



Proceedings of the Ninth Session of the First Assam Legislative Assembly assembled under the provisions of the Government of India Act, 1935

THE ASSEMBLY met in the Assembly Chamber, Shillong, at 11 A.M. on Thursday, the 27th March, 1941.

PRESENT

The Hon'ble Mr. Basanta Kumar Das, Speaker, in the Chair, the nine Hon'ble Ministers and sixty-three members.

QUESTIONS AND ANSWERS

STARRED QUESTIONS

(to which oral answers were given)

Deforestation of Longai Reserve

Maulavi MABARAK ALI asked :

*111. Will Government be pleased to state—

- (a) The result of the local inquiry held by the Hon'ble Minister-in-charge of Forests into the question of deforestation of certain parts of Longai Reserve under the Karimganj subdivision ?
- (b) How many Hon'ble Ministers visited the said reserve in this connection ?

The Hon'ble Srijut RUPNATH BRAHMA replied :

111. (a)—The matter has had to be considered in connection with the requirements of the Department's plantation programme, and also of existing forest villagers. The Conservator has been occupied in surveying the Reserve for these various aspects but has been delayed in his work by a boundary dispute in this area with the Tripura State, which has only recently been settled.

(b)—There has been no other visit in this connection, though Hon'ble Ministers have visited Longai.

Settlement of lands in Longai Reserve

Maulavi MABARAK ALI asked :

*112.(a) Will Government be pleased to state if they have decided to open lands for settlement in the Longai Reserve ?

(b) If so, when the lands will be available for settlement ?

The Hon'ble Srijut RUPNATH BRAHMA replied :

*112. (a)—Not yet finally decided. The area is being examined, but the matter has been delayed by a dispute over the title to a part of this Reserve.

(b)—Does not arise.

Protection of villages on either side of Mora-Manas from flood

Maulavi MUHAMMAD AMJAD ALI asked :

*113. With reference to the replies given to starred questions Nos.153(a) and (b) asked by me on the 23rd November 1940, will Government be pleased to state—

- (a) Whether the Drainage and Embankment Division has completed the final enquiry as promised in the reply under reference during the present cold weather ?
- (b) The names and designations of the officers that took up the preliminary investigation during the rains as also of those that took up the necessary final enquiries during the dry weather with the results of each ?
- (c) Whether the villagers of the said villages in either side of the Mora-Manas have recently approached the authorities for the remission of land revenue with a petition ?
- (d) If so, whether they have been given any relief in the shape of agricultural loans or gratuitous relief ?

The Hon'ble Maulavi ABDUL MATIN CHAUDHURI replied :

*113. (a)—Yes.

(b)—The Sub-Deputy Collectors of Barpeta and Sidli made preliminary investigations during the rains and the Executive Engineer, Embankment and Drainage Division, made final investigation during the dry season. The reports are now under consideration by Government.

(c) & (d)—The information has been called for and will be supplied to the hon. member on receipt.

Local Board and Government Dispensaries

Maulavi MABARAK ALI asked :

*114. Will Government be pleased to state—

- (a) The number of Local Board and Government dispensaries in the different subdivisions of the district of Sylhet ?
- (b) Whether Government is aware that there are areas in which medical aid is not available within the distance of 10 or 15 miles in the district of Sylhet ?
- (c) Whether Government propose to have a plan for creating a net work of subsidised Unani or Homeopathic dispensaries in all inhabited areas, to provide medical aid of some kind within a radius of every 3 miles ?

The Hon'ble Srijut HIRENDRA CHANDRA CHAKRAVARTY replied :

114. (a)—The number of hospitals and dispensaries maintained by Government and Local Bodies and the Government Subsidised Dispensaries in the different subdivisions of the Sylhet district is shown in the statement laid on the table.

Statement referred to in reply to starred question No. 114(a) asked by Maulavi Mabarak Ali :

Number of Government, Local Board and Subsidised Dispensaries in Sylhet

NORTH SYLHET SUBDIVISION

| | | | | | |
|-----------------------|-----|-----|-----|-----|-------|
| Government | ... | ... | ... | ... | 1 |
| Government Subsidised | ... | ... | ... | ... | 1 |
| Local Board | ... | ... | ... | ... | 13 |
| Municipal Board... | ... | ... | ... | ... | 1 |
| | | | | | <hr/> |
| | | | | | 16 |

SUNAMGANJ SUBDIVISION

| | | | | | |
|-----------------------|-----|-----|-----|-----|-------|
| Local Board | ... | ... | ... | ... | 12 |
| Government Subsidised | ... | ... | ... | ... | 1 |
| | | | | | <hr/> |
| | | | | | 13 |

HABIGANJ SUBDIVISION

| | | | | | |
|-----------------------|-----|-----|-----|-----|-------|
| Local Board | ... | ... | ... | ... | 12 |
| Government Subsidised | ... | ... | ... | ... | 1 |
| | | | | | <hr/> |
| | | | | | 13 |

MAULVIBAZAR SUBDIVISION

| | | | | | |
|------------------------|-----|-----|-----|-----|-------|
| Local Board | ... | ... | ... | ... | 10 |
| Local Board Subsidised | ... | ... | ... | ... | 1 |
| Government Subsidised | ... | ... | ... | ... | 1 |
| | | | | | <hr/> |
| | | | | | 12 |

KARIMGANJ SUBDIVISION

| | | | | | |
|-----------------------|-----|-----|-----|-----|-------|
| Local Board | ... | ... | ... | ... | 12 |
| Government Subsidised | ... | ... | ... | ... | 1 |
| | | | | | <hr/> |
| | | | | | 13 |

(b)—This may be so.

(c)—Government is considering the question of encouraging other systems of medicine, viz., Ayurvedic, Unani and Homeopathic.

Government Sub-Assistant Surgeon of Bahubal Dispensary

Maulavi ABDUR RAHMAN asked :

*115. (a) Is it a fact that the Habiganj Local Board has applied sometime back to Government for withdrawal of the Government Sub-Assistant Surgeon of Bahubal dispensary to employ their own doctor on a much reduced pay ?

(b) Are Government aware that a Sub-Assistant Surgeon equally efficient as a Government Sub-Assistant Surgeon is employed under the Board on a scale of Rs.50 to Rs.100 ?

(c) Is it a fact that the number of charitable dispensaries under this Board is inadequate ?

(d) Do Government propose to accept the prayer of the Board to withdraw the Sub-Assistant Surgeon in charge of Bahubal dispensary ?

The Hon'ble Srijut HIRENDRA CHANDRA CHAKRAVARTY replied :

115. (a)—Yes.

(b)—Government are aware that a Local Board is required to appoint a registered medical practitioner, and that the Habiganj Board at present pays licentiates on a scale of Rs.50 to Rs.100 : but Government cannot express an opinion on the relative efficiency of a Local Board Sub-Assistant Surgeon and a Government Sub-Assistant Surgeon.

(c)—The ratio of dispensaries per 100 miles in the Habiganj Local Board area compares favourably with the ratios in other Sylhet subdivisions.

(d)—Government have already sanctioned the withdrawal of the Government Sub-Assistant Surgeon from Bahubal.

Mr. BAIDYANATH MOOKERJEE : Sir, the reply to (c) is not quite clear. The question is : 'Is it a fact that the number of charitable dispensaries under this Board is inadequate' but the Hon'ble Minister replied : 'The ratio of dispensaries per 100 miles in the Habiganj Local Board area compares favourably with the ratios in other Sylhet subdivisions'. That is not the proper answer, Sir.

The Hon'ble the SPEAKER : The hon. member is asking a question of opinion and the Hon'ble Minister has given the fact.

Mr. BAIDYANATH MOOKERJEE : What is the opinion of the Government, Sir ?

The Hon'ble the SPEAKER : It is not permissible to ask for opinion, but in this case I may ask the Hon'ble Minister to reply.

The Hon'ble Srijut HIRENDRA CHANDRA CHAKRAVARTY : The answer is quite clear, Sir, that the ratio of dispensaries per 100 miles in the Habiganj Local Board area compares favourably with the ratios in other Sylhet subdivisions.

Mr. BAIDYANATH MOOKERJEE : Sir, the reply is that the number compares favourably with other subdivisions, but the question is whether it is adequate or not.

The Hon'ble Srijut HIRENDRA CHANDRA CHAKRAVARTY : It is a question of opinion, Sir,

UNSTARRED QUESTIONS

(to which answers were laid on the table)

Introduction of military training in the colleges**Kumar AJIT NARAYAN DEV** asked :

164. (a) Did Government ever move the military authorities for introducing military training in the colleges in Assam ?

(b) If so, when ?

(c) Will Government be pleased to state if such authorities agreed to such proposal ?

The Hon'ble Srijut ROHINI KUMAR CHAUDHURI replied :

164. (a), (b) & (c)—The military authorities would not correspond direct with Government on the matter. Military training for college students must be organised under the University, and has been the subject of correspondence for over two years ; but no decision could be reached yet.

War Fund subscription by the Registration office at Dhubri**Kumar AJIT NARAYAN DEV** asked :

165. (a) Are Government aware that the Registration office at Dhubri has made subscription to the War Funds compulsory ?

(b) Are Government aware that the Registration officers there refuse to register any document in the absence of a fixed rate of subscription being paid to the War Funds ?

The Hon'ble Miss MAVIS DUNN replied :

165. (a)—Government have no information.

(b)—Government have received no such allegation.

Maulavi MUHAMMAD MAQBUL HUSSAIN CHAUDHURY :
May we know, Sir, whether Government made any enquiry in the matter ?**The Hon'ble Miss MAVIS DUNN :** Government did make an enquiry and it was found that subscriptions given are not given on compulsion.**Appointments in the Forest Department****Maulavi ABDUR RAHMAN** asked :

166. Will the Hon'ble Minister in charge of Forest Department be pleased to lay on the table a list of appointments made in the year 1940 in all the branches of the Forest Department in the province ?

167. Will Government be pleased to state—

- (a) How many Muslims have been appointed in the year 1940 as Rangers, Deputy Rangers, Forest Extra Assistant Commissioners and Clerks?
- (b) Whether Government issued an instruction to all its branches to give preference to Muslim candidates when they are still under-represented?

The Hon'ble Srijut RUPNATH BRAHMA replied :

| | | | | |
|-------------------------------------|-----|-----|------|--|
| 166.—Indian Forest Service | ... | ... | Nil. | |
| Provincial Forest Service | ... | ... | Nil. | |
| Subordinate Officers— | | | | |
| Rangers | ... | ... | Nil. | |
| Deputy Rangers... | ... | ... | Nil. | |
| Foresters | ... | ... | 12 | } Excluding temporary and officiating appointments made during short term leave vacancies full particulars of which could not be obtained in the time. |
| Clerks ... | ... | ... | 4 | |
| 167. (a)—Rangers | ... | ... | Nil. | |
| Deputy Rangers | ... | ... | Nil. | |
| Forest Extra Assistant Conservators | | | Nil. | |
| Clerks | ... | ... | 2 | |

(b)—No. There are standing orders under which all appointing authorities are to observe the principles of communal representation in public services when filling up vacancies.

Maulavi ABDUR RAHMAN: Sir, my question was 'Whether Government issued an instruction to all its branches to give preference to Muslim candidates when they are still under-represented?'. The answer is 'No'. May I know from the Hon'ble Minister whether he has got any knowledge of the Gazette notifications when applications were called for?

The Hon'ble Srijut RUPNATH BRAHMA: The reply is very clear, Sir. It is not required to give any particular instruction for any particular community, but there are standing orders under which all appointing authorities are to observe the principles of communal representation in public services when filling up vacancies.

Maulavi ABDUR RAHMAN: Is it not a fact, Sir, that whenever any Gazette notification is issued preference is first given to the tribal people, then to the scheduled castes, then to others and then to Muslims?

The Hon'ble Srijut RUPNATH BRAHMA: I am not prepared to answer, Sir.

Maulavi ABDUR RAHMAN: May I enquire from the Hon'ble Minister as to whether he received any letter from me drawing his attention to the Gazette notifications during the months of July, August and September.

The Hon'ble Srijut RUPNATH BRAHMA : In addition, I may tell the hon. member that he also raised the question of communal representation in this Assembly and in reply to that I told him that the Muslims will have their due shares according to the basis of communal representation and that the proceedings have been communicated to the Department for guidance.

Maulavi ABDUR RAHMAN : Even a month ago only, it was brought to the notice of the Hon'ble Minister while a post was notified that the Muslims were given the fourth place.

The Hon'ble Srijut RUPNATH BRAHMA : Anyhow the Muslims are also getting their due share.

Maulavi ABDUR RAHMAN : Is it not a fact that the Hon'ble Minister had to admit while supplying the figures that the Muslims are still under-represented in many of the branches of the Forest Department ?

The Hon'ble Srijut RUPNATH BRAHMA : That may be so and we shall look into it.

Maulavi ABDUR RAHMAN : May I know whether the Hon'ble Minister can supply me with the total number of appointments both Hindu and Muslim made since January 1940 up till now ?

The Hon'ble Srijut RUPNATH BRAHMA : I have not got the figures at the moment, Sir, but if the hon. member desires I can supply him later on.

Maulavi ABDUR RAHMAN : Yes, Sir, I would like to have the figures up-to-date from January 1940.

Magic Lantern Demonstrations

Mr. F. W. BLENNERHASSETT asked :

168. Will Government be pleased to state—

- (a) How many Magic Lanterns are there in the Public Health Department ?
- (b) Where are they ?
- (c) How many of them are in good order ?
- (d) How many of them are in disrepair ?
- (e) How were they operated, and what is the illuminant ?
- (f) How many sets of Magic Lantern slides are there in the Public Health Department ?
- (g) What are the subjects of these slides, set by set ?
- (h) How many Magic Lantern demonstrations were given in the years 1939 and 1940 ?
- (i) Where were these demonstrations held ?
- (j) Who gave the demonstrations ?
- (k) How many people attended each such demonstration ?

The Hon'ble Srijut HIRENDRA CHANDRA CHAKRAVARTY replied :

168.(a)—Seven.

(b)—One in each of the districts of Sylhet, Goalpara, Kamrup, Darrang, Nowgong, Sibsagar and one in the office of the Director of Public Health.

(c)—All are in good order.

(d)—Does not arise.

(e)—Operated by the Assistant Surgeon, Public Health Department, assisted by a lantern operator. The illuminant is Acetylene gas.

(f)—About 80 sets.

(g)—The slides are on the subjects of Malaria, Cholera, Small-pox, Leprosy, *Kala azar*, Tuberculosis, Food, General Sanitation, Prevention of Blindness, Maternity and Child welfare, Typhoid, School hygiene, Hook-worm, Housefly, Milk as food, Water and infection, Beri Beri, Rabies Tetanus, Anthrax, Scenery, Tiger and the Tub, and Elephant haunt.

(h)—427 in 1939 and 340 in 1940.

(i)—The demonstrations were held mainly in outlying villages of the rural area of the province. Some were held in towns and at schools in towns and villages, and at agricultural exhibitions. A copy of the statement is placed on the library table.

(j)—Assistant Surgeons, Public Health Department.

(k)—The attendance ranged from 50 to 1,000.

Mr. F. W. BLENNERHASSETT: Will the Hon'ble Minister be good enough to state where the magic lantern for the Sibsagar division is situated at the moment?

The Hon'ble Srijut HIRENDRA CHANDRA CHAKRAVARTY: I think, Sir, the Public Health Assistant Surgeon in charge of Sibsagar division is working in the Golaghat subdivision.

Mr. F. W. BLENNERHASSETT: Then the answer is, Sir, that it is at Golaghat.

The Hon'ble Srijut HIRENDRA CHANDRA CHAKRAVARTY: We take the district as a whole and Golaghat is a subdivision of the district of Sibsagar.

Communal representation in Public Services

Srijut RABI CHANDRA KACHARI asked :

169. (a) Will Government be pleased to state the percentage of appointments held by the undermentioned communities in the Assam Civil Service (Senior and Junior), Assam Excise Service, Assam Forest Service, Assam Police Service and Assam Engineering Service (Senior or Junior Cadres)?

(i) Hindus

(ii) Muslims

(iii) Scheduled Castes

(iv) Tribals.

(b) Do Government propose to enquire whether any community has representation in excess of what is their due in these services and take early steps to bring down representation to a normal level at an early date?

(c) Do Government propose to give greater benefit to under-represented communities by providing facilities of accelerated admission and promotion?

The Hon'ble Maulavi Saiyid Sir MUHAMMAD SAADULLA replied :

169. (a) —A statement is given below :—

| Communities | | | | | | Per cent. of posts actually held |
|---|-----|-----|-----|-----|-----|-------------------------------------|
| <i>Assam Civil Service—91 Posts</i> | | | | | | |
| Muslims | ... | ... | ... | ... | ... | 35.16 |
| Hindus | ... | ... | ... | ... | ... | 38.46 |
| Scheduled Castes | ... | ... | ... | ... | ... | Nil. |
| Tribal ... | ... | ... | ... | ... | ... | 6.59 |
| <i>Assam Junior Civil Service—94 Posts</i> | | | | | | |
| Muslims | ... | ... | ... | ... | ... | 36.16 |
| Hindus | ... | ... | ... | ... | ... | 47.87 |
| Scheduled Castes | ... | ... | ... | ... | ... | 3.19 |
| Tribal | ... | ... | ... | ... | ... | 6.38 |
| <i>Assam Excise Service—8 Posts</i> | | | | | | |
| Muslims | ... | ... | ... | ... | ... | 25 |
| Hindus | ... | ... | ... | ... | ... | 62.5 |
| Scheduled Castes | ... | ... | ... | ... | ... | 12.5 |
| Tribal | ... | ... | ... | ... | ... | Nil. |
| <i>Assam Forest Service—19 Posts</i> | | | | | | |
| Muslims | ... | ... | ... | ... | ... | 5.26 |
| Hindus | ... | ... | ... | ... | ... | 47.36 |
| Scheduled Castes | ... | ... | ... | ... | ... | Nil. |
| Tribal | ... | ... | ... | ... | ... | 5.26 |
| <i>Assam Police Service—10 Posts</i> | | | | | | |
| Muslims | ... | ... | ... | ... | ... | 50 |
| Hindus | ... | ... | ... | ... | ... | 50 |
| Scheduled Castes | ... | ... | ... | ... | ... | Nil. |
| Tribal | ... | ... | ... | ... | ... | Nil. |
| (Out of 3 officiating posts 1 is held by Muslim and 2 by Hindus besides the permanent.) | | | | | | |
| <i>Assam Engineering Service Classes I and II—28 Posts</i> | | | | | | |
| Muslims | ... | ... | ... | ... | ... | 28 |
| Hindus | ... | ... | ... | ... | ... | 68 |
| Scheduled Castes | ... | ... | ... | ... | ... | Nil. |
| Tribal | ... | ... | ... | ... | ... | Nil. |
| (b)—It is at | | | | | | |

(Out of 3 officiating posts 1 is held by Muslim and 2 by Hindus besides the permanent.)

