in the town of Sylhet. The District Magistrate went out at night making inquiries from house to house as to what damage had been done by the tornado. That only shows that our normal life is absolutely unaffected by the acts of terrorism by a handful of young terrorists. I do not deny that there have been cases of political dacoity in our district. But may I ask, which Province in India is free from these isolated acts of violence by these terrorists ?

Mr. Uppi Saheb Bahadur (West Coast and Nilgiris : Muhammadan) : Madras.

Mr. Abdul Matin Chaudhury : My friend, Mr. Uppi Saheb, says, Madras. I think, very recently a political dacoity was committed at Ooty looting a bank there ; and in Rajahmundry, if I am not absolutely mistaken, there have been cases like that.

Mr. B. Das (Orissa Division : Non-Muhammadan) : There is no political dacoity in Orissa.

Mr. Abdul Matin Chaudhury : As regards Bihar and Orissa.—I speak subject to correction,—my own impression is that more political dacoities have been committed there than in the Province of Assam.

Mr. B. Das : Not in Orissa.

Mr. Abdul Matin Chaudhury : Then, again,—I speak subject to correction,—I think the towns of Benares and Cawnpore harbour more political revolutionaries than the entire Province of Assam. And even in the Province of Bombay, we have had outrages at Poona, and bombs were discovered in Bombay City itself. So if in all those Provinces these extraordinary measures were not necessary, why should you single out Assam in particular ? In our Province, Sir, as I said, we are a very peaceful and law-abiding population except that there have been a few cases of stray dacoities here and there. Our support to this motion will amount to the admission that the position in our district is quite as bad as they are in Bengal. We are not prepared to make that admission and I oppose this motion.

Sardar Sant Singh (West Punjab : Sikh) : Sir, the only justification for such a piece of legislation is the existence of the terrorist movement in some parts of India. It has been admitted on the floor of this House that this movement has now been in existence for the last 30 years. During this long period various powers have been asked for and granted to the executive to put down this movement ; but the history of the legislation shows that the more the repressive powers, the more has this movement flourished under this repression. It was probably due to this fact that Sir Harry Haig in his last speech on the Bengal Criminal Law Amendment Supplementary (Extending) Bill said :

“ I wonder if we remember that this conspiracy has been going on for nearly 30 years. Each time, when the conspiracy has been brought under control, the

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powers have been surrendered and the organisation has started working again. It is easy to be wise after the event, but looking back it may seem that this has been a fundamental mistake in the policy of Government in the past, a mistake into which they have been led by precisely those arguments of optimism and confining our action to the very minimum required, which we shall no doubt hear in this debate. I have said it is easy to be wise after the event, and therefore, a heavy responsibility rests on those who, even after the event, refuse to be wise, who misunderstand and reject the teachings of experience."

The policy laid down in this expression of opinion by the ex-Home Member is very clear, very definite and very precise. I wonder if the occupants of the Treasury Benches have realised the significance of this expression of opinion by an experienced Home Member like Sir Harry Haig. What does it teach? It has certain implications behind it, and the implications are that the Treasury Benches should not listen to the arguments of optimism which are advanced from this side, in order to modify their policy of putting down the terrorist movement by executive action. May I ask them, are they following this policy? Are they refusing to be wise after the event? If this policy of going midway between the rule of law and the rule of executive has failed in the past, why should they permit themselves to be persuaded to put forward a piece of legislation which is a wavering legislation, which leads to indecision of policy of the Government? I would rather suggest in my own humble way to the occupants of the Treasury Benches that they should follow the uncompromising attitude of Khan Bahadur Mian Abdul Aziz—I am afraid he is not in his seat just now—or Chaudhri Lal Chand, and put down the movement with a strong hand. We are familiar with these arguments. The happenings in mid-Europe today reinforce the arguments of the advocates of repression. History is repeating itself again. The democratic principle of equal opportunities for all under just laws no longer holds good there. The man in power today makes a short shrift of his opponents. What did the Czarist regime do? It put an end to all who were against the Government. The policy was "Either you are with us or against us: there is no middle way". I would advise the Government and I would offer them my full co-operation if they were to bring forward a decisive measure. If they think and if they consider in their wisdom—and the wisdom is always with the Government—that they can put down this movement by repression, then they should resort to unmitigated repression and repression alone: no palliative in the shape of appeals: no palliative in the shape of offering evidence before the Commissioners or before ordinary judges: no place for the Honourable the Law Member in this House: no place for the rule of law: no place for Legislative Councils or for legislative bodies. The Government should at once resort to putting down this terrorism by methods with which the executive was very familiar in the 15th and 16th centuries. The Government of India should revive some constitution similar to the Star Chamber Tribunal.....

An Honourable Member: That is going on.

Sardar Sant Singh: No, not yet. The Star Chamber is still a historical scandal. What I mean is this: if the Government really believe that this movement can be put down by these repressive methods, let them be clear about it. But if they, on the other hand, think that this policy has failed, that this policy did not succeed for thirty years, and that it is not likely to succeed now, then the logical way, the reasonable way, the rational way of looking at the problem is to examine the causes that gave

birth to this movement, to prescribe the remedies after carefully diagnosing the disease. The only method which has so far been successfully adopted in all civilised countries is the method of adopting the rule of just law.

The prevalence of the rule of law in the country will ensure the liberty of speech, liberty of action, within the bounds of law, and equal opportunities to rise for all people without distinction of caste, creed or colour. Once the younger generation is convinced of these conditions in the country, there will be no scope for terrorism, public opinion will abhor it, will not tolerate it, and the movement will automatically disappear. But if, on the other hand, the young men feel that the Government are not for the people, that the Government are not prepared to do justice between man and man, and that the administration is carried on on the principle of nepotism as is the case today with the Government of India, the suspicion grows resulting in discontent with the present state of affairs in the country, and the discontent grows with the result that resentment follows in its wake, and the resentment leads to all sorts of mad actions by the young men. You cannot do away with terrorism without radically changing the environments.

I will examine the provisions of the Assam Act now. All the respected principles of British criminal jurisprudence, on which the administration of law was based in India, have been dispensed with in this Assam Act. The Act has gone so far as to permit the Public Prosecutor to offer an open insult to the presiding judge of the Court. His Majesty's judge, when sitting in the Court, has so far been recognised to be the sole master of the Court room. He regulates the procedure, regulates the conduct of those who are in Court. But the Assam Act says that the Public Prosecutor may certify to the Court that the Court should be held *in camera*, and the judge is bound to follow the verdict of the Public Prosecutor, that is, that a judicial officer of His Majesty should be deprived of the control over his own Court and should be guided by the Public Prosecutor to exercise his discretion in a particular manner. Do we not lay here the foundation of suspicion against the judge himself, his impartiality and his independence? I hope the Honourable the Law Member will bear me out that it is not merely the doing of justice that matters, but it is obtaining the public sanction and public confidence that justice has been done: Unless the public is convinced that justice has been done, the mere doing of justice does not go to stabilise an administration. A terrorist may be a terrorist, a genuinely dangerous person; but if the public is not convinced of his guilt, certainly you cannot expect the public not to sympathise with him. The public only sympathises with the murderers and with the worst felons as long as they believe that justice is not done to them. All these Acts, wherein the judicial officer is deprived of power of controlling even his own Court, cannot lead to that confidence in the administration of justice which is so essential for the maintenance of peace and order in the country. Not only in this respect, Sir, that this Act violates the lifelong and time-honoured principles of English jurisprudence, but it goes further; it makes Dicey and other honoured jurists tremble in their graves, when this measure provides that the evidence recorded in the absence of an accused person can be used against him. I have never heard of such pernicious principles being placed before a self-respecting House to accord sanction to such principles by actually agreeing to the passage of that Bill. Certainly, I concede that in the Constitution, under which we are working, this House has no right to question the judgment of the

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Council that passed this Assam Act and that we are here merely required to supplement its provisions. The question under the circumstances is, should we or should we not supplement this Bill? It may be said, Sir, that the right of appeal is a valuable right and if we deny that right, we shall be denying a privilege to those for whom we are feeling some sympathy in their trial, though not in their actions. But what is this right of appeal? Evidence untested by cross-examination, untested by any of the methods known to jurists, is to be placed before the High Court. How can the Judge of the High Court decide or arrive at just conclusions on that kind of evidence? It is impossible. Therefore, Sir, this right of appeal may on paper seem to be a very valuable right, but really it is not such a right which any convict would like to have under the circumstances.

Then, Sir, it has been suggested that the names of witnesses are not to be disclosed because of the apprehension that the safety of their person will be in jeopardy. On the surface this seems to be a very plausible explanation. Of course, there may have been certain occasions on which witnesses were subjected to maltreatment for giving evidence in such cases, but have not such occasions been very rare? Do not such cases of maltreatment of witnesses occur in cases of non-political nature? I know of cases where witnesses were even murdered. But nobody ever suggested that the ordinary procedure should be changed....

Mr. K. C. Neogy : Your Babbar Akalis should have a special procedure, according to Mr. Aziz.

Sardar Sant Singh : My friend says that the Babbar Akalis should have a special procedure, there is no doubt about it that, if such legislation is going to be the order of the day, the Babbar Akalis, who are no longer to be found in the Punjab, would have it, if they make their appearance. But still the fact is there that the witnesses more often than not perjure themselves in Court. There are so many factions in the villages in India; nobody can deny it. From my knowledge of the conditions in the Punjab, I can say that there is no village there where there are not two factions at least, if not more. Sir, if evidence is not tested, if the identity of the witnesses is not to be disclosed, a witness can safely get his enemy into trouble. The question is, whether the safety of the witness is of paramount importance or the safety of the State is of paramount importance? Will it tend to the safety of the State to extend protection to the witnesses at the expense of the liberty of the citizen? The State will have to choose between the two. If the Government hold that the safety of the witness is more important than the safety of the State, certainly nobody can agree with such a proposition. There can be no two opinions that the safety of the State and its stability lies in the fact when every man feels that he is subject to an impartial law, that he possesses all the rights of a citizen in the State. Such a confidence in the people will tend more to the proper maintenance of law and order than a host of repressive measures. But when the State seeks to maintain order alone at the expense of law, when the State wants to ignore the law of the land entirely,—and I take the word 'law' to mean the law in its wider sense, I mean the law based upon certain fundamental principles of jurisprudence, and not the laws like the Assam Act or the Bengal Criminal Law Amendment Act, though these have seemingly the appearance of a law,—then the subjects gradually begin to lose all confidence in

such laws ; when confidence in law is lost, it is bound ultimately to upset order entirely. Therefore, Sir, the time has come when the Government in their wisdom should decide once for all whether they are for the rule of executive or the rule of law. There is no half-way house between the two. In India we are accustomed to this sort of legislation, which is neither here nor there, because some portion of a law is based upon English jurisprudence, while the other portion is based upon the Czarist jurisprudence, and we are asked to give our approval to a law which is made midway between the two. Both cannot work together. Therefore, if the Government want the rule of the executive,—it may be temporarily, it may be for some years,—I will co-operate with the Government and give them the powers they want, so that they may try their hand at that too. But if they do not want to be advocates of the rule of executive, then the best course would be to do away with the causes that have led to the keeping up of the terrorist movement for such a long period as 30 years. After all, 30 years is not a small period in the life of a nation,—it is a very long period, and yet the terrorist movement could not be put down with all your repressive laws. Therefore, I would urge that the time has come when the Government should once for all do away with the repressive laws and adopt the sane principle of the rule of law and try it for at least 10 years, and then decide whether the terrorist movement can be put down or not. With these few remarks, I oppose this legislation.

Mr. W. L. Scott (Assam : Nominated Official) : I should like, Sir, if I may, to place before the House a short account of the situation in Assam as it appears to an officer who has served there for the last 20 years. As to our position, Sir, I should like first to say a few words. Assam is a small Province, whose land frontiers march with Thibet, Burma and Bengal ; the Thibet frontier consist of high mountain ranges, and there are no roads connecting us with Burma ; so, for all practical purposes, we may say that the only Province which is in touch with Assam is the Province of Bengal. Our only railway starts from the Port of Chittagong, and from there it runs right through the Province. I was glad to observe that no attempt was made to deny the existence of Chittagong, or to deny that certain very unpleasant happenings have occurred there. And I wish to emphasise that the connection of Assam, especially of the districts of the Surma Valley, with Chittagong, is very close indeed. I will mention two points to show how closely connected we are. At the time of the attack made on the armoury at Chittagong in 1930, among the first armed forces which arrived on the spot were a detachment of Surma Valley Light Horse from Silchar and a detachment of Assam Rifles from Silchar. Those were the days when no regular troops were stationed in Bengal. On another occasion, during the Kuki troubles, in the Manipur State, in 1917, there was a raid made from the Manipur State across into the hills of North Cachar, and it appeared that some of the stations on the railway in that sub-division were threatened. The first troops to arrive on the spot in that case were a detachment of Assam Bengal Railway Volunteers from Chittagong. I mention these points merely as illustrating the very close connection which exists between Assam and some of the more disturbed districts of Bengal.

