

22nd March, 1923

**THE
LEGISLATIVE ASSEMBLY DEBATES**

(Official Report)

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OF THE

LEGISLATIVE ASSEMBLY, 1923.



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CONTENTS.

	PAGES.
THURSDAY, 15TH MARCH, 1923—	
Questions and Answers	3437—3438
Message from the Council of State	3439
The Budget—List of Demands ✓	3439—3517
The Mussalman Waqfs Registration Bill	3517—3518
FRIDAY, 16TH MARCH, 1923—	
Questions and Answers	3519—3523
The Budget—List of Demands ✓	3523—3556
Message from the Council of State and Bills laid on the Table	3556
The Budget—List of Demands ✓	3556—3597
SATURDAY, 17TH MARCH, 1923—	
Questions and Answers	3599—3600
Unstarred Questions and Answers	3600—3604
The Budget—List of Demands ✓	3605—3675
MONDAY, 19TH MARCH, 1923—	
Member Sworn	3677
Questions and Answers	3677—3689
Statement laid on the Table	3690
Unstarred Question and Answer	3690
The Budget—The Indian Finance Bill ✓	3691—3725
TUESDAY, 20TH MARCH, 1923—	
Questions and Answers	3727—3729
Unstarred Questions and Answers	3729—3731
Reduction of British Troops in India	3732—3733
The Budget—The Indian Finance Bill ✓	3733—3813
Statement of Business	3813
WEDNESDAY, 21ST MARCH, 1923—	
Governor General's Assent to Bills	3815
The Code of Criminal Procedure (Amendment) Bill	3815—3829
The Indian Official Secrets Bill	3829
The Abolition of Transportation Bill ✓	3830
The Indian Merchant Shipping Bill	3830—3833
The Indian Penal Code (Amendment) Bill	3833—3845
Statement of Demands refused by the Legislative Assembly and restored by the Governor-General in Council ✓	3845
Election of Members for the Public Accounts Committee	3845
The Indian Finance Bill	3846
The Malkharoda and Gaontia Villages Laws Bill	3846—3852
The Legal Practitioners (Women) Bill	3852—3854
Election of Members for the Public Accounts Committee	3854
Amendment of Standing Orders	3854
Statement of Business	3855

THURSDAY, 22ND MARCH, 1923—

Questions and Answers	3857—3863
Unstarred Questions and Answers	3864—3865
Imperial Wireless	3865—3870
Outstanding Resolutions of the Assembly	3870
India's Contributions to the Great War	3870
Indian Delegation from Kenya to London Conference	3870—3871
Report of the N.-W. Frontier Committee	3871
North Bengal Flood	3872
Reduction under Head "Opium"	3872
Public Accounts Committee	3873
Amendment of Standing Orders	3873
The Mussalman Waqfs Registration Bill	3873—3898
The Special Marriage Bill	3898—3927

SATURDAY, 24TH MARCH, 1923—

Questions and Answers	3929—3938
Gold Standard Reserve	3938—3940
Old Mosques in and around Delhi	3940—3943
Unstarred Questions and Answers	3943—3945
Message from the Council of State	3945
Communication from H. E. the Governor General	3945—3946
Resolution <i>re</i> Railway Concessions and Reduction in Fares	3946—3953
Resolution <i>re</i> Stoppage of Recruitment for Services outside India	3953—3967

MONDAY, 26TH MARCH, 1923—

Questions and Answers	3969—3973
Unstarred Questions and Answers	3973—3974
The Indian Finance Bill	3974—4002
The Cantonments Bill	4002—4003

TUESDAY, 27TH MARCH, 1923—

Questions and Answers	4005—4017
Unstarred Question and Answer	4017
Messages from the Council of State	4017
Bill laid on the Table	4017
Amendment of Standing Orders	4018
Election of Members to Publicity Advisory Committee	4018
The Exclusion from Inheritance Bill	4018—4038
The Code of Criminal Procedure (Amendment) Bill—Amendment of Section 4	4038
The Hindu Law of Inheritance (Amendment) Bill	4039—4044
The Code of Civil Procedure. (Amendment) Bill	4044
The Charitable and Religious Trusts (Amendment) Bill	4044—4045
The Illegitimate Sons' Rights Bill	4045
The Legal Practitioners (Amendment) Bill	4046
The Indian Evidence (Amendment) Bill	4046
The Indian Limitation (Amendment) Bill	4046
The Prevention of Deferred Rebates Bill	4047
The Interest Act (Amendment) Bill	4047—4050
The General Clauses (Amendment) Bill	4050
Attitude of Government <i>re</i> certain Bills introduced by Non-official Members	4050—4051

LEGISLATIVE ASSEMBLY.

Thursday, 22nd March, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

QUESTIONS AND ANSWERS.

POWER OF THE LEGISLATIVE ASSEMBLY TO REDUCE THE PAY OF OFFICERS OF THE CIVIL SERVICE OR THE ARMY.

604. ***Mr. Mohammad Faiyaz Khan:** Has the Assembly got the power if it wishes to reduce the pay of Indian or British officers in the Civil Service or the Army?

The Honourable Sir Malcolm Hailey: As far as Members of the All-India services and officers of the Army are concerned, the answer is in the negative. As regards other services, the power to influence pay is limited to such effect as may be produced by voting or refusing supply on Demands for Grants.

BHATKAL RAILWAY EXTENSION.

605. ***Mr. Mahmood Schammad Sahib Bahadur:** 1. Will the Government be pleased to state whether the Bhatkal Railway extension has been given up?

2. Is the Government aware that the proposed railway extension to Bhatkal does not connect the general railway system with the West Coast (Malabar) railway of the Madras Presidency?

The Honourable Sir Malcolm Hailey: 1. The reply is in the negative.

2. Yes.

POSITION UNDER THE INDIAN ARMS ACT OF RETAINERS OF MAHARAJAS, RAJAS AND NAWABS.

606. ***Lieutenant Nawab Mohammad Ibrahim Ali Khan:** I. Are the Government aware that in Schedule I of the New Indian Arms Rules, class 3, all Maharajas, Rajas and Nawabs are exempted under the Arms Act but nothing is laid down about their retainers, in consequence of which the local authorities are not in a position to allow the same liberty in the use of arms as is allowed to the retainers of the exemptees of class 6 who are of inferior standing?

II. Do Government propose to extend the same privileges to the retainers of exemptees of class 3 which are enjoyed by the retainers of class 6; and remove the great anomaly as soon as possible by amending the law or issuing Circulars to local Governments, making the necessary correction?

The Honourable Sir Malcolm Hailey: 1. Yes.

2. The Arms Rules Committee recommended no change in the provisions regarding retainers; and the Government of India are inclined to accept this recommendation unless very good reason to the contrary is shown.

Lieutenant Nawab Mohammad Ibrahim Ali Khan: Has effect been given to this?

The Honourable Sir Malcolm Hailey: Not yet; we are consulting the Local Governments regarding some of its details.

Baba Ujagar Singh Bedi: Is there any hope of giving us some information before the next Session at Simla?

The Honourable Sir Malcolm Hailey: I should hope that we may probably by that time be in a position to give effect to some of the recommendations of the Committee.

OFFICE OF THE MILITARY ACCOUNTS DEPARTMENT, POONA.

607. ***Mr. B. S. Kamat:** With reference to the Office of the Military Accounts Department, Poona, will Government be pleased to state:

- (i) If Government are aware that there is still some discontent amongst a section of the clerical staff on the ground that the pay of clerks in Divisional Offices, even though they were given temporary or supernumerary promotions, has been fixed at a lower stage than that of their juniors in field offices similarly situated?
- (ii) If any representations have been received, how have they been dealt with by Government?
- (iii) If it is true that the rates of pay of accountants and clerks in the Civil Accountant General's offices and those in the Military Accounts offices are the same; if the reply is in the affirmative, will Government kindly state why rates of increment to those clerks who have passed the Subordinate Accounts test are lower than in the Civil Department, although conditions of service in Military Accounts offices are perhaps more onerous; if any representations on this subject have been received by Government how have they been disposed of?
- (iv) If any temporary clerks entertained during the war and being made permanent in the Department are receiving higher rates of pay than those of the permanent clerks senior in service; if so, will steps be taken to remove the anomaly?
- (v) If it is true that the service of Deputy Examiners who were promoted to this grade during the war in place of absentees is not allowed to count towards pension; is it contemplated to remove any discontent on this ground by amending the rules?

The Honourable Sir Basil Blackett: (i) and (ii). Some representations on the subject were received by the Government of India from the clerks of the Military Accounts Department at Poona, but the grant of the special concession in question was not considered necessary in view of the liberal treatment accorded to the Military Accounts establishments generally under the orders introducing time-scale rates of pay.

(iii) The rates of pay of accountants and clerks of the Military Accounts Department are generally similar to those prevailing in the Civil Accountant Generals' offices; but the rate of increments of clerks who have passed the Accountants' test is lower in the Military Accounts Department than in the Civil Accounts Department. A representation for the grant of the higher rate of increment was received from the Military Accounts establishment at Poona, but the Government did not feel able to agree to it.

(iv) Men who had been entertained temporarily in the Military Accounts Department during the period of the war on higher rates of pay for special qualifications have been confirmed on those rates of pay. The Government of India do not consider that others in receipt of lower rates of pay have any legitimate claim to have their pay raised accordingly merely on the ground of length of service.

(v) Accountants who were promoted temporary Deputy Examiners during the period of the war were not allowed to count the higher emoluments towards pension. This decision was arrived at by the Government of India after careful consideration of the rules on the subject and they do not propose to make any amendment in the rules.

COMPLETION OF CUTTACK-TALCHER LINE.

608. ***Babu Braja Sundar Das**: Will the Government be pleased to state when the Cuttack-Talcher line is likely to be completed?

The Honourable Sir Malcolm Hailey: Work on the line has only lately been commenced and it is estimated that it will take about 2½ years to complete.

MILEAGE OF THE B.-N. RAILWAY RUNNING THROUGH THE ORIYA-SPEAKING COUNTRIES.

609. ***Babu Braja Sundar Das**: Will the Government be pleased to state how many miles of the Bengal-Nagpur Railway run through the Oriya-speaking countries under the Government of Bihar and Orissa, Bengal, Central Provinces and Madras?

The Honourable Sir Malcolm Hailey: The mileage of the Bengal-Nagpur Railway running through the Oriya-speaking tracts is approximately as follows:

	Miles.
Bihar and Orissa	540
Central Provinces	18
Madras	58

COACHING TRAFFIC EARNINGS OF THE B.-N. RAILWAY.

610. ***Babu Braja Sundar Das**: Will the Government be pleased to state the amount received annually by the Bengal-Nagpur Railway from Coaching Traffic stating specially the amount derived from the Coaching Traffic to Puri, Bhubaneswar, Baitarani and Jajpur?

The Honourable Sir Malcolm Hailey: The Bengal-Nagpur Railway received from coaching traffic, Rs. 2,21,47,000 during 1921-22 which included sums of Rs. 9,65,794, 1,28,213, 1,03,606 and 43,696 on account of passenger traffic booked to Puri, Bhubaneswar, Baitarani and Jajpur, respectively. Particulars of other coaching traffic booked to these stations are not available.

NUMBER OF MEN IN THE HIGHER GRADE SERVICES OF THE B.-N. RAILWAY.

611. ***Babu Braja Sundar Das**: Will the Government be pleased to state:

- (a) the number of men employed by the Bengal-Nagpur Railway in the higher grade services in their various departments stating how many of them are Europeans, Anglo-Indians, and Indians? Is there any Oriya in the higher grades of services?
- (b) the number of employees who are getting over Rs. 50 per month classifying them according to their nationality? How many Oriyas are there in the employment of the Bengal-Nagpur Railway getting a pay over Rs. 100 and over Rs. 50?

The Honourable Sir Malcolm Hailey: The information in the detail asked for is not available. It can be collected only by special compilations by the Bengal-Nagpur Railway and the Government are reluctant to put the Railway Administration to this trouble.

PASSENGER SUPERINTENDENTS.

612. ***Babu Braja Sundar Das**: (a) In pursuance of the Resolution by Mr. Joshi regarding Passenger Superintendents will the Government be pleased to state if the Bengal-Nagpur Railway have appointed any Passenger Superintendent at Howrah and Puri?

(b) Is it a fact that most of the third class passengers to Howrah between Howrah and Puri are Oriya-speaking?

(c) Do the Passenger Superintendents at Howrah and Puri (if appointed) know anything of the Oriya language?

The Honourable Sir Malcolm Hailey: (a) The reply is in the affirmative so far as Puri station is concerned.

At Howrah there are two Passenger Superintendents under the control of the East Indian Railway. These men attend both East Indian Railway and Bengal-Nagpur Railway passenger trains.

(b) Government understand that the percentage of Oriya-speaking passengers between Howrah and Puri is comparatively small.

(c) The Passenger Superintendent at Puri and one of the Superintendents at Howrah have a knowledge of the Oriya language.

Babu Braja Sundar Das: I beg to put another question.

Mr. President: Does the Honourable Member wish to ask a question of which notice has not been given? If it is a private notice question, that must come at the end.

Mr. K. Ahmed: Sir, in view of the fact that there is no Bengali-speaking Passenger Superintendent on the Eastern Bengal Railway, do Government propose to replace some of the Superintendents when they retire by a Bengali-speaking Superintendent?

Mr. President: Does the Eastern Bengal Railway run into Howrah?

Mr. K. Ahmed: Then I put both the East Indian Railway and the Eastern Bengal Railway.

The Honourable Sir Malcolm Hailey: We were asked to collect certain information about Oriya-speaking Superintendents on the Bengal-Nagpur Railway running into Howrah and Puri. I do not think the Honourable Member is in order in asking about Bengali-speaking Superintendents on the Eastern Bengal Railway.

IMPERIAL INSTITUTE.

613. ***Mr. W. S. J. Willson:** 1. Is Government aware that:

- (a) The Princes and people of India subscribed a very large sum of money towards the building of the Imperial Institute?
- (b) When the building became the property of the British Government this important Indian share was recognised by earmarking a certain portion for Indian purposes and placing it under the India Office?
- (c) The India Office has announced its intention, owing to the discontinuance of the Government of India grant, to hand over this portion of the building to the British Government to be used for other purposes?
- (d) The Indian Committee of the Imperial Institute (which includes distinguished Indian representatives) has protested against the action of the India Office, maintaining that this portion of the Imperial Institute should continue to be Indian and used for Indian purposes as at present?

2. In view of these facts and in addition the expressed wish of the Associations of Commerce, both in India and Great Britain, that India's long connection with the Imperial Institute should be preserved, also of the continued requests which are being received from India for assistance from the Institute, will the Government of India take steps to ensure that the recognised occupation of certain parts of the Imperial Institute for Indian purposes is not disturbed?

Mr. J. Hullah: 1. (a) Yes.

(b) The arrangement made was that the India Office should occupy, as lessee of the British Government, free of rent, firstly a portion of the basement for use as store-rooms and office, and secondly a corridor with passages, stairways and a subsidiary room. The Government of India understand that only the first area, which does not form part of the main building, is to be surrendered.

(c) The intention is believed to be as I have already stated, but I am not aware that the India Office has made any announcement on the subject.

(d) The Government of India have no information of any such protest.

2. The Government of India believe that the portion of the main building which was leased to the India Office is still in possession of the Imperial Institute, and will continue to be used for the Indian Exhibits, which will not be removed. They will, however, ascertain definitely whether this is so.

CONDITION OF PERMANENT QUARTERS AT RAISINA.

614. ***Lieutenant-Colonel H. A. J. Gidney:** 1. Will Government kindly state how many of the recently built permanent quarters at Raisina leaked during the rains, last February, and to what extent?

2. In view of the experience gained during the above period is the Government prepared to say that these quarters will be habitable during the monsoons?

3. If not, are they taking steps to make the roofs really water-tight?

4. Will the Government state what has been spent up to date in electro-wiring the houses in question?

5. Is it a fact that the electric-wiring has been done so unscientifically that much of the material put down only 4 or 5 years ago has perished to such an extent as to need renewal?

Colonel Sir Sydney Crookshank: 1. The total number of complaints of leakage during the rains referred to, received by the Executive Engineer in charge was six.

2. Yes.

3. Does not arise.

4. The total sum spent on wiring residential quarters to date is about Rs. 5 lakhs.

5. No.

Mr. S. C. Shahani: Are the Government aware that the doors and windows, as also the furniture in the Raisina quarters are all ill-made?

Colonel Sir Sydney Crookshank: May I ask the Honourable Member to state exactly what question he has put?

Mr. K. Ahmed: I suppose leakages are generally found in the buildings?

Mr. President: Order, order. Mr. Shahani.

Mr. S. C. Shahani: My question is—are the Government aware that the doors and windows in the permanent quarters at Raisina are badly made and that the furniture which is provided in the permanent quarters is badly made?

Colonel Sir Sydney Crookshank: I am not aware that either the doors or the windows, or the furniture is badly made. The best wood procurable has been obtained and is used in the manufacture of these articles and the best labour available has been employed.

CIRCULATION OF ONE-RUPEE NOTES.

615. ***Sir Montagu de P. Webb:** Will Government having regard to the unsuitability of the one rupee note as currency in this tropical country and to the fact that, according to the Report of the Indian Retrenchment Committee, the one rupee note is apparently more expensive to produce and maintain in circulation than the silver rupee, now revert to the pre-war practice of issuing the silver rupee only in future?

The Honourable Sir Basil Blackett: The matter is under consideration.

Mr. S. C. Shahani: Are the Government aware that the public in this tropical country now consider the one-rupee note as fairly suitable?

The Honourable Sir Basil Blackett: Government are aware from statements that have been made to them both that it will be a disaster if the one-rupee note is not withdrawn and that it will be a disaster if it is.

Mr. S. C. Shahani: Will the Government be pleased to state if it has been found difficult to maintain the one-rupee note in circulation and, if so, why?

The Honourable Sir Basil Blackett: I understand it was a little difficult in the first instance. In certain quarters it is now extremely popular. The whole question is a difficult one. It is very hard to say whether or not it is more expensive to keep the one-rupee note or the silver rupee in circulation and it is hard to say whether the public does or does not want the one-rupee note. The best criterion always in deciding whether a particular form of currency should be kept in circulation or not is whether the public want it or not, and that will ultimately be the criterion in this case.

Mr. S. C. Shahani: Will the Government be pleased to ascertain what the attitude of the public in the matter is before withdrawing the one-rupee note from circulation?

The Honourable Sir Basil Blackett: The Government are endeavouring to do so.