(b)—It is the policy of Government to watch the excesses and deficits in communal proportions and to remedy them by recruitment of fit persons belonging to under-represented communities.

(c)—It is not ordinarily possible to consider communal proportions in cases of promotion. Government are not clear what is meant by "accelerated admission" but their policy as already stated is to recruit from the under-represented communities, only 20 per cent. of posts being filled without reference to any existing excess or deficit in the particular cadre concerned.

Babu BIPIN BEHARI DAS : In reply to question No.169(a), it has been said that in the Assam Civil Service the percentage of the Scheduled castes is nil. May I ask the Government whether they will consider the cases of the Scheduled castes in the next vacancies that are going to be filled very soon ?

The Hon'ble Maulavi Saiyid Sir MUHAMMAD SAADULLA : Yes, Sir.

Babu BIPIN BEHARI DAS : With regard to the other services, viz., Assam Junior Civil Service, Assam Excise Service, Assam Forest Service, Assam Police Service and the Assam Engineering Service, it seems to me that in all of them the scheduled castes are under-represented. Will the Government consider the case of scheduled castes in each case ?

The Hon'ble Maulavi Saiyid Sir MUHAMMAD SAADULLA : The reply is printed there, Sir.

Sheristadars of the District Judge's Courts

Maulavi MD. ABDUS SALAM asked :

170. Are Government aware that the Hon'ble High Court of Calcutta made a proposal to the effect that the Sheristadars of the District Judge's Courts should be transferred from one district to another within the jurisdiction of the Hon'ble High Court after each five years ?

171. Is it a fact that Government of Assam at that time raised objection on the ground that the grades of the Sheristadars of the District Courts in Assam are not similar with those of Bengal ?

172. Do Government propose to introduce the system of district transfers with respect to those officers within the different Courts of this province, where the grades are similar ?

173. (a) For how many years has the present Sheristadar of the District Judge's Court at Sylhet been serving as a Sheristadar of the Judge's office at Sylhet ?

(b) What is his present age ?

(c) When will he retire ?

(d) Whether he is a native of the province ?

174. Is it a fact that there were from time to time public complaints against him ?

175. Are Government aware that this system of district transfer has been introduced in Bengal with considerable success ?

176. Do Government propose to introduce this system in Assam immediately ?

The Hon'ble Khan Sahib Maulavi MUDABBIR HUSSAIN CHAUDHURI replied :

170.—Yes.

171.—The Assam Government had several objections to accepting the suggestion even if it were only applied as between the judgeship of Sylhet and Cachar and the Bengal judgeships. One was the difficulty involved by difference in scales, others were the hardships of inter-provincial transfers,

the difficulty of adopting a special practice for one part of Assam only, and the fact that it would not be a complete safeguard against even if it were to reduce any mal-practices.

172 & 176.—Government doubt the feasibility of the proposal, but may examine it in relation to the report on separation of executive and judicial functions.

173. (a)—About 8 years.

(b)—48 years.

(c)—In 1947.

(d)—He is domiciled in this province.

174.—The Judge reports that he has received no complaints, except some vague allegations when he first occupied the judgeship and none have reached Government.

175.—Government have no information.

Maulavi MABARAK ALI: Will Government consider the desirability of transferring the present Sheristadar from Sylhet to Cachar?

The Hon'ble Khan Sahib Maulavi MUDABBIR HUSSAIN CHAUDHURI: The suggestion will be considered, if there is a Sheristadar at Cachar.

Grant to Local Bodies for Development of Industries

Mr. NABA KUMAR DUTTA asked :

177. Will Government be pleased to state the names of persons and institutions of each Valley which received contributions from the grant to the Local Bodies for Development of Industries in Assam during the last three financial years and the amount paid in each case?

The Hon'ble Miss MAVIS DUNN replied :

177.—A statement giving the information is placed below :—

Names of persons and institutions which received contributions from the grant to Local Bodies for the development of industries in Assam during the financial years 1937-38, 1938-39 and 1939-40.

1937-38

Assam Valley

| Names of Institutes | | Amount |
|---|-------|--------|
| | | Rs. |
| 1. Silghat Technical School, Nowgong | ... | ... |
| 2. Assam Poly Technic Institute, Sibsagar | ... | 150 |
| 3. Sakti Asram, Fakiragram, Goalpara | ... | 150 |
| | ... | 100 |
| | Total | ... |
| | | 400 |

Surma Valley

| | Amount |
|---|--------|
| | Rs. |
| 1. Don Bosco Industrial School, Shillong | 1,000 |
| 2. Sidheswar Samabaya Bayan Vidyalaya, Cachar | 50 |
| 3. Weaving Class attached to the factory of Maulavi Arab Ali, Cachar. | 40 |
| 4. Ram Krishna Sevasram, Cachar | 70 |
| 5. Mewa Weaving School, Karimganj | 50 |
| 6. Srinathpur Weaving School, Sylhet | 40 |
| 7. Deorail Aliah Madrassa Weaving Class, Sylhet | 100 |
| 8. Mahendranath Hindu Vidyalaya, Sylhet | 40 |
| 9. Birasri Weaving School, Sylhet | 40 |
| 10. Nava Kishore Dinanath Bayan Bidyalaya, Cachar | 40 |
| 11. Debpur Weaving Factory, Sylhet | 40 |
| 12. Rangauti Samabaya Bayan Vidyalaya, Cachar | 40 |
| 13. Girls' Middle English School, Maulvibazar | 50 |
| Total | 2,000 |

1938-39

Assam Valley

| | |
|---|----|
| 1. Sakti Asram, Fakiragram, Goalpara | 60 |
| 2. Assam Poly Technic Institute, Sibsagar | 90 |
| 3. Silghat Technical School, Nowgong | 80 |

Surma Valley

| | |
|--|-------|
| 1. Don Bosco Industrial School, Shillong | 1,000 |
| 2. Hailakandi Town Madrasa | 35 |
| 3. Birasri Weaving School, Karimganj | 40 |
| 4. Ramkrishna Sevasram, Silchar | 40 |
| 5. Nava Kishore Dinanath Bayan Vidyalaya, Silchar | 30 |
| 6. Srinathpur Weaving School | 40 |
| 7. Badarpur Weaving School | 25 |
| 8. Ramkrishna Mission Seva Samity, Sylhet | 50 |
| 9. Rangauti Samabaya Bayan Vidyalaya, Hailakandi | 30 |
| 10. Niharbindu Bayan-O-Balika Vidyalaya, Karimganj | 30 |
| 11. Mahila Rastriya Sangha, Sylhet | 40 |
| 12. Sylhet Mahila Sangha, Sylhet | 40 |
| 13. Sidheswar Samabaya Bayan Vidyalaya | 30 |
| 14. Mullapur Mahila Sangha | 15 |
| 15. Majgaon Bayan Vidyalaya | 25 |
| 16. Sylhet Durrie Weaving School | 50 |
| Total | 1,750 |

1939-40

Assam Valley

| | Amount |
|---|--------|
| | Rs. |
| 1. Assam Poly Technic Institute, Sibsagar | 50 |
| 2. Jorhat Weaving School | 100 |
| 3. Sakti Asram, Goalpara (Fakiragram) | 80 |
| 4. Sapatgram Middle English and Technical School, Goalpara. | 30 |

Surma Valley

| | |
|--|-------|
| 1. Don Bosco Industrial School, Shillong | 1,000 |
| 2. Ram Krishna Sevasram, Silchar | 50 |
| 3. Hafizia Samabaya Bayan Bidyalaya, Silchar | 50 |
| 4. Naba Kishore Dinanath Bayan Bidyalaya, Silchar | 50 |
| 5. Hailakandi Middle English Madrasa | 50 |
| 6. Srinathpur Weaving School, Munshibazar, Sylhet | 50 |
| 7. Banskandi Middle Vernacular Madrasa, Silchar | 40 |
| 8. Supatala Weaving School, Beanibazar, Sylhet | 40 |
| 9. Mahilasangha, Sylhet | 40 |
| 10. Debpur Weaving School, Sylhet | 50 |
| 11. J. C. Roy, Weaving School, Baniachung, Sylhet | 30 |
| 12. Labachand Weaving School, Gopaltilla, Sylhet | 25 |
| 13. Niharbindu Bayan Balika Bidyalaya, Shelliabazar, Sylhet. | 25 |
| 14. Baniachung Joy Jagannath Weaving School, Sylhet | 40 |
| 15. Enathganj Weaving School, Sylhet | 50 |
| 16. Adityapur Weaving Institute, Balaganj, Sylhet | 50 |
| 17. M. Nasibur Rahman of Sylhet Durrie Weaving School, Sylhet. | 50 |

Total—1,950

Mr. NABA KUMAR DUTTA: May I know on what basis contributions are made to these institutions?

The Hon'ble Miss MAVIS DUNN: It will be noticed that Assam Valley institutions are getting much less than the Surma Valley institutions. That is because the Assam Valley institutions get the benefit of the Williamson Endowment Fund also.

Mr. NABA KUMAR DUTTA: May I know whether there is a similar fund in the Surma Valley also?

The Hon'ble Miss MAVIS DUNN: There is none, as far as I know.

Maulavi MUHAMMAD MAQBUL HUSSAIN CHAUDHURY: May I know why Sunamganj was not given a single pie?

The Hon'ble Miss MAVIS DUNN: Probably there was no application from Sunamganj.

Mr. NABA KUMAR DUTTA : Is it not a fact that there is a fund called the Prafulla Chandra Trust Fund in the Surma Valley ?

The Hon'ble Miss MAVIS DUNN : I shall make enquiries.

Maulavi MUHAMMAD AMJAD ALI : Is it not a fact that the Surma Valley is receiving more attention whereas the Assam Valley is receiving step-motherly treatment ?

The Hon'ble Miss MAVIS DUNN : No, Sir.

Mr. BAIDYANATH MOOKERJEE : Is it not a fact that the Hill Division is getting more than the Surma Valley ? It will be found from the answer that the Don Bosco Industrial School at Shillong is receiving Rs.1,000. The hon. members are grudging Surma Valley, but the Surma Valley is not receiving a large share.

The Hon'ble the SPEAKER : The hon. members should not enter into any argument. The figures are there, and the hon. members may draw their own inference.

The Hon'ble Miss MAVIS DUNN : I shall explain why the Don Bosco Industrial School is getting a sum of Rs.1,000. There was an institution here called the Fuller Industrial School, which did not attract many people, and the cost of keeping it up was Rs.5,000 ; it was not found profitable or useful. Therefore, Government decided to give an extra grant to the Don Bosco Industrial School provided they took in people of other denominations, and the Fuller Industrial School was abolished.

Maulavi MUHAMMAD AMJAD ALI : The question was with regard to grants to local bodies. The Don Bosco Industrial School has been mentioned prominently. Is it a local body ? I don't think it comes under that category.

The Hon'ble Miss MAVIS DUNN : I have nothing more to add to what I have said.

Maulavi ABDUR RAHMAN : May I know what the Hon'ble Minister means by the term "local body". Does not the term of "local body" mean "the local self-governing institution" ?

The Hon'ble the SPEAKER : Apparently it is so.

Maulavi MUHAMMAD AMJAD ALI : The whole import of the word "local body" has been misunderstood.

The Hon'ble the SPEAKER : The Hon'ble Minister is to explain how the Don Bosco Industrial School has been treated as one coming within the category of "local bodies."

The Hon'ble Maulavi Saiyid Sir MUHAMMAD SAADULLA : The question was interpreted in office as one asking for the names of persons and institutions who have received grants-in-aid, and not merely local bodies. As a matter of fact, if the list is scrutinised it will be found that not a single local body has received any grant.

Maulavi MUHAMMAD AMJAD ALI : And why so ? Does not the term "local body" mean Local Boards and Municipal Boards ?

The Hon'ble Maulavi Saiyid Sir MUHAMMAD SAADULLA : Yes, that is the technical meaning. But the Department thought it better to place the figures for all who have received grants.

Maulavi MUHAMMAD AMJAD ALI : As the aim of this question has been frustrated will Government see their way to remodel the answer ?

The Hon'ble Maulavi Saiyid Sir MUHAMMAD SAADULLA : Sir, my hon. friends who have gone through the Budget will find, if I remember aright, that a sum of Rs.2,000 has been specifically mentioned as "grants to local bodies", which is given only to those Local Boards who maintain technical institutions.

Maulavi ABDUR RAHMAN: May I know whether Government mean to spend this amount through Local Boards ?

The Hon'ble Maulavi Saiyid Sir MUHAMMAD SAADULLA: This contribution is meant for only those Local Boards who have started technical institutions.

Maulavi MUHAMMAD AMJAD ALI: Was there any harm in distributing these grants through local bodies which contain institutions ?

The Hon'ble Maulavi Saiyid Sir MUHAMMAD SAADULLA: Unless a Local Board helps an institution, it is no use distributing grants through it. If a particular Local Board comes and says "we are helping this or that institution" then Government will consider whether to distribute funds through it. Otherwise Government do not see any reason why they should go to the local bodies for distribution of these grants.

Maulavi MUHAMMAD MAQBUL HUSSAIN CHAUDHURY: Are these contributions recurring ?

The Hon'ble Miss MAVIS DUNN: They are given from year to year.

Maulavi MUHAMMAD MAQBUL HUSSAIN CHAUDHURY: From the answer I find that Rs.1,000 is distributed to the Don Bosco Industrial School every year.

The Hon'ble Miss MAVIS DUNN: Yes, that was incidental when the Fuller Institution was closed.

Goalpara Commercial Corporation

Maulavi ABDUR RAHMAN asked :

178. With reference to starred questions Nos. 150-152 asked by Maulavi Md. Amjad Ali, M.L.A., on the 23rd November 1940, will Government be pleased to state—

- (a) The names with the present addresses of the constituents of the Goalpara Commercial Corporation ?
- (b) The nature and class of the Company it belongs to (i) limited or unlimited, (ii) registered or unregistered and (iii) private or public ?
- (c) The approximate date on which this Company was started with the names and the nature of business that it has been doing since its start ?
- (d) Whether it has any previous experience of navigation ?
- (e) If so, where ?

The Hon'ble Maulavi ABDUL MATIN CHAUDHURY replied :

178. (a)—Maulavi Mujibar Rahman and Srijut Mani Kanta Das both of Goalpara Town.

(b)—It is a business firm registered with the Registrar of Firms, Government of Assam. The liability of the two partners are unlimited. It is at present a private one.

(c)—The two partners were carrying on business for about 15 years and organised their business under the name and style of the Goalpara Commercial Corporation from 1st March 1939. The firm is carrying on business of various kinds. They are running the steam ferry across the Brahmaputra at Goalpara, are lessees of the Public Works Department

Haripani Ferry and also Bardhana and Malegarh ferries under the Government ; contractors for the carriage of mails between Goalpara and Dhupdhara by motor service from 1st March 1941 ; Public Works Department contractors ; timber contractors under the Garo Hills Forest Division ; representative of the Ford Motor Company for Goalpara Subdivision and owners of several buses and a truck within the Goalpara Subdivision.

(d)—None—prior to April 1939.

(e)—Does not arise.

Sub-Deputy Collector of Dergaon Circle

Srijut KARKA DALAY MIRI asked :

179. (a) Is it a fact that the majority of the raiyots of the Dergaon Circle sent a petition to Government requesting them to transfer the present Sub-Deputy Collector from that Circle ?

(b) If so, what action Government is going to take on the matter ?

180. (a) Is it a fact that since the posting of that officer in that Circle, the number of land dispute cases and criminal cases regarding land is increasing and pending in the court of Golaghat ?

(b) If so, what are the causes of these disturbances ?

The Hon'ble Khan Bahadur Maulavi SAYIDUR RAHMAN replied :

179. (a)—Two petitions were received, signed in all by 109 persons, not one of whom could be traced.

(b)—Government do not comply with requests contained in virtually anonymous petitions, when no improper actions have been proved against their officers.

180. (a) and (b)—There has been no increase in criminal complaints. Land revenue miscellaneous petitions have increased in consequence of the forcible encroachment of Nak-Kati Chapori and petitions for opening of grazing reserves in this area.

Srijut Nila Kanta Goswami, an employee of the Government Press

Mr. NABA KUMAR DUTTA asked :

181. Will Government be pleased to state—

(a) If it is a fact that the Superintendent of Government Press under the instruction from the Government asked for an explanation from Nila Kanta Goswami, an employee of the Government Press, for taking parts in the affairs of the members of the Assembly during the last session ?

(b) If it is a fact that an explanation was submitted by Nila Kanta Goswami to the Superintendent of Government Press ?

182. If the reply to question No. 181 (b) is in the affirmative, will Government be pleased to lay on the table a copy of the explanation submitted by the said Nila Kanta Goswami ?

183. Is it a fact that the said Nila Kanta Goswami is under suspension now ?

The Hon'ble Srijut ROHINI KUMAR CHAUDHURI replied :

181. (a) & (b)—Government were informed of certain alleged occurrences and the Superintendent on being given intimation of the allegations called for the man's explanation.

182.—A proposal to draw up proceedings against this temporary employee is under consideration of the Government and it will be unfair to discuss this question at this stage.

183.—No.

Complaint for not laying on the table those recommendations of the Retrenchment Committee which have been accepted by Government

Maulavi ABDUR RAHMAN: Mr. Speaker, Sir, during the earlier part of this Session, in reply to some of my questions regarding the recommendations of the Retrenchment Committee, the Hon'ble Minister-in-charge was pleased to say that by the end of this Session he would be in a position to supply the House with those recommendations which have been accepted by the Government. May I enquire when can we expect to know the decision of Government as the Session will close after two days ?