The existence of a terrorist party in Chittagong is admitted, and everybody knows that strenuous efforts are being made by the Bengal Government to bring that terrorist party under control. Our fear is, and it is no longer exactly a fear,

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it is almost a certainty, that the pressure which has been exerted on the terrorist party in Chittagong has driven the members of that party to take refuge in Sylhet. The result of this has been the beginning of various terrorist activities throughout the district of Sylhet. We have very definite information to that effect. Assam has been very patient in dealing with this terrorist movement. Although the Bengal Government passed their Criminal Law Amendment Act two years ago, no such action was taken in Assam. It was decided at the time that it was unnecessary for the time being. What was the result of that? Within the last year, we, first of all, were alarmed by an increasing number of gun thefts which occurred. Secondly, there were a series of dacoities committed generally on the mail trains or on mail lines. I cannot refer to all those, some of them are still under the consideration of the Courts.

Mr. T. E. Phookun : May I ask my Honourable friend to mention any case in which it has been proved that there is connection between the terrorists of Chittagong or of Bengal and those of Sylhet—any evidence to show that?

Mr. W. L. Scott : I am not in a position to give the details of the persons concerned in the dacoities that have taken place on the railway line by way of Chittagong. Some of the persons involved in those dacoities have been inhabitants of Tipperah. There was a dacoity at Itakhola station on the railway line and in pursuit of the dacoits the villagers turned out and followed the dacoits and one of them was shot. That case was tried under the ordinary law and the leading accused had to pay the final penalty. Among cases subsequent to this, which have now been disposed of, were an armed robbery committed on a mail runner near Habiganj. Two accused in that case have been convicted by the Special Tribunal and sentenced to six years' rigorous imprisonment. In fact, attacks on the mail lines in Sylhet became so frequent, and the situation grew so threatening for the post office, that there was a proposal to withdraw the right of insuring letters from various important places in the interior of Sylhet. That, of course, would have been a very serious interference with the course of trade.

Now, Sir, the Act has been passed by the Assam Council, but it has been extended only to two districts in the Province of Assam, Sylhet and Cachar. It has not been extended to any district in the Assam Valley Division. Mr. Phookun may continue to sleep quietly at night. (Laughter.) He is not likely at present to be troubled by any action under this Act. I would ask the House to consider that the Assam Act itself provides only for the provision of Special Tribunals, for the trial of cases which would otherwise drag on to abnormal lengths, and for the maintenance of control over persons against whom the Government do not wish to bring open evidence of their connection with terrorism. These provisions were made by the Assam Council after prolonged discussion. I would refer to two points which show that the Assam Council was not such an irresponsible body as a previous speaker suggested. You will find in this Act no provision that the crime of attempted murder shall be punished with death as you will find in some other Acts. That provision was in the original Bill, but it was withdrawn with the consent of Government in the course of the debate. Again, Sir, I think it has been stated that, under the Act, if a Public Prosecutor gave a certain certificate,

the Commissioners trying the case were bound to order that the case should be heard *in camera*. That was the provision in the original clause, but the word "shall" was changed in the course of the debate in the Assam Council into "may", and the final decision will remain with the Commissioners. There is no provision asking for any such camp as Deoli or any such provision. We propose to deal ourselves with our own bad characters. Sir, the greater part of the speeches that have been made, I think, would have been better addressed to the Assam Council when it was considering the Bill. I would now ask the House to consider the position of my poor little Province and give it the few powers which it is now asked to do. I thank the House for their patient hearing.

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

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

Mr. N. N. Anklesaria (Bombay Northern Division : Non-Muhamadan Rural) : Sir (Applause), I quite agree with my Honourable friend, Mr. Scott, when he says that most of the arguments that had been addressed by the previous speakers would have been better addressed in the Assam Legislative Council. By "most of the arguments", of course, I mean the arguments that were relevant to the issues involved in the Bill before the House.

Sir, the issues involved in this Bill are three. Firstly, whether we should give the right of appeal to persons accused under the Assam Criminal Law Amendment Act. Secondly, whether we should provide for any inquiry by the High Court, in the case of a man sentenced to death, whether that sentence of death shall be after due inquiry confirmed or not by the High Court; and thirdly, whether we should support the Assam Legislative Council when it proposes to except such accused persons from the Habeas Corpus provisions contained in the Indian Criminal Procedure Code. So far as the first issue is concerned, I think there is not a single reasonable man, there is not a single sane man, I say, who would refuse (Hear, hear) the right of appeal to a person accused of such serious offences, involving such serious penalties, as are provided for in the Assam Criminal Law Amendment Act; and it is only reasonable, it is only common sense that, in the case of a person sentenced to death, the High Court should have the power to inquire into the sentence and confirm, only if it is found to be maintainable. As regards our support to the Assam Council in its proposal to take away the right of Habeas Corpus, I suppose the Assam Council, with the facts before them, and weighing all the relevant considerations which were no doubt put forward by the Assam people's representatives in that Council, have come to the conclusion that it is expedient that the right of Habeas Corpus should be taken away from a person accused under the Assam Criminal Law Amendment Act, and, as regards this Honourable House, which has taken away that right in the case of such accused persons in so many other Provinces, would it lie in the mouth of this House to refuse to support the Assam Council when it seeks to have the same facilities given for punishment and investigation of crime which have been given to other Provinces? And

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how can this House interfere with the discretion of the Assam Legislative Council? What becomes of your talk of Provincial Autonomy? (Hear, hear.) Sir, I prefaced my remarks by referring to the point of relevancy, and when I was referring to relevancy, I had in my mind the very able speech of my Honourable friend, Mr. Neogy. Sir, I listened to my Honourable friend's speech with the usual respect and attention that I always accord to it when my friend speaks in this House, but I am sorry to say that when he sat down and when he said that "on these grounds I oppose this motion", I searched in vain for those grounds in my mind. Sir, my Honourable friend said that he opposed the motion because the right of appeal which was sought to be given to the accused person was not at all valuable, in fact it was useless, and how did he try to prove it? He said experience in Bengal had shown that whenever an appeal by an accused person under the Bengal Criminal Law Amendment Act had succeeded, the man was immediately clapped into jail on some other charge. Now, I say, such arguments require only to be stated to make their absurdity apparent. How is it the fault of this Act, which confers the right of appeal to such accused person, that that person, after his appeal succeeds, is nevertheless clapped into jail on some other charge with which this Act is not concerned?

Mr. K. C. Neogy : How do you know "on some other charge"?

Mr. N. N. Anklesaria : Well, I think, unless there were some such charge alleged, nobody could possibly be arrested.

Mr. K. C. Neogy : You would think anything.

Mr. N. N. Anklesaria : Secondly, my Honourable friend said that the right of appeal is not at all valuable because the Indian judiciary, the Judges of His Majesty's High Court, are not independent. That is what was his implication, if he has not stated so in so many words, and my Honourable friend cited the Honourable Sir Shadi Lal's *post-prandial* speech.

Mr. K. C. Neogy : Not at all *post-prandial*.

Mr. N. N. Anklesaria : I stand corrected—the considered speech of Sir Shadi Lal. I can only say that if Sir Shadi Lal by his speech wanted to imply that the Indian Judges of His Majesty's High Court are in any danger or under any possibility of being influenced by the Executive, then Sir Shadi Lal did himself very little justice, did very little justice to his Indian colleagues and he did very little justice to the exalted position which he occupied so long to the approbation of the whole country and to his own great credit. Sir, so far as I could remember the remarks read out by Mr. Neogy, Sir Shadi Lal never implied that he himself had that melancholy experience of being under any danger of being influenced by executive frowns or favours. Nor did he imply that any of his brother Judges was under that melancholy predicament. My Honourable friend, Mr. Neogy, while making these remarks, never stooped to any misrepresentation, but, I am sorry to say, I cannot say the same thing about my Honourable friend, Sardar Sant Singh. I am sorry he is not in his seat. My Honourable friend, Sardar Sant Singh, went to the extreme of telling this House, that this Bill should not receive the support of this House because it provided for the evidence being put before the High Court which is not sifted by cross-

examination. I say a greater misrepresentation, and a more wanton misrepresentation—I say wanton because a copy of the Bill has been in the hands of all the Members of the House for days,—about this Bill could never have been made in this House. If you refer to section 5 of the Assam Criminal Law Amendment Act, you will find that a section of that Act distinctly lays down that the procedure in a warrant case shall be followed in an inquiry under the Act. No, Sir, my Honourable friend is a lawyer, and he ought to have known that in warrant cases there is an examination-in-chief, there is a cross-examination, and there is a re-examination.

Mr. Gaya Prasad Singh (Muzaffarpur *cum* Champaran : Non-Muhammadian) : Does that Act provide for this ?

Mr. N. N. Anklesaria : Section 5 does provide for this. If my Honourable friend, Mr. Gaya Prasad Singh, cannot see this, then all I can say is that those are really blind who will not see.

Mr. Gaya Prasad Singh : Hear, hear.

Mr. N. N. Anklesaria : Then, Sir, as regards Habeas Corpus provision, as I said, the Assam Council have already stated that they want the right to be taken away. And after all what does this Habeas Corpus provision in connection with the present matter imply ? The Habeas Corpus provision in connection with the present matter simply implies this that an accused person has a right to come to the High Court and get the question of the legitimacy of his custody inquired into. The High Court cannot go into the facts, nor can it go behind the orders of the Executive, in ordering the arrest, provided all the forms of law have been complied with by the Executive. And, Sir, it will be attributing crass stupidity to the Executive to attribute its failure in observing more forms of procedure. That is all I have to say and I support the motion of the Honourable the Home Member.

Maulvi Muhammad Shafee Daoodi (Tirhut Division : Muhammadian) : Sir, I am afraid, the Honourable the Home Member has got a very poor case to support. I find that no justification has been made out for bringing this motion in this House except that the Government want to supplement the Assam Criminal Law Amendment Act. I have been trying to find out from the supporters of the Bill as to what they have to say in regard to the merits of the case and also on what ground the right of Habeas Corpus is going to be taken away from the people of Assam ? Sir, we have heard the Honourable the Official Member from Assam. I was very attentive in hearing his speech, so that I might find out what he has to say. His justification was that there have been unpleasant happenings in Assam for the last few years and, therefore, the Assam Criminal Law Amendment Act was justified but he said nothing as to why this right of Habeas Corpus was going to be taken away from the people of Assam. The point before us is whether we are justified in taking away the right of Habeas Corpus from the people of Assam ? That is the real point. On that question I did not find the Official Member say a word, and I am opposed to this Bill mainly and solely because of that. The perfunctory manner in which the Bill was presented to this House is known to you, Sir. You came to our rescue and put it off for the next day, so that we might know what the actual Bill in Assam was and for which we have to thank you, Sir, not only for this case, but also

[Maulvi Muhammad Shafee Daoodi.]

for the future guidance of the Legislative Department. Had it been a case in which the administration of the Province was concerned, I would not have hesitated in supporting the Government. But it is a matter in which the judicial right of the people of Assam is affected, and it cannot be taken away without reasonable justification being presented to the House.