Mr. K. Ahmed: Is the Honourable the Finance Member aware that contagious disease is prevalent especially in this city of Delhi? I suppose plague and small-pox are contagious diseases?

Mr. President: The Honourable the Finance Member is not responsible for Public Health.

COST OF MILITARY SERVICES.

616. ***Sir Montagu de P. Webb:** Will Government be pleased to say what percentage the cost of "Military Services" in India in (1) 1913-14, and (2) 1921-22, bears:

- (a) to the total expenditure of the Central and Provincial Governments combined; and
- (b) to the total cost, excluding Commercial services of administering India of the combined Central and Provincial Governments?

The Honourable Sir Basil Blackett: The percentages required are:

	1913-14	1921-22.
(a)	19.5	23.8
(b)	32	38.3

I may add that the corresponding figures for 1923-24 are approximately (a) 21.6 and (b) 35.2.

Dr. H. S. Gour: Is this percentage arrived at after taking into calculation military expenditure distributed over the heads of civil expenditure, as, for instance, 50 lakhs of rupees under the civil works in Waziristan, the Frontier Military Police and the like?

The Honourable Sir Basil Blackett: I did not work out the figures myself, so I cannot answer finally such detailed questions, but certainly we have not included political expenditure as part of military.

UNSTARRED QUESTIONS AND ANSWERS.

FOOD SOLD BY LICENSED STATION VENDORS.

247. **Bai T. P. Mukherjee Bahadur:** (a) Is the Government aware that the licensed station vendors generally supply inferior food and sell all food and articles at an exorbitant high rate and dupe the passengers?

(b) Is there any officer to supervise the work of station vendors just to see whether they are supplying inferior things or selling things at a higher rate to the passengers than the bazar rate?

(c) Does the Government intend to take steps to protect the poor passengers against extortion by station vendors?

Mr. C. D. M. Hindley: (a) Government are not aware that such is the case. Vendors are bound by their contracts to supply good and wholesome articles at current rates.

(b) The reply is in the affirmative.

(c) The Honourable Member is referred to replies to (a) and (b) of his question.

CHANGES IN LAW AFFECTING THE HINDU SOCIETY.

248. **Babu Braja Sundar Das:** (a) Will the Government be pleased to state if they consult the opinion of any body of Pandits connected with a religious institution regarding changes in law which affect the Hindu Society?

(b) Has the Muktimandap of Puri been ever consulted with regard to changes in social laws of the Hindus?

The Honourable Sir Malcolm Halley: (a) and (b). No. Public opinion is elicited by publication; if the opinion of particular bodies or individuals is sought, the selection is made by Local Governments.

RAJKUMAR COLLEGES FOR ARISTOCRATS.

249. **Babu Braja Sundar Das:** (a) Will the Government be pleased to state how many Rajkumar Colleges for aristocrats are there in India?

(b) Were they started at the initiative of the Government of India or the Provincial Governments?

(c) Is it a fact that minor sons of Landholders and Zamindars are sometimes forced to go there even against the protest of their natural guardians?

(d) What is the standard up to which education is imparted in each Rajkumar College?

(e) Is any method of administration imparted to the students of those colleges, bureaucratic or democratic?

Mr. Denys Bray: (a) There are five Chiefs' Colleges in India.

(b) They were started at the initiative of the local authorities.

(c) Not so far as the Government of India are aware.

(d) There is a Diploma Examination at all the Colleges which is accepted by Universities as equivalent to the Matriculation examination, and there is a Post-Diploma Class at the Mayo College, Ajmer.

(e) This question is not fully understood. The subjects connected with administration, in which instruction is given, are "Law" and "Land Revenue and Surveying".

REDUCTIONS IN THE STAFF OF B.-N. RAILWAY.

250. **Babu Braja Sundar Das:** (a) Is it a fact that great reductions in the staff have taken place in the Bengal-Nagpur Railway owing to retrenchment?

(b) If the reply to (a) be in the affirmative, will the Government be pleased to state the number of hands that have been discharged classifying them under heads, (i) Europeans, (ii) Anglo-Indians, (iii) Indians?

Mr. C. D. M. Hindley: I would refer the Honourable Member to the second part of my answer to Mr. Agnihotri's question put on the 12th March, which deals with the matter. Government do not propose to enquire into the number of hands discharged or the classes to which they belong.

FEMALE WAITING ROOMS AT SAMTHAL HATIM SERAI RAILWAY STATION ON THE O. AND R. RAILWAY.

251. **Mr. Syed Nabi Hadi:** Is Government aware that there is no female waiting room at Samthal Hatim Serai Railway station on Oudh and Rohilkhand Railway and the Indian women feel much inconvenience there?

Mr. C. D. M. Hindley: Government have no information. Railways provide separate waiting accommodation for female passengers where necessary.

IMPERIAL WIRELESS.

Sir Jamsetjee Jejeebhoy: With your permission, Sir, I should like to ask a question about which I have given notice to the Honourable Member in charge. Will Government be pleased to inform the House how the case stands regarding Imperial Wireless?

Colonel Sir Sydney Crockshank: Sir, before replying to that question in so many words, perhaps I may be permitted to take up a few minutes of the time of the House briefly to explain how the position stands, as it may enable Honourable Members better to judge and form their opinions. I would at the outset ask Honourable Members to frame a mental picture of the geographical position of India in relation to Africa, Europe and Asia. From this they will see in their mind's eye that India stands in the centre of a circle comprising South Africa, East and West Africa, the United Kingdom, Egypt, Europe generally, the Near East, the Far East, Singapore, Hongkong, Australia and New Zealand within its perimeter. Honourable Members will thus realise that India's position in the wireless field is one of very great importance indeed, both strategically and commercially. I will not go into the past history of the development of wireless, but, beginning at the year 1920, it will interest the House to know that an Imperial Wireless Telegraph Committee, ordinarily known as the Norman Committee, sat in London to investigate the Imperial Wireless position at large. The conclusions they arrived at were that the programme to be followed should be to develop on steps averaging about 2,000 miles a piece, that is to say, England to Egypt, Egypt to India, India to Singapore,

[Colonel Sir Sydney Crookshank.]

and on to Port Darwin, or Perth and Brisbane. This proposal, which was based on Government management throughout, did not, however, receive any favour either from the Government of India or from the Commonwealth, Dominion and Union Governments. The reason why we in India had no particular use for this arrangement was that for strategical purposes direct communication between England and India was of the highest importance and for commercial purposes to work on these short stages would be unpractical and unprofitable. These views were communicated to the Home Government and the next stage in the development of Imperial Wireless was that in 1922 an Imperial Wireless Co-ordinating Committee sat and recommended that the Indian station should be an Imperial station and more or less left it open to the Union, Dominion and Commonwealth Governments, who, I may remark, had already taken the matter into their own hands by entering into negotiations with branches of the main Marconi Company for the erection and working of their own stations. The Indian Government being reluctant to embark on the programme of expenditure involved the Home Government then offered to provide the money for the construction of this station on the understanding that we worked it and gradually repaid the capital by means of amortization or sinking fund. They proposed, however, to instal a station which in our opinion was not sufficiently powerful to give us the commercial traffic which we considered would be thrown on this central station and would be required in order to make it pay its way. Our views were communicated to the Home Government and as a result the British Cabinet decided that no restrictions should be placed on the arrangements for establishing Imperial wireless long-range stations outside the United Kingdom but that in England itself Government would erect and work its own high-power station. This therefore left us in India with a free hand and the question was then one of the comparative merits of Government erection and control *versus* private enterprise. In the case of Government capital and working, according to the advice which we received from our experts in this direction, the cost of the station was estimated to amount to about £421,000 or say £500,000 to be on the safe side. The ordinary working expenses would be on an average £41,000 per annum—probably more making allowance for the interest and sinking fund charges. There were therefore great difficulties in the way of Government taking up the construction of the installation itself—not only on account of the large amount of capital involved but also because we had no experts of the specialized technical standard required to construct and operating the station. And, moreover, and this is a very important point, we had not the full rights to utilise the Marconi patents and get the advantage of the best apparatus and means of conducting the service. The advantages and disadvantages of private enterprise on the other hand will be fully realised in that Government would not be required to put down capital; possibly they could enter on a contract for majority shares in the same way as the Commonwealth Government did which took 500,001 shares out of a million pounds worth of capital; or they could do what was done by the Union Government—that is to say, give a ten-year contract with the option of taking over the whole concern at a valuation at short notice. A further advantage of private enterprise would be that by coming into a contract with a branch of the Marconi Company we should get the full use of those patents which would make all the difference to the success of the concern. Therefore the balance of considerations was on the side of private enterprise and it remains so

still. What form private enterprise should take has not been fully gone into by this Government. We have had offers from two Indian firms, and also from a branch of the Marconi Company, but our arrangements would naturally be that we would give preference, if we had eventually to decide on going in for a contract, to a Company which was an Indian Company with a large proportion of Indian Directors and floated with Indian rupee capital.

That is the position at present and Government is now investigating further in that direction. That does not necessarily mean that wireless telegraphy throughout India and abroad will revert to contract working. It really means that there will be a blend of State and Company management which I think offers the best solution of this problem. That is to say, the Government would retain in their hands the working of the inland and coastal stations which we now have in India and in Burma and along the coast, and would also encourage the opening of feeder stations within the limits of these inland stations by Local Governments, by commercial undertakings or other bodies such as groups of coal mines, tea gardens, oil fields, or other concerns having occasion to take advantage of having small wireless installations of their own. There would also be the smaller wireless installations which would be worked under licence by the Indian States for the advantage of the communications within those States. So that, as I explained before, Government would still retain in their hands the working of wireless throughout India and Burma and along the coast, and if the proposal to enter upon a contract for the opening of Imperial wireless is found suitable and satisfactory, that would be handed over to private enterprise. It is not possible to state exactly where this high-power station in India would be situated, but it would probably be in a group of stations at places like Agra, Tundla and Hathras, those being about the right distances apart for the grouping of this central high-power world station and having the advantage of close connection with the main telegraphic heart or centre of India at Agra. It will thus be seen that Government have this very important problem under consideration as a part-Government-part-private-enterprise scheme. The traffic which would be thrown on this long range station in order to be of value for commercial purposes, without which it would be insignificant, would be in the nature of 2 million words per annum out of probably a total of 12 million words which pass over the cables; and the rates, although nothing has been fixed or settled in that matter, would probably be about 75 per cent. of the cable rates—that is to say Re. 1 for wireless per word as against Rs. 1-4 for cable transmission. That is the position in which we now stand and we propose to investigate further this field of private enterprise in the shape of an Indian company with Indian capital.

Mr. N. M. Samarth: May I inquire, Sir, whether the Government of India obtained the opinion of the law officers of the Crown as to whether it is legally permissible to the Government of India to grant a licence to any one in regard to wireless telegraphy within British India?

Colonel Sir Sydney Crockshank: I am not quite sure whether I fully understand the Honourable Member's question, but there will be no objection to entering into a contract by the Indian Government in India, as the British Government have already decided that that may be left entirely in the hands of the Indian Government; but I think what the Honourable Member probably has at the back of his mind is the utilisation of the patent rights which are possessed by the Marconi Company. These the

[Colonel Sir Sydney Crookshank.]

Government of India will not use, except by arrangement and payment of royalty fees to the Marconi Company as the law authorities in England have stated that payments which were made by the General Post Office to the Marconi Company in connection with the utilisation of some of their patent rights before and during the war cannot be extended to apply to the utilisation of those patents in India.

Mr. N. M. Samarth: I am afraid I have not made myself quite clear. My point is specifically this. Under the Indian Telegraph Act as it stands at present, have they obtained the opinion of the law officers of the Crown as to whether it is legally permissible to the Government of India to grant a licence at all to anybody for wireless telegraphy within British India?

Colonel Sir Sydney Crookshank: So far as I know, it is.

Mr. N. M. Samarth: My question is, have the Government of India obtained the opinion of the law officers of the Crown on that point?

Colonel Sir Sydney Crookshank: I am not quite sure; I shall look up the case and I will inform the Honourable Member later as to the exact position.

Sir Jamsetjee Jejeebhoy: May I inquire, Sir, whether wireless telephony would come within the scope of the proposed company?

Mr. H. A. Sams: Wireless telephony would not, I think, come within the scope of the proposed company which would be simply like any other land line.

Sir Deva Prasad Sarvadhikary: Before entering into any contract would the Government exhaust its inquiries with regard to other methods of wireless under investigation in India and abroad?

Mr. H. A. Sams: What other methods has the Honourable Member in mind?

Sir Deva Prasad Sarvadhikary: For example, regarding those about which question were asked in this House some time ago; that was one class of wireless I had in mind.

Mr. K. Ahmed: As for instance, I handed over a pamphlet of Khan Bahadur Habibur Rahman Khan regarding his original research in wireless telephony and telegraphy, and the Honourable Sir Sydney Crookshank promised that he would read that pamphlet and see if there is any good in it.

Colonel Sir Sydney Crookshank: I can assure Honourable Members who have just spoken that Government would be very careful indeed to make inquiry into every possible method of wireless transmission, whether of the kind to which I gave an answer some days back, or otherwise.

Rao Bahadur T. Rangachariar: May I ask in what form the Government aid is going to be given to this enterprise, whether it is to be in the shape of guarantee or in the shape of shares in the capital? Have they decided?

Colonel Sir Sydney Crookshank: Sir, there are several alternatives in this particular direction; but we have not got as far as going into the details of the exact proposals of any agreement which may be made, but

we would naturally be very careful to see that the interests of the Government were properly safeguarded and also that in the case of emergency or war the Government would have the full use of the Imperial Wireless stations in India.

Rao Bahadur T. Rangachariar: Will the Government when they have made up their mind inform the public as to what aid the Government is going to give in this matter, because the public are not likely to form a company without knowing beforehand what the Government proposes to do?

Colonel Sir Sydney Crookshank: Every opportunity of consulting public opinion would be taken before any agreement was entered into in a case like this.

Rao Bahadur T. Rangachariar: My point is, before concluding any agreement with any private firm or other people, will the public have an opportunity to tender on the terms proposed by Government?

Colonel Sir Sydney Crookshank: The public will be given every opportunity of tendering. There will be no intention of restricting the form of tender or the extent of it.

Rao Bahadur T. Rangachariar: Have any Indians been hitherto trained in the Government Wireless Branch?

Colonel Sir Sydney Crookshank: A number of Indians have been trained at the Wireless School at Karachi. If my memory serves me right, I think 141 operators and wireless telegraphists have passed out quite recently.

Rao Bahadur T. Rangachariar: How many officers are there and how many of these are Indians?

Mr. President: I think if the Honourable Member wants details he had better put his questions down on the paper.

Dr. H. S. Gour: Will the Government be pleased to consult this House before entering into any final contract regarding wireless transmission?

Colonel Sir Sydney Crookshank: I will make a note of the Honourable Member's wish to do so, but I do not know that it is altogether possible to do so.

Sir Deva Prasad Sarvadhikary: Having regard to the recent lessons in connection with the State management of railways, does the Government consider that mixed enterprises of the kind to which the Honourable Member has just referred is likely to be acceptable?

Colonel Sir Sydney Crookshank: As far as I can see, every advantage lies in the combined arrangements which I have outlined because Government retains the working of wireless within the Indian Empire and there will be every advantage in using private enterprise for long distance wireless.

Mr. Jamnadas Dwarkadas: May I take it, Sir, that the object of Government in giving the Imperial Wireless to a private company is that they think commercially it may prove successful which in the case of State management, I am afraid, will not prove so? Is that the reason?

Colonel Sir Sydney Crookshank: I think I may say that it is very largely so.

Mr. N. M. Joshi: Is the Government aware that they managed the Post Office and that it has given a profit of Rs. 1½ crores this year?

Mr. President: I think Honourable Members might consider now any further questions more carefully and put them down on the paper.

OUTSTANDING RESOLUTIONS OF THE ASSEMBLY.

Dr. H. S. Gour: May I put one question to the Honourable the Home Member, Sir? There is a very wide-spread feeling in this House that a very large number of Resolutions which have been admitted by you, Sir, will have fallen into arrears for want of dates for non-official business; and will the Honourable the Home Member see that some dates are set apart for working off a few of these Resolutions? Some of them are very important and which Honourable Members are anxious should be moved during the next Simla session.

The Honourable Sir Malcolm Hailey: I can only make a note of that desire. I cannot of course undertake at present to say anything about the course of business during the Simla session. I would remark, however, that the House must not expect that we should during the Simla session be able to set apart enough days for private business to have any substantial effect on reducing the number of Resolutions outstanding. Those number, to the best of my recollection, something like 260.

INDIA'S CONTRIBUTIONS TO THE GREAT WAR.

Mr. E. Burdon: With your permission, Sir, I should like to inform the Honourable Members of the Assembly that the Government have now completed and published an account of India's contribution to the Great War. The production of this Book, it will be remembered, was undertaken by Government at the request expressed more than once by Members of the Legislature. Copies of the Book will be found in the Library of this House, and copies can also be obtained from the Superintendent, Government Printing, Calcutta.

INDIAN DELEGATION FROM KENYA TO LONDON CONFERENCE.

Sir Deva Prasad Sarvadhikary: I asked a question, Sir, of which the Honourable Mr. J. Hullah has private notice. It is as follows:

"Will the Government be pleased to say whether the Secretary of State for the Colonies has acceded to the request of Indians in Kenya that their representatives should be heard at the forthcoming conference in London regarding the affairs in that Colony?"

Mr. J. Hullah: Evidently the Secretary of State for the Colonies has acceded to that request, for we have just received a telegram from the Secretary of State for India as follows:—"I have ascertained that the Indian delegation from Kenya will be treated on the same footing as the European delegation. First class travelling allowance and subsistence allowance at the rate sanctioned for Europeans is being granted to the Indians up to the same number as the European delegation, that is 3 or 4 as the case may be, if the Indians wish to send more than 2 representatives.

Sir Deva Prasad Sarvadhikary: Would that apply to the deputation sent from India?

Mr. J. Hullah: The telegram refers only to the deputation of Indians from Kenya.

REPORT OF THE N.-W. FRONTIER COMMITTEE

Sir P. S. Sivaswamy Aiyer: May I ask the Foreign Secretary for information as to when the Report of the North-West Frontier Committee which was presided over by him will be published, and whether an opportunity will be given to the House to discuss the questions arising out of that Report?

Mr. Denys Bray: I am afraid I am not in a position to give a definite answer to this question. The Report, as the Honourable Member is aware, is still under the consideration of the Government. The Honourable Member is aware, but possibly other Members are not aware, that the Report is exceedingly voluminous and the questions it raises are very complex, and it will necessarily take some little time for Government to conclude their consideration.