The Hon'ble Khan Bahadur Maulavi SAYIDUR RAHMAN: Sir, I am glad that the hon. member has raised this question. I was about to make a statement on this point. The position is this: our decisions on the recommendations of the Retrenchment Committee are being considered by the office, and there are one or two decisions which we have referred to the Government of India. We are still in correspondence with them; so unless the decision of the Government of India is known we are not in a position to place before the hon. members the decisions we have arrived at. I do not therefore think that it will be possible to lay them before the House during this Session, but I hope to send a copy of our decisions to each hon. member as soon as they are ready.

Report of the Privileges Committee of the Assam Legislative Assembly

The Hon'ble the SPEAKER: With regard to the next item in the agenda, *i.e.*, the item on privileges of the House, I think the Hon'ble Minister may make a motion for the acceptance of the recommendations* made by the Privileges Committee. Of course in making this motion the Hon'ble Minister will be quite entitled to explain the position of Government with regard to the various recommendations made by the Committee, and I shall hold that merely by moving for the acceptance of them the Ministry would not commit themselves to the position of accepting the motion. I only wish that such a motion be before the House so that all recommendations may be discussed, and I propose to place the recommendations to the vote of the House separately.

The Hon'ble Minister will therefore please make an initial motion for the consideration of the recommendations, explaining Government's position with regard to them.

*N. B.—For Report of the Privileges Committee see Appendix D of the Assembly proceedings of 4th March 1941.

The Hon'ble Khan Bahadur Maulavi SAYIDUR RAHMAN:
Sir, I think the matter will be dealt with by the Hon'ble Premier.

The Hon'ble the SPEAKER: I have no objection if the Hon'ble Premier will deal with it.

The Hon'ble Maulavi Saiyid Sir MUHAMMAD SAADULLA:
I beg, Sir, to move that the recommendations of the Privileges Committee be considered by this House now.

In making this motion, Sir, I reserve to myself the right of stating before the House that the position of Government is that they are prepared to accept the first recommendation only. As I have already stated on an earlier date of this Session, recommendation No. (II) is not in vogue in institutions of any parliamentary system and recommendation No. (III) is only consequential to recommendation No. (II).

The Hon'ble the SPEAKER: Motion moved :

"That the recommendations of the Privileges Committee recommending the following privileges for the members of the House be considered for their adoption by the House :—

(I) If any member of the Assembly is arrested, detained, convicted or imprisoned on any criminal charge or otherwise, the information of such arrest, detention or imprisonment together with charges against such member shall be forthwith sent to the Speaker by the person or persons under whose authority or order the arrest, detention, conviction or imprisonment is effected ;

(II) Mr. Speaker, on receipt of authenticated information of the arrest, detention, conviction or imprisonment of a member, shall require the Provincial Government to arrange for the production, on a specified date or dates, of that member for such meeting or meetings of the Assembly or any Committee thereof as Mr. Speaker thinks fit. Mr. Speaker shall also require the attendance of such a member in any joint session of the Legislature. The Provincial Government shall take such steps as they consider fit for the custody of the member during his stay at the place of the meeting of the Assembly, joint session or committee ;

(III) That a member should be entitled, while within the precincts of the House, to exercise all his rights and privileges as such as far as this is possible".

I think a discussion may take place on the matter.

The Hon'ble Maulavi Saiyid Sir MUHAMMAD SAADULLA:
I think, Sir, there is an amendment* in the name of Maulavi Maqbul Hussain Chaudhury.

The Hon'ble the SPEAKER: The amendment need not be moved, because I shall put each of the recommendations separately to the House. The hon. members may discuss and at the time of the voting they may decide in what way to vote and the object of the amendment will be achieved if they reject the recommendations Nos. 2 and 3.

Babu KAMINI KUMAR SEN: Mr. Speaker, Sir, the Hon'ble Premier in moving the motion has stated that Government is willing to accept only recommendation No. (I) and not the other two. I do not exactly understand the reasons of his objections to the acceptance of these two other recommendations. Now, Sir, I think in making these recommendations the Privileges Committee only gave effect to the intention of the Government of India Act, and in accepting them we will be only following

*Maulavi Muhammad Maqbul Hussain Chaudhury to move :—

"That items (ii) and (iii) of Mr. Chanda's amended motion in Appendix 2 of the Privileges Committee's Report be deleted".

the spirit of the Government of India Act. Section 69 of the Government of India Act says :—"A person shall be disqualified for being chosen as, and for being a member of a Provincial Legislative Assembly or Legislative Council.....if, whether before or after the commencement of this Part of this Act he has been convicted of any other offence by a court in British India or in a State which is a Federated State and sentenced to transportation or to imprisonment for not less than two years, etc.". So, Sir, from this section it is clear that a member of the Assembly, if he is convicted and sentenced to imprisonment for less than two years, he retains his membership. It is thus clear that the Government of India Act did not intend that a member merely by conviction or imprisonment should lose his membership. So, Sir, if we give effect to this recommendation, we are simply following the spirit of the Government of India Act and nothing else. On the other hand non-acceptance of these recommendations will mean that a member will practically be deprived from exercising his right of membership as soon as he is convicted and sentenced even for a day, which was not the intention of the Government of India Act. So if we do not give effect to those recommendations made by the Privileges Committee, we are depriving the hon. members of a right they are entitled to under the Government of India Act.

Sir, I see from the report, that a Minute of Dissent has been submitted by my hon. friend Mr. Whittaker. The position taken by him is I think due to a misunderstanding of the intention of the Government of India Act. Before I explain my position, I think I should read clause 2 of the Minute of Dissent. And that is :—

"2. This question has received special prominence because of the cases in which convictions have followed attempted *satyagraha*, although the mover made it clear that the scope of his motion was not intended to apply only to a particular kind of detention. The majority view, in effect proposes that as soon as a citizen becomes a law-maker he shall be exempt from certain penalties should he become a law-breaker. Hitherto it has been an axiom that a legislator's privileges shall not interfere with the administration of criminal justice. It is difficult to reconcile my colleague's known advocacy of the democratic way of life with the specious plea for inequality of treatment before the law."

I do not exactly understand, Sir, the latter portion of this clause, *viz.* "The majority view, in effect proposes that as soon as a citizen becomes a law-maker he shall be exempt from certain penalties should he become a law-breaker." The recommendations of the Privileges Committee did not intend to say that the hon. members, if convicted, would be exempted from any of the penalties which have been inflicted on them and these recommendations cannot be construed to be such. The effect of those recommendations is that they will merely be allowed to come here to exercise their right to which they are entitled by the Government of India Act, and there is no question whatever of exemption from any of the consequences of their past act. Even when those hon. members are brought here, they remain prisoner as before. Hon'ble Prime Minister has stated the other day that a prisoner can be brought to court to help the administration of justice and that they can be cited as witnesses to appear before a court of justice. Exactly the same thing is being asked here by the recommendation of the Privileges Committee, because the last sentence of the second recommendation says :—"The Provincial Government shall take such steps as they consider fit for the custody of the member during his stay at the place of the meeting of the Assembly, Joint Session or Committee".

Even if they are allowed to come here, they will still remain prisoners, still in the custody of the Government and as such they will not get any exemption from their sentence at all. If the ordinary prisoners, when summoned to depose in a court of law, are not treated as having any exemption or concession, I do not see why the hon. members of the House, if they are only allowed to come here to exercise a right conferred on them by the Government of India Act, can be said to have any exemption or concession. Then, Sir, I think there is a provision in the Jail Manual that a prisoner can be released on parole in cases of emergency such as serious illness of any of his relatives—he can be released on parole for some time on such grounds, and no question of exemption or concession arises. When they are not considered to have got any exemption, I do not see any reason why hon. members of the House when being allowed to exercise a right to which they are entitled by the Government of India Act, should be considered to have any exemption as when they will come here they will remain under the custody of the Government. When ordinary prisoners are allowed to come and help in the administration of justice, I do not see why for making laws hon. members who have not lost their membership should not be allowed the same privilege.....

Maulavi ABDUR RAHMAN: On a point of information, Sir. I want to know whether permission can be granted by the Government without passing any Act on the subject.

Babu KAMINI KUMAR SEN: I admit that it cannot be done without legislation, but if we create a convention first we can easily pass such legislation.

The Hon'ble Khan Sahib Maulavi MUDABBIR HUSSAIN CHAUDHURY: On a point of information, Sir. May I know whether a convention can supersede provisions of the law?

The Hon'ble the SPEAKER: There is no law at present which the convention that is being sought to be established would supersede.

Babu KAMINI KUMAR SEN: There is no existing law and so there is no question of overriding the law. The convention also does not exist, it will have to be created.

Mr. A. WHITTAKER: May I put the question in another form, Sir? Can any convention be substituted for a law not passed?

Babu KAMINI KUMAR SEN: I think, Sir, it may be done, but the question of legality has not been questioned. Sub-section (2) of section 71, says ".....the privileges of members of a Chamber of a Provincial Legislature shall be such as may from time to time be defined by Act of the Provincial Legislature, and, until so defined, shall be such as were immediately before the commencement of this part of this Act enjoyed by members of the Legislative Council of the Province". So I do not see any harm in the House creating a convention. Of course with regard to the legal position I have some doubt, but I do not see any harm in the House creating a convention at least for the purpose of taking up a legislation on similar lines. The Bengal Privileges Committee also adopted a similar convention, so I do not think there will be anything illegal in accepting a convention like this. I have already submitted that the proposition that has been propounded by the hon. member is based on a misunderstanding, and as under the Government of India Act a member who has been sentenced to prison for a term of less than two years does not lose his membership, it was not contemplated by the Government of India Act also that such member should be debarred to exercise his rights and privileges.

The third paragraph of my hon. friend's note of dissent is this:—"This question can also be examined from the point of view of a member's constituents, who elect him to serve their cause in the Legislature. If that member, whatever his motives may be, places himself in jeopardy by breaking the criminal law, the member's ability to carry out the programme approved by his constituency suffers. His constituency may approve or disapprove of the conduct which lands the member in jail but that, in my opinion, is entirely a matter for the member and his constituency. It is not open to that member to seek the help of his fellow legislators, as the majority propose, to escape either the consequences of breaking the law or the odium of breaking any undertaking which such member has given to his electorate". I have already said that there can be no question of escaping the consequences of breaking the law. That question would only have arisen if the hon. member was to be set free for the purpose. If the constituency knows that under the Government of India Act the member still retains his membership and in fact actually some convicted members of the House are exercising their right of membership by putting questions, and tabling cut motions and resolution: even now I do not see why the constituency should ask the member to send in his resignation.

Lastly, Sir, I do not know whether other provinces have accepted any such convention.....

Mr. A. WHITTAKER: No.

Babu KAMINI KUMAR SEN: But I do not see why only for that reason we should refuse to adopt it. As I have already said, the Bengal Privileges Committee has recommended similar privileges, and it would be only fair that we accept the recommendations of the Committee. The Committee also was appointed by the House and it consisted of the representatives of the different sections, so it would be unfair to accept only a portion of their recommendations and not the whole of it.

Mr. P. TRINKLE: Mr. Speaker, Sir, I wish to speak on the general terms of this motion. The privilege contained in it gives a wide latitude since it covers arrest for criminal acts or otherwise.

Before, therefore, coming to a decision, it would be helpful, I consider, to study the practice of the British Parliament in this matter. I am not suggesting that we should always follow their lead blindly, but if we can derive benefit from the experience of others in framing our own privileges, it would be unwise not to take advantage of it.

Freedom from arrest has been one of the most jealously guarded privileges of the British Parliament, but even from the fifteenth century when it was first specifically claimed a distinction has been drawn between arrest for civil actions and arrests for criminal acts. In the former case arrest would prevent the member from carrying out the King's business which has precedence to the interests of the private person. In the latter the offence has been committed against the King himself and could not therefore be protected by privilege.

Since that time the general trend has been to limit and narrow down the privilege in regard to freedom from arrest.

The position has been brought up to date by the case of Captain Ramsay, M.P. His preventive detention last year fell within the debatable ground between civil and criminal cases and was therefore considered by the Committee of Privileges on general grounds. In doing so, it made certain that the detention was not made on the ground of anything that Captain Ramsay had said in Parliament in which case there would have been a breach of privilege. Its conclusion is however that although there is a wide difference between arrest and imprisonment on a criminal charge

and detention without trial under a Regulation, yet they have a common purpose—the protection of the community as a whole. This accords with the principle laid down by the Commons in 1641, 'Privilege of Parliament is granted in regard to the Service of the Commonwealth and is not to be used to the danger of the Commonwealth'.

We see, therefore, Sir, that as the conception of democracy has grown, Parliament has endeavoured to follow this policy and to ensure that any privileges it may claim for its members are directed solely to the interests of the State.

Can we say, Sir, that a privilege sought on such a broad basis as that proposed by Mr. Chanda will satisfy this test? I think not, Sir.

I therefore consider that the acceptance of item I of the recommendation is as far as this House should go.

Mr. C. GOLDSMITH: Mr. Speaker, Sir, a convicted person who has committed offence against the law of the State is ordinarily debarred from enjoying any privilege of fellowship with his society, his family and of conducting his usual business on which his hungry and helpless wife and children depend. When the person is in jail, he cannot help his family at all. But there is no help. This is only because he has committed an offence against the State.

A Member of Legislative Assembly convicted on a like charge of committing offence against the State falls under the same category. If Members of a Legislative Assembly, being legislators, claim extra privileges because they are Members of a Legislative Assembly then they fall victim to the charge of being unjust and unworthy of the trust and confidence of the people. We cannot by virtue of being members be different from our fellow-beings in the sight of law. Law is no respecter of persons.

A convicted person having broken a law of the State cannot and should not be allowed to sit in judgment over the same law he has broken, and legislate for other people.

This report will also include conviction of political prisoners. We really regret that certain of our own countrymen should find it necessary at this time of world crisis, to court arrest and be in jail! It must be said to their credit that they have undergone imprisonment as a principle of sacrifice. When a political prisoner voluntarily breaks a law of the State he does so knowing all the implication. He most of all takes upon himself all the privations, ignominy, hardship, punishment, humiliation and rigour which conviction and prison life bring in their train. By undertaking this suffering on himself voluntarily and deliberately he seeks to win a moral battle. If his motive and aim in breaking law and undergoing this suffering and sacrifice is good and just, and he serves his full term of suffering, he really wins a moral battle and comes out victorious. But we with many others have questioned the motive and aim. But, assuming the motive and aim as just and good, of which the *Satyagrahis* are convinced, then the voluntary sufferings they undergo and the voluntary sacrifice they make are to be prized most and should be held in the highest esteem and therefore worthy of respect by all. The more the humiliation, rigour, hardship and privation and deprivation, the greater the honour and glory when they emerge victorious from this great ordeal. All the hardship, shame and punishment the authorities shower upon them unjustly will one day recoil on them (the authorities) in a ten-fold manner. That is the moral law. But if these convicted persons being in jail claim privileges, exemption, exceptions and want to be classed in this class and not that class and want to maintain the superiority-complex of membership of the Legislative Assembly then the

very essence of sacrifice, suffering and the principle of true *Satyagraha* is totally lost. All the purity, glory and grandeur of sacrifice and voluntary *Satyagraha* cult is tarnished, mutilated and trampled under foot. The greater the quantity and quality of privileges sought and claimed the lower the value of volition in courting arrest and undergoing imprisonment and sacrifice. They frustrate the very moral purpose which they sought to uphold and maintain before the world.

I am not a voracious or a very critical reader of papers, so it may have escaped my notice. But as far as I have read, heard or seen, nowhere have I found that the great commander Mahatma Gandhi is seeking for any privileges for his followers and for his *Satyagrahis*. I have such a great respect for his moral principles that he enunciates that I can never believe that he will ever seek or beg before Government for privileges for the *Satyagrahi* Members of the Legislative Assemblies. It is those people who do not really understand the true principle of sacrifice and are not willing to follow in the footsteps of Mahatma Gandhi, they only claim this privilege and that privilege, seek permission to join this session and that committee and form this Ministry or that alternative Cabinet and thereby only add insult to injury to the cause to which the Mahatma has dedicated himself. To all such pleadings and requests the Mahatma has invariably given his emphatic "No" and he is perfectly right in doing so to maintain the sanctity of his campaign.

The Hon'ble the SPEAKER: This is not the issue before us. The hon. member will do well to speak directly on the real issue before the House without digressing and speculating.

Mr. C. GOLDSMITH: Supposing these recommendations are adopted and the Mahatma commands that no member shall accept such privileges when he is in jail even if the Government bestow out of their own accord then where are they and where are we? It is no concern of ours as to what the privilege-seekers think or how they take it, but we on this side of the House will look foolish before the world. We neither satisfy them nor satisfy the demands of law; do no moral justice to them nor to ourselves.

Finally, by the adoption of such recommendations as items II and III will mean nullifying certain provisions of the Act. The Act supports the present Constitution. So far the Congress Party had tried all their means to wreck the Constitution, they failed to do so, and not only failed but sometimes co-operated to work it out. But now if these recommendations in an indirect and subtle way have their way, they will really wreck the Constitution, and will prove that the Ministers occupying the Treasury Benches are unworthy of office, for they cannot uphold the Constitution which they are pledged to support. As for myself it is my bounden duty to support the amendment that was going to be moved by Mr. Maqbul Hussain Chaudhury and not lend support to the attempt at wrecking the Constitution under which I find my place here and which enables me to make this bold statement of fact.

Mr. A. WHITTAKER: It seems presumptuous for a layman like me to enter into a duel with a keen lawyer like Mr. Sen. Were it not for your recent ruling that you would not interpret a section of the Government of India Act, I should be tempted to put this question to you, Sir. Mr. Sen referred me to section 69(1)(e) of the Government of India Act and said in almost these words that because a member is disqualified by a sentence of more than two years, therefore he cannot be disqualified by anything less than two years. Surely, Sir, you can stretch

a point and give an authoritative interpretation that this is a completely illogical conclusion. Secondly, it seems to me that Mr. Sen is trying to contest my note of dissent by claiming that if a member were to be brought from the jail into this Assembly, he would still be in jail because he remains under the custody of the Crown. Speaking as a member, and as a very long suffering member of this Assembly, I some time feel that I am in jail when I sit here. But it is clear that were a member to be brought from jail to this House his sentence would be interrupted. I do not think that I can accept the view that sitting here and sitting in jail are the same thing; however tempting the idea seems.

Babu KAMINI KUMAR SEN: On a point of information, Sir. Is that the case, when a prisoner is brought to the court to depose ?