Now, what we find is that several gun thefts had taken place in the Province and also a few dacoities had taken place in that Province. These are the two grounds put forward for depriving the people of Assam of this right of Habeas Corpus. I need not dilate upon this valuable right which the people have got. When the administration of a Province goes into the hands of autocrats, this is the last thing which a man can utilise, but this is going to be taken away. And why? Because the Executive of the province have found out that some gun thefts have taken place and also that some dacoities have occurred in that Province. Now, Sir, I fail to understand whether these two facts alone can be the proper justification for taking away that valuable right. I cannot understand how the Honourable Member can convince his own conscience when he finds that such a poor case has been made out by the Assam Government for enacting a provision like that. Still more, the Honourable the Home Member will consider the question as to why the Assam Government was hurrying in passing the Bill and enacting a measure for which they had no right whatsoever. Now, that right lies with this House, and the Home Member has rightly come to this House for the purpose of getting this power for the Assam Government. I submit that it is a very valuable right which this House possesses, and it cannot part with this right by consenting to a legislation of this nature in this fashion. Now, in this month of August, 1934, I find that a different feeling prevails throughout the length and breadth of India. No voice of terrorism is being heard in any part of the country at the present moment, and, in this calm political atmosphere of the country, it is not right for the Government to bring in a measure in this House on which hot discussions of stories buried for the present will take place and the people will become agitated over it. The best course for the Government of India would be not to help the Assam Government in this matter. When they do not like to look into the whole matter calmly and quietly and find out for themselves to what extent they would go in making a legislation for Assam, it is not for the Government of India to help them by coming forward with a Bill in which that right is to be taken away. I feel that in the life of the fourth Assembly we have passed so many repressive measures that we should now be saved the ignominy of enacting a measure of this kind at the last moment for which there is no justification. One more reason for my opposing this measure is that our Province of Bihar and Orissa lies on the border of Assam, and in our Province also some dacoities of that kind have taken place during the last four or five years. People from other parts of the country have been coming to our Province and committing those crimes. For that reason, I am afraid, we may also be roped in together with Bengal and Assam, and we may share the same fate as the people of Bengal and Assam. I take the precaution in opposing this Bill relating to Assam, so that my Province of Bihar and Orissa may not fall a prey to such repressive measures. Sir, with these words, I oppose the consideration of this Bill.

Mr. Gaya Prasad Singh : Sir, this Bill seeks to give legislative sanction to two provisions of the Assam Criminal Law Amendment Act which was passed by the local Legislative Council only this year. These two provisions are the one relating to section 15 which confers on an accused person the right of appeal to the High Court, and the second is section 29 of that Act which seeks to deprive an accused person of the right of Habeas Corpus under section 491, Criminal Procedure Code. With regard to the right of appeal, which the Assam Criminal Law Amendment Act seeks to confer upon an accused person, the local Legislature is not competent to make a provision to that effect, and it is for this reason that that particular point has come up before us for legislative sanction. Well, I am not very enamoured of the way in which the procedure for the trial of offences under the Assam Criminal Law Amendment Act has been prescribed by the local Legislature, and the right of appeal which it seeks to confer upon an accused person. Nonetheless, this right is a valuable right, and I have nothing to say on that point. There is only one matter to which I should like to refer, and that is the one which was stated by my Honourable friend, Mr. Anklesaria. He stated just now that in all respects the procedure for the trial of offences prescribed under the Local Act will be the procedure prescribed for the trial of warrant cases in the Criminal Procedure Code. This, I submit, is not strictly correct. He referred to section 5 of the Assam Act. Sir, I will quote section 5, and endeavour to show to the House that it is not so. The procedure prescribed by the Criminal Procedure Code for the trial of warrant cases will not be fully followed if a trial takes place under the Assam Act. Section 5 of that Act runs as follows :

“ Commissioners appointed under this Act may take cognisance of offences without the accused being committed to them for trial, and in trying accused persons, shall, subject to the provisions of section 13, record evidence in the manner prescribed in section 256 of the Code, and shall, in other respects also, subject to this Act and to any rules made thereunder follow the procedure prescribed by the Code for the trial of warrant cases by Magistrates.”

Now, Sir, in the first place, the accused here is not being produced before a trying Magistrate for being committed to a Sessions Court. The next is that the special procedure which is prescribed under the Local Act will be followed. Not only that, but also the rules which may be made by the Local Government will take precedence, and over-ride the express provision of the Criminal Procedure Code for the trial of warrant cases. As regards the rules which are to be made under the Local Act, I will refer to only one. The Local Government may make rules for “ the conduct of and the procedure at trials, the manner in which prosecutions before such Commissioners shall be conducted and the appointment and powers of persons conducting such prosecutions ”.

It will, therefore, be seen that the procedure which has been prescribed under the Criminal Procedure Code may be crippled and modified by section 5, as well as by the rule-making powers which this Act has conferred upon the Local Government. Therefore, it is hardly correct to say that the procedure which has been prescribed under the Criminal Procedure Code will be followed in all respects in the trial of offences under the Assam Criminal Law Amendment Act. Not only that ; I will read out section 7 and show how a wide departure has been made from the procedure laid down in the Criminal Procedure Code. Section 7 of the Local Act states :

“ The provisions of the Code, so far only as they are not inconsistent with the provisions of, or the special procedure prescribed by or under, this Act shall apply

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to the proceedings of Commissioners appointed under this Act, and such Commissioners shall have all the powers conferred by the Code on a Court of Sessions exercising original jurisdiction."

Only a few minutes ago, I said that no case can come before a Court of Sessions under the ordinary course of law without the case being put before a committing Magistrate for investigation. But this Act, which has been passed by the Assam Council, does not prescribe any such procedure. To that extent, therefore, this is a wide departure from the procedure laid down in the Criminal Procedure Code. I will dispose of my Honourable friend's contention by saying that he has been hardly correct when he said that the procedure prescribed by the Code of Criminal Procedure for the trial of warrant cases is to be strictly followed in the trial of offences under the Assam Criminal Law Amendment Act. Now the Assam Criminal Law Amendment Act has two important features. The one is contained in section 3 which states :

"The Local Government may, by order in writing, direct that any person accused of any offence specified in the First Schedule shall be tried by Commissioners appointed under this Act."

This more or less resembles a regular trial under the Code of Criminal Procedure with the reservations to which I have already
 3 P.M. made reference. But later on, in section 16, the Local Government has been given powers to arrest, and to keep in detention without trial for an indefinite period, persons who may be mere suspects. Now, with regard to the trial of cases before the Commissioners, a list of offences has been mentioned in the First Schedule of the Assam Criminal Law Amendment Act, while with regard to those persons who have not been put on trial before Commissioners, but who nevertheless might be clapped in jail merely on suspicion, the offences have been prescribed in the Second Schedule of that Act. Now most of the offences in the First Schedule are covered by the sections mentioned in the Second Schedule. For instance I will read just one or two. In the Indian Penal Code the offences mentioned in sections 121, 121A, 122, 123, 148, 216 and so on are the offences which are to be tried by the Commissioners under the First Schedule, while in the Second Schedule the same offences have been mentioned, namely, 121, 121A, 122, 123, 148, 216, and so on. Again, in the First Schedule, offences under the Explosive Substances Act of 1918, any offence under the Indian Arms Act of 1878, and any attempt or conspiracy to commit, or any abetment of, any of the above offences may be tried before the Commissioners, and the same offences have been mentioned as falling under the Second Schedule ; which means that a person who has been arrested and put before the Commissioners and has been acquitted by them, might again be arrested under the Second Schedule, and he might be clapped in jail for an indefinite period, without any charge being framed against him or without his being called upon to enter upon his defence. In section 16 to which I have just made reference, very wide powers have been given to the Local Government as to the way it may deal with those persons on whom it may have got some sort of suspicion. Sir, the relevant portion of section 16 is that where, in the opinion of the Local Government, there are reasonable grounds for believing that any person :

"(i) is a member of an association of which the objects and methods include the commission of any offence included in the Second Schedule or the doing of any

act with a view to interfere by violence or threat of violence, with the administration of justice ".....the Local Government may give any or all of the following directions, that such person :

- “(a) shall notify his residence and any change of residence to such authority as may be specified in the order ;
- (b) shall report himself to the police in such manner and at such periods as may be so specified ;
- (c) shall conduct himself in such manner or abstain from such acts as may be so specified ;
- (d) shall reside or remain in any area so specified ;
- (e) shall not enter, reside in or remain in any area so specified ;
- (f) shall be committed to custody in jail :

and may at any time add to, amend, vary or rescind any order made under this section ;”

Now, it will be seen that the provisions which I have read out give very extensive powers to the Local Government in dealing with a person who is a mere suspect, who might not have been placed before the Commissioners, or who might have been placed before the Commissioners and honourably acquitted. Sir, I find that even this power of appeal to the High Court, which is sought to be given to an accused person, is not a very valuable power, and recent experience shows that persons who have been honourably acquitted of a regular charge have again been arrested even in front of the trial Court. I will mention one or two instances. I know that a man coming from Bihar, an educated gentleman, named Mr. Vidyabhushan, was implicated in the Delhi conspiracy case. He was acquitted by the Court, but, as soon as he was out of the Court, he was arrested under Regulation III of 1818 and has been detained since that time. I have read in the papers that he is now going to be transferred to the Andamans. I have framed a question with regard to this gentleman, and I shall await with interest the reply which my Honourable friend, the Home Member, gives to that question. Now, Sir, I will mention another case from my own Province. There is a gentleman, named Mr. Ram Binode Singh of Chapra, who was implicated in the Motihari conspiracy case in my Province and was acquitted. In an earlier case he was sentenced to two years' imprisonment. In this particular conspiracy case he was acquitted, and, thereafter, interned. Later on, he has been dealt with under the Criminal Tribes Act, and has to dance attendance on the police, and subjected to various acts of harassment, and to notify his movements, and change of address and so on. He comes from the Chapra district in my Province, and he belongs to my caste, Kshatriya. (Laughter.) There were 45 persons implicated in a particular case, and these persons have been lumped up together belonging to various castes like Brahmmins, Kshatriyas, Bhumihars, etc. We did not know that these castes belong to the criminal tribes. However, not satisfied with this, he has been dealt with recently under the Defence of India Act and he has been interned in his own village.

The Honourable Sir Henry Craik : It is the Criminal Law Amendment Act and not the Defence of India Act.

Mr. K. O. Neogy : We are under the impression that we are still under war conditions.

Mr. Gaya Prasad Singh : I am sorry ; I mean he was dealt with under the Criminal Law Amendment Act. I have referred to these cases merely to show that a man who has been put before a criminal Court and who has been acquitted may be arrested again on mere suspicion. A per-

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son who may have been acquitted by the Commissioners under the Assam Criminal Law Amendment Act may be arrested and kept in jail.

Mr. N. N. Anklesaria : Not under the Assam Act.

Mr. Gaya Prasad Singh : Yes, it is under the Assam Act. My Honourable friend was absent when I read out section 16 of the Assam Criminal Law Amendment Act which gives extensive powers to the Local Government of Assam in dealing with a person who might not have been placed before the Commissioners or who might have even been honourably acquitted by them.

Mr. N. N. Anklesaria : So have the police under the Criminal Procedure Code.

Mr. Gaya Prasad Singh : No. Now, Sir, the right of Habeas Corpus, which section 491 of the Criminal Procedure Code confers upon an accused person, is being sought to be taken away by this Bill before us. I do not know how the Assam Council could enact those two provisions of the law which are *ultra vires* of their powers ; and it is to give legislative sanction to these two provisions of the Assam Criminal Law Amendment Act that we have been called upon to discuss this Act. As I have already stated with regard to the first question, namely the power of appeal to the High Court, although it is circumscribed within very narrow limits, I do not object ; rather the right of appeal which it confers is a valuable one and we have, of course, no objection to that part of the provision. But with regard to the other part, namely, the provision by which the power of Habeas Corpus is sought to be taken away, it is very objectionable, and more cogent reasons should be placed before the House before it can swallow that pill. That provision cannot be acceptable to us. Sir, I oppose the motion.

Khan Bahadur Mian Abdul Aziz : Sir, I desire to say a few words with regard to section 3 of the Bill. The House is aware that there is really no serious opposition to the provisions contained in section 2. With regard to section 3 of the Bill it is very necessary first to understand that there really is a fundamental difference in the point of view of the professional lawyer and the professional executive officer. It is no use concealing that fundamental difference and it is best to be honest about it. The one interest of the professional lawyer is that when a crime has been committed, the individual who is accused of that crime should be punished only if it is impossible for him to escape punishment. I am not quarrelling with that position but that is what it comes to.

Sardar Sant Singh : Who introduced this system in India ?

Khan Bahadur Mian Abdul Aziz : The British, to our misfortune, with their Procedure Codes and their Evidence Act. The executive officer on the other hand, if he is at all educated and understands his subject,—and I do not wish to boast but I have read as much of Austin and Holland as anybody else in this House has done,—goes back to the fundamental problem, and it is this. The State, as the executive of society, takes upon itself to say to the private individual, “you have no right of private revenge : we will do it for you”. That is the fundamental proposition and nobody has ever disputed it. Therefore, the executive officer always, when he thinks of justice,—and it is to his credit,—thinks of justice to the aggrieved quite as much as of justice to the accused.

Sardar Sant Singh : Will you please give some authority in support of your sweeping remark ?