Mr. W. M. Hussanally: May I know, Sir, if the Report is confidential?

Mr. Denys Bray: I may add this also that the Report in its present form is confidential, as reference has been made in parts of it to very confidential matter. Before it would be fit for general publication, that matter would have to be expunged.

Mr. Jamnadas Dwarkadas: Am I not correct in saying that the practice after the Reform Scheme came into existence has been to publish the Reports without Government first considering them. All the other Reports, for instance the Fiscal Commission Report and other reports, have been published without Government giving their consideration to them in the first instance.

The Honourable Sir Malcolm Hailey: That is not the general practice. The House will remember that we did not publish the Racial Distinctions Report until we fully considered it and indeed until we were prepared to put forward a Bill on it.

With regard to the Frontier Committee's Report, that general consideration does not arise. Mr. Bray has already explained the reason why it is not at present possible to publish that Report, namely, it contains confidential matter which must be expunged.

Mr. W. M. Hussanally: May I enquire whether this expunging will take place with or without the consent of the Members?

Rao Bahadur T. Rangachariar: I may mention that my minute on the Racial Distinctions Committee was not published in full with my consent.

Mr. President: These are not matters, strictly speaking, within the cognizance of the Assembly. Where the Assembly appoints a Committee, it has complete control over the publication of the Report. But if Government chooses to take the advice of Members of this Assembly or of other Members outside, the publication or non-publication of the Report is a matter entirely within the discretion of the Government.

NORTH BENGAL FLOOD.

Mr. K. Ahmed: With regard to the North Bengal flood, the Honourable Mr. Hindley,—I think in February last,—when I put a starred question, gave an undertaking in this Assembly and promised to lay on the table a statement.

Mr. President: Will the Honourable Member say if he is asking a question of which he has given notice?

Mr. K. Ahmed: No, Sir, I am not asking a question, but in regard to . . .

Mr. President: The Honourable Member is out of order. He has given no notice of the question, and it cannot be answered.

Mr. K. Ahmed: Sir, I am simply inquiring

Mr. President: The Honourable Member is not entitled to make even a simple inquiry without notice.

REDUCTION UNDER HEAD " OPIUM."

Babu Braja Sundar Das: Sir, I beg to ask a question of which I gave private notice. It reads as follows:

"1. (a) Will the Government be pleased to state the authority responsible for giving the understanding to the Indian Retrenchment Committee that a reduction of Rs. 19,80,000 on the estimate for 1922-23 will be made under the opium head in 1923-24?

(b) Is it a fact that owing to this given understanding the Committee make no recommendation for any reduction under the head 'Opium'?

(c) The Inchcape Committee state that 'there will be thus a saving of approximately Rs. 20 lakhs in 1923-24'. Where is the saving in the present Budget?"

The Honourable Sir Basil Blackett: Sir, the Retrenchment Committee requested the Finance Department to supply them with advance proofs of the Demands for Grants as soon as these were ready. Copies of rough proofs were accordingly furnished and these included a rough proof of the opium demand which the Committee assumed to be final. The demand for the purchase of opium at this stage was shown as Rs. 147 lakhs and included no provision for Malwa opium. Subsequently the demand was revised and the provision increased to the present figure of Rs. 169 lakhs which includes provision for necessary payment for special cultivation in Malwa. This change was, I understand, communicated to the Committee too late to allow of alterations being carried out in their Report.

As regards the rest of the question, I think it is clear from the recommendation of the Committee that they merely assumed an automatic reduction of 20 lakhs in expenditure on the purchase of opium, which assumption, as I have already stated, was based upon incorrect data. Apart from this, they say: "In view of the importance of safeguarding this important source of revenue we recommend no further reduction". It does not appear to have been the intention of the Committee to effect any reduction in the amount which the administrative authorities considered necessary to enable them to finance their opium operation. The greater part of this opium is required for sale to foreign Governments under contract. Any reduction of the provision in the budget would, it is estimated, result in a loss of about four times that amount of revenue as there is only a very limited reserve.

PUBLIC ACCOUNTS COMMITTEE.

Mr. President: I have to acquaint the Assembly that the following Members have been elected to serve on the Public Accounts Committee:

Mr. K. C. Neogy,
Mr. K. Ahmed,
Mr. N. M. Joshi,
Mr. Ambica Prasad Sinha,
Mr. K. G. Bagde,
Mr. Syed Nabi Hadi,
Rao Bahadur P. V. Srinivasa Rao, and
Mr. Braja Sundar Das.

AMENDMENT OF STANDING ORDERS.

The Honourable Sir Malcolm Hailey (Home Member): Sir, I made a motion yesterday, which was accepted by the House, in regard to the appointment of a Committee to consider an amendment of the Standing Orders, the particular Standing Order being that relating to Petitions. The rules provide that the Committee shall be elected by the transferable vote. As the time is somewhat short, I have suggested to some of my friends opposite that we might together put up a combined list which, if it were accepted by the House, would avoid the necessity of electing the Committee. If I have your permission, Sir, I will read out the names to the House, and if no further names are forthcoming, no ballot will be required.

The names are:

Rao Bahadur T. Rangachariar,
Mr. N. M. Samarth,
Mr. J. P. Cotelingam,
Mr. K. G. Bagde,
Mr. Ahmed Baksh,
Colonel Nawab Muhammad Ibrahim Ali Khan, and
Sir Henry Moncrieff Smith.

Mr. President: The question is that:

“Rao Bahadur T. Rangachariar, Sir Henry Moncrieff Smith, Mr. N. M. Samarth, Mr. J. P. Cotelingam, Mr. K. G. Bagde, Mr. Ahmed Baksh, and Colonel Nawab Muhammad Ibrahim Ali Khan be elected to serve on the Select Committee on the Standing Order on Petitions.”

The motion was adopted.

THE MUSSALMAN WAKF REGISTRATION BILL.

Maulvi Abul Kasem (Dacca Division: Muhammadan Rural): Sir, I beg to move:

“That the Report of the Select Committee on the Bill to provide for the registration of wakf estates and the proper rendering of accounts by the mutwallis of such estates in British India be taken into consideration.”

[Maq̄lvi Abul-Kasem.]

Sir, in doing so, I have to offer a few words of explanation to the House. The Bill which was introduced in this House and which was referred to the Select Committee had elaborate provisions for the control and management of these waqf estates. From the opinions that we received from the Local Governments, Government officials and public bodies, it appears that there was a great difference of opinion as regards the manner and method and the constitution of these controlling authorities and some objection was taken too about the details. Therefore, Sir, the Select Committee has decided to avoid not only the details about the constitution of controlling bodies but has left control out of the Bill itself. We have in this Bill, as it is now before the House, only confined ourselves to the registration of waqf properties and to the rendering of accounts by mutwallis. As unfortunately, human memory is very short, I have to repeat what I said on a previous occasion that this registration of waqf estates was absolutely necessary in the interests of these waqf properties because it has been found, and it is admitted also, that a large number of these waqf estates has passed out of the hands of the Muhammadans, and the purchasers of these estates who have in the majority of cases bought them for good money, when they are asked to return the same, raise the plea—and it is a justifiable and reasonable plea no doubt—that they have had them for good value and without notice. So now, what is proposed is that every mutwalli will now be compelled to register in a public office the full details of the waqf property. So that, if anybody in future advances any money on the mortgage of this property, or purchases any part of that property, he will do it with his eyes open and the Muhammadan community will have every right and chance to take it away from him whenever they want to. The second matter which is dealt with in this Bill, as it now stands, is that each mutwalli has to register the waqfnamah which lays down the conditions of the waqf and will have to submit an audited account annually before any public office for the inspection of any Muhammadans interested in the waqf estate. And these are the two simple provisions about which I think I will not be far wrong when I say there is almost unanimity of opinion from our sections. Whatever objections may have been raised to the method of control were in regard to investing some Government officials with executive powers and similar measures. But these have been done away with now. The only thing is that I and the Bill want that waqf properties shall be duly registered and we may have an opportunity of knowing what is a waqf property and what is not. And secondly, that the mutwalli, who is a trustee and only a trustee, and nothing more, may be made to submit an account of his income and his expenditure, so that the Mussulman public, which is at the present moment under the Statute law entitled to sue a mutwalli if he is guilty of misappropriation, may have the necessary information and facts before him before he proceeds to take action against the mutwalli. These are the only two provisions that now remain of the old Bill, and I think the House will have no objection to consider the proposals favourably. Before I take my seat, Sir, I might inform the House that the Select Committee had the advantage, in its deliberations when it considered the provisions of the Bill, of the experience and advice of the Honourable the Law Member of the Government of India. I mention this because he is not only the Law Member of Government and the Law Adviser of Government, if I may say so, but he is a distinguished Muhammadan lawyer and he has considered the Bill very carefully and we came to a

settlement that these are the only two important clauses that ought to be retained and the rest could be dropped out; that we ought to see how the Bill works and then we might take further steps, if necessary, on a future occasion. I think, Sir, I will be lacking in my duty, if at the same time I did not acknowledge my gratitude and my thanks to Mr. Wright, Secretary in the Legislative Department, for the trouble he has taken in redrafting this Bill. The Legislative Department has very hard work to do, what with Government Bills and with having to revise and redraft the amateur efforts of legislators like myself, they have had hard work to do in connection with my Bill. I have also to acknowledge my thanks to my Honourable friend Mr. Percival for the great trouble he has taken in considering the clauses of the Bill and drafting the same, and I hope that this House will receive this motion favourably.

Mr. Mahmood Schamnad Sahib Bahadur (West Coast and Nilgiris: Muhamadan): Sir, I may be permitted to say a few words about this Bill. Sir, this is a very useful piece of legislation, because all over India there are several religious and charitable endowments created by Muhammadans, the income of some of which is very large but of most very small. Still most of them are not properly managed by the mutwallis. The income is not devoted to the objects for which the endowments are created. And, if this Bill is passed, the Muhammadan public will be under a great debt of gratitude to those who have helped to pass it. And, of course, as was said by the last speaker, the Bill as it was introduced had many objectionable features; but now as it comes out of the Select Committee, it is shorn of most of these objectionable features, although there are some impracticable provisions which I hope, if some of the amendments are carried, will be removed. For instance, as I said, many of the waqf estates are very small. Even poor Muhammadans are anxious to secure salvation for their souls by dedicating their small holdings, and the income of such dedications is necessarily small. Sometimes it will be only Rs. 15 or Rs. 10 and if the accounts of these also are to be audited and auditor's fees are to be paid, from the income of such wakfs it will be very hard and the remainder left for the expenses of the object will be very little. Clause 3 provides that every statement of account shall, before it is submitted to the Court, be audited:

“(a) in the case of a waqf the gross income of which during the year in question, after deduction of the land revenue and cesses, if any, payable to the Government, exceeds two thousands rupees, by a person who is the holder of a certificate granted by the Local Government under section 144 of the Indian Companies Act, 1913, or is a member of any institution or association the members of which have been declared under that section to be entitled to act as auditors of companies throughout British India; or

“(b) in the case of any other waqf (i.e., whose income is less than Rs. 2,000), by any person authorised in this behalf by general or special order of the said Court.”

The Bill provides later on that for such auditing of accounts of income of small estates also fees has to be paid; if fees has to be paid for such auditing, then of course the income left will be very small. Besides that, there is a penalty clause also for not getting the accounts audited. I think there is an amendment in regard to that.

Mr. President: Order, order. I must ask the Honourable gentleman to reserve his remarks on these subjects till we come to the particular clauses on which they arise.

Mr. Mahmood Schamnad Sahib Bahadur: I hope that the House will pass the necessary amendments.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, I am entirely in the hands of this Assembly in moving my motion that the Bill be re-circulated for the purpose of obtaining further opinion thereon. After I gave notice of this amendment Sir, I have been approached by many Members of this Assembly, including the mover of the Bill, and I am exactly in the position which I have stated. I find, Sir, there are good points in support of it, because it is better that the consensus of opinion from the Provinces should be invited further on the Bill. As I have said, I do not like to oppose the Bill in any way. Patience is a great virtue. But if the requirement of this Bill is so urgently welcome—my friend might say “the sooner the better; make hay when the Sun shines; a bird in the hand is worth two in the bush.” Again my friend may not be returned by his constituency to this Assembly again, because there will be a lot of difficulties and obstruction put up in the way of the Bill by inviting opinion from the Provinces, and as you know, Sir, to borrow from my Honourable friend Dr. Gour, the *ipsissima verba* of the speech that he had made this morning

Mr. W. M. Hussanally (Sind: Muhammadan Rural): May I rise to a point of order, Sir? I am afraid the Honourable gentleman is blowing hot and cold at the same time. I am not aware whether he is speaking in favour of the Bill or whether he is going to speak in favour of the amendment which he has put down on the paper. I think he ought to make up his mind whether to move the motion or not.

Mr. President: I was just going to insist on it by asking him myself. Does the Honourable Member move the motion for re-circulation or not?

Mr. K. Ahmed: The result will come out, Sir. If it is the opinion of the Honourable Members of this House

Mr. President: The Honourable Member must give me a direct answer. We have got a long programme for legislation before us to-day and I want to know whether he wishes the Bill to be re-circulated. If he does, he had better move the motion.

Mr. K. Ahmed: If the Government has no objection that the Bill should be re-circulated and further opinion invited. On that point, as I have said, patience is a great virtue. The Government of India tries its utmost to give the best consideration in all matters no doubt. I was also one of the Members in the Select Committee on this Bill and also was engaged for a couple of days in giving my best consideration to it. There is a minute of dissent by my Honourable friend Khan Sahib Abdul Quadir. There are a number of amendments on the agenda. There are 10 amendments on the paper. From the gist of these amendments it appears that it is not probably advisable to go on with the Bill at present, and I, Sir, should certainly think that it is advisable in the circumstances

Mr. President: I understand the Honourable Member is advancing arguments in favour of re-circulation. I ask him now to move the motion.

Mr. K. Ahmed: I am in the hands of the Government. I am in favour of circulation if they accept it; if they do not, then I withdraw it.

Mr. President: It is not for the Government to accept or to refuse. The opinion of the Government may assist the Honourable Member, but the decision rests with the House.

The Honourable Sir Malcolm Hailey (Home Member): Sir, I have been asked for the opinion of Government on this question and I am quite prepared to give it. It will be remembered that when the Bill originally came before us, it involved the organisation of managing committees by Government and a very considerable amount of control to be directed by Government, and I may say at once that Government was opposed to any such proposal. That feature of the Bill has however now been excluded. The only new burden which the Bill now places upon Government is the receipt of accounts. For the rest, it will merely be for the Civil Court to take action on the lines of the Act of 1920 on the motion of persons interested in these wakfs. Therefore, from the point of view of Government, the Bill remains one entirely for the community. If they desire to see this system of registration applied to their accounts and are willing that these religious institutions should be compelled to submit those accounts to audit, we on our part are willing to stand aside and allow them to get their case through the Assembly without interference on our part. At the same time, I do not think, Sir, I should be doing my duty to the House if I do not state to it a certain fact which has just come to my knowledge. The representatives of one particular community in Bombay approached me as late as a few days ago with the complaint that the circumstances relating to the religious endowments in that community would not permit of the application of the Bill to them. I had to express regret that we had no previous notice of any such objection nor had it come before the Select Committee. But I wired that day to the Bombay Government asking them to give us its advice as to the attitude we should take on this particular subject as arising from the objections—if they were real objections—of that community. I have just received a wire in which the Local Government says: "This Government is informed that Muhammadan opinion generally is adverse to the whole Bill" and suggests the publication of the Select Committee's report before proceeding further and have promised us a fuller report on the subject. I could not, consistent with my duties to my fellow-Members on the Select Committee and to the Bombay Government have refrained from laying this fact before the House. It is possible that the Bombay Government, in wiring to us, had in view only the original Bill and not the Bill with the very much restricted scope which is now before the Assembly. But if you will permit me, though perhaps it may not be strictly cognate to this point, I would go one step further. My remarks grow out of the fact which I have just mentioned that we have had placed before us very strong objections from one section of the community. It is our intention subsequently to propose an amending clause whereby Local Governments will be able to exclude religious endowments of any one section of the Muhammadan community. I state that fact now because it might clear discussion subsequently. I feel myself strongly that it is a wise precaution, for cases might arise which are not now before us and which have not been represented to us. We might be at considerable inconvenience if we were obliged at the request of Local Government to put forward an amending Bill.

Mr. K. Ahmed: As I say

Mr. President: I cannot allow the Honourable Member to make a second speech. Is the Honourable Member going to move his motion?

Mr. K. Ahmed: I have not finished my speech

Mr. President: If the Honourable Member is going to move his motion he can move it. I am not going to allow him to make a second speech.

Mr. K. Ahmed: I have been supported by the telegram sent by the Government of Bombay to the Honourable the Home Member. That is in my favour that the Bill should be re-circulated. Furthermore, there is one difficulty that arises as will appear from the preamble of the Bill, that is, that the mutwallis should render an account. To render an account means preparing it and preparing it means some money is necessary, and I may tell you, Sir, that the majority of the Muhammadan Members who are here to-day—I have been told directly by some of them—think that to spend the money that will be required to prepare an account is certainly against the wishes of the donor, but I am ashamed myself because I was convinced by the Honourable the Home Member when we were sitting in the Committee room No. A a few days ago that this was a necessary cost,—I did agree with my Honourable friend that this was a necessary cost just to keep an account, to buy paper and stationery

Mr. President: The Honourable Member cannot go into the merits of the question just now. He must move the motion for re-circulation.

Mr. K. Ahmed: Sir,

Mr. President: Order, order. The Honourable Member, if he is moving his motion, must address his argument to prove that there has not been sufficient consideration of the measure and that therefore it is desirable to elicit further opinion thereon. I hope he will confine his remarks to that point but I am prepared to stretch the point in his favour and to regard the Honourable the Home Member's speech merely as an interruption.

Mr. K. Ahmed: I move my amendment, Sir:

"That the Bill be re-circulated for the purpose of obtaining further opinion thereon."

Mr. President: The original question was:

"That the Report of the Select Committee on the Bill to provide for the registration of waqf estates and the proper rendering of accounts by the mutwallis of such estates in British India be taken into consideration."

Since which an amendment has been moved:

"That the Bill be re-circulated for the purpose of obtaining further opinion thereon."

Khan Bahadur Maulvi Amjad Ali (Assam: Muhammadan): Sir, I never dreamt that my friend Mr. Kabeeruddin Ahmed would ever move his amendment. He knows full well that it is a notorious fact that all mutwallis have been dealing with the wakf estates with an amount of dishonesty which up till now has not been detected by any Court of justice.