Mr. A. WHITTAKER: Against that, Sir, I would refer Mr. Sen to section 71(3). When a man is produced from jail to give evidence in a court, he does so on the order of a court. Now section 71(3) was referred the other day by you, Sir, and by my hon. friend Mr. Sen. It was held then that no committee and no officer of the Legislature can take on to himself the status of a court. Therefore if a man is brought from Jail without the order of the court to this Assembly I maintain, Sir, that is an interruption in his sentence. This is no parallel if for the case of a convict is brought under the escort of a Government officer for giving evidence in a trial on the order of a court. So much for the legal aspect. Sir, I am glad to leave the legal aspect to other people. I should like to take this matter on very general grounds. I do not wish to follow Mr. Goldsmith in taking the emotional basis. In my opinion, the facts, Sir, are crystal clear. Mr. Chanda's motion surely seeks to set up a privileged class of people. It seeks to give certain persons an immunity before the criminal law which is not enjoyed by the citizens of any democratic country. It seems to me anomalous to bring up this question when a war is being waged exactly because the Nazi gangsters are making a similar claim in Europe and throughout the world that they are above the law.

Now I should like to refer the members of this Assembly to an English author, Mr. Laski, perhaps the most distinguished socialist in Europe. He has written a book called "Where do we go from here", in which he has described the inter-national struggle in these words. "Our choice is between the dark age of privilege and the dawn of an equal fellowship among men". I would like to repeat it, Sir, as it concerns a vital question. "Our choice is between the dark age of privilege and the dawn of an equal fellowship among men". In a small and more humble way, Sir, I think, this is the choice before this House. I cannot believe that the members of this Committee have realised all the implications of their claim. We have heard a great deal in this session about the cause of the masses and in this Privileges Committee we find only the claim that a class shall have the privileges denied to the mass, a claim that the status of a legislator shall alone mark out a man as superior to his fellow-beings, a claim by democrats that for certain occasions they shall be treated and regarded as autocrats. Sir, I ask this House to support the view stated by the Hon'ble Premier and so vindicate a principle for which the Parliamentarians in other centuries and in other countries have considered no sacrifice too great ; a principle for which our fellow citizens in this century are upholding by the force of arms. On the Assam front that principle needs upholding and those, who claim to serve the mass cannot, in my opinion, justify their claim if they seek to create a privileged class.

Mr. BAIDYANATH MOOKERJEE: Mr. Speaker, Sir, I had no intention to take part in this debate because I was a member of the Privileges Committee and as such I got the opportunity of fully discussing the matter there but ; Sir, a few points have been raised which, in my opinion, requires some comment and should be made clear before the House. Sir, since the coming into being of the present constitution, this question of privileges of the members of the Legislature had been raised several times on the floor of this House because it raises a question of fundamental right of the hon. members and I hope, Sir, that this question should not be decided on any party spirit. Sir, it has been said by my hon. friend Mr. Goldsmith that because the Congress members are now in jails and that they have courted jail voluntarily, it is very wrong on their part to come up before the House with such a motion as would entitle them to come in this House and to take part in the deliberation. Sir, I can understand where the burning is. But will it not be proper for the hon. members of this House to go through the motion carefully so that they can realise that these privileges are not meant only for the Congressmen who are now in jail ? Sir, he delivered his speech most biassedly I hope, he will explain before the hon. members of this House that without mentioning any other class, why he simply mentioned about the Congress members ? These privileges will not be enjoyed by the Congress members only.

Mr. JOBANG D. MARAK: Mr. Goldsmith did not mention about the Congress members only but he mentioned about all the members.

Mr. BAIDYANATH MOOKERJEE: Sir, I think you clearly heard it and you had to intervene even in the matter. So I need not go into that matter any more. Mr. Whittaker has said that in no other democratic countries, this sort of privilege has been sought for or introduced. Sir, in this connection may I inquire from Mr. Whittaker whether he can name any democratic country where money is spent before the consent of the Legislature is taken, and that also without any necessity or urgency.

Mr. A. WHITTAKER: Yes, Sir, there are many countries.

Mr. BAIDYANATH MOOKERJEE: Sir, without any Act? If it is done anywhere, then we should take it that there is some Act by which the Government is empowered and can rectify it, but not so blindly and boldly as we have done here. Sir, we discussed on the floor of this House about the Motor Vehicle Rules which are in force and have been given effect to without our consent. I also brought before the notice of the hon. members of this House that our valuable right was flouted another time while discussing about the donation of one lakh of rupees both of which met with the same fate and were allowed to be flouted and we took the insult rather silently. Now, Sir, my appeal to the hon. members is this: Whether they admit that the tone of the debate in this House has fallen to a great degree due to the absence of some members or not and whether they should or should not take the guidance, wisdom and assistance of these hon. members who used to guide us and give this hon. House their sound advice and opinions in all matters. Sir, it has been said by my hon. friend Mr. Sen that by bringing them here we are not going to make them free, but simply they will be allowed to do their part to their country and to perform their duty towards their constituents as we all present here are performing to-day.

Mr. F. W. BLENNERHASSETT: How ?

Mr. BAIDYANATH MOOKERJEE : If I am to explain to an experienced man like Mr. Blennerhassett how the House will be benefited by their presence and how the hon. members who are now behind the prison bars will do their duty, then of course Sir, I am undone. I think he understands the position quite well, but for the reason well-known to this House he cannot agree with me. Sir, in my opinion it will be only fair and proper if the House can give this kind of privilege to the hon. members of this House who are now behind the prison bars and thereby enable us to take their advice and guidance in the matter of administration. I hope, Sir, Government will consider the matter and revise their present attitude for the sake of fairness and justice and the hon. members will deal with this matter in a non-partisan spirit.

Maulavi MUHAMMAD MAQBUL HUSSAIN CHAUDHURY : Mr. Speaker, Sir, on a motion of mine the original proposals of Mr. Chanda were sent to the Privileges Committee for a report and therefore I feel it my duty to speak a few words. I thought that I would not say anything, but after I have heard Mr. Mookerjee I feel tempted to say a few words. Mr. Mookerjee said that there was no harm if Members of the Legislative Assembly who are convicted now were allowed to attend the sittings of the Assembly and given a chance to do their duty towards their constituents. I think, Sir, the duty of the Members of the Assembly was to represent their constituents and not to court arrest or to keep themselves absent from the sessions of the Assembly.

Mr. BAIDYANATH MOOKERJEE : I am not confining to the Congress members only.

The Hon'ble the SPEAKER : Mr. Mookerjee said that his recommendations are confined not only to the Congress members but to all members.

Maulavi MUHAMMAD MAQBUL HUSSAIN CHAUDHURY : I am coming to that point. How can I think, after I have heard Mr. Mookerjee, that members who come here to enact laws and help Government for the operations of laws, would commit crimes against some provision of the law prevalent in the country? When he becomes the law himself he should know that he is to suffer all the consequences of the law. Those who court arrest, in my opinion, they are to be accused for the breach of the privileges of this House. They had no right to keep themselves absent from this House without the consent of their constituents. Thus they are doing a disservice to their constituents. I think that a member of this august House is sufficiently responsible and sufficiently alive to his duties that he has come here to help the deliberations, to enact laws for the people and he also knows it full well that by committing some crimes against some provision of the law he deprives himself from doing his duties and he cannot claim any privilege. This privilege as proposed in these proposals of Mr. Chanda means that we are going to frame some rules for ourselves which will not be applied to other persons of the same footing in the society who may be convicted under some sections of the Indian Penal Code. Whether that will be fair or not for this House—that is a matter for consideration. I for myself am not prepared to frame such rules for ourselves.

This is my unambiguous assertion. Now Mr. Mookerjee said that his idea was quite general and not for the Congress Members of Legislative Assembly only. When these proposals were put before the House we knew from the newspapers that the High Command of Wardah announced that the legislators of the Congress group should court arrest and go to jail. Until that announcement was made, such proposals did not come before the House and only on that ground I made mention of the Congress Members of Legislative Assembly. Now when they court arrest they do it to enhance the prestige of the Congress movement and they want to make Government feel that an organisation throughout India, i.e., Congress is against some provisions or rules of Government and let Government feel it. In some cases I found that Government was accused for lawlessness because there are some Members of Legislative Assembly who though offered *Satyagraha* for three or four times were not arrested. If that is the feeling of a *Satyagrahi*, I think, it is quite unbecoming of him. When he has offered *Satyagraha* he must be prepared to suffer all consequences of the law. Then why some want this privilege and why some want to be placed in this class or that class?

The Hon'ble the SPEAKER: I think, the hon. member is going beyond the real points at issue.

Maulavi MUHAMMAD MAQBUL HUSSAIN CHAUDHURY: Sir, there was an amendment in my name which you did not permit to be moved. I am perfectly at one with the Hon'ble Premier that is I am prepared to accept item No. 1, and item Nos. 2 and 3 of the amended recommendations of Mr. Chanda's proposals are to be deleted. That is my view.

Mr. JOBANG D. MARAK: Just one word, Sir. I do not see any reason to make a separate law for the Members of Legislative Assembly and another law for the public. If I am convicted and put in jail then whether I am entitled to privileges either as a Member of Legislative Assembly or as an ordinary man, that I should know clearly before hand and that if I commit a crime I shall be convicted and shall be deprived of all privileges outside the jail. For this very simple reason, Sir, the recommendations made by the Privileges Committee cannot be accepted *in toto*. I do not know if there is any such privilege mentioned anywhere in any constitution and also in England. In view of this I fail to see why the Privileges Committee should have made such recommendations. The House was in power then to throw off the motion moved by the hon. member, Mr. Chanda; and if such privileges are given in no Legislature, I fail to see, Sir, why this matter have been referred to the Privileges Committee by this House. It is nothing but sheer waste of money. The House considered the motion and referred the matter to the Committee. Now the Privileges Committee's report is before us; and we are throwing it out now. It is waste of time and money. These privileges, as recommended and proposed by the hon. mover cannot be accepted because we should not have one law for the Members of the Legislative Assembly and another for the public.

The Hon'ble Maulavi Saiyid Sir MUHAMMAD SAADULLA: Mr. Speaker, Sir, I hope I will not be accused of approaching these recommendations of the Privileges Committee in any partisan spirit, but I will deal with the subject, as if, it is a question, as my hon. friend Mr. Mookerjee put it, 'of fundamental rights of members of this House', although towards the end of my reply I will have to advert to the genesis of these recommendations. The privileges of members which the framers of the Government of India Act, wanted to give are detailed in section 71 of the Constitution Act.

This has been referred to by my hon. friend Mr. Kamini Kumar Sen and it has also been adverted by my hon. friend, the Leader of the European Group. On an earlier occasion I had placed before the House the privileges which the Constitution has granted, that is, there should be freedom of speech in every Provincial Legislature and no member of the Legislature shall be liable to any proceeding in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of any publication by or under the authority of the Chamber of such a proceeding or any report, vote or proceedings. In other respect, *i. e.* sub-section (2) lays down the privileges of the member of a Chamber of a Provincial Legislature shall be such as may from time to time be defined by an Act of the Provincial Legislature, and, until so defined, shall be such as were immediately before the commencement of this Act enjoyed by the members of the Legislative Council of the Province.

The first question, therefore, is, for us to decide whether such a privilege, as is now recommended for acceptance of the House, was granted by the previous Constitution. I need not tell the House that there was no such privilege under the Government of India Act, 1919. Therefore, as a privilege we cannot claim it as of right. The only point for consideration of the House is whether we should adopt it by an act of legislation of this Legislature, for, in my opinion, Sir, adoption of such a privilege for however a temporary period by way of convention will not help the members of this House in any way. Sir, officers of the Crown who are in charge of prisons will not release their charges unless there is a statutory authority declaring their release or declaring their attendance to the session of the Legislature. Therefore, I say, Sir, a mere convention will not help us. We are to see whether such a privilege should be granted to hon. members by enacting a piece of legislation here. My hon. friend Mr. Sen wants to deduce from section 69, clause (e) to sub-section (1) that inasmuch as the Parliament had made this provision that unless a member is sentenced to transportation or imprisonment for not less than two years, he retains his membership and, therefore, according to him, the framers of the Act wanted that these members, unfortunate members I should say, who are in prison for a sentence of less than two years, have got the privilege of coming to the House because they do not cease to be members. In other words, my friend's contention is that the privileges of membership of the Legislature must tantamount to a compulsory attendance in all the sessions of the Legislature. I think, Sir, the conclusion to which he has arrived is untenable. Section 69 has absolutely no connection with the claiming of privileges by members and rightly the heading to that section on the marginal note is about disqualification of membership and not privileges of membership.

That his conclusion is not logical I shall deduce from sub-section (2) of section 69 itself. Sub-section (2) says: "A person shall not be capable of being chosen a member of a Chamber of a Provincial Legislature while he is serving a sentence of transportation or of imprisonment for a criminal offence". The principle underlying there, is, that one who has been proved guilty in a court of law and who has been imprisoned for a criminal offence (there is no limitation of a period of two years or any), he is guilty of being a breaker of the law; so he is guilty of a criminal offence carrying with it all the odium of moral turpitude, and therefore such a person ought not to be chosen as a law-maker. If, Sir, I am correct in deducing the principle underlying sub-section (2) of section 69, then we can approach the recommendations of the Privileges Committee from that angle of view.

We come here together, Sir, to help and guide the Executive Government in framing laws, and also in administering the country. Whether we should entrust this work to law breakers is the main point at issue. I think, Sir, we in this Legislature can take our cue from what happens in our society.....

Babu KAMINI KUMAR SEN: On a point of information, Sir. Were not two members of his Cabinet law-breakers some time before ?

The Hon'ble Maulavi Saiyid Sir MUHAMMAD SAADULLA: Yes, Sir, some of them were. But at the time they chose to stand for election they had seen that they had followed wrong lines before. They corrected their political philosophy in the light of the new constitution.

Sir, I was telling the House that we should see what happens in our own society. Everywhere *panchayats* are held to settle disputes or to arbitrate in matters of legal significance, and everywhere a man, who has been guilty or pronounced guilty by a court of law and has suffered imprisonment, is debarred from being a member of *panchayat*. Here, Sir, I am not referring to my hon. friends who have been compelled under a sense (shall I say 'false' ?) of patriotism to court arrest and suffer all the difficulties of jail life. I am not referring to them, but I am referring to the generality of criminals. It is for consideration whether these people should come here to frame laws and dictate to Government that the administration should be run on certain lines. I think, Sir, such a right which will not be acceded to by a village *panchayat* should not be accepted by this august Assembly of the accredited representatives of the people.

No one deplotes more than myself that at this critical juncture of India's history my hon. friends of the Opposition thought fit to incarcerate themselves by breaking the law. But as my hon friend Mr. Mookerjee objected to the speeches of Messrs. Goldsmith and Maqbul Hussain Chaudhury, I have got to remind him that Mr. Chanda, when he moved a certain motion on the floor of this House on the 23rd November 1940, himself said that he had been compelled to move that motion on account of the impending courting of arrest by the party of which he was the Deputy Leader. I cannot but place before the House that portion of his speech for the remembrance of the hon. members. While moving his motion, Mr. Chanda said, "Since the declaration of the war the country has been covered over with a net work of laws which are unknown to any forms of civilized jurisprudence—laws which are humiliating to the self respect of the nation—such laws have been imposed upon the children of the soil and the life of the entire country has been subordinated to the whims and caprices of officials whose sense of responsibility is not among their strong points. So, in the present circumstances every combination of men is a conspiracy and every lover of freedom is a libel ! I submit that in the present circumstances it may be necessary for many self-respecting people to come into clash with such laws as are at present in force in the country—laws which have so little of law in them ! Besides not merely from the political point of view but from many other occasions may arise under which a member of this House may find himself in detention, and when such occasions arise, the House should decide what ways and means should be adopted so that their attendance in the House during the sessions may be secured".

That puts in a nutshell, Sir, the genesis of these recommendations. These recommendations were deliberately made by Mr. Chanda in view of their impending *Satyagraha*, which, in other words, is breaking the law, which according to him had very little law in them.

My hon. friend Mr. Sen has argued very eloquently that when Government can release prisoners, on their undertaking, to look after their ailing relatives (probably he had a recent case in view) or when a prisoner is brought before a court of justice to give his testimony, the same privilege should be granted to the hon. members of this House if, unfortunately, they find themselves behind the prison bars. I ask in all seriousness whether the analogy does hold. In one case a prisoner may be brought before a court of justice to give his testimony under a definite Act, the Prisoners Testimony Act. He comes there only to depose to what he has seen and not to really pass judgment. On the other hand, when a person is released on humanitarian grounds to look after either a sick parent or sick wife, there he does not enjoy the privilege of membership of the Legislature, nor is he allowed to guide the destinies of the people. It is purely a case of an act of love and mercy to his own kith and kin that he is allowed on parole. If I am correct, my hon. friend Mr. Kamini Kumar Sen has in his mind the case of our unfortunate brother, Babu Karuna Sindhu Roy. My hon. friend Mr. Mookerjee gave me a telegram the other day saying that Mr. Karuna Sindhu Roy's aged father is ill at Sylhet and that Karuna Babu should be allowed to nurse his father. I at once acceded to the request on the distinct understanding that he should cease his connection with politics during the period of parole.

Babu KAMINI KUMAR SEN: On a point of personal explanation, Sir. I did not have any particular case in mind but only the system of releasing prisoners on parole.

The Hon'ble Maulavi Saiyid Sir MUHAMMAD SAADULLA: Political agitation occupies so great a place in the minds of some hon. members of that party, that my friend Mr. Karuna Sindhu Roy refused to come and help his aged father under those conditions. Sir, as we are now dealing with the question of the concrete cases of my friends of the Congress Party who have offered *satyagraha* and courted jail, it may be that some of them may refuse to come to the House on the ground that being *satyagrahis* they cannot accept any little benefit from any law of not suffering to the same extent as other fellow prisoners of other denominations. Every one may remember here that certain ardent *satyagrahis*, although they were offered the highest class, refused to accept the concessions that are granted to that class, and liked to be treated as ordinary prisoners. Who knows that there may not be such ardent *satyagrahis* amongst our own people, and if we accept this privilege either by way of legislation or convention, that a *satyagrahi* will not refuse these privileges, thereby putting the poor jail authorities in a quandary? They may offer *satyagraha* in the jail itself and refuse to come and attend the session. There may be cases of that description. If we are to treat the subject as of general application, in that case, Sir, it is a relevant point to consider whether those breakers of the law or those Members of Legislative Assemblies who may be unfortunately convicted of offences of moral turpitude should be brought here to guide and dictate to the Executive on what lines the administration of the country should be carried on.