Khan Bahadur Mian Abdul Aziz : You have to study before you know that. But it is absolutely the correct view, I repeat it again.

Sardar Sant Singh : The Punjab administration is not the proper place to study this question.

Khan Bahadur Mian Abdul Aziz : The State as the executive of society takes away from the private individual the right of private revenge.....

Mr. K. C. Neogy : Does it ?

Khan Bahadur Mian Abdul Aziz : It does, and it has an obligation to do so.....

Mr. K. C. Neogy : If that is the sample of legal knowledge of the executive officer, then God help us.

Khan Bahadur Mian Abdul Aziz : Sir, I understand the working of Mr. Neogy's mind : he says his enemy will be before the State. The executive officer wants to prevent his enemy getting at him and see that he does him no harm. That is the legal position. We want to prevent the continuance of that evil of private revenge and we want the aggrieved person not to take the law into his own hands. That is the justification for all these measures. (Interruption.) Therefore, when the State incurs that obligation, it is right that executive officers should realise their responsibility to those who fail to receive justice, when in a number of cases, under abnormal circumstances, we are not in a position to bring the guilt home to the persons who may be suspected—I am not saying that they are guilty. The correct professional lawyer's view is : " Do not prevent. Do not protect. Let the crime when it occurs be punished ". The official's view undoubtedly is that if we do not take proper preventive measures we fail in social hygiene, because we go on encouraging a disease which ultimately does much more harm than anything else possibly can. As my time is limited, I will give only a few instances. In one case, within half an hour, three individuals shot fifteen people dead and wounded another eight. The terror that they created in that neighbourhood was so great that for a number of months continuously they were able to live at the expense of the neighbouring villages and received harbour and food and shelter and it was with great difficulty that ultimately they were traced.....

Mr. K. C. Neogy : Did that happen in Assam ?

Khan Bahadur Mian Abdul Aziz : I will come to Assam. Assam is the home of good people, and this legislation is being applied to only a few districts which are really not Assam proper. In another case,—I do not want to mention names,—an individual, who was a hired assassin, went on for two years terrorising and gaining adherents to himself throughout a very large tract. This is where the executive officer's point of view is different ; he wants to prevent this disease, and, therefore, I think, there is nothing unreasonable in asking this House in the interests of the welfare of society as a whole that there should exist some provision by which in regard to individuals who are dangerous in every way, the State should have some power to control their nefarious activities. That is why I support this Bill.

Mr. S. C. Mitra : Sir, after my speech on the Bengal Criminal Law Amendment Supplementary (Extending) Bill, I did not like to say much on this present Bill, but the fine exposition of law and jurisprudence that my Honourable friend, Mr. Abdul Aziz, has made.....

Mr. K. C. Neogy : The Punjab version of British jurisprudence !

Mr. S. C. Mitra : encourages me to say a few words. He was appealing to authors of jurisprudence like Holland, Austin, Savigny and other great authors : perhaps he has forgotten the fundamental principles of political science. It is an accepted principle from the days of the great political philosopher Montesquieu, and which has now been followed generally by the civilised world, that the main three functions of a State, *viz.*, the judiciary, executive and the legislative, should be independent of each other ; and for the last three centuries or two, statesmen and politicians have always attempted, in framing new Constitutions in different parts of the world, to maintain the great principle by keeping these three main organs independent of one another. My Honourable friend, Mr. Abdul Aziz, says that it is the executive alone that should have its way. Our.....

Khan Bahadur Mian Abdul Aziz : I never said that.

Mr. S. C. Mitra : Our main contention, and why we really object to the enactment of this oppressive legislation is that in India the Government is going headlong crushing and reducing to a minimum the independence of the judiciary. It will be an insult in future for the judiciary to have its existence here in India, if legislation goes on in this way. It is high time for the Legislature to make its point once more clear, that if the Legislature and the judiciary must have their existence, independent of the executive, they must assert it. Day to day there is encroachment, not only on the Legislature in India, which really does not properly function at all, but even on the judiciary, which, due to the earlier statesmanship of the British people, was always given independence, completely free from executive control. To our misfortune we are losing that position every day. Here, in this House, we find that even Law Members, who are expected to see that there is no undue encroachment from the executive on the judicial side, support all these measures. Why should the Government be afraid of their own judiciary ? Why are they anxious to curb the powers of their judicial officers ? If we go through the legislation for the last two or three years, any one will find, who has any eyes to see, that strenuous efforts are being made to encroach on the rights of the judiciary. It is not as if the judiciary is elected or the people have any voice in the appointment or selection of the judiciary, as it obtains in other parts of the world. In India it is a body entirely appointed and selected by the executive. Yet they cannot trust their own judiciary and everywhere we will find some attempt is being made that justice may not be had even from the Court of law. My Honourable friend, Mr. Neogy, was quoting the views of an eminent Chief Justice who is now placed on the Judicial Committee of the Privy Council. Going through the *Modern Review*—the premier monthly magazine in Bengal—I find, they say about the new appointment in Bengal :

“ According to a contemporary, the new British Chief Justice chosen for the Calcutta High Court served in the last world war. Is it meant that that is a qualification for his high office ? As Bengal has been for years practically under martial

law which is going to be perpetuated, it is perhaps fitting that her Chief Justice should be an *ex*-soldier."

Naturally, my friend, Mr. Gaya Prasad Singh, was thinking whether the Defence of India Act had been applied because we are under martial law and even Judges are appointed with experience of the world war. I congratulate my Honourable friend, Mr. Scott, on his excellent and lucid maiden speech: I was carefully listening to his speech, but though he explained his position, he could not convince anybody. His only argument was that Assam was in a very unfortunate geographical position being nearer to Chittagong, and that was the reason why this law should be extended to Assam. I think the only case he could make out in support of his proposition was that there were a series of postal dacoities in Assam and that this law will help them to check the spread of such dacoities, but if that is the main reason, I think my friend will be well-advised to ask his Government to make some law by which these postal dacoities could be stopped, but I could not accept his argument that because Assam was close to Bengal, this law was necessary. Sylhet is not so close to Chittagong, because the Tippera hills and the Comilla district intervene.

Then, my friend, Mr. Anklesaria, following the Honourable the Law Member, said that most of the speeches were irrelevant. (Laughter from the Opposition Benches.)

Mr. K. C. Neogy : Great lawyers think alike.

Mr. S. C. Mitra : This is a Supplementary Bill, and, naturally, Honourable Members are expected to refer to the main Bill and justify their position, and you, Sir, have very kindly passed orders so that in future we may not be put in a very unfortunate position in reference to the main Bill which will be supplied to Honourable Members. Now, in the present Bill, I find there are only two substantive provisions,—one is about appeals, and the other is about section 491 of the Criminal Procedure Code which deals with Habeas Corpus. As regards the first section, I have not much to say. It confers rights which are certainly of doubtful benefit as has been pointed out already and truly maintained that out of 10 cases, 9 cases would be rejected in appeal, and if one case succeeds, it is invariably known that the acquitted person will be at once arrested and put in jail under the Criminal Law (Amendment) Act. As regards the further consideration, whether capital sentence is not to be preferred to a penal servitude in the Andamans, that is also a matter for serious thought. As regards clause 3, which says that the powers conferred under section 491 of the Criminal Procedure Code, 1898, shall not be exercised in respect of any person arrested, committed to or detained in custody under the Assam Criminal Law Amendment Act, 1934, this is a very important clause, and the House will be well advised to go through the whole thing very carefully and see which of the sections of the main Act is going to help an accused person. If anybody wants to do justice to his position in this House, he should go through the sections of the main Act. My friend, Mr. Anklesaria, in his leisure moments, when he is actuated to support Government, may say that all that we say on this side is irrelevant, but I maintain that all Honourable Members should scrutinise the provisions of the main Act. Generally, I can divide it into main divisions. One deals with Special Tribunals, and the other deals with the question of detention of suspects. As regards Special

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Tribunals, my friend, Mr. Gaya Prasad Singh, has clearly shown how irrelevant my friend, Mr. Anklesaria, was, when he talked of these sections. He did not even read section 5 where it is clearly said that the sections of the Criminal Procedure Code will only apply subject to....

Mr. N. N. Anklesaria : On a point of personal explanation, Sir. I was trying to reply to what Mr. Sant Singh was saying. He said that there was no cross-examination, and I said that the procedure provided was for a warrant case, and such a procedure provided for cross-examination. That was my point.

Mr. S. C. Mitra : My friend still thinks that the procedure applied to warrant cases still applies *in toto* to cases tried by Special Tribunals. I invite his attention again and ask him to read section 5, where he will find it is stated that the procedure is subject to the rules made under this Act, and the executive of the Assam Government are authorised to pass any rule they like....

Mr. N. N. Anklesaria : That is not so.

Mr. S. C. Mitra : Will my friend show how it is not so, instead of making such irresponsible remarks....

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

Mr. N. N. Anklesaria : I can show....

Mr. S. C. Mitra : I am prepared to wait till my friend is able to show me.....

Mr. Deputy President (Mr. Abdul Matin Chaudhury) : Order, order. The Honourable Member must address the Chair.

Mr. N. N. Anklesaria : The rule-making power is restricted to the things mentioned....

Mr. Gaya Prasad Singh : What are the things mentioned?

Mr. N. N. Anklesaria : I cannot read out the whole section....

An Honourable Member : Section 14.

(Mr. Anklesaria was looking through the Act.)

Mr. S. C. Mitra : Mr. Deputy President, let my friend explain afterwards. I cannot wait till he is able to find out his point. But I may explain that the Criminal Procedure sections will be subject to any rules made by the Local Government for the trial of these cases. That is a very far-reaching limitation of the application of the Evidence Act. My friend, Mr. Gaya Prasad Singh, quoted a few cases of arrests of accused persons—immediately after acquittal by a competent Court of jurisdiction, but, Sir, it is no wonder to Members hailing from Bengal, where it is the usual practice, and it is not an exception. In every political case, which is tried, whether by a Special Tribunal or by an ordinary Court of law, as soon as an accused person is acquitted, he is immediately put under the preventive sections of the Criminal Law (Amendment) Act and confined to jail for an indefinite period. I remember numbers of cases, where these people, under the Criminal Law (Amendment) Act, are confined in jails for periods much longer than

their co-accused who had served the full term of sentence in jail and were released after the expiry of imprisonment, but these people, whether acquitted or discharged, are still rotting in jails, and nobody knows for how long they will have to remain in jail. Here I challenge the Government to say whether my statement is correct or not. I should like the Home Member to contradict me whether it is not a fact that invariably the acquitted and discharged people in political cases are put under arrest and confined in jail as suspects under various sections of the Criminal Law Amendment Act.

Then, my friend, Sardar Sant Singh, said that the safety of the State must be looked after first even before the safety of witnesses. I say it is not necessary to go to that extreme at all. It is clearly provided in the Assam Criminal Law (Amendment) Act, that, whenever the Court wished it, or the Public Prosecutor wanted it, they could always hold these trials *in camera*. Sir, I should like to refer to the relevant sections to make the position clear as it is said that the life of the witnesses is in danger. It is section 10 :

“(1) In any trial by Commissioners appointed under this Act, the Commissioners may, if they think fit, order at any stage of the trial that the public generally or any particular person shall not have access to, or be or remain in, the room or building used for the trial.

(2) Where in the course of any such trial, the Crown Prosecutor certifies in writing to the Commissioners that it is expedient in the interests of the public peace or safety, or of the peace or safety of any of the witnesses in the trial that the public generally should not have access to, or be or remain in, the room or building used for the trial, the Commissioners may order accordingly.”

So, it is very clear that there are provisions for the safety of the witnesses, and, therefore, the question of the safety of the State *versus* the safety of the witnesses does not arise. Incidentally, I should like to submit that there are provisions for arrest and search by anybody above the rank of a police constable. Unbounded powers are given and any suspect may be kept in confinement for any period that the executive may like. Section 23 deals with scrutiny of cases by two Judges, and at the end of sub-section (1) you will find :

“The said Judges shall consider the facts and circumstances and the allegations and answers and shall report to the Local Government whether or not in their opinion there is lawful and sufficient cause for the order.”

Sub-section (3) says :

“Nothing in this section shall entitle any person against whom an order has been made under sub-section (1) of section 16 to attend in person or to appear by pleader in any matter connected with the reference to the said Judges, and the proceedings and report of the said Judges shall be confidential.”