Mr. President: Order, order. Is the Honourable Member addressing himself to the motion for re-circulation? He has just referred to facts which he calls notorious. If they were notorious it is obvious that they do not need to be elicited by re-circulation.

Khan Bahadur Maulvi Amjad Ali: I am addressing my speech so far as to oppose the amendment of my Honourable friend. This Bill as originally drafted was not acceptable to the country because it was a hard measure as put by my Honourable friend Maulvi Abul Kasem, but after the opinions of the Local Governments were received and a Select Committee was constituted, the Select Committee, thanks to them, have made the Bill acceptable to the country by removing all objectionable clauses. Sir, there is nothing in the opinion of the Select Committee so far as this Bill is concerned, which is objectionable, and accordingly the Select Committee has recommended the passage of the Bill. Now, if this Bill goes again to the country for further opinion, the result will be that the Honourable Member who has moved this Bill may not be here any more and perhaps this Bill may not come before the House in the next Simla session, so that the whole object is going to be frustrated by this amendment which will do no good to the community, rather it will do immense harm to the Muhammadan community. Therefore I oppose this amendment.

Mr. W. M. Hussanally: I rise also to oppose the amendment that has just been proposed by my Honourable friend Mr. Kabiruddin Ahmed. The Bill as it has emerged from the Select Committee is a perfectly harmless measure so far as the mutwallis and wakfs are concerned. There can be absolutely no objection to the mutwalli being called upon to register his wakfnamah and file his accounts of income and expenditure from time to time. So far as those two points are concerned, there is an absolute certainty that the Local Governments and the public could have no objection, and my Honourable friend Mr. Kabiruddin Ahmed has advanced no reasons whatever in support of the amendment he has proposed. The measure that is now before us is of a very urgent character from the fact that several large wakfs have been misappropriated and the matter requires speedy remedy. If the Bill is re-circulated, it will take time and the very object that we have in view will be frustrated. My Honourable friend Maulvi Abul Kasem said that the Bill as it is now presented to the House has received the full support of the Honourable the Law Member. That being the case, I think there is absolutely no reason for re-circulating the Bill for further opinion. In regard to the opinion of the Government of Bombay which has been put before us by the Honourable the Home Member, so far as we are concerned I think there will be no objection on our part to give power to the Local Governments to exclude any particular sect of the community or any particular limits within their territory, and so far as we are concerned we can leave that matter safely in the hands of Local Governments. If any particular sect of the community do not wish that this Act should apply to them, it will be open to them to approach the Local Government concerned which for good reasons may exclude them from the operation of the Bill. To that I will have no objection, but I certainly have a very strong objection to the Bill being re-circulated on the grounds that I have just mentioned. I therefore strongly oppose it.

Maulvi Abul Kasem: Before the House comes to a decision on the amendment of my Honourable friend I beg to inform the House that the original Bill contained amongst others these two conditions about registration and the rendering of accounts. They were circulated and it took just two years for the Government to ascertain opinion and in this volume of papers that have been supplied to Honourable Members they will find an expression of opinion on these two provisions as well as on others. But

[Maulvi Abul Kasem.]

before I sit down I would remind my redoubtable friend Mr. Kabir-ud-Din Ahmed of the condition of the mosque in Maldah which has gone into waste and for which Lord Curzon and the Government of India offered Rs. 50,000 for repair but the mutwalli was not prepared to add Rs. 5,000 to it. (A Voice: "Rs. 60,000.") Government was prepared to pay Rs. 60,000. In this House questions are put about the ruin of mosques, their repairs and the use of the compound of mosque buildings by Government or by non-Mussalmans. There is a real grievance about this but I must say that if the Mussalmans want the Government to protect their religious institutions and their mosques, they ought to do everything that lies in their power to protect them from misappropriation and misuse by the so-called trustees. It has been said that there will be expense which the wakf donor never contemplated. I ask, did the donor ever contemplate that these trust properties or their income should be misappropriated by the mutwallis for their own use, for their own pleasures and for their own mischief. I would remind my friend Mr. Kabeer-ud-Din Ahmed of another mosque which lies near his door between the Malda Railway station and the English bazaar, a few yards from that station where the passengers are eaten up by tigers.

Mr. K. Ahmed: If I understand the Honourable Member

Mr. President: I allowed the Honourable Member to make a speech and a half but I will not allow him to make a second speech.

Mr. K. Ahmed: I was going to say, Sir

Mr. President: Is the Honourable Member going to withdraw his amendment or not?

Mr. K. Ahmed: Otherwise there was no necessity for my standing.

Mr. President: The Honourable Member can withdraw but cannot make a speech in doing so.

Mr. K. Ahmed: Since reference has been made and

Mr. President: The question is that the Bill be circulated for obtaining further opinion thereon.

The motion was negatived.

Mr. President: The question is:

"That the Report of the Select Committee on the Bill to provide for the registration of waqf estates and the proper rendering of accounts by the mutwallis of such estates in British India be taken into consideration."

The motion was adopted.

Mr. President: We will postpone the first clause (Short title, extent and commencement) till the end.

Khan Bahadur Maulvi Amjad Ali (Assam: Muhammadan): Before I move my amendment I would invite my Honourable friends of this House to very kindly listen to my submissions. With regard to the merits of the amendments I shall move one after another in due course. The amendment that stands in my name runs as follows:

"In clause 2(c) after the words 'appointed by a Mutwalli' the words 'or by the Court' be inserted."

I shall be very brief in making my submission. The word 'mutwalli' has been defined as follows:

"Any person appointed either verbally or under any deed or instrument by which a waqf has been created, to be the mutwalli of a waqf and includes a naib mutwalli or other person appointed by a mutwalli to perform the duties of a mutwalli and, save as otherwise provided in this Act, any person who is for the time being administering any waqf property."

Now, my submission is that in line 6 after the words 'appointed by a mutwalli' the words 'or by the Court' shall be inserted. Disputes like this, namely, that if the donor makes no provision in the deed as to who will be mutwalli after the death of the existing mutwalli, may arise among the beneficiaries. For instance, I am a donor, and also a mutwalli. Under Muhammadan law, I fail to nominate my successor at my death bed, because suddenly I become unconscious and die. There is also no provision in the deed itself as to how this vacancy is to be filled up. Is that vacancy to remain vacant or to be filled up? Who is to fill it up? There is no provision in the deed itself. Secondly, you fail to nominate your successor. At this juncture the only remedy is to approach the Kazi. That is the Muhammadan law. It may be asked now, who is the Kazi? The District Judge has been held by the Honourable High Court of Calcutta to be the Kazi. I am myself a mutwalli of a certain wakf property and I had to approach the District Judge to appoint me a mutwalli because the last mutwalli could not nominate his successor. Nor was there any provision as to who would succeed. The difficulty arose and I had to approach the District Judge with a petition and I was appointed by him. In order to cover those cases this amendment is necessary. Now, Sir, it may be contended at least by one Member of this House that this argument may be met by the last sentence "any person who is for the time being administering any wakf property." I do not think this portion will meet my argument. Any person administering a property means any person who is already a mutwalli and administering. It is a present progressive tense. For instance, if the post of mutwalli falls vacant and there is no occupant of that post, then who is administering? There is nobody administering. So, I submit to this Honourable House that my amendment may be accepted as it is an innocent one and will at the same time prevent certain disputes to which reference has already been made by me. I think that my amendment will commend itself to the House. With these words I move my amendment.

Maulvi Abul Kasem: Sir, to save the time of the House I rise to say that I have no objection to accepting this amendment if there is no technical difficulty of a drafting nature, because I admit that a mutwalli may include a person appointed by a Court as mutwalli. Of course, not being a lawyer I cannot go into the details, but I am quite prepared to accept the amendment.

The Honourable Sir Malcolm Halley (Home Member): Sir, we have considered this point on the drafting side and find the amendment not very appropriate as it stands. It would assume that a person was appointed by the court to perform the duties of mutwalli. Now, Sir, if I am correct the case which would arise is that under section 92 of the Civil Procedure Code the Court may have appointed a trustee. It is as such trustee that he would be performing the duties of mutwalli; and on the whole we think that the purpose of the Honourable Member would be best attained

[Sir Malcolm Hailey.]

by inserting the words a little further up in the sub-clause which would then run:

“ ‘Mutwalli’ means any person appointed either verbally or under any deed or instrument by which a waqf has been created, or by a court,”

The reason for using that particular form of words (a Court instead of the Court) is that, under section 92 of the Civil Procedure Code it would not necessarily be the District Court which had appointed a trustee. If therefore the Honourable Member still feeling that the existing concluding words of the sub-clause are not a sufficient safeguard for him, I would suggest that after the word “ created ” be inserted the words “ or by a court.”

Khan Bahadur Maulvi Amjad Ali: I have no objection, Sir.

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

Mr. President: Further amendment moved:

“ That in sub-clause (c) of clause 2, line 4, after the word ‘ created ’ the words ‘ or by a court ’ be inserted.”

The motion was adopted.

Mr. Mahmood Schamnad Sahib Bahadur: Sir, I move:

“ That to clause 2(e) the following be added:

“ and includes the mosques and the other Moslem institutions referred to in section 4 of the Religious Endowments Act, 1863, as not falling within the control of the committee appointed under the provisions of the-Act ’.”

Sir, before 1863 all charitable and religious institutions were managed and supervised by Government through mutwallis. After that year the Government divested itself of the burden and under the Religious Endowments Act the institutions were divided into two classes, one falling under section 3, another falling under section 4. The institutions whose mutwallis were appointed by or whose appointment were subject to the control of the Government were those falling under section 3; and all the institutions whose mutwallis were only under the supervision of Government fall under section 4. Now, only the institutions falling under section 3 were placed under the control of the committee appointed under the Act; and the latter kind of institutions, that is, those under section 4, are not under the control of any committee or any other authority; they are not liable to render any account to anybody, and so large properties belonging to such mosques are misappropriated and the incomes are not properly applied to the objects for which they were intended. I therefore want that those institutions which fall under section 4 of the Act may also be included in this Bill, that is to say, section 2, sub-section (e) may be read with the addition which I have proposed. If that is done there will be no objection; it will do a lot of good in the management of such institutions and help the cause of charitable foundations which otherwise fall into disuse. Many such institutions in my own district have been ruined; the properties have been misappropriated and sometimes alienated while the buildings are crumbling to ruin. So I hope my amendment will be accepted.

The Honourable Dr. Mian Sir Muhammad Shaif (Law Member): Sir, I venture to submit to the House that the amendment moved by my Honourable friend is entirely unnecessary. From the definition of

“ wakf ” as embodied in this particular sub-clause it will be clear to Honourable Members that wakf means the permanent dedication by a person professing the Mussulman faith of any property for any purpose recognized by the Mussulman law as religious, pious or charitable, but does not include a certain kind of wakf mentioned in the concluding words of the sub-clause ordinarily known as “ wakf-alal-aulad ” or family endowment. It will thus be clear that every kind of wakf recognized by Muhammadan law, whether of a religious or charitable or any other character, falls within the purview of this Act in so far as registration and rendering of accounts is concerned. It follows therefore that wakfs which are outside the particular section of the Act of 1863, to which my Honourable friend has referred, do fall, by reason of this definition, within the purview of this Act. Where then is the necessity of amending the definition in the manner in which my Honourable friend proposes? Such an amendment cannot but create confusion. The definition as embodied in the Bill as it has emerged from the Select Committee, I submit, is all-embracing, and in consequence the amendment put forward by my Honourable friend is absolutely unnecessary.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Mr. President: The question is that clause 2, as amended, stand part of the Bill.

Mr. S. O. Shahani (Sind Jagirdars and Zamindars: Landholders): Before you put clause 2, Sir, to the vote, I request that I may be permitted to suggest that the definitions may be made applicable to all religious and charitable endowments. It appears to me that this Bill can be easily made applicable to all religious and charitable endowments. It will be a very useful Bill, and I, therefore, submit that this extension may be sanctioned by the House.

Mr. President: That is entirely outside the scope of the present Bill. The Honourable Member proposes to bring under this Bill religious and charitable endowments other than those of the Mussalman community, and therefore, it is entirely outside the scope of the measure.

Clause 2, as amended, was added to the Bill.

Mr. President: Clause 3.

Mr. Mahmood Schamnad Sahib Bahadur: Sir, I beg to move:

“ That in clause 3 (1) (a) after the word ‘ property ’ the words ‘ and also of the property purchased from the income of the Waqf property ’ be inserted and the necessary consequential changes be made.”

The income of many institutions which have got large estates are not fully utilised for the benefit of the institutions; from the surplus income other properties are purchased and they are enjoyed as the property of the mutwalli. If this Bill is not made applicable to those properties, their accounts will not be rendered. Therefore, I submit that those properties which are purchased from the income of the Wakf properties should also be included.

The Honourable Dr. Mian Sir Muhammad Shaif: I venture to submit to the House again that this amendment too is entirely unnecessary. It is obvious that the property in the hands of a mutwalli being Wakf

[Dr. Mian Sir Muhammad Shafi.]

property, its income is also Wakf and property purchased from the income of this property must necessarily be treated in law as Wakf property. The amendment, therefore, is entirely unnecessary.

Maulvi Abul Kasem: I quite appreciate, Sir, the remark which has just fallen from the Honourable the Law Member that property itself ought to include the property purchased from the income of the Wakf property, but I would just tell him, Sir, that in many cases the properties purchased from the income of these Wakf properties are not admitted to have been purchased from that, unless we can prove it. In that case to make it more clear, if we could add this definition (Voices: "No, no.") Of course I leave it to the House.

The Honourable Dr. Mian Sir Muhammad Shafi: That, I submit, is a pure question of fact in each case. There will be an issue in each case whether that property has been purchased out of the income of Wakf property.

(Mr. Mahmood Schamnad Sahib Bahadur then got up.)

Mr. President: Does the Honourable Member want to withdraw his amendment?

Mr. Mahmood Schamnad Sahib Bahadur: No.

Mr. President: I will then put the amendment.

The amendment was negatived.

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

Mr. President: The question is that clause 6 stand part of the Bill.

Maulvi Abul Kasem: There is an amendment by Maulvi Abdul Quadir, Sir.

Khan Sahib Maulvi Abdul Quadir: I beg to move, Sir:

"That in clause 6, for the words 'Every statement of accounts shall, before it is furnished to the court under section 5, be audited' substitute the following: 'Any person may, after a statement of accounts has been furnished to the court under section 5, apply to the court that such statement of accounts be audited and on such application the court shall direct that it be audited'."

Sir, I am against compulsory pre-auditing of the accounts to be submitted by the mutwallis. They can be so audited after the public interested in the proper management of the various Wakf estates are satisfied that the accounts have been fudged up and that they should get them audited for the purpose of finding out as to how and where the money has been spent; otherwise, Sir, if the House makes yearly audit incumbent on the mutwallis, there would be diversion of a considerable portion of the revenue from the charitable purposes for which the donors originally intended. This would be a regular tax on all Wakf property every year. It is quite undesirable to levy such a tax unnecessarily for all time to come. I therefore oppose the levying of such a tax and move my amendment. I submit, Sir, that if this amendment is accepted, it would have the effect of doing away with the yearly audit of the statement of accounts to be submitted by the mutwallis. Otherwise they will have to submit yearly accounts and engage the services of a trained auditor, and that would be an unnecessary charge

on all waqf properties, which is not desirable. It would be resented and the use of the revenues of the waqf would be diverted. So I oppose this and submit this amendment which I hope will be accepted.

The Honourable Sir Malcolm Hailey: As we have only just seen this amendment and as, to a certain extent, we shall be answerable for the drafting, might I in the interests of the House ask the Mover of the amendment if it exactly expresses his own intention? His proposal, if we take the wording of the amendment, is that any person, after a statement of accounts has been filed, may apply that it should be audited. Does he mean that any person, for instance myself who am not a Muhammadan, may force the Mutwalli to have his accounts audited? Or was it his intention to repeat in effect the provision which we have in the Act of 1920 which allows an interested person to apply?

Khan Sahib Maulvi Abdul Quadir: I mean an interested person.

The Honourable Sir Malcolm Hailey: If the intention is an interested person, the wording must follow that intention.

Mr. President: Does the Honourable Member desire the insertion of the word "interested" before "person"? If so, it ought to be moved as an amendment.

Khan Sahib Maulvi Abdul Quadir: Yes.

The Honourable Sir Malcolm Hailey: We can supply the Honourable Member with the wording which it will be necessary to adopt. The wording which I assume would be adopted, subject to the draftsman, is that of section 3 of Act XIV of 1920.

Mr. President: Perhaps we may postpone consideration for a moment unless the form of words is actually ready for submission to the House in the form of an amendment.

Khan Bahadur Saiyid Muhammad Ismail (Patna and Chota Nagpur cum Orissa: Muhammadan): Sir, I submit that every Muhammadan is not in sympathy with the amendment moved by Maulvi Abdul Quadir, and I would suggest that the amendment be drafted for the consideration of the House and it would then be possible to the House to consider it on its merits.

The Honourable Sir Malcolm Hailey: I would suggest that the House might discuss the matter on the substance, understanding that the word "interested" will subsequently, if the substance is approved, be substituted by a more correct form of wording.

Lala Girdharilal Agarwala (Agra Division: Non-Muhammadan Rural): Sir, I beg to oppose the amendment moved by my learned friend on the ground that it would turn the proposed legislation into a sort of Homeopathic pill of legislation. I submit, either have a law or have no law. There is no use having a middle course. If my Honourable and learned friends desire that there should be only a nominal registration, I personally have no objection, but the only reason I oppose this amendment is to draw the attention of the Honourable Members of the Assembly to the fact that, by accepting that amendment, the proposed law will lose all its force. Secondly, I may inform Honourable Members that I have a mind to bring forward subsequently, if possible, a Bill which might apply to Hindus, and

[Lala Girdharilal Agarwala.]

if this principle is adopted, the same principle will have to be accepted for the Hindus, and I am not prepared for that. On these grounds, Sir, with the greatest respect for Muhammadan sentiments, I strongly oppose this amendment.

Mr. W. M. Hussanally: Sir, I rise to do the same and for exactly the same reasons as those advanced by my friend Lala Girdharilal Agarwala. The matter was very fully considered in the Select Committee and we came to this unanimous conclusion. No reason has been shown by my friend Maulvi Abdul Quadir for upsetting the decision we arrived at in Select Committee, and as this Bill is likely to be applied to all communities, in the near future I think we ought to come to an understanding which will be applicable to every kind of charitable endowment.