Mr. JOBANG D. MARAK: Sir, even though the privileges be granted to the *satyagrahis*, would they accept to attend the Assembly session, in view of the orders of the High Command? (Interruptions.)

The Hon'ble the SPEAKER: Order, order.

Mr. JOBANG D. MARAK: They may not be in a position to attend the Assembly sessions.

The Hon'ble the SPEAKER: The hon. member has not heard the Hon'ble Premier.

The Hon'ble Maulavi Saiyid Sir MUHAMMAD SAADULLA: Mr. Marak has risen to ask for a ruling on a matter which I am going to place before the House.

Now, Sir, we are practically, if not theoretically, dealing with the subject on account of the situation that has arisen from the *satyagraha* movement. My friend Mr. Marak asks in effect what is the use of granting such privileges to members in jail to be brought out here, when members, who are perfectly free to come, have not been allowed to attend the session of the Legislature.

Mr. JOBANG D. MARAK: This was due to an order from the High Command.

The Hon'ble Maulavi Saiyid Sir MUHAMMAD SAADULLA: This is really a question which ought to exercise the serious consideration of the House, *viz.*, whether under the present circumstances it is really worthwhile to pursue this matter of privilege further.

The Hon'ble the SPEAKER: I am now putting the first recommendation before the House.

The question is that this House adopts and recognises the following privilege of the members of the House and recommends to Government to give effect to it:—

- (I) "If any member of the Assembly is arrested, detained, convicted or imprisoned on any criminal charge or otherwise, the information of such arrest, detention or imprisonment together with charges against such member shall be forthwith sent to the Speaker by the person or persons under whose authority or order the arrest, detention, conviction or imprisonment is effected".

The question was adopted.

The Hon'ble the SPEAKER: Then I am putting the other two recommendations together.

The question is that this House adopts and recognizes the following privileges of the members of the House and recommends to Government to give effect to them:—

- (II) "Mr. Speaker, on receipt of authenticated information of the arrest, detention, conviction or imprisonment of a member, shall require the Provincial Government to arrange for the production, on a specified date or dates, of that member for such meeting or meetings of the Assembly or any Committee thereof as Mr. Speaker thinks fit. Mr. Speaker shall also require the attendance of such a member in any joint session of the Legislature. The Provincial Government shall take such steps as they consider fit for the custody of the member during his stay at the place of the meeting of the Assembly, joint session or committee ;

- (III) That a member should be entitled, while within the precincts of the House, to exercise all his rights and privileges as such as far as this is possible".

The Assembly divided.

AYES—13

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| 1. Babu Akshay Kumar Das. | 8. Srijut Purandar Sarma. |
| 2. Mr. Baidyanath Mookerjee. | 9. Srijut Santosh Kumar Barua. |
| 3. Babu Balaram Sircar. | 10. Khan Bahadur Maulavi Mahmud Ali. |
| 4. Babu Bipin Behari Das. | 11. Srijut Khorsing Terang. |
| 5. Babu Kamini Kumar Sen. | 12. Srijut Rabi Chandra Kachari. |
| 6. Mr. Kedarmal Brahmin. | 13. Babu Sanat Kumar Ahir. |
| 7. Mr. Naba Kumar Dutta. | |

NOES—42

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| 1. The Hon'ble Maulavi Saiyid Sir Muhammad Saadulla. | 19. Maulavi Jahanuddin Ahmed. |
| 2. The Hon'ble Srijut Rohini Kumar Chaudhuri. | 20. Maulavi Muhammad Maqbul Hussain Chaudhury. |
| 3. The Hon'ble Srijut Hirendra Chandra Chakravarty. | 21. Maulavi Mabarak Ali. |
| 4. The Hon'ble Khan Sahib Maulavi Mudabbir Hussain Chaudhuri. | 22. Khan Bahadur Maulavi Mufizur Rahman. |
| 5. The Hon'ble Dr. Mahendra Nath Saikia. | 23. Maulavi Namwar Ali Barbhuiya. |
| 6. The Hon'ble Maulavi Abdul Matin Chaudhuri. | 24. Maulavi Naziruddin Ahmed. |
| 7. The Hon'ble Khan Bahadur Maulavi Sayidur Rahman. | 25. Maulavi Sheikh Osman Ali Sadagar. |
| 8. The Hon'ble Miss Mavis Dunn. | 26. Shams-ul-Ulama Maulana Abu Nasr Md. Waheed. |
| 9. The Hon'ble Srijut Rupnath Brahma. | 27. Dr. C. G. Terrell. |
| 10. Srijut Jogendra Narayan Mandal. | 28. Mr. F. W. Blennerhassett. |
| 11. Babu Kalachand Roy. | 29. Mr. N. Dawson. |
| 12. Maulavi Abdul Aziz. | 30. Mr. W. R. Faull. |
| 13. Maulavi Abdul Bari Chaudhury. | 31. Mr. P. Trinkle. |
| 14. Maulavi Abdur Rahman. | 32. Mr. C. W. Morley. |
| 15. Maulavi Md. Abdus Salam. | 33. Mr. D. B. H. Moore. |
| 16. Maulavi Muhammad Amiruddin. | 34. Mr. A. Whittaker. |
| 17. Maulavi Muhammad Amjad Ali. | 35. Mr. Benjamin Ch. Momin. |
| 18. Maulavi Ghyasuddin Ahmed. | 36. Srijut Bhairab Chandra Das. |
| | 37. Srijut Bideshi Pan Tanti. |
| | 38. Srijut Binode Kumar J. Sarwan. |
| | 39. Srijut Dhirsingh Deuri. |
| | 40. Rev. L. Gatphoh. |
| | 41. Mr. C. Goldsmith. |
| | 42. Mr. Jobang D. Marak. |

The question was negatived.

The Assam Finance Bill, 1941

The Hon'ble the SPEAKER: The next item of business is the consideration of the Assam Finance Bill, 1941, clause by clause. There is one amendment in the name of Mr. Baidyanath Mookerjee.

Mr. BAIDYANATH MOOKERJEE: Sir, I beg to move that in proviso (ii) to Division C of clause 2 for the word 'half' occurring in the second line, the word 'one-fourth' shall be substituted.

The object of my bringing this amendment is this that it is quite evident that this proviso has been added simply to give some relief to some small tea concerns or companies. Sir, up to an income of Rs.3,000 we are not to pay any tax, but if the income is above Rs.3,000, in that case we are to pay tax. Now, Sir, according to this proviso, we find that a company the income of which is below Rs.4,400 will get some benefit but not the benefit stated above. For example, a company the income of which is Rs.4,000, if this proviso would not have been in the Bill, would have to pay Rs.625 as Agricultural Income Tax. But this proviso being in existence he is to pay at present only Rs.500. So, Sir, an amount of Rs.125 will be paid less. Again, Sir, a concern whose income is Rs.4,400 will not get any benefit out of this proviso, because without this proviso he shall have to pay Rs.687-8-0 which is less than half of the amount which exceeds Rs.3,000. In other words the excess of an income in this particular case is Rs.1,400; but according to this he has not to pay more than Rs.700. But even without this proviso that concern will have to pay only Rs.687-8-0. So we find that no benefit will be given to a company whose income is Rs.4,400. So, Sir, it practically amounts to this that a company making only a profit of Rs.1,400 above Rs. 3,000 which income is exempted shall have to pay Rs.687-8-0. But if my amendment is accepted, in that case this benefit will be extended up to an income of Rs.7,999. Sir, a concern making a profit of Rs.8,000 will have to pay Rs.1,250 in either case. So no benefit will be given to a garden making a profit of Rs.8,000 even if my amendment is accepted.

Last year an amendment to this effect was brought before the House and the Hon'ble Premier then in charge of the Finance Department gave us some hope that as it was the first year and there were no sufficient data before them, this question would be considered after the Government gathers some experience after working for a year.

Now, Sir, I think that this is a quite harmless amendment, and if my amendment is accepted, in that case the benefit which the Government wants to give to the small concerns will be really given effect to.

With these few words I commend my amendment.

The Hon'ble the SPEAKER: Amendment moved:

"That in proviso (ii) to Division C of clause 2 for the word 'half' occurring in the second line, the word 'one-fourth' shall be substituted."

The Hon'ble Khan Bahadur Maulavi SAYIDUR RAHMAN: Mr. Speaker, Sir, at the outset, I must remove certain misapprehension on the part of the hon. mover. He seems to think that this proviso governs merely clause (c). But it is not so. This proviso governs all the three clauses (a), (b) and (c). So in that view I think his motion is not quite in order.

Secondly, Sir, in his speech he has referred to incomes. He says that no benefit will accrue to a concern which makes an income of, say, Rs.4,400. When he refers to this income, I believe he refers to the agricultural

income because 40 per cent. of the total income goes to the central income-tax and this assessment is made only on agricultural income. So when the hon. mover says that the amendment will benefit a tea concern with an income of Rs.7,999, I think, it will be more correct to say that it will affect the tea concern with a total income of about Rs.15,000.

Mr. BAIDYANATH MOOKERJEE: I question it, Sir.

The Hon'ble Khan Bahadur Maulavi SAYIDUR RAHMAN: All these provisos refer only to the agricultural income. So there is no room for questioning.

Mr. BAIDYANATH MOOKERJEE: That is also not the true statement.

The Hon'ble Khan Bahadur Maulavi SAYIDUR RAHMAN: Now, Sir, I oppose this motion on several grounds. First of all, I want the hon. members to see what is the state of affairs in the central income-tax. The central income-tax is limited to half of the excess over Rs.2,000 whereas this Assam tax is limited to half of the excess over Rs.3,000. So Assam is being treated more liberally. In the central income-tax, the small increase relief and marginal relief both are enjoyed only by the individual assessee but we are having these reliefs to all including joint family funds, and associations. So in this respect also, Assam is much more liberal than the Government of India. Then, Sir, Government is not in a position to say what consequences are involved in this amendment. Had it been only with regard to individual assessee probably the loss could have been estimated. In the case of the companies, Sir, we have got no information at our disposal. Now the first set of assessment is not yet complete and on receipt of this motion I called for information as to what taxes have been collected under this proviso from different circles in Assam. We have got replies from three circles that nothing has been collected and amongst these circles are included the circle from which the hon. mover comes, namely, Sylhet.

So, Sir, although the Hon'ble Premier during the discussion in the last Budget Session on a similar motion said that Government would reconsider this matter if they get materials before them, but I must say, Sir, that the position remains the same because we have got no materials to say either 'yes' or 'no', with regard to this amendment.

Lastly, Sir, I would point out to the House that our budget is a deficit one and I have been accused of framing such a deficit budget. In these circumstances will it be proper for me to forego this amount which can be obtained from this proviso?

Adjournment

The Assembly then adjourned for lunch till 2-5 p.m.

After Lunch

The Hon'ble the SPEAKER: The question is:

"That in proviso (ii) to Division C of clause 2 for the word 'half' occurring in the second line, the word 'one-fourth' shall be substituted."

The amendment was negatived.

The Hon'ble the SPEAKER: The question is that clause 2 of the Bill stands part of the Bill.

The question was adopted.

The Hon'ble the SPEAKER: The question is that clause 1 of the Bill stands part of the Bill.

The question was adopted.

The Hon'ble the SPEAKER: The question is that the title and preamble of the Bill stands part of the Bill.

The question was adopted.

The Hon'ble Khan Bahadur Maulavi SAYIDUR RAHMAN: Sir, I beg to move that the Assam Finance Bill, 1941 be passed.

The Hon'ble the SPEAKER: Motion moved:

"That the Assam Finance Bill, 1941 be passed".

Babu KAMINI KUMAR SEN: May I have a bit of information from the Hon'ble Finance Minister? I draw his attention to clause 2, paragraph A. "In the case of every Hindu undivided or Joint Family—

(a) at the rate applicable under the list of rates contained in paragraph B below to a sum equal to the share of a brother if such share exceeds Rs.5000 ;

(b) at four pies in the rupee, if the share of a brother is Rs.5,000 or less".

In item (b) of this paragraph the rate is prescribed at four pies and no exemption is mentioned. Exemption for the first Rs.1,500 is granted to every individual by paragraph B. Is it not correct to say that the brothers of a Hindu undivided family having income of less than Rs.5,000 are also entitled to the same exemption on the first Rs.1,500 of their income?

The Hon'ble Khan Bahadur Maulavi SAYIDUR RAHMAN: I think that Rs.1,500 will be deducted in the case of (a).

Babu KAMINI KUMAR SEN: Will the brothers of a Hindu undivided family having an income of less than Rs.5,000 be entitled to the same exemption?

The Hon'ble Khan Bahadur Maulavi SAYIDUR RAHMAN: I think so, but I am not sure. If the hon. member wants, I can give him more correct information after consulting the Assistant Commissioner of Agricultural Income Tax.

Mr. BAIDYANATH MOOKERJEE: Mr. Speaker, Sir, I shall be failing in my duty if I do not protest against the passing of this Bill. Sir, I moved an amendment which was very harmless and the benefit I sought for was for small concerns. It is well known to this House that the share-holders of these small concerns are Indians. As a representative of the Indian tea planters, I think that when the reasonable and equitable relief that was sought for by my amendment was rejected by the Government, I cannot but oppose the passing of this Bill. So, Sir, I oppose the passing of this Bill.

The Hon'ble Khan Bahadur Maulavi SAYIDUR RAHMAN: Sir, I sympathise with the hon. member. I am myself interested in a small tea garden and I would also like very much that the relief be granted. But my point is that at present there are no data before us to do anything in this matter, and in future if circumstances will justify, I can assure the hon. member that this question will receive our serious consideration.

Mr. BAIDYANATH MOOKERJEE: As I stated before, the same words we heard during our discussion last year. So I do not know how many years it will take to collect the materials that are required for the purpose. I am sorry I cannot agree.

The Hon'ble Khan Bahadur Maulavi SAYIDUR RAHMAN:
It is unfortunate that the materials have not been collected as yet.

The Hon'ble the SPEAKER: The question is:

"That the Assam Finance Bill, 1941, be passed."

The Assembly divided.

AYES—37

- | | |
|---|---|
| 1. The Hon'ble Maulavi Saiyid Sir Muhammad Saadulla. | 16. Maulavi Muhammad Amjad Ali. |
| 2. The Hon'ble Srijut Rohini Kumar Chaudhuri. | 17. Maulavi Ghyasuddin Ahmed. |
| 3. The Hon'ble Srijut Hirendra Chandra Chakravarty. | 18. Maulavi Jahanuddin Ahmed. |
| 4. The Hon'ble Khan Sahib Maulavi Mudabbir Hussain Chaudhuri. | 19. Khan Bahadur Maulavi Keramat Ali. |
| 5. The Hon'ble Dr. Mahendra Nath Saikia. | 20. Maulavi Muhammad Maqbu Hussain Chaudhury. |
| 6. The Hon'ble Maulavi Abdul Matin Chaudhuri. | 21. Maulavi Mabarak Ali. |
| 7. The Hon'ble Khan Bahadur Maulavi Sayidur Rahman. | 22. Khan Bahadur Maulavi Mufizur Rahman. |
| 8. The Hon'ble Miss Mavis Dunn. | 23. Maulavi Namwar Ali Barbhuiya. |
| 9. The Hon'ble Srijut Rupnath Brahma. | 24. Maulavi Naziruddin Ahmed. |
| 10. Srijut Jogendra Narayan Mandal. | 25. Dr. C. G. Terrell. |
| 11. Srijut Joges Chandra Gohain. | 26. Mr. F. W. Blennerhassett. |
| 12. Babu Kalachand Roy. | 27. Mr. N. Dawson. |
| 13. Maulavi Abdul Bari Chaudhury. | 28. Mr. W. R. Faull. |
| 14. Maulavi Abdur Rahman. | 29. Mr. P. Trinkle. |
| 15. Maulavi Muhammad Amiruddin. | 30. Mr. C. W. Morley. |
| | 31. Mr. D. B. H. Moore. |
| | 32. Mr. A. Whittaker. |
| | 33. Mr. Benjamin Ch. Momin. |
| | 34. Srijut Bhairab Chandra Das. |
| | 35. Srijut Bideshi Pan Tanti. |
| | 36. Srijut Dhirsingh Deuri. |
| | 37. Mr. C. Goldsmith. |

NOES—8

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|-----------------------------|--------------------------------|
| 1. Babu Akshay Kumar Das. | 5. Babu Kamini Kumar Sen |
| 2. Mr. Baidyanath Mookerjee | 6. Mr. Naba Kumar Dutta. |
| 3. Babu Balaram Sircar. | 7. Srijut Santosh Kumar Barua. |
| 4. Babu Bipin Behari Das. | 8. Babu Sanat Kumar Ahir. |

The question was adopted.

The Goalpara Tenancy (Amendment) Bill, 1939

The Hon'ble the SPEAKER: The next item of business is consideration of further amendments, if any, to the amendments made by the Assam Legislative Council on the Goalpara Tenancy (Amendment) Bill, 1939.

Now, there is only one amendment which has been tabled by Srijut Santosh Kumar Barua to clause 31 of the Bill.

Srijut SANTOSH KUMAR BARUA: I do not like to move the amendment,* Sir.

The Hon'ble the SPEAKER: Then there is no other further amendment and so I would request the Hon'ble the Revenue Minister to move that the House do agree to the amendments made by the Legislative Council.

The Hon'ble Khan Bahadur Maulavi SAYIDUR RAHMAN: Mr. Speaker Sir, I beg to move that this House do agree to the amendments proposed by the Assam Legislative Council on the Goalpara Tenancy (Amendment) Bill, 1939, as printed in the order paper.

The Hon'ble the SPEAKER: Motion moved:

"That the House do agree to the amendments made by the Assam Legislative Council on the Goalpara Tenancy (Amendment) Bill, 1939, as printed in the order paper."

Mr. BAIDYANATH MOOKERJEE: Mr. Speaker, Sir, before we accept and agree to the amendments made by the Upper House to the Goalpara Tenancy (Amendment) Bill, I think, it is my duty to point out some points which in my opinion, seems to be glaring mistakes and some other points which are a bit anomalous on the very face of it. Sir, the Hon'ble Revenue Minister moved an amendment in the Upper House to clause 31 of the Bill as passed by the Assembly. He substituted the word 'the date on which the Act comes into force' for the words '2nd March 1939.' He moved this amendment from an impression or on belief, I understand, that this clause as passed by the Assembly militates against section 292 of the Government of India Act.