The other day, I gave an idea to the House of the kind of charges that are framed against these men. I should like to explain that a little more today and show that what is known in law as charges are never framed against these men. I appeal to the Honourable the Law Member,—who is not sleeping I hope—(Laughter)—he will be able to quote any number of cases and even decisions of the Judicial Committee of the Privy Council, where it has been explicitly maintained that, if a charge is to be a charge in law, it should definitely and specifically state the nature of the offence, and it should give the date precisely so that the accused may be in a position to refute the charge. It is a misnomer to call these vague allegations that are brought against these suspects as

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charges or that these poor suspects get any chance to refute the charges. I publicly challenge the Government and say that these allegations are not what we legally call charges ; they are mere misnomers. I do not want to repeat the points that I made in another debate that it is impossible for these poor suspects in any way to clear their conduct because the allegations are so vague. A mere statement that you are a member of the revolutionary party, or a statement that you are one of a party or you are under the influence of some party, that you smuggled some arms,—without giving any date, or giving a date which covers three or four years,—such kind of charges are generally made and it is impossible for any man, nor can it be expected of any decent man, to refute those allegations. If Government are in a position to meet the point, let them explain to the House how they give proper facilities for these unfortunate suspects to clear their conduct. For these reasons I think this House will be well advised in throwing out this Bill.

The Honourable Sir Nripendra Sircar (Law Member) : Sir, I propose to talk only on the question of Habeas Corpus, because I find that my Honourable friend, Mr. Gaya Prasad Singh, and also other Honourable Members have been labouring the point that a very valuable right is being taken away under this clause 3 which has been tried to be introduced. I shall take care not to waste the time of this House by going over the ground which I covered on another occasion, but I should like to add a few words to the position which I took up. In making this point, I am addressing the House as a professional lawyer, I do not know what that exactly means. Although I may be said to be on the executive for three months, my instinct as a professional lawyer is not completely gone, and as a professional lawyer the position seems to me to be this.

If the Assam Act provides.—I am not going into the merits of the Assam Act, I am not going to discuss as to whether this Act ought to have been passed or not,—if the Assam Act provides, to put it very bluntly, that a person can be kept in jail provided, in the opinion of the executive, that detention is necessary, then no High Court can help that unfortunate individual although you expressly state in the Statute that the powers of the High Court under section 491 will not be taken away. In one of the recent cases, the Honourable Mr. Justice Ameer Ali, in a long judgment in which, as one would expect, as a Judge of the High Court he was struggling all the time against the drastic provisions which have been introduced under these Acts,—he gave an illustration which I would like to place before Honourable Members. I would ask them to accept that the Judge was not enamoured of these provisions and he was trying to condemn them as much as possible within the limits of the law by showing the nature of the enactment which he was discussing. He says this :

“ I will conclude with an example, in itself trifling, ”

—He was discussing the question as to what is the position of a person where it has been laid down that he can be detained, provided in the opinion of somebody else his detention is necessary—

“ I will conclude with an example, in itself trifling, but which illustrates what I have in my mind. Suppose that by Statute the Commissioner of Police is empowered to extort any dancer whose performance is in his opinion likely to offend the public taste. Information is given by an Inspector ”—(mark the words)—“ information is given by an Inspector out of revenge. The dancer might prove that her performance was perfectly proper, that would not be enough nor would it enable the Court to investigate the correctness or otherwise of the opinion of the Commissioner of Police.”

That is to say, the learned Judge is considering this position, namely, the Statute has provided that where in the opinion of the Commissioner of Police a certain thing offended the Act and the performer may be externed, then the fact that, as a matter of fact, the Commissioner of Police was acting on information which was prompted by revenge will not enable the High Court to go into the matter. And why? The reason is simple, because the Statute says that where in the opinion of the Police Commissioner such a thing appears, then certain consequences follow. If you start with that position, the Assam Act,—as I say again, I am not going into the question about the peacefulness of the Assam people or otherwise,—but if the Assam Act provides that if in the opinion of some Government official the detention of a particular person is necessary,—and that would justify the detention,—then the High Court,—and remembering that Mr. Justice Ameer Ali is discussing a case where the power of the High Court had not been taken away, that is to say, where there was no express provision that the High Court should have no power under section 491. There he took the position which he was compelled to take, namely, the Statute has provided that the opinion of somebody would be conclusive. I am not going into a series of cases, but I may ask the Honourable Members of this House to accept that, during the last three years, a series of cases have come up before the High Court, and, shortly speaking, the Calcutta High Court has come to this conclusion, and it is the Calcutta High Court which counts so far as Assam is concerned, at the present moment. The position is this, that an Act like the Bengal Criminal Law Amendment Act is not *ultra vires* of the local Legislature. No. 2 is that, within its legitimate ambit, the Provincial Legislature has as much rights as a sovereign body like the Houses of Parliament, and the enactment of a Statute like the Bengal Criminal Law Amendment Act by which a particular person is made the sole judge of the desirability or otherwise of the detention of a person who has not been tried, that is a position in which the High Court can be of no assistance whatsoever to the person detained. I would like to remove an impression, if that is in the mind of anybody, because I find that some speeches are open to that construction. It is as if I had said on the last occasion—I have read the transcript of my speech carefully,—that a measure like the Bengal Criminal Law Amendment Act, by which a person can be detained merely on the opinion of the executive, and where the High Court has no power of interference even if the executive had proceeded on information which ought to have been rejected, and which is bound to be rejected, if the matter comes up before a Court of justice, as if I had said that that was not a drastic provision. I said nothing of the kind, and with respect to my friends here, I can assure them that as a lawyer, if I may use the expression as a professional lawyer, I realise the drastic nature of the provision, probably far more than some of my friends on this side. That is neither here nor there, nor did I suggest—I think a question was put to my Honourable friend, Mr. Puri, who is not here,—that this is not an act of repression. I said nothing of the kind. I started by assuming it was an act of repression. I proceeded to say in the very next sentence, if Honourable Members will read that speech, the repression which is permissible. . . .

Mr. S. C. Mitra : Every criminal law means repression.

The Honourable Sir Nripendra Sircar : I said not only every criminal law, in some cases even *quasi*-criminal law may amount to repression.

Mr. K. C. Neogy : Even the Marriage Registration Act may act as a repressive measure.

The Honourable Sir Nripendra Sircar : Whether marriage is a repression or not, on that opinions may differ. I do think that, in some cases, marriage is a violent repression.

Mr. B. Das : I agree entirely.

The Honourable Sir Nripendra Sircar : If I may proceed, Sir, what I wanted to say was this. I proceeded in the next sentence to say that because law in many instances has got to be repressive it does not follow that any amount of repression is justified for putting an end to a situation of danger, however slight. The amount of repression which is justifiable—that must depend on the circumstances and all that I wanted to say was that in the case of Bengal, as in this case, the Provincial Legislature had decided what was the amount of repression which was necessary for putting to what they considered a desperate situation. I never for a moment suggested that this House is here only for recording the decrees of the Provincial Legislatures. I never suggested for one moment that this House cannot apply its mind to this problem, but what I do submit, with all the emphasis at my command, is that, *prima facie*, in a question of this kind, where the degree of repression must depend on knowledge of local affairs, a Provincial Legislature is as competent, perhaps even more competent, than this House to decide that particular question. I labour under no illusion on this point.

Now, Sir, if you look into it, from the strictly lawyer's point of view, without going into any question of oppression, and so on, which are questions of fact, let us assume that this House rejects this measure. What happens. This point was very ably, if I may say so with great respect to my Honourable friend, Sir Abdur Rahim, debated by him at full length in the discussions of 1932. The point was of course exactly the same, and the same answers were given by my predecessor, Sir Brojendra Lal Mitter, and in those discussions, Sir Abdur Rahim indicated what was the correct legal position. I told this House on the last occasion that that is the position which has been accepted by the Calcutta High Court. I have brought the authorities here, and I think it will be really inflicting them on the House if I refer to those cases now. The position, as I understand it, and as was clearly indicated in those debates and which has now been accepted by the High Court in four reported decisions,—and there is, I believe, one more unreported decision,—the position is this, if you don't put in this clause, that is to say, if we assume that the High Court's power, whatever it is, has not been expressly taken away by the Statute, then the accused or the suspect or the detenu, whatever his position may be, will be left in this position. If he comes up to the High Court, the High Court will say "yes, our powers have been taken away and we shall, therefore, look into section 491". If you turn to section 491, the position of the High Court is that it can interfere. It can investigate into the facts which justify detention if the man is illegally detained and all those authorities, beginning from the case of 60 years ago show that if, as a matter of fact, the Legislature, whether Provincial or Central, in its wisdom has provided that a particular person will be the judge as to whether detention is permissible or not, then the High Court is out of it, because it is no longer illegal detention, however drastic it may seem, and drastic it is, in fact, namely, that a man should be detained on infor-

mation, possibly as the illustration shows on wrong information and then the High Court has no power of interference. That logically follows from the fact that in a Statute, which a Provincial Legislature was completely empowered to enact, has indicated that it is enough that a person in the opinion of some executive officer is liable to be detained.

Mr. Gaya Prasad Singh : Is it the contention of the Honourable Member that, as a result of the series of judicial decisions to which he has just alluded, the power of the High Court to interfere under section 491 of the Criminal Procedure Code has already been taken away ? If that is so, what is the use of keeping clause 3 in this Bill ?

The Honourable Sir Nripendra Sircar : I shall deal with the point as to why this clause is there at all. That is a point which was very pointedly put by my Honourable friend, Sir Abdur Rahim. The position is affected not only by the four recent decisions of the Calcutta High Court but by the decision to which I referred on a previous occasion covering a period of sixty years. The position is that, if this Statute provides that detention is permissible provided that the executive is of opinion that the man ought to be detained, then in that case the High Court has no power of intervention. The power of intervention is to be looked at in this way, that the High Court cannot investigate into the facts to find whether such detention was justified : the High Court cannot go into the materials before the Government and come to a different conclusion that, on those materials, this man ought not to have been detained at all. The High Court is entitled to come to a different conclusion from the executive on certain materials which were not before the latter, but there, unfortunately, under the law, the High Court has no right to interfere, and if I may remind my Honourable friend, Mr. Gaya Prasad Singh, the taking away of the power of the High Court under section 491, so far as Bengal Regulation III of 1818 is concerned, that was introduced in 1923 so that before 1923 the position was this. We had the Bengal Regulation III of 1818. There was no provision in the Bengal Regulation that the power of the High Court as regards Habeas Corpus, or as regards any similar powers would be taken away. Therefore, up to 1923, the position was that there was an Act under which a person could be kept in custody if the opinion of the executive was to that effect. If I remember aright, my friends will correct me if I am wrong, I believe the Regulation III of 1818 even goes further and uses the word "supposed". Therefore, the mere fact that the change was made in 1923 by an amendment made no alteration in the law. That law had been enacted sixty years ago, and repeatedly confirmed by the different High Courts. Section 491 was no doubt amended, but by that amendment no change was made in the law. It only made clear a position about which some doubt might be raised by somebody ; it merely declared what the law was, even prior to the amendment, what was happening from those old times right up to 1923, and the object and the necessity of introducing clause 3 is exactly the same as the necessity of maintaining in the Criminal Procedure Code, section 491 with reference to Bengal Regulation III of 1818. Then, Sir, another point has to be remembered which is of practical importance, and that is this. It may well be said that the Legislature need not have started amending Acts and taking away expressly the power of the High Court where no such power existed. They were satisfied, up to 1923, with reference to the Bengal Regulation, to leave it in an unamended condition without any express reference to the taking away of the

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power of the High Court, and they might have continued in that fashion. Where was the necessity for this ? There is a good deal of force in that ; but it has got to be remembered that now in 1934 the position is this. Not only has the Criminal Procedure Code been amended merely for declaring what was previously the law, but that course was followed by this House in 1932. It had been followed in other Acts of the Bengal Council ; it had been followed in the Punjab Council and the result, therefore, would be that, having followed a consistent course from 1923 right up to the last month when the Bengal Criminal Law Amendment Act was passed, if you now remove this section, it will not help the accused but it will only lend colour to any plausible arguments which may be advanced, that because this section is to be found in the Bengal Act, because such a section is to be found in the Criminal Procedure Code, and as it is not here, therefore, the High Court can go into the matter. Of course the High Court will reject it, but there is nothing very sinister in introducing clause 3 for merely declaring what the law is always recognized to be from a very long time. There is another small point, Sir, and I have done. This point was also raised by my Honourable friend, Sir Abdur Rahim, and, I told my friend on the last occasion, that the point had been decided as he suggested and that was this. I may now assume that this House has passed this section and this is part of the enactment, namely, the power of the High Court is taken away under section 491. Now, suppose some person is in custody, is being detained, can the High Court inquire into his case at all ? I say, "yes", it can, in spite of this provision, it can inquire but to this limited extent. It can only inquire whether the provisions of this particular Act have been complied with, or to put it in colloquial language, when the man applies under section 491,—and two of the cases in the Calcutta High Court are exactly like that,—the man says, "oh, no, there is no proper order for justifying my detention under the Bengal Criminal Law Amendment Act". The High Court says :

"In spite of this section being in existence, we can inquire as to whether the provisions of this particular Statute have been complied with, and that for this obvious reason. The language of this section,—*Honourable Members will find*,—as also similar sections in the other Acts, do not apply to a person detained under the Act or purporting to be detained under the Act."