Khan Bahadur Sayid Muhammad Ismail. Sir, I rise to oppose the amendment moved by Maulvi Abdul Quadir. As a Muhammadan interested myself in the management of a religious waqf and also of a charitable waqf property I offer my support most unhesitatingly to clause 6 of the Bill as drafted by the Select Committee. After mature consideration if the House is really anxious that Muhammadan property should be protected from mismanagement and misappropriation of its income from abuses of dishonest Mutwallis, then the only safeguards which have been proposed are embodied in the provisions of the Bill. If any amendment of clause 6 as is suggested is made, the Bill will be of absolutely no effect. Then what will remain will be the simple registration of the waqf property with a copy of the *waqfnamah* filed in the Registration office. Without compulsory provision for the auditing of the accounts there can be no check over the accounts submitted by the Mutwallis. The audit of accounts is absolutely necessary. I therefore very strongly oppose this amendment and support the provision of clause 6 of the Bill as it stands.

The Honourable Sir Malcolm Hailey: I only wish to speak for the assistance of Members of this House in the matter. I recognise that the question whether these trusts should be audited or not is largely one for the community, but I should like to point out to Members of this House that there already exists in our Legislature a provision which allows an interested person to apply for audit. That is to say section 3 of Act XIV of 1920, the words of which run that an interested person may obtain an order embodying a direction that the accounts of the trust shall be examined and audited. We already have this provision for audit in our law, so that, if the Honourable Member's intention, as embodied in his revised amendment, is carried out, it will be merely repeating an existing section of the Act of 1920.

Khan Sahib Maulvi Abdul Quadir: I submit, Sir, that it is not my intention that they should not be audited. I take objection to the fact that they should be always audited before they are submitted to the Court in which they are registered. If the accounts are to be submitted after they are audited, that would entail a charge, which, I submit, is unnecessary. This is not necessary in all cases, because we know there are only certain estates in which the revenues are misappropriated. Now, the public or any Muhammadan who is interested in waqfs knows in what estates the revenues are misappropriated, so, after the statements are submitted to the Court in which the estates are registered, he can apply . . .

Mr. President: Order, order. I allowed the Honourable Member to speak under a misapprehension. I thought the Honourable the Home Member had moved an amendment to his amendment. I must now call upon Maulvi Abul Kasem.

Maulvi Abul Kasem: Personally speaking, I have no objection to accepting this amendment, because it will practically mean that, if anybody wants to get the accounts audited, he will have to take action either under this Act or the Act of 1920. I might say that the main objection of my friend Maulvi Abdul Quadir is that there will be a recurring expenditure and a charge on the waqf property. May I submit to him and to the House that the auditing of accounts is a necessary charge on all properties. If you want to save money by avoiding audit, then I think the Government of India can save a large amount of public money by giving up their Audit Department; but that is not practicable. The object of making the mutwalli submit an audited account of income and expenditure was to ensure that the mutwalli will always take care not to submit what has been called in this House "faked" accounts of his income and expenditure, and the dread of having to face an auditor will make him keep his accounts at least in a more decent form than he would otherwise do. Unless there is this provision for the auditing of accounts, I think a mutwalli will be as free to misappropriate and misutilize trust funds as he has been in the past. Of course this expenditure need not be incurred by a small estate. Here the discretion is left to the court to certify anybody to audit the accounts and he can give this certificate to a *musharraf* or a pleader who is specified. I think my friend Maulvi Abdul Quadir will be well advised to withdraw his amendment, because that will be the only possible check that this law will bring to bear upon the conduct of the mutwalli and upon his expenditure of public trusts. I may tell my friend and the House that, according to Muhammadan law, which has been much referred to, a waqf is nobody's property, it is public property and it should, I think, be willing and agreeable to pay the cost of audit.

The amendment was negatived.

Clause 6 was added to the Bill.

Khan Bahadur Maulvi Amjad Ali: Sir, in moving this amendment I would like to inform the House that the Bill as originally drafted contained a provision to enable anyone interested in a Waqf to file a suit against a Mutwalli for misbehaviour; but unfortunately the Select Committee has not thought fit to retain this clause to which I refer—No. 20 of the original Bill. That clause as it was drafted ran as follows: as Honourable Members of this House may not have the original Bill with them, I will read it out:

"20. Notwithstanding anything contained in any law for the time being in force, any person interested in any *Waqf* or the trusts relating thereto may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court, the *Mutwalli* of such *Waqf* or the members of Central Committee or any District Committee appointed under this Act for any misfeasance, breach of trust or neglect of duty committed by such *Mutwalli*, member of Committee, or local Agent in respect of the *Waqf* or the trusts vested in or confided to them respectively, and may in such suit pray that the plaintiff himself be appointed *Mutwalli* or that the Court may appoint any other person to be the *Mutwalli*; and the Civil Court may—

(a) direct the specific performance of any act by the *Mutwalli*, member of Committee or local Agent,

[Khan Bahadur Maulvi Amjad Ali.]

(b) decree, damages, and costs against such *Mutwalli*, member of Committee or local Agent, and

(c) direct the removal of such *Mutwalli*, member of Committee or local Agent, either on grounds set forth in the plaint or on any other grounds that to the Court may appear just and proper."

The Honourable House is aware that the object which actuated my Honourable friend Maulvi Abul Kasem to take the trouble of presenting this Bill to this House was to bring the Mutwalli to his knees in case of misdeed, misfeasance, malfeasance, malversation or other neglect of duty in respect of any Waqf. Mutwallis often consider themselves the owners of the Waqf. They do not consider that they are simply the agents of the donors. The Mutwallis thus mismanage the property in any way they think fit. Now it is to put a check on these things that this legal measure has been devised. But I find to my greatest pain and disappointment that even if this Bill is passed in its present form, the Mutwalli's misbehaviour will remain where it is now. The only thing this Bill has sought to enforce is to compel the Mutwalli to submit to court first of all a deed of waqf, a schedule of the Waqf property, an account of income showing receipts, etc. For instance, the mutwalli submits his accounts, and the account submitted by him shows that he has been spending the income of the property in his own way on his own account. How can you punish him or bring him before a court for punishment for his misbehaviour? The Bill

under consideration makes no provisions for that. What is the advantage gained if this Bill is passed? For instance, I am a mutwalli; I am asked to submit accounts; I submit accounts; very well; I say that I have appropriated Rs. 2,000 to my own account. I am bound to submit a true statement of account and I do so, and that is all; I have submitted a true account saying that I have spent this amount. Is there any provision of law under the Bill to punish that conduct? Is there any control in this Bill? Why are you going then to pass this Bill? For no earthly reason; only for this purpose, to compel me to submit to the court of the District Judge a copy of my account. I have been dealing with this for the last 20 years. In my district I make bold to say that, ever since I have joined the Bar, I have been dealing with hundreds of cases of this character; sometimes I have opposed the appointment of a mutwalli, sometimes I have supported it; at last my turn came and I was appointed. However this law under debate is altogether defective. I am not prepared to agree to all the provisions. You are always saying that you are going to save the waqf property of a pious Mussalman who gave his property for the purpose of general charity and you are requested by this Bill, by the author of this Bill, to accept it simply for the purpose of saving the property from the hands of dishonest mutwallis. That is the object. Now, Sir, it struck the author of this Bill before, to put in this clause, but unfortunately I find that when the matter came before the Select Committee it was thrown out. Why? I do not understand the reason why it was thrown out; there were so many Mussalman members of the Select Committee, including the author himself; why did they agree to this proposal that this clause should be deleted from the Bill and to make the proposed Bill altogether infructuous? I submit, therefore, that such a provision should be made in this Bill.

Now, Sir, before I sit down after moving my amendment I would seek your permission to say one word for the edification of the Honourable House.

This Bill seeks to achieve something. By that something I mean that under the Muhammadan law, as Honourable Members probably know, there are three classes of *waqf*, viz., purely public, *quasi*-public and purely private. These are the three classes of *waqfs* recognised by the Muhammadan jurists. So far as the purely private *waqf* or *quasi*-public *waqf* is concerned, this Bill has nothing to do with it. It is excluded from the operation of this Bill. It only deals, as Honourable Members are aware, with public *waqf*, or in other words, with *waqfs* in which the donor has dedicated all his income for the use of the public, and has not kept even a single pice for the use of his descendants or for himself. Now, so far as the other two *waqfs* are concerned, when the donor gives a certain amount to his descendants and certain amount to charitable purposes, it is a *quasi*-*waqf*, and when he gives the entire benefit to his descendants, it is a purely private *waqf*. That *waqf* was validated by the Act of 1913 when the *Waqf* Validating Act was passed. Now, Honourable Members are concerned only with the purely public *Waqf*. Before the passing of the Civil Procedure Code of 1908, I find that the District Judge—I have already said that the District Judge is a *Kazi* under the Mahomedan law—was dealing with disputes arising out of *Waqf* properties as a *Kazi*, but by a recent provision of the law I find that the powers of the District Judge as *Kazi* have been curtailed with regard to the procedure to be followed in any suit or in any application in respect of *Waqf* property in which purely public interests are concerned. When there is a litigation, when there is an application or a suit before the District Judge in regard to a dispute arising out of a public *waqf*, I find the powers of the District Judge with regard to procedure have been curtailed by section 92 of the Civil Procedure Code. I will read the section with your permission, Sir :

“ In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate General, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the Local Government within the local limits of whose jurisdiction the whole or any part of the subject matter of the trust is situate to obtain a decree, removing any trustee—in this case Mutwali—

- (a) removing any trustee ;
- (b) appointing a new trustee ;
- (c) vesting any property in a trustee ;
- (d) directing accounts and inquiries ;
- (e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust ;
- (f) authorising the whole or any part of the trust-property to be let, sold, mortgaged or exchanged ;
- (g) settling a scheme ; or
- (h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.”

This being the law, this being the stringent law, would you think for a moment that, where there is a *waqf* of the nature of a purely public

[Khan Bahadur Maulvi Amjad Ali.]

character, anyone of the Muslim public will think it necessary on his part to institute a suit of this nature to the District Court? How is he interested? You know, in the first place, that in a public trust nobody is interested individually. In a public trust everyone is interested only as one of the Members of the public. Everybody's business is nobody's business. So, in this case would you think that in the case of a public waqf, as contemplated by this Bill, if the *mutwalli* is found guilty of breach of trust or any other neglect of duty, any one Mussalman in the whole of India would come forward of his own free will to pay a large sum of money from his own pocket! Why should he? He is not personally interested in the property; he will not gain anything thereby. It is in the interest of the public. The usufruct will go to the public and to no particular individual. So, not a single Muhammadan from any part of India will come forward with a suit like this because of the fact that he is not individually interested, he will not pay a single farthing out of his own pocket. People are not so liberal. This is one ground, Sir, why, when a *mutwalli* of a public trust is found guilty of misconduct, his action is not sought to be brought before the Court. This has been my experience for the last 20 years. This is one ground.

Let me point out another ground why this provision of law, that section 92, is an insuperable bar in the way of bringing a suit against a *mutwalli* in the Court. The second ground is that he has to go to the Collector or if it is a Presidency town, then he has to go to the Advocate General to obtain his sanction. This is a condition precedent to the filing of the suit, under section 92 of the Civil Procedure Code,—before instituting a suit, he must go to the Advocate General or to the Collector for permission to institute a suit. Would anyone think that any human being is so generous as to spend large sums of money, to go to the Advocate General to institute a suit simply to punish the dishonest *mutwalli*. I do think there is none. It might be contended that instead of going to the Advocate-General, one can go to the Collector for permission. Yes, one can go to the Collector for permission. But who will go to the Collector for permission? There also the same question arises, *i.e.*, spending money. If in seeking permission a man has got to spend money, he may not go to Court at all. So, I think this provision of law stands in the way of bringing dishonest Mutwallis before the Court of the District Judge for punishment for his misbehaviour. This law is very stringent one whereas the Muhammadan law which is in force in this country is not so stringent. In the case of *quasi*-public waqfs, in the private waqfs, the parties interested and aggrieved by the conduct of the Mutwalli run to the Court of the District Judge and file petitions against him and the District Judge entertains their petitions and adjudicates upon them. There it is only a question of petition. This law under consideration does not make any provision of that kind. This Bill makes the aggrieved party take protection under section 92 of the Civil Procedure Code, which is impracticable and nobody will ever think of doing it. I therefore submit to this Honourable House that if it really desires to punish the dishonest Mutwalli and save the trust property, it should make some easy provision as was made by my friend, the author of this Bill. But he put it "suit", but in my amendment I have "application". If you put in "suit", who will care in this world to pay a large amount on stamps? There are properties yielding crores and lakhs. Who will care to pay the necessary amount on stamp? Nobody is personally interested, as I have already submitted to

you. You must make some provision which will make this Bill acceptable to the country and at the same time useful to the country. You have got something which is not at all useful for the purpose for which it has been brought here, namely, to bring the dishonest Mutwalli to book. By the present provision you have not made any provision to safeguard the interests of the property, so to say. You are simply by this provision compelling him to go to the District Judge and file an account. It may be that he has purchased some beer for a certain amount of trust money as a luxury. How are you to punish him for this conduct of his? This Bill has made no provision, and as I have already submitted that procedure is impracticable. No one having no personal interest would have recourse to protection under section 92 of the Civil Procedure Code. If you want to save Muhammadan trust property which has been vested in the Mutwallis, if you really wish to do it, as I feel in my heart of hearts should be done, then I hope that this House will be very pleased to accept my amendment, which runs in these words :

" Clause 7 be re-numbered as 7 (2) and the following new sub-clause (1) be inserted before sub-clause (2) in the following terms :

' (1) Notwithstanding anything contained in any law for the time being in force, any person interested in any Waqf or the trust relating thereto, may, without joining as party any one interested therein, and without obtaining previous sanction under section 92 of the Civil Procedure Code of 1908, file a petition before the Court against a Mutwalli for any misfeasance or breach of trust committed by such Mutwalli or for his any other improper conduct in respect of the Waqf property of which he is the Mutwalli and may, *inter alia*, pray that either the applicant or any one interested in the Waqf be appointed Mutwalli and the Court may—

- (a) direct the removal of such Mutwalli and appoint any one in his place; or
- (b) direct the specific performance of any act by the Mutwalli; or
- (c) grant any other consequential relief which the Court may, under the circumstances of each case, deem just and proper."

This is my amendment. Before I resume my seat I may say that though the Select Committee have made the Bill acceptable to the country, unfortunately they have lost sight of this salutary provision of law for which the dishonest Mutwallis would never dare commit any act of breach of faith so far as the waqf properties are concerned, and if any Honourable Member of this House opposes this amendment, I think he will be doing injustice to the Muhammadan community. There should be some provision under this Bill under which the dishonesty of the Mutwalli can be punished by the District Judge. With these words I move my amendment before the House. The amendment is worded very carefully and I hope it will commend itself to the acceptance of the House.

The Honourable Dr. Mian Sir Muhammad Shafi: Sir, by the amendment now before the House my Honourable friend seeks to get rid of the provision embodied in section 92 of the Code of Civil Procedure whereby the previous sanction of the Advocate General or of the Collector under section 93 is necessary in order to enable a person to institute a suit for the reliefs mentioned in that section. I venture to submit to the House that the provision embodied in section 92 is a very wholesome provision and in support of that contention I cannot do better than cite from a judgment of

[Dr. Mian Sir Muhammad Shafi.]

the Calcutta High Court reported in I. L. R. 24 Cal. 418. This is what the learned Judges of the Calcutta High Court say :

“ The real object of the special provisions of section 539 seems to us to be clear. Persons interested in any trust were, if they could all join, always competent to maintain a suit against any trustee for his removal for breach of trust; but where the joining of all of them was inconvenient or impracticable it was considered desirable that some of them might sue without joining the others, provided they obtained the consent of the Advocate General or of the Collector of the District; and this condition was imposed to prevent an indefinite number of reckless and harassing suits being brought against trustees by different persons interested in the trust.”

A wholesome provision like this, I venture to submit, is absolutely essential in the interests of justice and to prevent frivolous suits by any one and every one who chooses to come into the court in cases of this kind. The object of Maulvi Abul Kasem's Bill is twofold. In the first place it seeks to secure registration of Mussalman waqfs and in the second place he seeks to secure the publication and audit of accounts once a year, the object being that instead of groping in the dark as is the case at present, those who are interested in the maintenance and welfare of these charitable and religious endowments may have furnished to them materials upon the basis of which, should the trustee misappropriate, they may be able to go to the court and ask for the reliefs which are mentioned in section 92 of the Civil Procedure Code. The accounts rendered under this Act by the trustees once a year will enable persons interested in the maintenance of these charitable and religious endowments to see that the trustee is administering the property in the right way and should the accounts disclose to them any ground for a reasonable relief, then they will be in a position to go to the Collector or the Advocate General and on the basis of the proof which they have obtained from the statement of account filed in the court by the trustee under this Act, to obtain the previous sanction which is necessary for the institution of these suits. To go beyond this in this particular enactment, I submit, would be entirely unnecessary as well as undesirable. Further you will see according to section 6 of the Charitable and Religious Trusts Act of 1890, if a trustee without reasonable excuse fails to comply with an order made under sub-section (5) of section 5, such trustee shall without prejudice to any other penalty or liability which he may incur under any law for the time being in force be deemed to have committed a breach of trust affording ground for a suit under the provisions of section 92 of the Code of Civil Procedure, 1908, and any such suit may so far as it is based on such failure be instituted without the previous consent of the Advocate General, so that if the case comes within the purview of section 6 of the Act of 1920 no previous sanction of the Advocate General will be necessary. On all these grounds, I venture to submit that whatever may be the motive underlying the amendment which has been placed before the House, and I have not the slightest doubt that the motive is an excellent one, the amendment is both unnecessary and undesirable. If the trustee renders correct accounts, correct in the manner described by my Honourable friend, that is to say, if he marries his own son or his own daughters or his own brother out of assets in his possession belonging to the charitable or religious endowment, then I can assure my Honourable friend that that trustees will not remain Mutwalli of that endowment for long. If he imagines that by rendering correct accounts in that manner he is discharging himself of the liability and of the duties which are cast upon his shoulders by the law of wakfs as ordained by the laws of Islam, then I am afraid he will be labouring under a hallucination, and I have not the slightest doubt he will soon realize that persons interested

in the maintenance of that wakf can without any difficulty go to court and obtain his removal.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Clause 7 was added to the Bill.

Clauses 8 and 9 were added to the Bill.

Khan Bahadur Maulvi Amjad Ali: I move:

“That in clause 10 the words ‘with imprisonment which may extend to three months, or’ be deleted.”

(Cries of “Withdraw, withdraw.”)