The Hon'ble the SPEAKER: What is the point that the hon. member wants to make? What is the amendment he is referring.

Mr. BAIDYANATH MOOKERJEE: Amendment to clause 31.

The Hon'ble the SPEAKER: But there is no date. I heard the hon. member saying 'the date'. What is the amendment?

Mr. BAIDYANATH MOOKERJEE: At page 19, Sir, of the Bill.

The Hon'ble the SPEAKER: But the hon. member mentioned an amendment made by the Hon'ble Revenue Minister in the other House. What is the amendment?

Mr. BAIDYANATH MOOKERJEE: There is a change, Sir, in the Bill which is under consideration now.

The Hon'ble the SPEAKER: Yes, I quite see that in the original Bill there was "second March 1939". Yes, the hon. member may go on.

Mr. BAIDYANATH MOOKERJEE: Sir, section 292 reads thus: "Notwithstanding the repeal by this Act of the Government of India Act, but subject to the other provisions of this Act, all the law in force in India immediately before the commencement of Part III of this Act shall continue in force in British India until altered or repealed or amended by a competent Legislature or other competent authority". So, Sir, we find

*Srijut Santosh Kumar Barua to move:—

That sub-sections (2) and (3) of the proposed new section 95A in clause 31 be deleted.

that section 292 of the Constitution Act says that all the law in force in British India prior to 1st April 1937, *i.e.*, the date on which Part III came into operation, shall continue to be in force until altered, repealed or amended by a competent Legislature. It is contended that according to section 292, all the provisions of the Goalpara Tenancy Act, 1929 shall continue to be in force till the date on which they are either altered or repealed or amended. And as the present Tenancy (Amendment) Bill will come into force at a date subsequent to 2nd March 1939 the provisions of the Goalpara Tenancy Act, 1929 cannot be altered, amended or repealed with effect from 2nd March 1939 by this amending Bill. Sir, if we look critically to the wordings of the proposed new section 95A, we find in sub-section (1) certain provisions relating to enhancement of rent have been suspended, and not altered, amended or repealed. As such, I venture to submit that this clause does not militate against section 292 of the Government of India Act. In this connection I would like to draw your attention to section 75A of the Bengal Tenancy Act. This section 75A was inserted by the Bengal Tenancy (Amendment) Act, 1939. By this section certain provisions relating to enhancement of rent had been suspended with effect from 27th August 1937, a date long before the date on which the amending Act came into force.

The Hon'ble the SPEAKER: I do not quite understand what point the hon. member is trying to make.

Mr. BAIDYANATH MOOKERJEE: My submission is, Sir, that this House did not pass any such clause, which might militate against any provisions of the Government of India Act. Sir, I fail to understand the cause of not retaining the clause as passed by us and the necessity of amending the same in the other House by an amendment tabled by the Hon'ble Revenue Minister. I want to know what led to the amendment of that clause. Just to add weight to my argument, Sir, in this connection, I beg to draw your attention to clause 5 of the Bill. I think that so far as clause 5 of the Bill is concerned retrospective effect has been retained. There is some anomaly. In clause 5 retrospective effect has been retained whereas it has been abolished in clause 31 on the ground that it will militate against section 292 of the Government of India Act, 1935.

The Hon'ble the SPEAKER: How can I help the hon. member?

Mr. BAIDYANATH MOOKERJEE: I am just bringing to the notice of the hon. members of this House the fact that there was no necessity for making this change by the Hon'ble Revenue Minister who is responsible for this Bill. The clause was accepted by this House, but without any sound reasoning this has been altered.

The Hon'ble the SPEAKER: The hon. member must have read the speech of the Hon'ble Revenue Minister in the other House where he gave his reasons.

Mr. BAIDYANATH MOOKERJEE: Then, what about clause 5, Sir? The same arguments apply there also. If I am permitted, I can read that clause also, so that my point will be quite clear to the hon. members of this House. Sir, I am not opposing this Bill, but I am only pointing out the anomalies and mistakes. If you think you cannot help me in any way I shall stop here, but I shall only point out one mistake. It seems to me.....

The Hon'ble the SPEAKER: The hon. member was quite entitled to table further amendments to the amendments made by the other House. In that case I would have allowed the hon. member to move his amendment.

Mr. BAIDYANATH MOOKERJEE: I know, Sir. But what is the good of moving amendments? I am crying in wilderness for all these days. I am not opposing the Bill, but I am only pointing out mistakes. I would refer you, Sir, to clause 10 of the Bill. By that clause a new section, section 26A, is proposed to be inserted. In sub-section (1) of the proposed new section 26A we find under (ii) "division of tenancies in accordance with section 24 of this Act". Sir, it is necessary to know what section 24 of this Act means. If 'by this Act' is meant the Act which is proposed to be passed, *i.e.*, the Goalpara Tenancy (Amendment) Act, 1941, then we find that section 24 of this Act, *i.e.*, clause 24 of the Bill, does not certainly deal with division of tenancies, but deals with rights of under-*rai-yats*. If by 'this Act' is meant the parent Act, *viz.*, the Goalpara Tenancy Act, 1929, we find that section 24 of the Act deals with liabilities for arrears of rent on transfer. In either case, section 24 either of the Goalpara Tenancy Act, 1929 or the Goalpara Tenancy (Amendment) Bill, 1939, which when passed into Act, does not deal with division of tenancies. It will be thus clear that in the present case the words "division of tenancies in accordance with section 24 of this Act" are either meaningless or have no sense at all. I do not know whether the hon. members with their eyes wide open will pass this Bill with such palpable incongruity. I would also ask you, Sir, as custodian of the dignity and prestige of this House, to consider whether it will advance our dignity and prestige if such a Bill with such patent imperfection is passed.

With these few observations, Sir, I resume my seat.

The Hon'ble the SPEAKER: As I understand the hon. member, it appears to me that he has urged this point only with a view to get a statement from the Hon'ble Revenue Minister, so that he may persuade himself either to vote for the acceptance of the amendment made by the other House, or against it.

Mr. BAIDYANATH MOOKERJEE: Yes, Sir, exactly so.

The Hon'ble the SPEAKER: When the hon. member has not tabled any amendments I do not see what can be his purpose other than to decide whether he should vote for this motion or against it.

Mr. BAIDYANATH MOOKERJEE: Yes, Sir.

The Hon'ble Khan Bahadur Maulavi SAYIDUR RAHMAN: I beg to submit before the House that these amendments were made in pursuance of the ruling given by the Hon'ble President of the Upper House and on the advice of the Legal Remembrancer. I have nothing more to say on that.

As regards the mistake that has been pointed out, this mistake I think continued from here and if there is any mistake, Sir, I may ask the House to bring in amendments afterwards.

The Hon'ble the SPEAKER: After hearing the Hon'ble Minister, I feel it is my duty to say that there are apparently some inconsistencies in the Bill. With regard to the reasons which led the other House to make their amendments, I am not at all entitled to say anything by way of criticisms. But I should tell the House that there has been an interpretation of section 292 of the Government of India Act given by the Federal Court very recently, to the effect that Bills can be passed giving retrospective effect.

Now as regards clause 1 of the Bill, it was amended in order to remove the defect which was found by the other House, namely of giving retrospective effect. Other consequential amendments have been made. But as Mr. Mookerjee pointed out, in clause 5 there has remained the provision that was made by this House as being consistent with the object of giving retrospective effect to the Bill. With regard to clause 31(1) I find that there

also the same inconsistency remains. The other House have altered sub-clause (1) of clause 31 and have also made certain alterations in sub-clauses (2) and (3) of the same clause. I think, instead of making these alterations, they ought to have moved for a complete deletion of these sub-clauses. Mr. Santosh Kumar Barua has tabled an amendment here now to delete these sub-clauses. His amendment is unfortunately time-barred and he is also not going to move it. In view of the amendments made by the other House, I think these sub-clauses (2) and (3) of clause 31 are really redundant. As the Bill now stands after the amendments made by the other House, these two sub-clauses of clause 31 are for the benefit of nobody.

So there are some inconsistencies in the Bill. The Hon'ble Revenue Minister has, however, given the assurance to the House that the Government would come forward with an amending Bill after this Bill is passed into law.

Now the question is :

"That the House do agree to the amendments made by the Assam Legislative Council on the Goalpara Tenancy (Amendment) Bill, 1939 as printed in the order paper and which are as follows :—

1. That in clause 1 in sub-clause (2), the words 'not later than the 1st of October, 1939' be deleted.

2. That in clause 3, after sub-section (5) of the proposed section 20, the following new sub-section and the proviso be added :—

'(6) After receipt of such notice of transfer, the landlord shall not refuse to recognise the transferee as the tenant in respect of the holding or portion or share thereof transferred nor omit to enter the transferee's name in the landlord's rent-roll in place of that of the transferor or where only a share or a portion of the transferor's interest has been transferred, along with the name of the transferor :

Provided that such recognition shall not operate as the admission of the amount or fixity of rent or of the area or of any incident of such occupancy holding or be deemed to constitute an express consent of the landlord to the division of the holding or to the distribution of the rent payable in respect thereof :

Provided further that if a transfer is subsequently set aside or modified by a competent authority, the party in whose favour such order has been made shall, unless such order has been passed in a suit, appeal or other proceeding to which the landlord or the entire body of landlords was a party, file with the Deputy Commissioner a notice describing the modifications made by such order and deposit the prescribed fee for the service of such notice. The Deputy Commissioner shall cause the notice to be served on the landlord named in the notice or his common agent, if any, in the prescribed manner. The landlord, on receipt of such notice, shall cause his rent-roll to be corrected accordingly.'

3. That in clause 5 in the proposed section 21A, between the words 'a portion' and in the word 'thereof', the words 'or a share' be added.

4. That in clause 8,

(i) in sub-section (2) of the proposed section 25, for the words 'second day of March, 1939' the words 'date on which this Act comes into force' be substituted.

(ii) in the proviso to sub-section (6) of the proposed section 25 for the words 'second day of March, 1939, the said period has, on the day of the commencement of this Act' the words 'date on which this Act comes into force, the said period has' be substituted.

5. That clause 17 be deleted.

6. That for clause 18 of the Bill the following be substituted :—

‘18. In section 46 of the said Act the following sub-section shall be inserted as sub section (2), namely :—

‘(2) Notwithstanding anything contained in the foregoing sub-section if there is any arrear of rent due by the tenant, the recovery of which is not barred by the law for the time being in force as to limitation of suits for arrears of rent, the payment may, at the option of the landlord, be applied first to such arrear,

and the existing sub-section (2) shall be renumbered as sub-section (3).’

7. That in clause 31,

(i) In the proposed section 95A(1) for the words ‘2nd March 1939’ the words ‘the date on which this Act comes into force’ be substituted.

(ii) In the proposed section 95A(2)(a) for the words ‘2nd March 1939 and before the date of the commencement of this Act’ the words ‘the date on which this Act comes into force’ be substituted”.

The question was adopted

The Sylhet Tenancy (Amendment) Bill 1939

The Hon'ble the SPEAKER: Then comes the question of consideration of further amendments, if any, to the amendments made by the Assam Legislative Council on the Sylhet Tenancy (Amendment) Bill, 1939.

The Hon'ble Khan Bahadur Maulavi SAYIDUR RAHMAN: I beg to move, Sir, that the amendments made by the Assam Legislative Council on the Sylhet Tenancy (Amendment) Bill, 1939, as printed in the order paper, be agreed to by this House.

The Hon'ble the SPEAKER: Motion moved:

“That the House do agree to the amendments made by the Assam Legislative Council on the Sylhet Tenancy (Amendment) Bill, 1939, as printed in the order paper.”

Maulavi ABDUR RAHMAN: Mr. Speaker, Sir, I do not like to take the time of the House by dilating on the amendments made by the other House. But on the principle that ‘half a loaf is better than no loaf’ I would rather accept the amendments made, as it is our bitter experience that if we send it again to the Council, it will have to come back again to this House, which means a lot of delay. Therefore, with the object of getting something instead of nothing we are agreeing to it.

Maulavi ABDUL BARI CHAUDHURY: Mr. Speaker, Sir, the Sylhet Tenancy (Amendment) Bill as it has emerged from the Assam Legislative Council is beyond recognition. All the provisions made in the Bill as the result of prolonged agitation and investigation by the Government have either been negatived or mutilated. The only provision that has not been touched by that august House is the provision regarding the landlord's transfer fee.

Sir, the other salutary provision in the original Bill was the abolition of the law of pre-emption in favour of the landlord. This provision of pre-emption, as we all know, is bad in law and principle and is not to be found in land-law system of any country. But the House of Elders have not seen their way to agree to this beneficial measure.

On a first reading of the Bill as amended by the Upper House one is tempted to reject it altogether. But we are practically at the end of the life-time of this Assembly and we apprehend that we may not find time to pass the original Bill in a joint session. As such we are compelled to remain

content with the only provision of abolition of the landlord's transfer fee. So we have no other alternative but to accept the Bill.

We hope to come forward with a new amending Bill if we outlive the usual life time of the Assembly.

Mr. BAIDYANATH MOOKERJEE : Mr. Speaker, Sir, I rise to support the motion moved by the Hon'ble Minister. While supporting the motion I would also thank him for the right attitude he has taken up in this matter. Sir, the revolutionary nature of the original Bill to some extent has been diminished. It has been suggested by my hon. friends, Mr. Abdur Rahman and Mr. Abdul Bari Chaudhury, that Government should come forward with another Bill so as to give effect to the provisions which have been omitted by the Upper House. Sir, on the other hand I hope that, before bringing any other amending Bill it will be prudent on the part of Government to watch the effect of this Bill for some time. Otherwise it will be doing injustice to one section of the people who have got no representation in this House. With these few words, Sir, I support the motion.

The Hon'ble the SPEAKER : The question is:

"That the House do agree to the amendments made by the Assam Legislative Council on the Sylhet Tenancy (Amendment) Bill, 1939, as printed in the order paper, and which are as follows:—

1. That in sub-clause (2) of clause 1 the words 'not later than the 1st of October, 1939' be deleted.

2. That clause 8 be deleted.

3. That clause 10 be deleted.

4. That in clause 11,

(i) in sub-section (2) of the proposed section 34 for the words 'second day of March, 1939' the words 'date on which this Act comes into force' be substituted;

(ii) in the proviso to sub-section (6) of the proposed section 34 for the words 'second day of March, 1939 the said period has, on the day of commencement of this Act' the words 'date on which this Act comes into force, the said period has' be substituted.

5. That sub-clause (b) of clause 12 be deleted.

6. That sub-clause (a) of clause 13 be deleted.

7. That clause 14 be deleted.

8. That in clause 15 for the words and figures '30 to 32 and 35 to 38' the words and figures '30 to 33 and 35 to 38' be substituted.

9. That clause 18 be deleted.

10. That clause 20 be deleted.

11. That clause 21 be deleted.

12. That in clause 23 for proviso (b) under sub-section (2) of the proposed section 103 the following be substituted:—

'no order for division or distribution shall be made which would jeopardise the security for the rent due or where such division will involve the partition of homestead into such small parts as would make it inconvenient for a third party to occupy if any portion fall vacant or where such division will otherwise result in the creation of unreasonably small holding unless the landlord agrees to such division or distribution;'

13. That in clause 25,

(i) in the proposed section 116A(1) for the words '2nd March, 1939' the words 'date on which this Act comes into force' be substituted;

- (ii) in the proposed section 116A(2) (a) for the words '2nd March 1939, and before the date of the commencement of this Act' the words 'date on which this Act comes into force' be substituted.
- 14. That in clause 25,
 - (i) in sub-section (1) (b) of the proposed section 116B, the words 'whether specified in the said Act or not' be deleted;
 - (ii) after sub-section (1) (b) of the proposed section 116B the following proviso be added :—
'Provided that a rate of rent which is in existence for the last 12 years before the commencement of this Act shall be deemed fair and equitable for the purpose of this section';
 - (iii) for sub-section (4) of the proposed new section 116B the following be substituted :—
'(4) The provisions of section 129 of the said Act shall apply *mutatis mutandis* to appeals from the decisions or orders of the Revenue Officer under this section';
 - (iv) The following proviso be added at the end of the proposed section 116B :—
'Provided that in exercising the powers under this section the Revenue Officer shall be guided by the provisions of the said Act relating to reduction of rents'.
- 15. That clause 32 be deleted.
- 16. That clause 33 be deleted.
- 17. That clause 34 be deleted."

The question was adopted.

The Assam Speaker's and Deputy Speaker's (Salaries and Allowances) Bill, 1940

The Hon'ble the SPEAKER: Then comes the consideration of further amendments, if any, to the amendments to the Assam Speaker's and Deputy Speaker's (Salaries and Allowances) Bill, 1940.

The Hon'ble Maulavi Saiyid Sir MUHAMMAD SAADULLA: Mr. Speaker, Sir, I beg to move that the amendments made by the Assam Legislative Council to the Assam Speaker's and Deputy Speaker's (Salaries and Allowances) Bill, 1940, be considered.

Hon. members may remember that the original Bill as passed by the House made a provision of a salary of Rs. 250 per mensem to the Deputy Speaker of the Assam Legislative Assembly. As a consequence thereof the principle was accepted that while the Deputy Speaker draws salary of his office at Rs. 250 he will not be entitled to any salary and allowance as a member of the Legislative Assembly. When the Bill went up to the other House the Council amended clause 3 and gave to the Deputy Speaker a salary of rupee one per annum only, as he now gets, and the consequential relief that they wanted to give him was by amending sub-clause (2) to clause 4, "The Deputy Speaker shall, while he draws salary for his office, be entitled to the salary as member of the said Assembly". As I mentioned when I introduced the original Bill in this House that my predecessors had drafted the Bill, and as it is known to everyone that in other Assemblies the Deputy Speakers have been given a salary, so we also proposed to give our Deputy Speaker a salary of Rs. 250 per mensem. The Government even now take the same position, and therefore I am not prepared to accept the amendments passed by the Upper House.

With these few remarks, I leave the matter for the consideration of the House.

The Hon'ble the SPEAKER: In that case the Hon'ble Premier should say "do not agree".

The Hon'ble Maulavi Saiyid Sir MUHAMMAD SAADULLA: With these observations, I move that the amendments made by the Assam Legislative Council on the Assam Speaker's and Deputy Speaker's (Salaries and Allowances) Bill, 1940, as printed in the order paper be not agreed to by this House.