Those are technical words, where they are used,—if they had not been used, then of course of complication might have arisen,—but if clause 3 remains on the Statute-book, it is still open to the High Court to say,— "where is the order of the executive by which this man has been detained ?" And if that order is not forthcoming, if there is no Government order which declares that this man ought to be detained under the provisions of this Act, then the High Court can inquire, and it has inquired as I said in two of the recent cases, although, after inquiring into the facts, they came to the conclusion that there was, in each case, a proper order which justified detention ; that is to say, the High Court comes up against the dead wall as soon as it finds the order signed by the executive that this man ought to be kept under detention. Therefore,—I am afraid I have taken more time than I intended to,—it, therefore, boils down to this. Is there any great necessity for this section ? That is a question which would be a very pertinent question,—and that is the way in which it was put by my Honourable friend, Sir Abdur Rahim, but, after discussion,

this Legislature has followed the line of action which it did take up in 1923 and to declare the law on the subject it got a similar provision in the Act of 1932. As I said, in the other Acts, there is a similar provision as well, and not only in the Acts of this Legislature but also in those of the Local Legislatures. Therefore, on this point of time, if this section is rejected by this House, it will really give no relief whatsoever to the accused except probably allowing a "professional lawyer" to argue an unsubstantial point for a couple of days. (Laughter.)

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4 P.M.

Muhammadan Urban) : Mr. Deputy President, I had intended to speak when the substantive clause, namely clause 3, was taken up for consideration. But in view of the Honourable the Law Member's speech, I think it may be just as well if I offer my remarks at this stage. The arguments of the Law Member divide themselves into two categories.

Firstly, that this clause suspending the Habeas Corpus is necessary, and, secondly, that the House is within its jurisdiction to pass a clause of this kind. Let me take up the first position. I was really gratified that the Honourable the Law Member made the speech that he did, because I thought that that was a speech that ought to have been made from this side of the House. What was the position that the Law Member took up with reference to this question. He argued that during the last 60 years, beginning with the Wahabi case, so far as the Calcutta High Court, at any rate, was concerned, the position was made perfectly clear that, on merits, a question like this could be examined by the High Court and therefore the prerogative of issuing the writ of Habeas Corpus was an unsubstantial thing. He argued that it was not necessary even to put this clause in the Bill, that the predecessor of this Assembly had in 1923 done an unnecessary thing in inserting such a provision, that its successors had continued to do a series of unnecessary things by passing amendments to this effect, and that, therefore, we should now perpetuate this unnecessary provision by repeating it in every Bill which we can think of in this connection. What else did it amount to ? This measure, he said, is absolutely unnecessary. The High Court is quite clear in its mind as to what should be done. Whether this measure is there or not, there is no possibility of the High Court interfering with the judgment of the Executive. The opinion of the Executive is made supreme under the substantive Act which has been passed by the Assam Legislative Council, and, therefore, no judiciary can take notice of this fact beyond enquiring whether a formal order detaining the accused and keeping him in custody has been passed or not. Therefore, he is bound to go to the logical extent of saying that it is really a superfluous and an unnecessary provision, and he says that as in 1923 the Assembly had passed that provision and had repeated it successively in a series of enactments, therefore it is necessary that this unnecessary and superfluous provision should again be repeated in this House. And, mark, you, Sir, what was the necessity for it ? Not that the High Court were at any time under any illusion as regards the nature of this provision, not that the High Court Judges will be led astray, will be led into legal complexities, because this provision is not there ; for about 60 years precedents are abundant in High Courts, and whether this provision is there or not, they are not going to interfere with that matter, but because some briefless barrister would take up this case and earn an unmerited fee.

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I should have thought that that pleading was conclusive against this clause being in this Bill. But it seems to me that the position of the Government is not quite so innocuous as all that. A very plausible case has been put forward by the Law Member, which reduces the Government case to an absurdity according to his own showing, but I think the Home Member and those who have advised him have much more serious intentions for having this clause in the Bill than what my Honourable friend, the Law Member, gave them credit for. Nobody on this side of the House has questioned the fact that the merits of this question cannot be discussed by any High Court. Take, for instance, a case under clause 16 of this Bill when Government think that a certain person should be detained in custody. Now, what the High Court can question and what the High Court has repeatedly discussed is whether the forms prescribed have been complied with before the particular action was taken by the Executive. Whether the forms prescribed in the Criminal Law Amendment Act have been followed by the executive or not is a question which can legitimately be argued before the High Court. Under clause 16, for instance, it is ordained that the Local Government may, after giving a person or persons concerned such reasonable opportunity to explain his conduct as may be practicable by ordinary writing, do such and such thing, but the question arises whether that reasonable opportunity which is further curtailed by the provision that it should be of a practicable nature has at all been given by the executive to the person who is going to be committed into custody. Of course, it is open to the accused to argue that no opportunity of any kind was given to him and that the charge which the Government brought against him was not a correct charge. It is provided that this order of the Local Government shall be reviewed every year and it is open for the accused to prove, if he can at all, that the Local Government has not reviewed the matter during the last three or four years.

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

These are forms which have been prescribed by this very Act, were passed by the local Legislature, and, therefore, these forms must be complied with and the enactment of this provision in the present Bill would mean that even these forms need not be complied with by the Local Government. That is our objection to the inclusion of a provision like this. It is a very hackneyed objection because, if I may say so, it has been repeated time after time and if the Law Member can see no other justification for repeating this clause than the justification that an unnecessary provision has been repeatedly inserted because for once the Legislative Assembly made a blunder in passing it, then I think the clause stands self-condemned and this House need not be a party to the absurdity of passing it.

Then, Sir, let me take up another point which the Honourable the Law Member referred to. I know that some Members in this Assembly thought that this provision was *ultra vires* of this Legislature. I entirely agree with the Honourable the Law Member that it is not *ultra vires*, that it is open to this House to pass a provision of this kind, and to suspend the Habeas Corpus. In fact, Parliament itself has done it. When it passed the Defence of the Realm Act, it suspended the Habeas

Corpus. A great deal of confusion has arisen from the fact that this right is supposed to be a common law right or that it was conferred by the Magna Charta. Somehow or other it has been assumed by some that it is a right which cannot be touched by any Legislature. Now, that is a proposition to which I do not subscribe. The Parliament in England is a supreme legislative authority and it can suspend any fundamental right, if I may use the modern phraseology, if it thinks fit to do so. Therefore, no question of an inherent right, other than the plea to have a certain guarantee as against the Legislature, can ever be suggested or can ever be put forward. The Parliament has got paramount powers with reference to all these matters, and, therefore, I venture to agree with the Honourable the Law Member that Parliament can suspend that right ; but may I ask the Honourable the Law Member to turn his attention to another aspect of the question ? It is not really an issue whether this provision is *ultra vires* of the Legislature or *intra vires* of the Legislature, but the question is whether the Legislature will be doing its proper duty in abolishing or suspending the Habeas Corpus and if it is thought that this is its proper duty, then under what circumstances it can be done ? Now, Sir, my Honourable friend knows that the term " fundamental right " has come into great use especially since the War. Every modern political Constitution has at any rate, the large majority of modern constitutions have a list of what are called the " fundamental rights ". They declare that the property of a person is sacred and cannot be touched except in accordance with the provisions of the law ; that the liberty of persons should be assured and cannot be violated except in accordance with the law, and so on and so forth. What is the value of these fundamental rights ? Has anybody suggested that these fundamental rights cannot be abrogated ? No, Sir, Parliament, having supreme jurisdiction, can really go back on these fundamental rights and pass legislation which can nullify these fundamental rights. But the Parliament is asked to pause, to consider and to take time to think over the seriousness of the step that it is asked to take. Sir, it is only an ordinary amendment that can be passed by a snatch majority or by a whisper from the Government Benches. In these Constitutions, special provision is made whereby any abrogation or suspension of fundamental rights must be accompanied by certain conditions. For instance, some of these fundamental rights can be modified by what is called a constitutional amendment. A constitutional amendment in this connection means that a law relating to the abrogation of those fundamental rights cannot be passed as any other ordinary law can be, but has to be passed under certain circumstances and on certain conditions being fulfilled. A constitutional amendment must be passed by a certain majority, not by a snatch vote, not by my Honourable friend, Captain Lal Chand, being in the majority of one and the Government carrying out that fundamental constitutional amendment, but certain requisite conditions have to be satisfied. In some constitutions, a constitutional amendment can only be passed if adopted twice, that is once passed and again affirmed according to some other Constitution. A constitutional amendment can sometimes be passed after a referendum to the country has been made and the country has given its verdict whether the constitutional amendment could be passed or not. A constitutional amendment can be passed, again, after the dissolution of the House and the creation of a new House which should also agree to the passing of this constitu-

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tional amendment. Why is all this done? My Honourable friend should think of that aspect of the case, not because Parliament is not sovereign, not because within the limited power, that we have been given, this House is not supreme even in suspending or abrogating the right of Habeas Corpus, but because the case is serious, and, before so serious a step is taken, the Government should pause, consider, hesitate and think twice, aye, a hundred times even, before they come forward with a proposal which abrogates or suspends the fundamental right which every citizen in every civilized country ought to have; but that aspect of the case seems never to have occurred to the Government. My Honourable friend says this is an unnecessary provision, but because we have had a series of unnecessary provisions, let us add one more to this series and pass another Bill which will enable the next Law Member to point out that even in 1934 this unnecessary provision has been passed and so in the year of grace in 1938 it ought to be passed also. That is not treating the question seriously.

My Honourable friend has not understood the significance of this provision about Habeas Corpus. I am sorry I have to say that. As a lawyer, of course, he knows it, but as a politician I want him to appreciate the question of Habeas Corpus and not as a lawyer. Lawyers know the limited manner in which they have to treat questions relating to Habeas Corpus, but politicians know the origin of Habeas Corpus, the importance of Habeas Corpus, the part it has played in the political history of every country in the world and the enormous importance that is attached by members of subject nations in particular to this right of Habeas Corpus. Sir, I appeal to my Honourable friend to look at this question as a politician and not as a lawyer, and if he looks at the question as a politician, I have no doubt whatsoever what his answer would be to this question of whether Habeas Corpus should be suspended or not. This is not an unnecessary provision, it is a very important provision from the Government point of view. It is not an innocent provision, but it is most dangerous from the point of view of the ordinary citizen.

I do not want to pursue the propositions of law which were laid down by my Honourable friend, Mr. Abdul Aziz. Probably, as an Executive Officer of long standing, that is the only way he can look at this question, but I can tell him that no professional lawyer, if I may use that term, whatever it may mean as the Honourable the Law Member has said, no professional lawyer worth his salt ever thinks that an accused should be convicted only if it is impossible to acquit him. That is not the proposition. Lawyers have said that it is better that nine guilty men should be acquitted, rather than one innocent man should be condemned. That is quite a different proposition, and when he or I stand in the dock in the position of an accused, we might then better realise the value of that legal dictum (Applause) and what it means to the liberty of the people. It is quite all right for an Executive Officer to say we are saving you from all these troubles by putting half a dozen people into custody, in detention without trial, without investigation and without cross-examination and without a judicial certification. In all that, it is the mentality of the Executive Officer, but the lawyer's mentality is that one innocent man being unnecessarily and improperly

convicted means a reflection on the whole community, a reflection on the whole judicial system. Therefore it is that forms and procedures have been laid down which try to make it absolutely certain that a man convicted deserves to be convicted though a man acquitted may not deserve to be acquitted. That is the fundamental difference between an Executive Officer and the judicial officer, between an officer in authority, who when he cries out "*koi hai*", has half a dozen *chaprassis* rushing in to carry out his behests and a humble lawyer who tries to do his duty according to his conscience and that conscience which merely asks him to try his level best to put all the facts before the judge and leave it to him to decide the case on its merits. There is one minor point to which I should like to refer, and I want that the Honourable the Law Member should advert his attention to. Section 491 says : that any High Court may, whenever it thinks fit, direct a certain number of things to be done and among these provisions, there is a curious provision that a person detained in any jail situate within such limits be brought before the Court to be there examined as witness in any matter pending or to be enquired into in such Court. Even that provision is now taken away by this clause. I ask the Honourable the Law Member to state whether, as a matter of law,—and in that I entirely yield to him, because he is supreme in this House—it will still be open to the High Court to get a detenu as a witness if the High Court is satisfied that his evidence is necessary.