Before crying “withdraw, withdraw” will Honourable Members be pleased to listen. My amendment relates to certain drastic measures proposed by this Bill. I want to convince the House and I won't sit down till I convince the House of the truth and the force of my argument before this Honourable House. It is provided that if a Mutwalli is remiss in submitting accounts, on the first occasion he is to be punished with fine. If he is guilty of the same thing for a second or third time, he may be punished with imprisonment for three months or with fine which may extend to a thousand rupees. Now, in the first place, the word “imprisonment” is not qualified; it may be either rigorous or simple. In most sections of the Penal Code providing imprisonment for offences provision is made for simple or rigorous imprisonment. But here power is vested in the court to punish a Mutwalli with imprisonment which may be either simple or rigorous. So on this ground it is objectionable that a Mutwalli who has failed in filing the account should undergo hard labour. Secondly, imprisonment is not necessary at all in my humble opinion. For Honourable Members know that a guardian appointed by a court to administer a minor's property who may remiss in his duties is liable only to a fine. There is no provision in that Act for punishing him with imprisonment. So, I think, this provision in the measure before us is very drastic. Fine will be quite sufficient in my opinion. The law says that he may be punished with fine which may extend to Rs. 2,000. That I think will quite meet the requirements of the case. Is not this measure a drastic one? I hope Honourable gentlemen will agree with me and throw out this provision, so that the Muhammadan people of India may accept the Bill with some amount of eagerness; otherwise when people go through the Act, they will see that a Mutwalli is liable to be punished with imprisonment in addition to fine and they will not like it. It will be difficult for donors to find Mutwallis. Who will come to do service for nothing? The Mutwalli will accept it so long as there is no risk in it. He would not get anything beyond his allowance. His children would not get anything. Who will be such a fool as to undertake this business of the Mutwalli in this way? This is a most drastic measure indeed. In the interests of the people of this country this provision should not be allowed to stand, and my submission is that such a provision is altogether uncalled for and unwelcome, and I hope that my submission will commend itself to the House. With these few words, I move my amendment.

Mr. President: The original question was that clause 10 do stand part of the Bill.

Since which an amendment has been moved:

“That the words ‘with imprisonment which may extend to three months, or’ be omitted.”

The question is that that amendment be made.

The Assembly divided :

AYES—45.

Abdul Quadir, Maulvi.
 Abdulla, Mr. S. M.
 Abul Kasem, Maulvi.
 Agarwala, Lala Girdharilal.
 Ahsan Khan, Mr. M.
 Akram Hussain, Prince A. M. M.
 Allen, Mr. B. C.
 Anjad Ali, Maulvi.
 Ayyar, Mr. T. V. Seshagiri.
 Bagde, Mr. K. G.
 Barodawalla, Mr. S. K.
 Bhanja Deo, Raja R. N.
 Bhargava, Pandit J. L.
 Bishambhar Nath, Mr.
 Bradley-Birt, Mr. F. B.
 Bridge, Mr. G.
 Chaudhuri, Mr. J.
 Clark, Mr. G. S.
 Cotelingam, Mr. J. P.
 Ghulam Sarwar Khan, Chaudhuri.
 Ikramullah Khan, Raja Mohd.
 Iswar Saran, Munshi.
 Jafri, Mr. S. H. K.

Jamali, Mr. A. O.
 Jamnadas Dwarkadas, Mr.
 Jatkari, Mr. B. H. R.
 Jejeebhoy, Si: Jamsetjee.
 Latthe, Mr. A. B.
 Mukherjee, Mr. J. N.
 Nabi Hadi, Mr. S. M.
 Neogy, Mr. K. C.
 Pyari Lal, Mr.
 Ramji, Mr. Manmohandas.
 Rangachariar, Mr. T.
 Reddi, Mr. M. K.
 Samarth, Mr. N. M.
 Sarfaraz Hussain Khan, Mr.
 Sarvadhikary, Sir Deva Prasad.
 Schammad, Mr. Mahmood.
 Shahani, Mr. S. C.
 Singh, Babu B. P.
 Ujagar Singh, Baba Bedi.
 Venkatapatiraju, Mr. B.
 Vishindas, Mr. H.
 Webb, Sir Montagu.

NOES—23.

Abdul Majid, Sheikh.
 Ahmed, Mr. K.
 Ahmed Baksh, Mr.
 Aiyar, Mr. A. V. V.
 Ayyangar, Mr. M. G. M.
 Basu, Mr. J. N.
 Das, Babu B. S.
 Faiyaz Khan, Mr. M.
 Faridoonji, Mr. R.
 Gour, Dr. H. S.
 Holme, Mr. H. E.
 Hussanally, Mr. W. M.

Joshi, Mr. N. M.
 Man Singh, Bhai.
 Muhammad Hussain, Mr. T.
 Muhammad Ismail, Mr. S.
 Nag, Mr. G. C.
 Percival, Mr. P. E.
 Shahab-ud-Din, Chaudhri.
 Sinha, Babu Adit Prasad.
 Sinha, Babu Ambica Prasad.
 Sohan Lal, Mr. Bakshi.
 Srinivasa Rao, Mr. P. V.

The motion was adopted.

Clause 10, as amended, was added to the Bill.

Clause 11 was added to the Bill.

Mr. S. K. Barodawalla (Bombay City: Muhammadan Urban): Sir, on the assurance given by the Honourable the Law Member that he is going to provide that the Local Governments will be empowered to exempt any community that they like from the operation of this Act, I beg leave to withdraw this amendment.*

Clause 12 was added to the Bill.

Mr. President: As a matter of fact, the new clause to be moved by the Honourable the Law Member covers the point raised in the next amendment.

The Honourable Dr. Mian Sir Muhammad Shafi: Sir, I beg to move that a new clause, clause 13, be added, as follows:

"13. The Local Government may by notification in the local official Gazette exempt from the operation of this Act or of any specified provision thereof any *waqf* or *waqfs* created or administered for the benefit of any specified section of the Mussulman community."

* "At the end of clause 12 of the Bill the following be added:
 '(c) apply to the Dandi Bohra (Muhammadan) community'."

The Honourable Members will, I think, see quite easily the object of this amendment. Administration of trusts is a provincial transferred subject in charge of Ministers and, therefore, it is wise that, in so far as the actual working of the two main principles embodied in the present Bill are concerned, the fullest liberty should be left to the Ministers to apply those provisions. There may be in certain provinces some sub-sections of the Moslem community who stand on an entirely different footing from the rest of the community with regard to the position as well as the administration of trusts which they may have created. It is prudent in these cases to leave it to the Local Government, should the circumstances of a given province or *waqf* so require, liberty to exclude that *waqf* or those *waqfs* from the purview of this Bill. Such a liberty of action to the Local Government is in the best interests of the community itself.

I hope, therefore, that the House will accept this amendment.

Mr. W. M. Hussanally: If the Honourable Member will permit me, I would like to add a little proviso.

“with the consent of the local Legislature.”

The object I have in view is this that whereas I am not—against Bohras being excused from the operation of this Act, it is likely in the near future that this Act will be made applicable to other endowments besides Mahomedan and in that case a difficulty will arise, and that is this, that in certain cases while a particular sect may like that a particular endowment may evade the operation of this Act, the general community may not like it. Therefore if the matter is discussed in the Local Legislatures and thereafter the exemption is made it will be in the interests of everybody; and that is why I suggest that amendment.

The Honourable Dr. Mian Sir Muhammad Shafi: I suggest to my Honourable friend, Mr. Hussanally that the Minister being in the discharge of his ordinary duties responsible to the Local Legislature, is not likely to take action under this section unless he fully realises that in that action he is supported or will be supported by at least the majority of the Local Legislature. In a matter of this kind to add such a proviso as is suggested by my Honourable friend, is, I think, undesirable.

Lala Girdharilal Agarwala: Sir, I want simply to say one word. I am greatly thankful to the Honourable the Law Member for his amendment which I suppose, will cover a large number of cases, but may suggest a word to be added to that amendment—“may exempt or restrict” from the operation of this Act. The object is that there are some *Waqfs* belonging to the Shia Community and they would not like that persons who do not belong to their own community should take action under this Act. There are *Waqfs* belonging to other communities also who live in air-tight compartments and who do not like to be interfered with by persons belonging to other communities. So if *Waqfs* are totally exempted that will not be quite sufficient; but if the application of the Act is restricted in the way I suggest, it will meet the case. My object is that in the application of this Act, certain *Waqfs* may either be totally exempted from the operation of the Act or that its operation might be restricted, and that was the reason I put forward my own amendment:

“Nothing herein contained shall authorise any Mussalman to take action under this Act in regard to *Waqfs* of a sect to which he does not belong.”

Mr. President: I see that the Honourable Member does raise a somewhat different point from that raised by the Honourable the Law Member. The Honourable the Law Member's new clause empowers the Local Government to exempt any section of the community from having the Act applied to it at all. The Honourable Member's point is different. He does not want the provisions of the Act set in motion against one sect by persons belonging to another sect, which is a different question.

Mr. K. C. Neogy: Sir, I rise to a point of order. The Honourable the Law Member not being a Member of this House, is he entitled to move an amendment?

Mr. President: The Honourable Member is quite right.

The Honourable Sir Malcolm Hailey: Sir, we seem to have fallen into error on that point. My Honourable friend, Sir Muhammad Shafi, is so well known in this House that we regard him as one of ourselves; but if you will allow the amendment to stand in my name, I shall be grateful.

Mr. President: The question is:

"That the following new clause be added to the Bill:

"13. The Local Government may by notification in the local official Gazette exempt from the operation of this Act or of any specified provision thereof any Waqf or Waqfs created or administered for the benefit of any specified section of the Mussulman community."

The motion was adopted.

Lala Girdharilal Agarwala: I beg to move that a new clause be added at the end, namely:

"13. Nothing herein contained shall authorize any Mussalman to take action under this Act in regard to waqf of a sect to which he does not belong."

Sir, I have already explained my object; the amendment which has just been carried would not exactly cover this case and it is necessary to safeguard the interests of various different classes and communities, who although they are Muhammadans, still observe differences of opinion and differences of custom to some extent and who might not like persons belonging to other sects to interfere in their affairs. It is for this reason and with this object that I beg to move my amendment.

Mr. S. K. Barodawalla: Sir, I will not take up the time of the Assembly, but I give my full support to the amendment. As has been pointed out, no community has a right to interfere with the affairs of another community and no very long speech is needed on this as we have instances in other communities also; among the Hindus also we know that one community does not like that any other community should interfere in its affairs; I think, therefore, this amendment should be accepted by this House.

Maulvi Abul Kasem: Sir, I would have been very glad to accept the amendment moved by my Honourable friend, Mr. Girdharilal Agarwala. I want to tell him that, distinguished lawyer as he is, there is nothing in the provisions of this Bill which asked any Muhammadan or anybody to interfere with anything. It is only the Mutwalli who is asked to register his waqf and to submit accounts, so there is nothing in it. If he has to move an amendment like that, he will have to move an amendment to section 192 of the Civil Procedure Code.

The Honourable Sir Malcolm Hailey: May I point out to Mr. Abul

2 P.M.

Kasem that Mr. Agarwala's amendment obviously has reference to clause 4. If he will read that clause, he will see that "any person may apply to the Court by a petition in writing for the issue of an order requiring the Mutwalli to furnish further particulars or documents. Now let us take a case in point. If it were a case of a Shia wakf, then a Sunni could not move the Court. It is a matter, I think, in which the community must decide for itself whether they wish to restrict action under clause 4 to Members of the particular sect or to a section of Mussalmans for whose benefit the endowment was intended. But I myself see some difficulty in the amendment as it stands. Let us assume again that a Sunni wakf has left money for purely charitable purposes or for purely education purposes. Will the Court be able to decide whether that wakf is, in the words of the amendment, a waqf of a particular sect? Does the particular sect of the donor determine the nature of the endowment if the endowment is for purely general purposes?" I can quite understand that if the endowment was for the purposes of Shia education or charity to Sunnis or to Khojahs, then the amendment might apply. I suggest that if the Court is to be able to decide exactly what is meant by a waqf of a particular sect, then some better definition than that will be required than is given in the amendment.

The Honourable Dr. Mian Sir Muhammad Shafi: Sir, should an endowment or a wakf be purely for the religious purposes of a particular sect, it is obvious that any member of another sect would not be a person having an interest in the maintenance of that wakf. Should, however, the wakf be for a general charitable or pious purpose, then every Muhammadan would have an interest in the maintenance of such a wakf. Therefore, whether in a particular case a particular person applying for relief is a person having an interest in the maintenance of the wakf, is a question which will depend upon the circumstances of each case, and it would, therefore, I submit be unwise, if I may venture to say so, to enact a provision of this kind.

The Honourable Sir Malcolm Hailey: Might I make one additional remark, Sir, that, if the amendment is carried in its present form, it will, as the House will see from clause 4, allow a Hindu to apply to the Court but not a Muhammadan of a different sect.

Mr. President: The question is that the new clause be added.

The motion was negatived.

The Honourable Sir Malcolm Hailey: Might I suggest a purely formal change which has just been brought to our notice: it may save trouble hereafter. We proposed the addition of the words "by a Court" in sub-clause (c) of clause 2. We think that the words should be "a Court of competent jurisdiction" in order to fall into line with the language used later on in the Bill.

Mr. President: On the motion that the Bill be passed that amendment can be made.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

Maulvi Abul Kasem: I now move, Sir, that the Bill, as amended, be passed.

The Honourable Sir Malcolm Hailey: I now make the motion I referred to:

“That in clause 2, sub-clause (c), for the words ‘or by a Court’ the words ‘or by a Court of competent jurisdiction’ be substituted.”

Mr. President: The question is:

“That in line 4 of sub-clause (c) of clause 2, after the words ‘or by a Court’ the words ‘of competent jurisdiction’ be added.”

The motion was adopted.

Mr. President: The question is:

“That the Bill, as amended, be passed.”

The motion was adopted.

The Assembly then adjourned for Lunch till Fifteen Minutes Past Three of the Clock.

The Assembly re-assembled after Lunch at Fifteen Minutes Past Three of the Clock. Mr. President was in the Chair.

THE SPECIAL MARRIAGE BILL.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I have already presented the Report of the Select Committee to amend Act III of 1872, and I now move that the Bill be taken into consideration. Honourable Members will see that the Bill as it was originally introduced by me in this House was a purely Civil Marriage Bill, that is to say, it was a marriage Bill in which two persons, subject only to the law of consanguinity which I need not advert to now, were free to marry under the Act as I proposed to modify it. Since then, the Select Committee have made certain changes restricting the scope of the Bill, and I should like Honourable Members to realise the changes made and its effect upon the Bill as introduced in this House and committed to the Select Committee. As I have said, the Bill, the principle of which was accepted by this House, was a purely Civil Marriage Bill. It included all classes and excluded no community. When it went before the Select Committee Members of that Committee thought that we must go along the line of least resistance and exclude from the provisions of our Bill classes which did not want to come within its scope. As such we have excluded Muhammadans, Parsees and others and have restricted the operation of the Bill to four designated classes of persons, namely, Hindus, Sikhs, Jains and Buddhists. We have also out of deference to the opinions received set out certain rules regarding succession and also inserted other provisions relating to adoption and management and succession to religious endowments. I should like briefly to justify the changes made by the Select Committee and point out to the House why it is now an acceptable measure. Some of my friends who voted for the Bill upon its second reading when it was referred to the Select Committee feel dissatisfied that the measure has been truncated and deprived of all the provisions which they regard as essential. I should

like to explain to them that the measure which I ask the Honourable Members of this House to take into consideration has in no way abridged or curtailed the pre-existing rights which existed under the original Act III of 1872. Those who object to the added provisions are still free to contract marriages under the original Act. They may entirely ignore the provisions of the added sections. But, as I have said on the last occasion when I had the honour of speaking on this Bill, one objection which persons who are required to sign a declaration under that Act raised was that they could not conscientiously sign a declaration with a mental reservation and that it was not right that the law should compel them to sign it. I shall very briefly point out the reasons—the historical reasons—which culminated in the framing of that form which constitutes a declaration under the Act. As far back as 1832 a Royal Commission was appointed by an Act of Parliament for the purpose of revising and codifying certain important branches of Indian law. That Royal Commission sat and framed what is now known as the *lex loci* Act, the official designation of which is the Removal of Caste Disabilities Act. That Act was enacted as Act XXI of 1850. The underlying principle of that Act was that no person shall suffer any penalty by the mere fact of his renouncing a caste or religion. Later on, in 1856 the Legislature passed what is known as the Hindu Widows' Re-marriage Act. That legalised the re-marriage of widows. In 1868 that great jurist and lawyer Sir Henry Maine, the then Law Member of the Viceregal Council, pointed out in the late Imperial Legislative Council that it was the bounden duty of the Sovereign to provide for the marriage of all his subjects and if they wished to marry, no impediment by caste, creed or otherwise should stand in the way. If the State does not enact a Civil Marriage Law the consequence is that it leads to promiscuous intercourse and concubinage. He therefore placed before the Legislative Council a Civil Marriage Bill. But before that Bill could become law his term of office ended and he was succeeded by another jurist, Sir James Stephen and he again circulated the Bill, collected all the opinions and made the following summary of the cases to which he adverted. This is what he said:

“The cases which I have quoted appear to me to establish in the broadest way that on the most general principles it is just, equitable, and according to good conscience that all men should have a right to marry although the law to which they are subject may prescribe the manner in which their right is to be exercised. In India, as we all agree, there is no fundamental common law other than the law of justice, equity and good conscience upon this subject. If a man is not a Hindu, nor a Muhammadan, nor a Parsi, nor a Christian, nor a Jaina, no form is prescribed for him by law. Does it follow that he cannot marry at all? Certainly not. What follows is that his right must be determined by the general maxim that contracts for a lawful object and made on good consideration are valid and must be performed, and I have yet to learn that marriage is in a general sense, unlawful or immoral or a promise to perform conjugal duties by the wife or the husband is not a good consideration for the promise to perform reciprocal duties by the husband or the wife.”

He then said that we must have a Civil Marriage law. Then the question arose whether there was a large public opinion to support the enactment of such a marriage law. The Brahmos of Bengal who had moved the Imperial Legislative Council to enact a law for themselves were of opinion that they were perfectly prepared to declare themselves as non-Hindus and therefore they accepted the form which was then prescribed and Act III of 1872 became an Act of the Imperial Legislature. A very large number of marriages have been contracted under the Act of 1872 but in a recent case their Lordships of the Privy Council laid down that both Brahmos and Sikhs as well as Jainas were Hindus and the decision of Sir James Stephen, who had in 1872 taken for granted that if the Brahmo said he was not a

[Dr. H. S. Gour.]