The Hon'ble the SPEAKER: Motion moved:

"That the amendments made by the Assam Legislative Council on the Assam Speaker's and Deputy Speaker's (Salaries and Allowances) Bill, 1940 as printed in the order paper be not agreed to by this House."

Mr. BAIDYANATH MOOKERJEE: Mr. Speaker, Sir, I rise to support the motion of the Hon'ble Premier, and thank him that in this matter he is following the principle of other Provinces as well as that of the last Congress-Coalition Ministry.

In this present Bill there is another point which also requires our serious consideration, and on that ground also the Bill should not be accepted as it emerged from the Upper House. I mean, Sir, clause 5 of this Bill. In the original Bill when the provision of a salary of Rs. 250 was mentioned there was another provision regarding travelling and daily allowances—"the Deputy Speaker shall be entitled, while touring on public business, other than for the purpose of attending the sessions of the Assembly, to travelling and daily allowances at such rates and upon such conditions as may be determined by rules by the Provincial Government". But while the provision about the salary has been changed, the provision about travelling and daily allowances has been left as it was. So if we accept this Bill, in that case the Hon'ble Speaker and Deputy Speaker will lose the travelling and halting allowances to which they are entitled at present. The Deputy Speaker now, like other members, gets a salary of Rs. 100, and over and above that when he comes to attend sessions of the Assembly, or joint sessions, gets his travelling and halting allowances, but in the amended Bill, as it has emerged from the Upper House, we find that his salary has not only been reduced to Re. 1 per annum, but on the other hand he cannot draw any travelling and halting allowances when coming to attend sessions of the Assembly or a joint session. So, Sir, although the spirit of the Bill was to increase the salary of the Deputy Speaker, we now find that not to speak of making any increment, we are taking away even the rights which he is enjoying at present just like other members of the House, for attending sessions of the Assembly. So having regard to this point also I hope the Hon'ble Premier, while tabling an amendment of this Bill in the Upper House, will give full consideration of this matter also.

The Hon'ble the SPEAKER: When the Bill goes to the other House there can be no further amendment.

Mr. A. WHITTAKER: Mr. Speaker, Sir, I think there is a constitutional question arising out of this Bill, which seeks to set right a wrong which has been continuing since 1937. The Council have presumably fully considered this measure, and made certain fundamental amendments. The effect of sending this Bill back in its present form, without making any amendments, is tantamount, I think, to a slight on the Council. The only effect of sending back the Bill will be to stiffen their attitude. They are sure to condemn it, and thus yet another year will have gone without having made any progress at all.

The main amendment concerns the salary which it is proposed to give to the Deputy Speaker. We wish to get the co-operation of the Council. In my opinion there is a better chance of securing that co-operation by fixing the Deputy Speaker's salary on a more rational basis, *i. e.*, by paying the Deputy Speaker the salary that the Speaker himself gets, for the days on which he acts and works for the Speaker. The chief objection that the Council has to the Bill is the payment of a salary irrespective of the amount of work which is done.

I should like to see this matter disposed of without antagonizing the Council further: the Council has done its work, and I cannot say that it has done its work unreasonably. Holding this view, this group is not prepared to embitter the feeling between the two Houses, and we propose to remain neutral if this Bill goes to the vote.

The Hon'ble Maulavi Saiyid Sir MUHAMMAD SAADULLA: Mr. Speaker, Sir, I am obliged to my friend Mr. Mookerjee for pointing out the inconsistency in the provisions of clause 5 of the Bill. Clause 5 was intended to deprive the hon. Deputy Speaker of his travelling and daily allowances for attending the sessions of the Assembly in view of the fact that he would be given a fixed salary of Rs. 250 a month. Now, after the passing of the amendment by the Council by which it was decided not to give him that salary, they should have allowed him to draw his travelling and daily allowances which are given to members of this Assembly. As this and other matters also need looking into, we can only do it by refusing to agree to the amendments of the other House.

The Hon'ble the SPEAKER: The question is .

"That the amendments made by the Assam Legislative Council on the Assam Speaker's and Deputy Speaker's (Salaries and Allowances) Bill, 1940, as printed in the order paper and which are as follows be not agreed to by this House.

1. That in clause 3 for the words 'rupees two hundred and fifty per mensem' the words 'rupee one per annum' be substituted.

2. That in clause 4, in sub-clause (2), the word 'not' be deleted and for the word 'any' the word 'the' be substituted".

The question was adopted.

The Assam Legislative Chambers (Members' Emoluments) (Amendment) Bill, 1940

The Hon'ble Khan Bahadur Maulavi SAYIDUR RAHMAN: I beg, Sir, to move that the House do agree to the amendments made by the Assam Legislative Council on the Assam Legislative Chambers (Members' Emoluments) (Amendment) Bill, 1940, as printed in the order paper.

Sir, in the original Bill that was passed by the Assembly, there was a proviso that the President of the Assam Legislative Council shall not be paid halting allowance that is granted to members of this Assembly. The Council thought that this proviso should be deleted and that was only to give more allowance to the Hon'ble President of the Council. Under the existing provision he is entitled to only double halting allowance. He has not got any fixed salary but is paid Rs. 500 for the period of the session of the Council. In other provinces, they have got fixed salary for the Hon'ble President of

the Upper House and they have got other allowances also. But in this province the Hon'ble President has not been so generously treated, and I think it is only fair for this hon. House to agree to this amendment that has been made by the Assam Legislative Council.

The Hon'ble the SPEAKER: Motion moved:

"That the House do agree to the amendments made by the Assam Legislative Council on the Assam Legislative Chambers (Members' Emoluments) (Amendment) Bill, 1940 as printed in the order paper and which is as follows:—

That clause 2 be deleted."

The question was put and adopted.

The Assam Embankment and Drainage Bill, 1940

The Hon'ble Maulavi ABDUL MATIN CHAUDHURI: I beg, Sir, to move that this House do agree to the amendments made by the Assam Legislative Council on the Assam Embankment and Drainage Bill, 1940 as printed in the Order Paper.

The Hon'ble the SPEAKER: Motion moved:

That this House do agree to the amendments made by the Assam Legislative Council on the Assam Embankment and Drainage Bill, 1940, as printed in the Order Paper and which are as follows:—

1. That in clause 2, at the end of sub-clause (iv) (a), the 'full stop' be omitted and the following words be added 'and with respect to unsettled waste land, shall mean Provincial Government.

2. That in clause 5,

(a) after the figure '(i)' the letter and brackets '(a)' be inserted;

(b) for the figures and brackets '(ii)' the letter and brackets '(b)' be substituted;

(c) for 'comma' after the word 'removed' in the fifth line of sub-clause (ii), a 'semi colon' be substituted and the remaining words be changed into a new paragraph;

(d) for the figures and brackets '(iii)' the figures and brackets '(ii)' be substituted.

3. That in clause 6, in sub-clause (i), for the words 'invite objections by a proclamation, allowing one month's time for their receipt, from the public, Railway Administration, Local Boards, Municipalities and Town Committees. On receipt of such objections he shall publish a notice stating the place, date and time at which an enquiry will be held for the purpose of ascertaining the opinion of the persons affected. After this enquiry has been completed, the Deputy Commissioner shall forward the proposal with his recommendation to the Provincial Government for orders', the words 'forward the proposals to the Provincial Government' be substituted and sub-clauses (ii) and (iii) be deleted.

4. That after clause 8, a new clause as clause 8A be inserted as follows:—

8A. As soon as possible after the publication of a scheme under section 7 a Deputy Commissioner or, where the scheme affects persons in more than one district, the Commissioner of Divisions shall invite objections by a proclamation allowing one month's

time for their receipt from the public, and any Railway Administration, Local Board, Municipality or Town Committee likely to be affected. On receipt of any objections the Deputy Commissioner or the Commissioner as the case may be shall publish a notice stating the place, date and time at which an enquiry will be held for the purpose of ascertaining the validity of the objections. After such enquiry has been completed the Deputy Commissioner or the Commissioner as the case may be shall forward the objections along with his recommendations to the Provincial Government'.

5. That in clause 9,

(a) for sub-clause (i) the following be substituted :—

'(i) After taking into consideration any objections and recommendations made under the preceding section the Provincial Government may direct that the scheme drawn up under section 7, with such consequential modifications as Government deem necessary, be put into operation and completed forthwith, or within such period as may be directed' ;

(b) in sub-clause (iii) for the word 'authorised', the word 'charged' be substituted.

6. That in clause 10 in item (a) of sub-clause (i) the word 'removed' followed by a 'comma' be inserted between the words 'drain' and 'constructed'.

7. That in clause 11, for the word 'excess' the word 'access' and in the second line for the word 'on' the word 'or' be respectively substituted.

8. That in clause 12 in sub-clause (ii)—

(a) for the word 'section' the word 'sub-section' and for the words 'one month' the words 'six months' be respectively substituted ;

(b) for the 'full stop' after the word 'rupees' at the end of the sub-clause, a 'comma' be substituted and the words 'or to both' be added".

The question was put and adopted.

The Assam (Temporarily-Settled Districts) Tenancy (Amendment) Bill, 1940.

The Hon'ble Khan Bahadur Maulavi SAYIDUR RAHMAN : I beg, Sir, to present the Report of the Select Committee on the Assam (Temporarily-Settled Districts) Tenancy (Amendment) Bill, 1940.

Hon. members will find that the Select Committee considered this Bill, but made no change. So it has been placed before the House as it was before.

(After a pause)

I beg, Sir to move that the Assam (Temporarily-Settled Districts) Tenancy (Amendment) Bill, 1940, as reported by the Select Committee be taken into consideration.

The Hon'ble the SPEAKER : Motion moved :

"That the Assam (Temporarily-Settled Districts) Tenancy (Amendment) Bill, 1940, as reported by the Select Committee, be taken into consideration."

I am taking that there is not going to be any debate.

The motion was then put and adopted.

The Hon'ble the SPEAKER : As there is no amendment, the Hon'ble Minister-in-charge may move that the Bill be passed.

The Hon'ble Khan Bahadur Maulavi SAYIDUR RAHMAN: I beg, Sir, to move that the Assam (Temporarily-Settled Districts) Tenancy (Amendment) Bill, 1940, be passed.

The Hon'ble the SPEAKER: Motion moved:
"That the Assam (Temporarily-Settled Districts) Tenancy (Amendment) Bill, 1940 be passed."

(After a pause)

The question was put and adopted.

The Assam Maternity Benefit Bill, 1940.

The Hon'ble Maulavi ABDUL MATIN CHAUDHURY: I beg, Sir, to present the Report of the Select Committee on the Assam Maternity Benefit Bill, 1940.

(After a pause)

I beg, Sir, to move that the Assam Maternity Benefit Bill, 1940, as amended by the Select Committee be taken into consideration.

The Hon'ble the SPEAKER: Motion moved:
"That the Assam Maternity Benefit Bill, 1940, as amended by the Select Committee be taken into consideration."

Mr. N. DAWSON: Mr. Speaker, Sir, this Bill first came before the House one year ago and since then it has been circulated for public opinion and has also been discussed by a Select Committee.

In its original draft, the Bill was rather a complicated one and contained certain clauses which were difficult to understand, but to-day as a result of the deliberations of the Select Committee we have it presented to us in a greatly improved and in a much more simplified form.

The most noticeable improvements are:

(1) The obligations both of the employer and of the employee have been clearly defined.

(2) The rate of benefit has been standardised which means that all women will be treated on an equal footing.

(3) The qualifying period and by this I mean the number of days during which a woman must work in order to entitle her to benefit is not exacting and is one which no woman will find any difficulty in carrying out.

(4) Another important improvement is that provision has now been made for the immigrant woman who arrives on a garden pregnant. In her case there will be no qualifying period. This was a notable omission in the original draft.

We, Sir, consider that this Bill in its present form is fair and equitable both to employer and to employee.

For the information of the House, I may say that it will mean to the tea industry an annual expenditure of nearly six lakhs of rupees in hard cash alone, but expenditure does not end there. Medicines and medical attention have to be provided and in many cases it is customary to grant special food and free milk. All this imposes a heavy burden on the tea industry especially in these days of rising working costs, but nevertheless we are prepared to bear it and further we are prepared to loyally work this Act.

We have for long realised the obligations which we owe to our labour and this question of maternity benefit is nothing new. Indeed, broadly

speaking this Bill only seeks to make compulsory the payment of something which we have hitherto been accustomed to grant to our labour on a voluntary basis.

During last session, a certain hon. member expressed the fear that gardens already paying higher benefits than those laid down in this Bill would be tempted to reduce them. I again take the opportunity of repeating what I said on that occasion that I am sure that such a fear is groundless for I feel confident that no Manager would be so mean as to take the opportunity of reducing benefits to the minimum as laid down in the present Bill.

With these words, Sir, I support the Bill.

Mr. A. WHITTAKER: Mr. Speaker, Sir, there is in this Bill a splendid opportunity for Government of the day to carry out its benefits to Government's own employees. I refer to one of the definitions which says that Government are empowered to benefit employees in other establishments to which the Act applies or may be extended. I hope, Government, in the spirit of the Bill will act as model employers and will not seek to put any burden on private employers which they are not themselves prepared to shoulder. In the term 'Government' I would include, local authorities such as Local Boards and Municipalities. For example, I think it would be possible under this Act to extend these benefits to women school teachers as well as to nurses in Government Hospitals.

The Hon'ble Maulavi ABDUL MATIN CHAUDHURI : Mr. Dawson has already given the details of the improvement that have been made in this Bill. The hon. member must have noticed that there has been considerable change and improvement in the Bill itself; but I am glad to say that the report of the Select Committee has been unanimous. With a desire to give relief to these women workers, representatives both of labour and capital have worked in a most amicable spirit and so they have been able to achieve unanimity. As regards the point that has been raised by Mr. Whittaker that effect should be given of the provision of the Bill to extend to the employees of the Government, I can assure him that Government had this in view in extending the scope of the Bill.

The Hon'ble the SPEAKER: The question is: "That the Assam Maternity Benefit Bill, 1940, as amended by the Select Committee be taken into consideration."

The question was adopted.

The Hon'ble the SPEAKER: Now the Bill will undergo consideration clause by clause.

Clause 7

Mr. N. DAWSON: I beg, Sir, to move that in clause 7, the 'comma' occurring after the words 'Inspector-General of Civil Hospitals' shall be substituted by a 'full stop' and the rest of the clause beginning with the words 'when a woman declines, etc.', shall be regarded as a new sentence.

Mr. Speaker, Sir, the reason for this amendment is a small error in punctuation.

The Hon'ble the SPEAKER: Amendment moved:

"That in clause 7 the 'comma' occurring after the words 'Inspector-General of Civil Hospitals' shall be substituted by a 'full stop' and the rest of the clause beginning with the words 'when a woman declines, etc.' shall be regarded as a new sentence."

Has the Hon'ble Minister got anything to say ?

The Hon'ble Maulavi ABDUL MATIN CHAUDHURI: No, Sir, I accept the amendment.

The Hon'ble the SPEAKER: The question is :

"That in clause 7, the 'comma' occurring after the words 'Inspector-General of Civil Hospitals' shall be substituted by a 'full stop' and the rest of the clause beginning with the words 'when a woman declines, etc.' shall be regarded as a new sentence."

The amendment was adopted.

The Hon'ble the SPEAKER: The question is that clause 7, as amended, stands part of the Bill.

The question was adopted.

Clause 11

Mr. N. DAWSON: I beg, Sir, to move that in clause 11, the following new sentence shall be added at the end :

"Where medical officers are appointed as Inspectors, they shall be of a rank not less than that of Assistant Surgeon."

Mr. Speaker, Sir, with this amendment, I only seek to have included in the Bill one of the recommendations made by the Select Committee. From the report of the Select Committee, clause 11, we find as follows :— "We consider that if a medical officer is appointed as Inspector he should be at least an Assistant Surgeon". This, Sir, I think, has obviously been omitted by mistake.

The Hon'ble the SPEAKER: Amendment moved :

"That in clause 11, the following new sentence shall be added at the end :—

"Where medical officers are appointed as Inspectors, they shall be of a rank not less than that of Assistant Surgeon,".

Mr. BAIDYANATH MOOKERJEE: Mr. Speaker, Sir, I rise to support the amendment because I think it is my duty to do so as I was a member of the Select Committee. As has already been stated by the hon. mover, that few words which the hon. mover wants to insert in the clause have in fact been omitted through mistake. I think, Sir, there is no harm in accepting it as it was unanimously accepted by those hon. members who took part in the Select Committee. The Hon'ble Minister was also the Chairman of that Committee and as such I think he also remembers it and I hope he will accept it.

The Hon'ble Maulavi ABDUL MATIN CHAUDHURI: Sir, both Mr. Dawson and Mr. Mookerjee have correctly interpreted the intention of the Select Committee. I have no objection in accepting the amendment.

The Hon'ble the SPEAKER: The question is :

"That in clause 11, the following new sentence shall be added at the end :—

"Where medical officers are appointed as Inspectors, they shall be of a rank not less than that of Assistant Surgeon".

The amendment was adopted.

The Hon'ble the SPEAKER: The question is that clause 11, as amended, stands part of the Bill.

The question was adopted.

Other clauses

The Hon'ble the SPEAKER: The question is that clauses 1, 2, 3, 4, 5, 5A, 5B, 6, 8, 9, 10, 12, 13, 14 and 15 stand part of the Bill.

The question was adopted.

Title and Preamble

The Hon'ble the SPEAKER: The question is that the title and preamble of the Bill stand part of the Bill.

The question was adopted.

The Hon'ble Maulavi ABDUL MATIN CHAUDHURI: I beg, Sir, to move that the Assam Maternity Benefit Bill, 1940, as amended, be passed.

The Hon'ble the SPEAKER: Motion moved:

"That the Assam Maternity Benefit Bill, 1940, as amended, be passed."

(After a pause)

Then I take it that there is not going to be any debate.

The question is:

"That the Assam Maternity Benefit Bill, 1940, as amended, be passed."

The question was adopted.

The Assam Forest (Amendment) Bill, 1940

The Hon'ble Srijut RUPNATH BRAHMA: Mr. Speaker, Sir, I beg to present the report of the Select Committee on the Assam Forest Amendment Bill, 1940, and beg to move that the Bill as amended by the Select Committee be taken into consideration.