The Honourable Sir Nripendra Sircar : If the Honourable Member wants an answer, it is very simple. If the position is as the High Court cannot enquire into the matter and all that is concerned is to see whether there is a signed order by the Government, then the High Court cannot possibly send for any accused for putting any question. In these circumstances, supposing the accused says nothing and supposing he satisfies the judges that he is innocent, then the High Court cannot interfere, because, as I said—I am not repeating this argument—the Provincial Legislature in its wisdom has made the opinion of the Executive to be the sole judge. What is the High Court going to do ?

Diwan Bahadur A. Ramaswami Mudaliar : I am afraid the Honourable Member is doing an injustice to me as well as to the Criminal Procedure Code. May I read again the particular sub-section ? It does not say that he should be called as a witness in his own behalf or in the matter of the detention with which he has been dealt with. If he is required as a witness in any matter whatsoever—that is what the sub-section says : Let me read the sub-section :

“ That a persons detained in any jail constituted within such limit be brought before the Court to be there examined as a witness in any matter pending or to be enquired into in such Court.”

If there is a case against “ X ” and the person detained in custody in the Deoli Camp is required to give evidence in that behalf, then has the High Court power to issue this writ to bring him as a witness for the matter before it ? That is the question for which I want an answer.

The Honourable Sir Nripendra Sircar : I think the answer to that question is, there may be two opinions about that. I can only say this that in two instances in 1933 and one instance in 1934 witnesses have been sent for and examined by the Calcutta High Court in Calcutta itself.

Diwan Bahadur A. Bamaswai Mudahar : I am glad that my Honourable friend has answered the question. There can be two opinions about that. I do not want two opinions, but I want one opinion that the High Court has got power to send for this man and examine him if it is required. Some judges may issue a writ to bring the man in custody to give evidence in a particular case and there may be other judges who may decline to do so. In view of the fact that this particular section is there, the judges may feel very chary in using their power, even if it is granted that they have the power in issuing summons for this man to come and give evidence before them. It seems to me, therefore, that this provision is the most obnoxious provision in the whole Bill. The Bill relates itself into two parts, the one is an enabling provision, whereby the right of appeal is granted to convicted persons, and assuming that the Assam Legislature has passed it, I am bound to see that that provision is incorporated, because it is an enabling provision. But the provision, to which my decision and my consent is now required, is also for the right of Habeas Corpus to be suspended. The Honourable Member has said, it is unnecessary. I think it is necessary from the Government point of view, and because it is necessary, I am bound to oppose it, because it will do a great deal of harm and it will do a great deal of injustice. I perfectly agree that there are limits to which an accused can be protected even if we do not adopt this clause. Therefore, we should leave unaffected section 491 in the case of these people who are treated by the executive at their mercy without any right of appeal of any kind. I, therefore, think that this very little, almost infinitesimal right that they have which, according to the Honourable the Law Member himself, is unsubstantial, should be preserved, and let us leave them the consolation of at least going occasionally before the High Court when they do feel that the forms which have been prescribed under the Assam Criminal Law Amendment Act have not been complied with by the executive, to set right the defects. On these grounds, I, therefore, oppose this provision. (Applause.)

The Honourable Sir Henry Craik : Sir, the debate to which we have listened today has travelled over a very wide range of subjects, some of them, it has seemed to me, only very remotely connected with the actual provisions of the Bill under discussion. The debate now seems to be ready to perish of inanition and it is for me,—I admit not unwillingly,—to perform its obsequies. I should like to remind the House that really this Bill is a very simple supplementing measure, designed to give effect to two clauses of a local Act passed by very large majorities through the local Council, which were unfortunately found to be beyond the powers of the local Legislature. Some of the speakers opposite me have taken the opportunity of attacking the local Act, and it has been asserted that the local Act was introduced and passed without any reason, that it is an Act of oppression and that the circumstances of the Province were not such as to justify its passage. My Honourable friend, Mr. Phookun, from Assam, dismissed in a somewhat airy fashion what he described as three or four decoities, the maximum limit of loot in any one of which was, he said, three thousand rupees, and which seemed to him, or at any rate he gave me that effect, of being nothing more than a little playful ebullition of high spirits on the part of a few youths who he denied were in any way connected with

the terrorist movement. Now, Sir, my Honourable friend's facts were as inaccurate as his deductions seem to me to be unreasonable. So far from their being three or four dacoities, there have been in the last 3½ years 15 dacoities, two of them accompanied by murder. That can hardly be described as a trifling series of offences. So far from the largest quantity of money stolen in any one of these crimes being Rs. 3,000, the largest quantity actually was Rs. 15,000 or thereabouts. And I think in almost every case the amount was considerably in excess of Rs. 3,000.

Mr. T. E. Phookun : That comes to only four dacoities a year for the whole Province.

The Honourable Sir Henry Craik : There have been 15 dacoities of a political nature in 3½ years. Now, Sir, the Honourable Member suggested that there was no proof that these dacoities.....

Mr. T. E. Phookun : May I know how the Honourable Member maintains that these were of a political nature ?

The Honourable Sir Henry Craik : If the Honourable Member would allow me to conclude one or two sentences without interruption, my point might become clear. He denies that it has been established that these dacoities are of a political nature. Sir, my Honourable friend, Mr. Scott, whose maiden speech has been acknowledged to have been a lucid and a convincing statement, made it quite clear that the Local Government were satisfied that these crimes were the crimes of a terrorist organisation. I would invite attention to one particular passage in the speech of the Honourable Maulvi Saiyid Sir Muhammad Saadulla, the Member in charge of Law and Order in Assam, when he moved for consideration of the Bill. He said :

“ I have been in charge of the Department of Law and Order since 1929, and have resisted the proposals of the police and of the district authorities to supplement the ordinary criminal law. But the information now placed before the Government clearly proves the existence of many organisations, within the Province, with the avowed policy of overthrowing the constituted Government by means of force and violence. In the public interest, I cannot divulge either the quantum or quality of the evidence that Government possess, but I can assure the House that on the materials which were placed before us, my Honourable colleagues, European and Indian, the Government as a whole, both the reserved and the transferred halves, have come to the unanimous conclusion that Government must possess powers ready for use for dealing with future emergencies.”

That, Sir, is an opinion that I do not think anybody on the other side is in a position to go behind. Certainly I am not. I do not personally know the conditions in Assam,—I could not know them. But here is the responsible Member in charge of the subject and he tells us that the whole of the Government, both Indian and English, are completely convinced that there are these terrorist organisations at work. I think, Sir, that effectually disposes of the point made that there is nothing in the situation in Assam to justify the assumption by the authorities of special powers.

Next, Sir, I come to the speech, the very interesting and enthralling speech, of my Honourable friend opposite, Mr. Neogy, which seemed to me, if I may say so, even less directly connected with the question before the House than most of the other speeches. He dealt very largely with the question, which seemed to be worrying his conscience, of the

[Sir Henry Craik.]

independence of the judiciary ; and he made certain observations,—for which I have no doubt he has satisfied himself he has good cause,—which seemed to me to constitute a somewhat serious reflection on the independence of the judiciary,—I think he went so far as to say, of certain High Courts. Now, Sir, my Honourable friend is fond of throwing challenges to me across the floor of the House, and he did so in his speech this morning. He quoted a speech made by my old friend, Sir Shadi Lal, who was till recently Chief Justice of the Punjab, which contained certain observations which my Honourable friend used to support his case. I think, he rather hinted that he would like me to reply across the floor of the House to those observations. Well, Sir, I am much too old a bird to be caught by that sort of chaff. (Laughter.) The late Chief Justice's speech was made on the 7th May. I left India on the 3rd May. I had never heard of the speech before my Honourable friend mentioned it. I did not even know it had been made. I have never seen a single newspaper article about it and I certainly am not prepared to take a single passage from what was, I imagine, a carefully prepared *ex cathedra* pronouncement of that sort, spoken from the Bench with all the dignity of the Chief Justice's office surrounding him and with of course no possibility of argument or contradiction, and here from my place in this House, where there is every possibility of argument and contradiction and interruption, to make a reply to it. I think my Honourable friend will admit that that is not an unreasonable attitude to take up. But there was one thing that the Honourable Member said in his speech, and the same point was taken by other speakers, notably by my Honourable friend, Mr. Mitra, whose speech was, if I may venture to say so, largely a repetition of the arguments used by other speakers, and that is, that it is no use giving these people the right of appeal, because directly the appellate Court acquits them, the executive authorities arrest them and detain them. In fact, from the remarks made by my Honourable friend, I gather that he intended me to believe that in his own Province that is practically the invariable procedure, that in the first place no appellate Court dare acquit, but that if it did, the man is immediately re-arrested. Of course, I cannot speak for Bengal.....

Mr. K. C. Neogy : May I interrupt my Honourable friend for a moment ? I made it quite clear that to my knowledge no such thing has happened with regard to appeals to the High Court : but so far as the trials by special commissioners or trials by other judicial officers were concerned.—primary trials,—this is rather the rule, than the exception.

The Honourable Sir Henry Craik : I am sorry if I put in my Honourable friend's mouth any words he did not mean : I certainly thought that he had referred to appeals in the High Court. As I say, I cannot speak for Bengal, but we have, in our small way in the Punjab, had a similar problem to deal with in the last four years, and speaking entirely from recollection, and subject to correction, I only remember one case in which I, as the Member in charge of Law and Order, agreed to the executive arrest of a person who was acquitted by—in this case, it was, I admit,—the High Court, on appeal. The circumstances of that particular case are, it seems to me, of some little interest in rebutting the general attitude of Honourable Members opposite that the procedure has necessarily the result of keeping in indefinite detention innocent men

I will venture to tell the House very broadly, without the names of course, the circumstances of that particular case. The man in question had been tried for being implicated in a conspiracy to murder—a conspiracy which, I may say, resulted in murder : he was convicted in the Sessions Court and sentenced to death ; he appealed to the High Court and he was acquitted ; and taking a careful survey of all the facts, and the information in our possession, about that man, the Local Government decided that they would not be doing their duty if they allowed him to remain at large. He was accordingly arrested and placed under detention. Now comes the interesting part of the story—two interesting parts in fact. One was that I had a conversation with one of the High Court Judges who acquitted him : my Honourable friend will pardon me for bringing in a conversation outside the House, but I only follow his own example. The Judge said to me that he was very sorry he had to acquit this man, that he was perfectly satisfied in his own mind that the man was as guilty as he could be, but the rules of evidence by which he was bound—and notably the rule, that the evidence of an accomplice is not to be accepted without material corroboration, precluded him from convicting him.....

Mr. K. C. Neogy : Is this the practice in the Punjab—to discuss such matters between a High Court Judge and executive officials ?

The Honourable Sir Henry Craik : The Honourable Member has himself quoted a conversation.

Mr. K. C. Neogy : I merely wanted to know.

The Honourable Sir Henry Craik : I do not say it is the practice, but the circumstances were exceptional and the Judge in question came to me and volunteered this statement and I do not see why I should not have listened to it.

Mr. K. C. Neogy : I am very glad my Honourable friend makes a candid admission.

The Honourable Sir Henry Craik : That was a perfectly candid admission by the Judge, and it shows that there are rules of evidence which occasionally, at any rate, I do not say always—I do not even say often—but occasionally result in the acquittal of a man who is known to be guilty. Now, there is another interesting part. This particular man was kept in detention and I am very glad to say that he saw the error of his ways and he made what I really believe was a sincere repentance. I went very carefully into his case and discussed it with the officers in actual contact with him : he wrote out in the very greatest detail the entire history of his connection with the terrorist and he wrote out in the very greatest detail every incident connected with the conspiracy for which he was tried. He admitted up to the very hilt his guilt. I do think that story has a certain significance. It does show that the procedure of the ordinary Courts is not cent. per cent. guaranteed to arrive at the truth ; there are occasions when the executive government, in possession of facts of that kind, are perfectly justified in ordering detention as an executive order. There is no injustice in it and I submit that it was not done without the very gravest consideration.