Hindu there was an end of the matter, was upset by the decision of their Lordships of the Privy Council. Well, Sir, that was the state of the law till the judgment of the Privy Council was given. About 13 years ago the Honourable Mr. Bhupendra Nath Basu, now a Member of the Secretary of State's Council, revived this piece of legislation which Sir Henry Maine had placed before the Legislative Council and it was considered but afterwards it failed to become law. Later on Mr. Patel wanted to introduce and did introduce a more restrictive measure legalising the marriages between the Hindus of different castes and it was referred to a Select Committee, but after it emerged from the Select Committee, it was considered that as the reforms were about to be announced and the constitution of the Imperial Legislative Council revised, it would be better if this measure was reintroduced in the popular Chamber. Well, Sir, taking the cue from the deliberations of that Council, I took the earliest opportunity of reintroducing a measure which has been referred to the Select Committee and which emerges from that body with a unanimous report. This is, Sir, shortly the history of marriage law in this country. After it came back from the Select Committee I have been besieged with inquiries by my friends of both complexions, reformers and orthodox and I shall now briefly explain the reasons which have led the Select Committee to recommend for enactment this measure in the form in which it is presented to this House. I shall first deal with the objections of the reformers. They say "What we wanted you to do is to enact a general civil marriage law. What you have done is to decapitate the measure the principle of which we accepted and it has come out of the Select Committee in an extremely crippled, restricted and circumscribed form. If we are to fight for civil marriage law, let our fight be continued but we are not prepared to accept this half-way house. To them I say, Sir, that the Select Committee have very carefully considered this objection of the reformers and they came to the conclusion that it is much better in a case of this kind to take along with them public opinion and it is better that we should have a narrow and restricted measure than to work for a Civil Marriage law. Then, Sir, to them I say that if the Bill is not acceptable they are not better off and no worse off than they were under Act III of 1872. The additional sections which are awaiting your judgment are sections which are purely permissive and they entitle every man, be he a Hindu, Jaina, Sikh or Buddhist, to ignore the provisions of those sections and resort to the pre-existing law. It binds nobody; it obliges no one; it is a purely permissive measure and it is made amply clear that it is so. Therefore, I submit that if anybody has any objection on the ground that the measure now before the House is a narrow and a more restricted one, he has only to say to himself, "I shall ignore it; I am in no way prejudiced by it and therefore I should not object to it." Then, Sir, it has been said that this measure creates a paradox. Under Act III of 1872, a Hindu contracting a marriage by subscribing to a declaration that he does not profess the Hindu religion still remains subject to Hindu law regarding succession and the enjoyment of his property; but by making a declaration under this part of the Act that he is a Hindu he will be deprived of his personal law and he will be subjected to the restrictions now embodied in the various sections of my Bill. My answer is that, here again it is a matter of opinion. If you wish to make a declaration under the first part, by all means do so, and you will continue to enjoy all the rights and privileges which are given to you under that part of the Act. But if, on the other hand, you have

conscientious scruples in the making of a declaration under that part of the Act, then you declare under the second part and place yourself under the disabilities created by that part. You are in no way prejudiced. Your position has been improved to the extent that you are not bound to make a declaration which you cannot conscientiously subscribe to, for you are given the option of subscribing either to one declaration or the other.

Then one of my esteemed friends asked me, what about collateral succession. Well, Sir, the Members of the Select Committee have anxiously considered this question and they came to the conclusion that regarding collateral succession a person who contracts marriage under this part of the Act should not be placed in a position of greater disability than a person who comes under the *lex loci* Act; in other words, that a person who contracts a marriage should not be put in a worse position than a convert; and therefore whatever may be the law relating to converts and to persons subject to the Act or coming under the Act of 1850 that shall be the law which will apply to a person who contracts marriage under this part of the Act. So that, Sir, so far as that question is concerned, it has been settled by the Select Committee in the manner I have indicated regarding succession. Regarding succession and the enjoyment of religious rights I have to say a few words. Regarding succession the Members of the Committee were divided, as is mentioned in the report of the Select Committee. The reason why the majority of them agreed that succession should be regulated by the Indian Succession Act, rather than under the normal Hindu Law was that under the Indian Succession Act, daughters and wives acquire a certain vested right of which they are deprived under the Hindu Law. The special disabilities created by Hindu Law against the succession of females would be removed if the general Law of Succession as embodied in the Succession Act is made applicable to persons who marry under that part of the Act. Here, again, I wish to remind the Honourable Members of this House that they are at liberty to marry under either the first part or the second part, and if they wish to come under the Indian Succession Act, then and then only they need marry under that part.

Then, Sir, it has been said "What about religious endowments and their management?" Well, Sir, the mere fact that inter-caste marriages and marriages between Hindus and the followers of allied faiths would be possible under this Act makes it impossible that persons who contract marriages under this Act should continue to enjoy as of right the right of management of religious trusts; and, therefore, the Select Committee have made that provision.

Now, Sir, as regards the law of adoption. So far as the law of adoption is concerned, two questions arise, one that the father of such married person may adopt a son to himself and, secondly, that he may wish to make an adoption. As regards the father's right to adoption, if he chooses and if he finds that the son has gone out of the family by contracting a marriage which he disapproves of, he is entitled to make an adoption. Honourable Members will know with the larger powers of testamentary disposition which are coming into force in this country, the law of adoption is now receding into the background. Every Hindu possessing his self-acquired property is entitled to bequeath it to anybody he likes; and so far as the person who marries under this part of the Act is concerned, he, having elected to be bound by the provisions of that part of the Act, to which I refer, has been deprived of the right of adoption. I do not say that

[Dr. H. S. Gour.]

these provisions are all justifiable, but what I do say is that these are the provisions which have been inserted in the Bill on a compromise made with my orthodox friends. The Honourable Sir Sivaswamy Aiyer on the last occasion when he enlightened the House with his views said that the time had come for a measure of this character, but he demanded that certain restrictions should be embodied in the Bill so as to make it clear upon the points to which I have adverted. I have, Sir, carried out his wishes, and I hope that after the restrictions that have been inserted, my friends, orthodox friends, Rao Bahadur Rangachariar and Sir Sivaswamy Aiyer, will accord to my Bill the whole-hearted support which it now deserves. There remains, Sir, the question of Muhammadans. No one was more grieved than I was when the Select Committee deleted the Muhammadans from the provisions of this Bill. But, I felt, Sir, that if we are to carry our Muhammadan fellow-subjects with us, we could not force this measure down their unwilling throats. And as the majority of them were not yet prepared for this piece of legislation, we thought it wise and right that we should exclude them. We have been told, Sir, by some of my over-cautious Muhammadan friends, "you have excluded the Muhammadans to-day, but some person might include them to-morrow, and so the Muhammadans will come in for the disabilities of this part of the Act." But my friends have merely to read my Bill to see how utterly impossible it will be for the Muhammadans to come under this part of the bill. They have no adoptions; they have no shibaits, their law of succession is different, and the Bill expressly mentions that it applies only to Hindus, Jains, Sikhs and Buddhists, and I therefore say, Sir, that if some enterprising spirit were to bring in an amending Bill, what is there to prevent him from introducing an independent measure. I submit therefore there is nothing in this objection. The fear of any Muhammadan reformer bringing in a measure hereafter is a standing fear, and is certainly not aggravated by the introduction of my Bill. These are all the objections which have been addressed to me and I have striven, very briefly, to reply to them. I commend, Sir, my proposition to the acceptance of the House.

Rai Bahadur Pandit J. L. Bhargava (Ambala Division: Non-Muhammadan): Sir, I move:

"That the Bill as reported by the Select Committee be recirculated for the purpose of obtaining further opinion thereon."

At this stage I consider it quite unnecessary to enter into the merits of the principle of the Bill, or the history of Act III of 1872, or the subsequent attempts that were made to modify or to extend it. In this connection it will suffice to say that the Bill, though permissive in its nature, is of a highly controversial character, and all the motions that have been made by the Honourable Mover of this Bill have met with strong opposition in this House. The Bill was opposed when it was introduced. When the motion for referring it to Select Committee was made in January 1922 that motion was negatived by this House after a very lengthy and full discussion; and when it was referred to a Select Committee in September last, it was only by a bare majority of one vote. I am also not unaware of the fact that the Bill in its original form was circulated for opinion, and the opinions that were obtained on it were before the Select Committee; but the Bill as it is presented in its amended form is so much modified and

altered that the members of the Select Committee themselves have considered it necessary to recast it, and the object of my motion is to circulate the Bill as it has emerged from the Select Committee for opinion of the persons who are affected thereby. It has been pointed out by the Member in charge of the Bill that the scope of the Bill has been restricted, and there is no doubt that the Christian, Muhammadan, Jewish and Parsee communities have been excluded from the scope of the Bill, but that is no reason why these communities should not consider and see whether this Bill is good for the communities which will be affected by it. The communities which remain are the Hindu, Sikh, Jaina and Buddhist communities. These communities will remain affected and the exclusion of other communities will not affect them in the least so far as the main principle of the Bill is concerned.

Sir, as has been pointed out by the Honourable Member in charge of the Bill, certain matters have been introduced by the Select Committee. One of them is that marriage according to this Act will have the effect of separating the person marrying from the joint family of which he is a Member. The other is that in matters of succession the party marrying under this Bill will be governed by the Indian Succession Act, and there is also a provision that the person marrying under this Bill shall have no right to adopt. These are matters of vital importance and of great significance. It is stated in the Report of the Select Committee that "all reasonable and legitimate objections urged against the original Bill in the opinions received on it have been sufficiently met." The question is whether these objections have been sufficiently met or not, and whether the Select Committee had the opinions of those communities whom the Bill will affect on the questions which have been introduced into the present Bill before them. It might be said that these opinions had reference to these questions and it is reference to these questions that has led the Select Committee to introduce these matters. No doubt there is a passing reference incidentally made in some of the opinions about these questions, but the reference is simply to the effect that these questions will arise. There is no definite and considered opinion upon all these matters and it is therefore necessary, before this House is in a position to pass this Bill or to consider the motion that has been made before it, that the opinions of all those persons who will be affected on these points which have been introduced by the Select Committee, and upon which they have had no opportunity of expressing their opinion, should be before this House. And the fact that on a very important question the Members of the Select Committee themselves were not agreed is a strong argument that the opinions of the representatives of those persons who will be affected by the Act should be obtained. Looking to the nature of the amendments that have been made in the Bill and to the nature of the changes that have been introduced, it is highly desirable that the Bill should be recirculated for further opinion.

With these remarks, Sir, I move my amendment.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadan Urban): Sir, it is a cruel irony of fate that I find myself supporting my Honourable friend, Mr. Bhargava, on this point. The House will see that I had given notice of the same amendment but with a different object. My Honourable friend wishes somehow to kill this Bill. I wish that the Bill should be improved; but, according to the rules, both of us had to give notice of the same motion. I do not wish, Sir, to make a

[Munshi Iswar Saran.]

secret of my own views and convictions on this question. I am one of those who are thoroughly, completely, dissatisfied with the Bill as it has emerged out of the Select Committee. Without meaning any offence I think that its opponents on the Committee got the better of my Honourable friend the Mover of this Bill and introduced clauses into this Bill which have made it practically ineffectual. Sir, when this Bill was circulated for opinion the House will remember that there was a very short Bill which only sought to take out certain words from the Special Marriage Act of 1872. The opinions that were given by the various High Courts and by various public bodies related to the Bill as it stood then, but since this Bill has been modified in the Select Committee in very important details and as it is a measure of a far-reaching character I do think that it is fair to the public and fair to us that we should know what they think about the changes thus introduced. My friend has airily brushed aside all these objections. He says, "Oh, well, if you do not agree with this Bill, then you take advantage of Act III of 1872; but if you do agree with it, then come and marry under this Act." Now I am afraid my Honourable friend does not realise the position which I and those who think like me occupy. I am with him whole-heartedly—I might almost say, enthusiastically, on the question of reform in this matter; but I look at the whole question from the standpoint of a Hindu. What I say is this. A Hindu cannot go and get married under Act III of 1872. He cannot go before the constituted authority and say "Well, I do not profess Hinduism." That is a lie. What is the alternative that he has? He comes here, the same man, and says "All right, I shall marry under this beneficent measure which has been given to us by Dr. Gour." And what does he find? He finds that he practically ceases to be a Hindu.

(An Honourable Member: "How?")

Munshi Iswar Saran : Quite right—how? That is a very pertinent question and a very relevant question of my Honourable friend. Now if my Honourable friend will refer to any book on Hindu law or if he will take care to consider all those fundamental principles on which Hindu society is based, he will find that a very great deal of importance is attached to adoption, to succession and to other matters like these. What do you find here? I am a Hindu. Let the House remember that it can only form an accurate idea of my position if it does not forget that I am a Hindu. I have practically all those feelings, all those convictions, all those emotions which most Hindus have; but I feel that on this question there has grown up a custom which places an unnecessary restriction on the liberty of our action. But look at the difficulties created for us. Suppose I am a Brahmin and I marry in a Kshatriya family under Dr. Gour's Bill and I find that I have not got any issue and I believe in *Pinda dan* and the spiritual benefit that a son can confer on me, what do I find? I cannot adopt. I say, it gives a rude shock to my notions on this particular subject. I do not wish to be governed by the Indian Succession Act; I wish to be governed by the Hindu law. You say "Either you go and tell a lie before the sub-registrar or you consent to this." I say I will not accept this position; because you rob me of my right to be governed by the Hindu law and in its place you give me the Indian Succession Act which has been introduced into this country for the regulation of inheritance amongst non-Hindus. Then my friend says "Well, here is the Caste Disabilities Act." Sir, by my marrying under this Bill you deprive

me of my right to live with my brother, you deprive me of my right to adopt; you deprive me of my right to be governed by my own personal law and you say that this is a measure which is going to be used by anybody. It may be used; it may be used by those who are not Hindus, but Hindus of that class would much rather go and marry under Act III of 1872 than come and marry under the present Bill. These are important far-reaching changes which have been introduced by the Select Committee into this measure. I do not wish to speak at length at this stage, and I say that it is necessary, it is advisable, nay, it is imperative that you should collect the opinions of those who are entitled to speak upon it. My Honourable friend says public opinion will be satisfied. If the motion of my Honourable friend is rejected and if this Bill comes to be considered you will form a measure of public opinion by the voting that will take place. The fact of the matter is this. Let me say quite frankly—I am keener than Dr. Gour for this reform, but I do not wish to conceal it from myself that the vast majority of our people do not like it. This being so, some people say “Why do you then introduce it?” My answer to that is this: it is a permissive measure, it does not force you to marry under this measure if you do not care; there is a large and growing body of Hindu dissenters and it is for their protection, for the protection of a minority—call them a microscopic minority if you like, but still a minority—that this Bill has been brought forward. You say “Remove this restriction; remove this bar; let us be free to marry according to our choice.” The law has imposed the restriction that if I marry against the custom of the locality or of the family, then the marriage is not a marriage in the eye of the law, the wife is not a wife in the eye of the law, and the children are not legitimate in the eye of the law. I cannot by any means get over this difficulty created by the law and it is therefore to the Legislature that I come for redress. If the House will permit me I wish to refer to a case which was decided by the Allahabad High Court. There was a case of marriage between a Brahmin man and a Kshatriya woman; it was argued that this marriage was contracted according to the custom prevalent in Nepal and the parties were Nepalese; the High Court did not sustain the plea put forward by the widow about the validity of her marriage. Now, it is against this position that we complain; we say that the law has created this difficulty for us, and it is the law alone which can remove this difficulty. But I say, if you want to remove this difficulty, remove it in a way that honest and genuine Hindus with Hindu ideas may be able to take advantage of this Act and I pray you, do not give us an Act which is not worth having. But, Sir, be that as it may. I do not wish to speak as to the various provisions that

4 P.M.

are contained in this Bill. I only wish the House to consider this question whether it is prepared to take up this Bill at the present moment in spite of these important changes that have been introduced or whether it thinks it advisable to send it round for public opinion. I support the motion of Mr. Bhargava and I am distinctly of opinion that the Bill should be sent round so that Judges and others may be able to express their views on it.

Raj Sahib Lakshmi Narayan Lal (Bihar and Orissa: Nominated Non-Official); Sir, I stand to support this amendment. I do not like to traverse the grounds so ably put forward by my Honourable friend, Munshi Iswar Saran, but I want to support this amendment only on one ground. My Honourable friend, Dr. Gour, has kindly issued a pamphlet regarding this Bill. I have carefully gone through that pamphlet many a time, and it

[Rai Sahib Lakshmi Narayan Lal.]