The Hon'ble the SPEAKER: Motion moved:

"That the Assam Forest (Amendment) Bill, 1940, as amended by the Select Committee be taken into consideration."

(After a pause)

The Hon'ble the SPEAKER: Then I am putting the question. The question is:

"That the Assam Forest (Amendment) Bill, 1940, as amended by the Select Committee be taken into consideration."

The question was adopted.

Clause 1

Mr. F. W. BLENNERHASSETT: Mr. Speaker, Sir, I beg to move that for sub-clause (2) of clause 1, the following shall be substituted:—
“(2) Section 2 of this Act shall come into force at once and shall apply to the whole of the territories to which the Regulation now applies and section 3 shall come into force at such times and in such areas as the Provincial Government, may by notification, direct.”

Mr. BAIDYANATH MOOKERJEE: So far as the last portion of the amendment is concerned, I think, that my amendment should be taken first.

The Hon'ble the SPEAKER: Yes, I see the point. Therefore I allow Mr. Mookerjee to move his amendment first.

Clause 3

Mr. BAIDYANATH MOOKERJEE: Mr. Speaker, Sir, I beg to move that clause 3 of the Bill shall be deleted.

Sir, it will be found in the Bill that clause 3 says that section 63 of the Assam Forest Regulation is hereby repealed. I think it will be well on my part if I read section 63. It runs like this: "When in any proceedings taken under this Regulation, or in consequence of anything done under this Regulation, a question arises as to whether any forest produce is the property of the Government, such produce shall be presumed to be the property of the Crown until the contrary is proved." Now, Sir, by this clause we are going to do away with this section of the Assam Forest Regulation, 1891.

Sir, during 1928 there was a Forest Enquiry Committee and this question was also raised at that time. I think it will not be out of place to read the relevant portion of the findings of that Enquiry Committee.

"The question of amending section 63 so as to throw the burden of proof on the Forest Department was raised by several witnesses. The argument used was the general presumption in criminal law that a person is innocent until he is proved guilty and that any forest produce seized was Government property. The section throws the burden of proof on the person found in possession of forest produce to show that it is his own property and not Government property. The argument overlooks the fact that for the extraction of forest produce from private lands a certificate of origin is required as laid down by rule 2 at page 72 of the Manual". Rule 2 reads like this: "No forest produce shall be removed unless covered by a pass which shall be in the form of (i) a permit issued by a duly authorised Forest Officer under the rules relating to the Unclassed State Forests or reserved forests, allowing the holder to remove forest produce from a specified locality; or (ii) a certificate of origin (in the form prescribed in Appendix A) in the case of forest produce from private lands for which nothing is due to Government. Such certificate must be issued by the owner of such land or his duly authorised agent and must bear such signature or stamp of the owner or his agent as has been previously registered in the local Divisional Forest Office, and such certificate shall be produced by the holder at the revenue station specified therein to be dealt with as noted hereafter". Now I will read the remaining portion of the findings of the Forest Enquiry Committee, "If persons who want to extract forest produce from private lands will only obtain a certificate of origin as prescribed by the rule and such a certificate can be obtained for two pice from any revenue office, the burden of proof is at once transferred to the forest department to show that any forest produce seized covered by such a certificate is Government property. The law thus prescribes a clear remedy for the protection of persons who want to extract produce from private lands, and if the rule is made more generally known to the public we consider that no legitimate grievance exists in maintaining the section as it at present stands".

Now the point is this: if a person extracts some forest produce from any private land in that case he requires a certificate and if he extracts such produce from Government land in that case he requires a permit. So, Sir, in any case if any forest produce is extracted from any forest he must have either a permit or a certificate either from Government or from the private owner as the case may be. Now if a man when challenged can produce a permit or a certificate his liabilities go. Then it will be on the part of the Government servants to prove that the forest produce in question was not extracted from any private land but from Government forest for which he

had no permit but a certificate. Sir, in this connection I like to mention how the forests are at present managed in the district of Sylhet. The forest area in that district is about 306 square miles and if we take the boundary it is 518 square miles. Over and above this there are *khas* forests. Now there are only one Divisional Forest Officer, 4 Rangers in 5 subdivisions, 9 or 10 Deputy Rangers, 20 Foresters and 63 Guards. Sir, will it be possible for these few persons to protect an area of 360 square miles and to guard it properly? Sir, obviously I do not find any reason why this section should be repealed. As I have already shown that if there be any pass or certificate there will be no trouble on the part of the person who will be in possession of any forest produce. Sir, I do not think that it will be prudent on the part of the Government to relax or to do away with such a rule from the Forest Regulation. Forest is one of the top-most revenue fetching departments of this province of Assam (*hear, hear*). With all sincerity I appeal to the Government to consider it very seriously whether they should take such a step when it is in my opinion absolutely unnecessary. The question of harassment has been raised several times on the floor of this House, but I think, I have been able to prove that if a man really steals, he will be in trouble, and nobody else (*Voices:—question*). Sir, my friends may question as it may serve their purpose, but the fact is there. They will get opportunities of contradicting my observations and then I shall patiently hear them. However, Sir, my point is this: that the *bona fide* extractors are in no case harassed but only those who steal or are careless, —careless in the sense that though they have got pass or certificate, but do not care to carry it with them, and cannot produce when required— are harassed and in my opinion they should be harassed. Now it is our duty to see that a man do not take away any forest produce without paying either to the Government or to the private landlords or to any other class of owner of the forest. That is the only point which I hope the Hon'ble Minister-in-charge of the Forest Department will seriously consider as to whether by retaining or deleting this clause he will do justice to that trust which has been entrusted in his hands by the people of the province.

The Hon'ble the SPEAKER: Amendment moved:
"That clause 3 of the Bill shall be deleted."

Maulavi MUHAMMAD MAQBUL HUSSAIN CHAUDHURY:
Sir, I rise to oppose the amendment moved by Mr. Mookerjee. It is surprising that a man of progressive ideas like Mr. Mookerjee should oppose this clause. This is a Bill consisting practically of two clauses. Clause 2 is nothing but insertion of certain new provisions to the Forest Regulation and clause 3 repeals section 63 of that Regulation. I need not read out the language of section 63 as Mr. Mookerjee has already read it out to the House. Sir, there is no other law in which this principle will be found. Everywhere when a man is arrested it is the party that arrests who is to prove that the man is guilty, but only in the Forest Regulation there is a separate principle that when a man is arrested he is taken as guilty, *i. e.*, the burden of proof is on him. This Bill seeks to change this French principle of law. Mr. Mookerjee says that any one possessing certificate is safe from the clutches of this section. He is somewhat true. I live in a village and I can say that the Forest Officers in most cases harass public with the help of this section, *i. e.*, section 63.

Mr. BAIDYANATH MOOKERJEE: Clause 2 is there.
Maulavi MUHAMMAD MAQBUL HUSSAIN CHAUDHURY:
Mr. Mookerjee refers to clause 2, but he does not know how it is possible for a poor and unlettered cultivator to prove a case

against a Forest Officer as he himself says that it will be very difficult for a Forest Officer to prove that a property belongs to Government. The cultivators are unlettered and on the part of an unlettered cultivator it is very difficult to prove a case against the mighty Forest Officer, I say mighty because the entire Government is behind him. Government are convinced that most of the oppressions are done under this section and they have brought forward this Bill to repeal section 63. Now I find in the Select Committee's report that except one member, Mr. Whittaker, all the members were unanimous and Mr. Whittaker submitted a very lengthy note of dissent. What I find in it, Sir, is that he wants to leave the power to the Department. He said :—

“.....I would suggest that ordinary prudence should make the repeal of section 63 experimental for such district or districts as the Department consider suitable”

Mr. Mookerjee's amendment is inspired by that (*Laughter*). We have got experience and we have personal knowledge, Sir, that when a cultivator goes with forest produce from permanently-settled areas he is arrested, even if he goes with produce which do not grow in Government land. Ordinarily reeds, *ikra*, thatch grass and a particular kind of bamboo are not grown in Government land, but when a cultivator goes by the Forest Officer he is arrested and it is presumed that all the properties belong to Government, though in fact the properties do not belong to Government. Due to this section, the Forest Officer has got a licence to oppress him. I asked more than once in this House to the Hon'ble Forest Minister to make a tour in those areas before he brought this Bill but unfortunately he had no time and he could not go.....

Mr. BAIDYANATH MOOKERJEE : And so he committed this mistake !

Maulavi MUHAMMAD MAQBUL HUSSAIN CHAUDHURY : He has not committed any mistake rather he has tried to do some good. But had he performed his tour there he would do many things and he would not have to depend upon Mr. Mookerjee and myself. Now if this amendment is carried, the entire idea underlying this Bill will be frustrated. This is the only clause which seeks to give some relief to the people and if this clause is deleted as proposed by Mr. Mookerjee, the entire Bill becomes useless. I find that the idea of Government is progressive and they have not brushed away from their minds the grievances of the people and from this Bill.....

Mr. BAIDYANATH MOOKERJEE : Does the progress mean let loose in every matter ?

Maulavi MUHAMMAD MAQBUL HUSSAIN CHAUDHURY : Sir, I shall have many things to say in connection with the amendment of Mr. Blennerhassett and therefore I stop here and with these few words only I oppose the motion of my friend Mr. Mookerjee.

Mr. A. WHITTAKER : Mr. Speaker, Sir, I am looking forward to the occasion when I shall be in such complete agreement with Mr. Maqbul Hussain Chaudhury that he will accuse me of colluding with himself (*Laughter*). But meanwhile it might save the time of the hon. members of this House if I try to explain my own position as clearly as possible. If I were an entirely free agent in this matter and influenced solely by the views of the Forest Department I should have sponsored the amendment moved by Mr. Mookerjee. In fact, academically speaking, I am in entire agreement with it. I recognise however that person like my friend Mr. Maqbul Hussain Chaudhury have got direct experience of this problem, and have repeatedly in this Assembly made accusation

of harshness against Government, and against the Forest Department in particular. I am at a considerable disadvantage compared with them because I have not got contact with the villagers which they themselves have. To a large extent I must rely on Government's own published report, and I refer Mr. Maqbul Hussain Chaudhury to the latest one and to Government's own resolution drafted with the approval of the Hon'ble Minister-in-charge in which he makes this statement: "of the cases tried in court this year only 14 per cent. ended in acquittal". It seems rather difficult to prove a charge of harshness against Government when only one case in seven ends in acquittal.

Maulavi MUHAMMAD AMJAD ALI: On a point of information, Sir. Can he also tell us how many of these cases were defended?

Mr. A. WHITTAKER: Referring to the same resolution, Sir, I find these words "it is noticeable that out of 2,408 charge reports brought for forest offence during the year nearly 80 per cent. were dealt with departmentally".

To return again to the facilities and the advantages which my friend Mr. Maqbul Hussain Chaudhury has by living in close contact with the villagers near forest areas, I agree, Sir, that that might alter the approach to this question. For this reason, I propose an amendment, in my minute of dissent, which would allow Government to repeal section 63 experimentally in certain areas. If that experiment does not fulfil the pessimistic anticipations of the Forest Department, well and good; let the repeal extend to the whole province. If, however, those gloomy anticipations are fulfilled, I think we as responsible members of the Legislature should be empowered to call a halt. Therefore, I cannot consider my own individual attitude to Mr. Mookerjee's amendment without seeking some statement from the Hon'ble Forest Minister about his views on Mr. Blennerhassett's amendment.

Maulavi ABDUR RAHMAN: Mr. Speaker, Sir, I also oppose vehemently the amendment of Mr. Mookerjee.

Mr. Mookerjee wants retention of section 63, which gives a weapon in the hands of the forest officers. Sir, I shall later on repudiate the arguments which have been advanced by Mr. Whittaker for experimental application of clause 3 to certain areas.

Now, first of all let us consider the proposed relief which the Government seeks to give to the poor people. In clause 2 to section 60 of the Forest Regulation, to create some apprehension in the minds of irresponsible forest officers who for their own gain harass the people for nothing. If, at the same time, section 63 of the Regulation be retained the object of these two clauses will be frustrated (Mr. Baidyanath Mookerjee:—Question). Certainly, Sir. If section 63, which gives absolute power in the hands of the forest officers to arrest or detain any person, be retained then it will be absolutely useless on the part of the legislature to enact clauses (3) and (4) to section 60 of the Regulation.

Sir, the reasons why the whole object will be frustrated if section 63 is retained are not far to seek. Proposed sub-clause (3) to section 60 provides that "Any Forest Officer or Police Officer who vexatiously or maliciously arrests any person on the pretence that he is suspected of having been concerned in any forest offence or otherwise, etc." That is if the finding of the Magistrate be that the arrest was vexatious or malicious then only the forest officer can be put to task. But section 63 of the Manual gives absolute power to a forest officer to arrest a person whenever a suspicion arises in his

mind that the person is carrying forest produce which belongs to Government. If the poor people have to be given any relief, which is proposed by sub-clauses (3) and (4), it is mandatory on the part of a Legislature to delete section 63 of the Regulation.

Now, Sir, I shall make a few remarks on the argument of Mr. Whittaker. Mr. Whittaker has said, in his minute of dissent, that if the Bill as introduced by Government be passed and given effect to, the Government may sustain losses in revenue. But I may tell him, Sir, that these cases of vexatious and malicious action on the part of forest officers generally occur with regard to small matters, e.g., bamboo, which is called *mule bamboo*, *san-grass*, and as has been observed by my friend Mr. Maqbul Hussain Chaudhury, with regard to *ikras* and other reeds which are unclassified forest produce and unidentifiable. If any person takes any produce of this kind from his homestead land and intends to go to the market for sale, and if he happens to pass by a forest office he will be immediately arrested. According to the existing law what becomes the fate of the man? The man has to prove that the produce was grown in his homestead land. In many cases it does not become possible on the part of the poor people to prove that they were produced in their own land.

Again, Sir, I may tell Mr. Whittaker—I do not know whether he has got any idea as to the district of Sylhet, more particularly the tea garden areas—that most of the forests are bounded by tea-gardens and that these forests are not under tea cultivation. The remaining portions are uncultivated and are leased out to people to remove forest produce such as *san-grass* and bamboo. Even in such cases it will be seen that there are records to show in magisterial courts that, even after taking a lease from the tea garden manager, if anybody goes to remove the forest produce in that particular area and he has to pass by the forest office and is unfortunately met by a forest officer, he will be arrested and sent up for trial. In most of these trials the poor people are convicted.

One point more, Sir. Mr. Whittaker has said that since last year there is a decrease in the prosecution and conviction of these cases. I may tell him that since we began our work with the Budget Session of 1937 this question has been coming up before the House and the agitation that has been going on in this House has resulted in the fall of such convictions to a small extent.

There is one more point, Sir, and that is as regards the definition of the 'forest officer'. Even a Guard also is defined as a forest officer. Generally these officers are the Foresters and the Guards, and the complaints are usually against these poorly paid officers. These people have no responsibility and they will arrest people for their own personal gain and prosecute them and send reports. The peculiar thing about these prosecutions is that the man charged against has to prove that the property does not belong to Government. This the poor accused people are often unable to prove.

I will refer, Sir, to another thing which Mr. Whittaker has put in his note of dissent. He has referred to section 411 of the Indian Penal Code. He says, "It is not easy for either the police or the ordinary complainant to secure a conviction under section 411 of the Indian Penal Code in respect of stolen property which is easily identifiable. The difficulties are enhanced enormously when that property is as unidentifiable as most of the products of nature." And so he proceeds to argue that the onus of proof should be on the accused. Sir, this is a unique thing in legislation. All the major offences for theft are being dealt with in one manner, but

in this matter, because it is Government property, it is dealt with in a particular manner and the accused is to prove that he is not guilty. But the spirit and principle of the ordinary law is that whenever a person is arrested and handed up before a Court it is to be presumed that the man is not guilty. A judicial mind will say that we must presume that he is guilty to the Magistrate to presume that the man that is produced before him is guilty. The Court is to begin trial with a biased mind that the man is guilty, and how these poor fellows are to prove that the property is theirs? In these civilised days we should decry this sort of legislation.

Mr. A. WHITTAKER: On a point of explanation, Sir. In the interests of accuracy may I draw the attention of both my hon. friends to page 22 of the last Forest Report? The argument is that by these forest theft cases the hardship concerns very petty and small matters producing no forest revenue. Now according to the Forest Department's returns no produce and miscellaneous revenue comes to the total Rs.6,30,000 or 36 per cent. of the total of the Forest revenue. I submit, Sir, that takes it a long way out of the category of petty revenue or petty theft.

Mr. JOBANG D. MARAK: Mr. Speaker, Sir, I think I should not support the amendment for some reasons. Regarding section 63 I remember some particular instances which recently took place in the Garo Hills (*laughter*). One Asansingiri Marak, *ex-Mauzadar*, and Nokma of two Akhings, Sang Sangiri and Amindagiri, cut some *sal* trees and collected them in his compound. One Forest Officer went into his compound and got hold of those properties and reported the matter to the Divisional Forest Officer. The Divisional Forest Officer referred the matter to the Deputy Commissioner. The result was that he was fined Rs.100 (*hear, hear*). An appeal was filed and preferred to the Commissioner of Divisions who upheld the conviction. My point is this, Sir. The accused person in perfect good faith had cut those trees, because he perfectly knew that he had every right to cut any number of trees for his home use. It was also established that the trees were cut for his own domestic use, not for sale nor for gift. There was another instance. The man concerned was a teacher and he had cut a tree to make a plank for his own use. He was immediately fined Rs.20 in court, as he was appearing in court on a witness in another case.

In the face of the occurrences I have referred to amongst many others I hesitate to support this motion. Other amendments are coming up and I shall say something about them. I therefore do not support Mr. Mookerjee's amendment. But I would request Government to look into the two incidents I have referred to and remove the grievances.

Mr. BAIDYANATH MOOKERJEE: May I know whether on these two occasions the accused persons had any pass or certificate with them, or were they really stolen properties?

Mr. JOBANG D. MARAK: They had free permit to cut trees, and these question do not arise. They get a right or concession to cut trees including *sal* and other classed trees without permit and free of royalty from unreserved forests for their own use.

The Hon'ble the SPEAKER: As the time is now up, we shall take up this matter to-morrow.

Adjournment

The Assembly was then adjourned till 2 P.M. on Friday, the 28th March 1941.

Shillong,
The 13th June, 1941.

A. K. BARUA,
Secretary, Legislative Assembly, Assam.