I can recall another story bearing on the same point—perhaps in rather lighter vein ; and in this case I will not vouch for its complete

[Sir Henry Craik.]

truth. It was in a certain district in which I served in the Punjab as a young man, a story current in the countryside,—it was a very lawless district. The story is that a lady, whose husband had been murdered, was determined to have her revenge and so she sent for the local murderer and asked him : “ Look here, my husband has been murdered : I suspect so and so : what will be your price for getting rid of him ? ” He stated his usual terms—Rs. 50 or something like that : and she said : “ How much will you charge for murdering his wife ? ” He said : “ That would be cheaper—say Rs. 40.” A bargain was struck and he took the wife out for a walk and pushed her down a well and disposed of her like that. Then he was arrested and put before a magistrate : of course he had been through this sort of thing before and it did not worry him : he made no statement before the committing magistrate : he was committed for trial : he did not say much in the Sessions Court beyond saying that he was innocent ; and he was convicted. He then, as usual, appealed to the High Court and he was acquitted. It had all happened to him before and so the whole thing was a familiar routine for him : he then went back to the lady who had employed him and said : “ Now I have done my job ; where is the Rs. 40 ? ” She said : “ But, the Judge Sahib said you did not do it.” (Laughter.) She refused to pay him. The ending of the story is that he thereupon murdered the lady, but I am not sure about that. As I said, I cannot vouch for the truth of the story, but still it does corroborate my point, which is that one cannot, in every single case, accept the contention that a man who is acquitted by a Court of law must necessarily be innocent.

Sir, I noticed that my frined, Mr. Abdul Matin Chaudhury, while not denying, like his compatriot from Assam, the existence of the terrorist organization, did make the point that it was not really a very serious menace. He said, as far as I can recollect, that it has not been necessary to take precautions to secure the safety of officers in Assam. I quite agree that that is true, and that the form of terrorist crime in Assam, so far as the material before me goes, is much less violent in the sense that it usually takes the form of dacoity and is less murderous than the crimes committed by the same kind of organization in Bengal. As Mr. Scott made it clear, the chief danger in Assam is, that terrorists from Bengal have taken refuge there under pressure from the police, and they have been using Assam, not for committing the type of terrorist murder which has been so deplorable a feature of Bengal, but rather for replenishing their funds by robbery and dacoity. That is perfectly true, but the menace is surely none the less a very serious one and fully deserves to be dealt with by special weapons.

A later speaker, Sardar Sant Singh, in the course of his speech questioning the provision in the Bill for the abrogation of the powers of Habeas Corpus disputed the contention that such a provision is in the interests of witnesses. His own word were that “ witnesses were occasionally subjected to maltreatment ”. Now, that is surely slightly understating the case. Witnesses are no doubt maltreated occasionally, but the justification for this legal provision is not maltreatment but stark murder. Witnesses have on a great many occasions,—though certainly there have been fewer occasions in recent years than in the past,—but on a great many occasions witnesses have been murdered with the utmost ruthlessness, and I have no doubt that, if the trials of terrorists were held in public, and

the witnesses or informers or accomplices on whose evidence the prosecution was to rest were placed in Court, that murders would again become most distressingly frequent. Nor can it be said that even a trial *in camera* is really any substantial measure of protection. If there is a trial at all, even if it is held *in camera*, it is easy enough for the agents of the accused to ascertain and make a note of the names of the witnesses.

My friend misquoted the Assam Act when he said that it was within the power of the Public Prosecutor practically to direct the Commissioners to hold a trial *in camera*. That is not the case. His mistake has already been pointed out by Mr. Scott. The Public Prosecutor can merely draw attention or certify that in his opinion it is necessary, but it is still for the Commissioners to decide.....

Mr. T. R. Phookun : May I interrupt my Honourable friend for a moment ? It is provided that neither the name nor the designation, nor any words, signs or visible representation disclosing the identity of any witness in a trial by Commissioners appointed under the Assam Criminal Law Amendment Act, and so forth, shall, without the permission of the Commissioners, or after the termination of the trial, without the permission of the Local Government, be published in any newspaper, book or other document. So, I think it is clear that identity would not be disclosed.....

The Honourable Sir Henry Craik : All the same, I don't think that section would fully protect the witness. If he has to appear in Court at all it is easy enough for the accused or his agent.....

Mr. T. R. Phookun : I would like to ask another question, Sir. How many witnesses have been murdered within the last 20 years ?

The Honourable Sir Henry Craik : Within the course of 20 years ?

Mr. T. R. Phookun : About that.

The Honourable Sir Henry Craik : I should say a considerable number, certainly a dozen, within the course of 20 years. I have only got figures for the last four years, and during this period in Bengal alone two have been murdered, and there have been two other attempts. Of course, as I said, there have been far fewer attempts within the last four years, but before that they were comparatively common.

Another point made by my friend, Sardar Sant Singh, was that it was possible for the Commissioners in certain circumstances to record evidence in the absence of the accused. That is no doubt true. It is only when the accused, either by voluntary act renders himself incapable of appearing in Court, or forcibly resists his production or behaves in a persistently disorderly manner, that evidence is recorded in his absence. My Honourable friend should know from a certain case that was notorious in the Punjab, that it is possible for accused persons, by persistently disorderly conduct, by refusing to be taken to Court and by interrupting the proceedings by shrieking and singing, and so on, to hold up a trial almost indefinitely. And what happened in that notorious trial is in itself a full justification. I submit, for this provision. It can only be used in the case of an accused who is determined to defeat the ends of justice by rendering the proceedings impossible.....

Sardar Sant Singh : May I draw the attention of the Honourable the Home Member to the various provisions in this respect, to which I referred in a cursory manner, because I could not deal with all the clauses

[Sardar Sant Singh.]

separately as the Act has been passed already. In that Act it is laid down, for instance, in section 8, clause 2 (b), that any evidence already recorded in the trial or in favour and so forth. Similarly in clause 3, it is stated that the Court may not recall the witnesses.....

The Honourable Sir Henry Craik : I am not clear whether this is an interruption or a speech. I am not saying that the Honourable Member was wrong, but there is this power, and I am trying to justify it.

Now, I do not propose, in fact I am not qualified, to follow my Honourable friend, Diwan Bahadur Ramaswami Mudaliar, into the question of Habeas Corpus. I admit that when we get into those sorts of abstruse legal questions,—I am not a lawyer, and I get out of my depths, I am sure the House would not want me to deal with those questions. But taking what has been called the executive point of view, I would like to defend this provision, apart from the question of consistency or inconsistency with previous Acts, on its merits. I am perfectly aware that it is a principle of common law—I trust I am not using that term incorrectly—it is a recognised principle of civilised government, shall I say, that the subject has certain defined and well-recognised rights of personal freedom, and that he is not to be deprived of those rights, except by a sentence of Court. That is a most important principle which, I think, as I said the other day in another connection, everybody who has any respect at all for ordered government must support. But my point is this. There do arise emergencies which make it necessary to abrogate the ordinary law. When you have a deep-seated, wide-spread conspiracy, whose deliberate object is to paralyse and defeat the ordinary law, then I do think the executive government must be armed with the power to hold in abeyance, temporarily at any rate, possibly permanently, or at any rate so long as the danger exists, those powers of personal freedom which, ordinarily speaking, everybody would desire to respect and conserve. That, Sir, is the basic justification for any measure of this nature, and in clause 3 of the Bill we merely desire to endorse the very clearly pronounced verdict of the Assam Council regarding the existence in present circumstances in that Province of that special emergency to which I have referred.

Sir, I hardly think it is necessary for me to speak any longer, at any rate at this stage, in favour of the motion. I hope the
 5 P.M. House will agree, in view of what has been said in defence of this Bill, and, in view of the very clear verdict of the local Legislature, to take the Bill into consideration. (Applause.)

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

“ That the Bill to supplement the Assam Criminal Law Amendment Act, 1934, be taken into consideration.”

The Assembly divided :

AYES—58.

Abdul Aziz, Khan Bahadur Mian.	}	Bajpai, Mr. G. S.
Ahmad Nawaz Khan, Major Nawab.		Bhadrapur, Rao Bahadur Krishna Raddi
All. Mr. Hamid A.		B.
Allah Baksh Khan Tiwana, Khan		Bhore, The Honourable Sir Joseph.
Bahadur Malik.		Brij Kishore, Rai Bahadur Lal.
Anklesaria, Mr. N. N.		Buss, Mr. L. C.

Chatarji, Mr. J. M.
 Craik, The Honourable Sir Henry.
 Dalal, Dr. R. D.
 DeSouza, Dr. F. X.
 Dudhoria, Mr. Nabkumar Sing.
 Duguid, Mr. A.
 Fazal Haq Piracha, Khan Sahib Shaikh.
 Ghuznavi, Mr. A. H.
 Gidney, Lieut.-Colonel Sir Henry.
 Grantham, Mr. S. G.
 Grigg, The Honourable Sir James.
 Hockenull, Mr. F. W.
 Hudson, Sir Leslie.
 James, Mr. F. E.
 Jawahar Singh, Sardar Bahadur Sardar Sir.
 Kumaluddin Ahmad, Shamus-ul-Ulema Mr.
 Lal Chand, Hony. Captain Rao Bahadur Chaudhri.
 Lindsay, Sir Darcy.
 Lumby, Lieut.-Colonel A. F. R.
 Metcalfe, Mr. H. A. F.
 Morgan, Mr. G.
 Muazzam Sahib Bahadur, Mr. Muhammad.

Mukherjee, Rai Bahadur Sir Satya Charan.
 Noyce, The Honourable Sir Frank.
 Pandit, Rao Bahadur S. R.
 Perry, Mr. E. W.
 Peri, Mr. Goswami M. R.
 Rafiuddin Ahmad, Khan Bahadur Maulvi.
 Raghbir Singh, Rai Bahadur Kunwar.
 Ruisman, Mr. A. J.
 Rajah, Rao Bahadur M. C.
 Ramakrishna, Mr. V.
 Rastogi, Rai Sahib Badri Lal.
 Rau, Mr. P. R.
 Richards, Mr. W. J. C.
 Row, Mr. K. Sanjiva.
 Scott, Mr. J. Ramsay.
 Scott, Mr. W. L.
 Singh, Kumar Gupteshwar Prasad.
 Singh, Mr. Pradyumna Prashad.
 Sircar, The Honourable Sir Nripendra.
 Spence, Mr. G. H.
 Studd, Mr. E.
 Trivedi, Mr. C. M.
 Zakaullah Khan, Khan Bahadur Abu Abdullah Muhammad.
 Zyn-ud-din, Khan Bahadur Mir.

NOES—28.

Abdul Matin Chaudhury, Mr.
 Abdur Rahim, Sir.
 Ba Maung, U
 Bhuput Sing, Mr.
 Das, Mr. B.
 Gunjal, Mr. N. R.
 Jadhav, Mr. B. V.
 Jog, Mr. S. G.
 Maswood Ahmad, Mr. M.
 Mitra, Mr. S. C.
 Mody, Mr. H. P.
 Mudaliar, Diwan Bahadur A. Ramaswami.
 Murtuza Saheb Bahadur, Maulvi Sayyid.
 Neogy, Mr. K. C.

Pandian, Mr. B. Bajaram.
 Pandya, Mr. Vidya Sagar.
 Parma Nand, Bhai.
 Patil, Rao Bahadur B. L.
 Phookun, Mr. T. R.
 Reddi, Mr. P. G.
 Sant Singh, Sardar.
 Sen, Mr. S. C.
 Sen, Pandit Satyendra Nath.
 Singh, Mr. Gaya Prasad.
 Sitaramaraju, Mr. B.
 Thampan, Mr. K. P.
 Uppi Saheb Bahadur, Mr.
 Ziauddin Ahmad, Dr.

The motion was adopted.

The Honourable Sir Joseph Bhole (Leader of the House) : Sir, I think it will be meeting the convenience of the House if I make the announcement that the Government do not intend to move the motion which stands in the name of my Honourable friend, Mr. G. S. Bajpai, in respect of the Bill known as the Muallims Bill.

Mr. President (The Honourable Sir Shanmukham Chetty) : Tomorrow, when the Assam Criminal Law Amendment (Supplementary) Bill is finished, the House will pass on to the motion standing in the name of Lieut.-Colonel Lumby regarding the Indian Army (Amendment) Bill.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 14th August, 1934.