I could rightly understand that pamphlet, I thought that the Honourable Dr. Gour was of opinion that this Bill would be of great political advantage for the Hindus. I am sorry I cannot agree with him in this view, but I do not like to labour that point at present. What I want to say at present is this, that if there was any political advantage in that Bill, that has been lost by excluding the other communities, and if this Bill as it is put now is pressed and passed into law, it will do a lot of harm without any good which it is supposed by Dr. Gour to do. I trust that this House will carefully consider this measure and vote for postponement of the matter at present.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): I rise, Sir, to support the motion for taking the Bill into consideration introduced by Dr. Gour. We have on the other hand a motion for circulating the Bill for inviting public opinion thereon by my friend, Mr. Bhargava. Now, Sir, we are accustomed in this House to opposition to measures of this character by those who avowedly belong to the orthodox view, and I do not for a moment object to the view put forward by my friend, Mr. Bhargava. But I must confess to a sense of surprise and amazement at the support that he has been getting, and a powerful support too, from my Honourable friend, Munshi Iswar Saran, because if I correctly interpreted the views of my friend, Munshi Iswar Saran, he never belonged to that section of Hindus which take a pride in calling themselves conservatives or orthodox. Now, Sir, what is the attitude taken up by Munshi Iswar Saran? Why does he object to the Bill? He says there is not much difference between the Act of 1872, and the Act which will come in force if you pass this Bill into law. Now, Sir, can that objection stand? Those of the Honourable Members who were present in Simla when Dr. Gour introduced this measure, will remember that my sole reason for supporting it was that it secured to the individual the liberty of conscience which the Act of 1872 as it stood denied to him. I want to ask Honourable Members a serious question, whether if you pass the present Bill into law, it does or does not ensure that liberty of conscience that we want, it does or does not ensure that liberty of conscience that we wanted. (*Mr. B. N. Misra*: "No, it doesn't.") It does. What will be the effect of this Bill? My Honourable friend, Mr. Biswa Nath Misra, ought to know that it does secure that liberty of conscience which we want, and I will prove it to him in a minute if he will have the patience to hear me. What was our objection to the Act as it stood? Our objection was that, if a man belonging to one caste of Hindus married a girl from another caste, also of Hindus, both of them had to go and declare on oath that neither of them was a Hindu. That is, in order to secure the marriage they had to tell a lie on that solemn occasion and renounce their faith altogether. Now, the moment this Bill becomes law, if a boy of one caste of Hindus wants to marry a girl of another caste of Hindus, neither of them will be called upon to say "We are not Hindus and therefore we shall take advantage of this Act and get married." Both of them can retain their faith, both of them can be Hindus and yet the law will recognise their marriage as legal. Now, what are the objections which my Honourable friend, Munshi Iswar Saran, urged? He said: "Yes, it might secure to them this liberty of conscience. They may not have to renounce their faith, but in the eyes of the law they will not retain the power to be Hindus. They will not be able to make the Hindu law applicable to them in all instances as it would be

applicable in the case of ordinary Hindus." Now, I want to point out to my Honourable friend, Munshi Iswar Saran, that we are faced with a great difficulty in getting this measure through. There is an opposition from the orthodox community. I do not for a moment admit that that opposition is from a majority of Hindus. I do feel that at any rate at the present moment there are a majority of my community of Hindus who are prepared to confer on their fellowmen the liberty of conscience which has been so far denied to them. So that, so far as that argument is concerned it does not appeal to me that Hindus are not yet prepared to grant to their fellowmen the liberty of conscience that is wanted. But I want to point to my Honourable friend, Munshi Iswar Saran, the difference between these two things. First the highest thing that a man values, namely, liberty of conscience, which this Bill secures for him. Secondly, the objection which he has pointed out refers to the application of that law in those instances which gives him all the worldly rights which a man's being a Hindu entitles him to. Now, assuming for the moment that for the sake of compromise we have in the Select Committee not been able to give to such Hindus as will take advantage of this Act when it becomes law, that we have not been able to confer on them all the rights which ordinary Hindus enjoy on account of the worldly rights, after all what is that loss compared to the great and, higher gain that is a man's property if liberty of conscience is secured to him. To me it seems to be a very futile objection to urge for the purpose of defeating this measure. I wish, Sir, that I could persuade Members of this House not to delay for a moment, not to make a moment's delay in doing justice to those who have for long claimed and justifiably claimed at our hands the liberty of conscience. Not to allow this measure to go through at the present moment is to risk this measure being thrown out, is to risk inviting perpetual blame on the community that, while we are claiming and rightly claiming freedom from other quarters, we are not prepared to give to our fellowmen the liberty of conscience which as human beings it is their right to demand. I feel, Sir, that it would be a great mistake if this Bill was not taken into consideration. I feel that it would be a great mistake if this Bill was sent back to the people for eliciting their opinion thereon. Where is the necessity of sending this Bill again to the people? Has not this question been before the country now at least for the last 12 years? Was it not in 1911 that Mr. Bhupendra Nath Basu first introduced a measure of this character? Was it not again for years together that Mr. Patel's name was associated with a Bill entirely of this character? This subject has been before the people for a long time and now, after 12 years of agitation on this question, when we are on the verge of seeing this Bill through in this House, when we are on the verge of doing justice—bare justice—to our fellowmen who belong to our community, to come forward and put this argument before us that it should be re-circulated is, I believe, not in accordance with our claim for doing justice to all as representatives of the people. Another thing. When Dr. Gour first introduced the measure, it was in a very wide form. It allowed a Hindu not only to enter into inter-caste marriages but it even gave him the right of going outside his communities and it was made applicable to all communities in India. Now, I personally would have welcomed that reform. But if the House is not prepared for it, if all the communities have some objections to urge against a wide and sweeping measure of that kind, I will respect their feelings and I think the Select Committee has done wisely in respecting the feeling of those communities, with the result that the scope of this Bill is very much narrowed down, and with the Bill in its present form, even that pillar

[Mr. Jamnadas Dwarkadas.]

of orthodoxy, my Honourable friend, Mr. Rangachariar, has nothing to say against it.

Munshi Iswar Saran: That is the danger.

Mr. Jamnadas Dwarkadas: Honourable Members will see that he has himself appended his signature to the Bill as the Chairman of the Select Committee to which this Bill was referred, and it appears to me absolutely futile that effort should be made at this stage to throw out the measure on grounds which the House need not seriously consider. I strongly appeal to the House, Sir, not to accept my friend, Mr. Jawahar Lal Bhargava's amendment but to pass my friend Dr. Gour's motion.

Mr. J. N. Basu (Burma: Non-European): Sir, it is rather a big thing to find oneself within the focal distance of the President's eye. The problem is to find the *loci* of the President's focus within this Assembly and being a new comer, the problem seems to be insoluble to me. I leave it to my veteran friends to solve and if they fail, they may present it to the University examinees in the question papers. However, Sir, I will not detain the House long, for I had almost taken a vow not to open my lips; but when I glanced through the Bill I found that there was a sub-conscious conspiracy on the part of the Select Committee to compel me to speak, although I candidly admit that I share the common weakness of this House in having an itchy tongue. Now to the Bill. Most of the speakers have all along dwelt on the Hindu aspect of the question. I have followed closely my Honourable friend, Dr. Gour, to find out whether he would make any reference to Burma or the Burmese Buddhists in Burma. I fail to find any reference to that. My province has been included in this Bill only for one reason and that I find from the Statement of Objects and Reasons. The reason is given in paragraph 2:

"Some of us are doubtful whether Buddhists should be included, but the majority are of opinion that they should be included, as Indian Buddhists, equally with Sikhs and Jainas, have been held by the Courts to be Hindus for purposes of succession, marriage, and other matters."

Now, as Indian Buddhists have been declared to be Hindus for certain purposes, *a fortiori* Burmese Buddhists can also be included as Hindus. That is the line of reasoning I understand adopted in this. Well, Sir, you can easily see that Burmese Buddhists are quite different in their law of succession, inheritance, marriage, adoption and so forth. There are also Chinese Buddhists in Burma. The Burmese Buddhist law is quite peculiar to themselves. Their law of succession is not at all anything like the Hindu law. They have no will at all, and their ideas of adoption are not at all similar to the law of adoption in India. There is no libation of water or *pinda* offered to the soul of Burmese Buddhists. They do not believe in souls. They are concerned more with the care that should be taken by the adopted children for the living parents and they have recourse to adoption during their lives. Now, they can adopt many children, even the fathers of children and adoption is open to both the parents. Now, that law is going to be affected by one of the sections of this Bill. (*Dr. H. S. Gour:* "How?") You deny that right of adoption to certain persons. (*Dr. H. S. Gour:* "I do not deny the right of marrying under the Burmese law.") You deny the right of adoption to certain persons if there is a marriage under this law. (*Dr. H. S. Gour:* "You can ignore it.") Then, Sir, their law of succession is quite different. I do not see how that law

can be restricted in this way. There are Burmese Buddhists and Chinese Buddhists who stoutly repudiate to be dictated to or be governed by any law other than their own. Their opinion has not been elicited on these vital matters. And apart from the merits of the question, apart from the merits of the Bill which I heartily approve, I certainly take my stand on this point that the Chinese Buddhists' opinion, the Burmese Buddhists' opinion have not been elicited on these matters. I for one cannot undertake the risk of voting in favour of this Bill unless I know the views of my constituency. Have they been given an opportunity of ventilating their views? I submit, Sir, not. On the Bill as it has emerged from the Select Committee at present their opinion I submit has never been elicited. Burma has been treated in this way all along by the Government of India. What prevented, I submit, the Government of India or this Honourable House from having at least one Member of Burma on the Select Committee? If in matters affecting Burmese Buddhists and Chinese Buddhists their interests are very studiously neglected by this House,—I must say candidly,—and by the Government of India all along, I submit that the Burmese Members feel—I mean thereby the Members who represent Burma—that they are ignored. Their presence would have been helpful to the Select Committee in matters like these and would have saved them from the pitfalls of hasty legislation. My point therefore is simply this—that this Bill should be republished for eliciting the opinions of the Burmese Buddhists. It is contended by my Honourable friend, Mr. Jamnadas, that this Bill should be wholeheartedly supported. All the remarks that he has made do not affect Burma at all. I shall be happy if Dr. Gour leaves Burma completely out of the jurisdiction of the Bill. None of the Members of the Select Committee happen to have considered the Burmese point of view. They seem to have taken it for granted and have fallen into the fallacy that because Indian Buddhists are Hindus for certain purposes, therefore the Burmese Buddhists are also Hindus. Now there are ordinary Hindus and Privy Council Hindus. But there are no Privy Council Buddhists in Burma yet. They are all ordinary Buddhists. I must also refer to another aspect of this matter. I must again protest that the treatment meted out to Burma as the milch cow of British India, as British India is the milch cow of the British Empire. I therefore move that this Bill be re-circulated. I shall then be in a position to support wholeheartedly the principle of the Bill.

Mr. Manmohandas Ramji (Indian Merchants' Chamber and Bureau: Indian Commerce): I had no intention of taking part in this debate. I felt that I should be satisfied with exercising my right to vote but as Mr. Jamnadas emphasised the liberty of conscience and the opinion of the majority, I think I must give him some reply. As far as the majority question is concerned, I ask Mr. Jamnadas whether he has approached his own community on this question and ascertained their views, whether there is a majority or a hopeless minority in his favour; and if the question is put to masses of Hindus I have no doubt that not more than two or three per cent. will come to his side. In order to prove my contention I may tell the House that opposition meetings have been held all over India and there is not a single meeting in support. There has been opposition all over and there have been petitions also. Therefore that feeling is there. Of course, there is no objection for any Hindu to marry in any fashion he likes. There is that liberty of conscience, but that liberty under the present Bill before us does not meet the actual requirements of the case. It is patch work simply, because these people think that if they

[Mr. Manmohandas. Ramji.]

carry this now they can go further later on; but when we take the trouble of legislating, let us not be satisfied with half measures, but let us give full measures, which they dare not do.

Bhai Man Singh (East Punjab: Sikh): Sir, I oppose the motion that the Bill be taken into consideration and support the amendment that the Bill be circulated for opinion on quite a different ground. I think the Select Committee has gone far beyond the mandate that was given to it by the House. The House when it made over the Bill to the Select Committee was simply concerned with one point, namely, whether marriages between men and women of different castes or different religions should be allowed under the Act or not; there was already an existing law regulating such marriages with the condition that the parties had to state that they do not belong to the Muhammadan or Hindu religion and the question was that this declaration should be dispensed with. The Select Committee has assumed to itself powers that were never given to them and has brought before us a Bill which we could never dream of. They now come to us with the proposition that if a Hindu marries a Hindu girl of another caste he shall not adopt; if he marries a girl of another caste he shall be deemed to have separated from his family; a Hindu who marries a Hindu girl of another caste or a Jaina girl shall not be allowed to follow the rules of succession according to Hindu law but shall have to follow the rules of Indian Succession Act, which, so far as I understand, is very much akin to English or Christian law in this respect. Sir, I was never prepared to give those powers to the Select Committee to enable them to spin out a huge system of succession, adoption and joint Hindu family law for us. There is a very good precedent against this sort of thing in another measure which was called the Cantonment House-Accommodation Bill. That Bill was referred to a Joint Committee and the Committee found that it was necessary to make many drastic changes in the Bill, but the Joint Committee, being true to the mandate which had been given to them, did not think themselves capable of going beyond the limits under which they thought the Bill had been referred to them and they reported to the House that as they wanted to make certain drastic changes they would like the Bill to be re-submitted to them. I really wonder how the Select Committee on this Bill has assumed to themselves powers which were never given to them, and it is on this ground of principle, Sir, that I would strongly oppose their report being taken into consideration on the floor of the House. They have not stuck to the principle of the Bill only, they have gone far beyond our mandate; and if the principle is once conceded that a Select Committee can change the whole fabric of a Bill and give us quite a new law on the subject, I think it will be a very bad precedent from the point of view of the principles of legislation. I therefore, Sir, strongly oppose the Bill being taken into consideration.

I should like to draw the attention of the House to another anomaly in the Bill as it has emerged from the Select Committee. So far as I understand, a gentleman who marries another Hindu girl after declaring that he does not belong to the Hindu, Muhammadan or Jaina religion, has to follow the ordinary rules of succession. At least the present Special Marriage Act does not lay down that he shall follow the law laid down in the Succession Act. But a Hindu who is not prepared to say that he is not a Hindu who marries under the provisions of this amended form of marriage is told by the law 'No, my dear Sir, though you are a Hindu,

though you are not prepared to say that you are not a Hindu, you shall not be allowed to follow the Hindu Law of Succession.' I do not find anything special in the latter case that makes it necessary that he should be forced by this measure to follow a different law of succession from what is followed by the rest of the society. I think if Dr. Gour presses that this Bill should be passed in its present form, as it has emerged from the Select Committee, in my humble opinion, he will be doing a distinct disservice to the cause of reform, because those who marry under this Bill would practically become outcastes. Again they shall lose the power of adoption. That is a privilege which perhaps every Hindu, at least a Hindu who is not prepared to say that he is not a Hindu, cherishes to his heart; and is it not downright tyranny to force him not to have the power of adoption? I am sorry my Honourable friend, Mr. Jamnadas Dwarkadas, is not present in the House. He claimed the liberty of conscience. I too claim the same thing, but I ask why we should snatch away the right of adoption from a person who is liberal enough to marry a girl of another caste. Why should you snatch away the rights of succession to him under the Hindu Law who is liberal enough to marry a girl of another caste? In the end I should like to make my own position clear. Let it not be understood that I am at all against inter-caste marriages. My religion very freely allows inter-caste marriages. In fact the Sikh religion observes no castes at all. Again, I know that marriages between Hindus and Sikhs are at present prevalent and inter-caste marriages amongst the Sikhs are valid according to the Anand Marriage Act and their marriages with Hindu girls are also valid according to the present law. I would at the same time very much wish that inter-caste marriages be as much more prevalent as possible, but I strongly oppose the Bill as it has emerged from the Select Committee, and I strongly oppose the motion for taking it into consideration for the Select Committee have gone so much beyond the mandate of the House and the Bill creates so many difficulties in the way of persons marrying under it.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I would not have risen, if I did not think that I might draw the attention of the Honourable Members to a few points of some complexity to which attention has not hitherto been drawn; and that I propose to do by a reference to some of the features of the present Bill. It seems to me, Sir, on a careful perusal of the Bill, that it creates an anomaly of a character which it is impossible to obliterate by means of amendments. The first point I take up is that the Bill provides that succession to the property of a person marrying under the Act or to that of the issue of persons marrying under it will be governed by the Indian Succession Act. Now, Sir, there are certain sections of the Indian Succession Act which say that it does not apply to Hindus, etc., e.g., section 331 of the Act. (*Mr. K. Ahmed*: "Amend and get rid of them.") You have got therefore to reconcile this inconsistency in the first place. You have to do many other things, besides. You have got to get rid of the Hindu Wills Act, also, if you have to submit to the Indian Succession Act entirely, all cases arising out of the present Bill. The law on the subject, it seems, will have to be harmonised. Then, suppose, Sir, a person marries under this Bill and thereby separates himself and his wife from the joint family. Under the Bill he is not then entitled to adopt a son to himself; and succession to the property of a son who has been adopted under the Hindu Law, but who marries under the Bill, will also be governed by the Indian Succession Act. Now, it may be, that there is a collateral

[Mr. J. N. Mukherjee.]

or a lineal ascendant, who is to succeed to the man who marries under the Bill. The law by which that collateral or ancestor is governed, it may be presumed, is Hindu Law and, yet he will succeed to that man's or his adopted son's property under the Indian Succession Act. Reversing the situation, these persons will succeed to the property of their collaterals or ancestors under the Hindu Law. If it be the case of sons who are to succeed to a person marrying under the Bill, of course the proposed new law clearly provides that it will be the Indian Succession Act that will govern the succession, but in the other case where collateral or lineal succession to the property of an orthodox Hindu is open to the man, marrying under the Bill or his issue, the succession will be governed by Hindu law in spite of the Bill. Then, Sir, I am here reminded of a case of two brothers marrying, one according to this proposed law, and then dying without any issue, but leaving his mother, widow and brother; what then will happen? According to the Indian Succession Act we find that unlike the provisions of the Hindu Law, a division of the estate takes place; that a certain share goes to the widow and the remainder to the children or the children's children or to the kindred, as the case may be, but in lineal succession direct succession stops, with children's children, and does not go further down as in Hindu Law. The proposed law when it comes to be practically applied to such and similar cases will be found sometimes to militate against the principle of both the Mitakshara and the Bengal school of the Hindu law of succession. And if with reference to the same person two different sets of laws under two different conditions are found to be applicable at the same time, I submit to this House, that the greatest confusion will arise in the practical application of the law. The question of succession is not the only question with which we are concerned. We are concerned also with wills. If a man is to be governed by the Hindu Wills Act, then, there are only certain sections of the Indian Succession Act which must be used in interpreting the wills of Hindus but not others. He is also governed by the provisions of the Probate and Administration Act, in this connection, and not by the Indian Succession Act. It must be remembered that there are again certain sections which are applicable under the Indian Succession Act, which are a counterpart of the English law on the subject and they are not applicable to Hindus. Those questions will also have to be disentangled and faced in applying the provisions of the Bill. Sir, these are matters, no doubt, of detail, but the whole question, if it is to be solved at all, will have to be solved by reference to these matters of detail, and by not shutting our eyes to the practical difficulties of the situation. Again, Sir, we have here in this Bill, forbidden adoption, but if we take into account Hindu wills, we shall find that under the Hindu Wills Act, in interpreting the will of a Hindu, it has been laid down that the word 'son' should include an adopted son and a daughter-in-law should include the wife of an adopted son. I could multiply instances of this nature to some extent, but I do not propose to do so. All these difficulties would, however, vanish if a separate and well-defined class was created by the Bill, say "Hindu Dissenters," or something of that sort, but as it is the word "Hindu" without any qualification has been retained in the Bill and the word "Hindu" as it has been authoritatively interpreted means one who professes any form of the Brahmanical religion *

Dr. H. S. Gour: Where is it laid down? Where does a Hindu mean a Sikh or Jaina?

Mr. J. N. Mukherjee: The latter is not the point. I think I am correct in what I have stated. The House has been often told by Dr. Gour that the Privy Council has held that a Brahma is a Hindu. It is not so. What has been held by the Privy Council is that although a man adopts European habits of life, if he is born a Hindu the birth mark of Hindu sticks to him until there is a formal act of renunciation by him. That is what has been held by the Privy Council in Sardar Dyal Singh's case, and not what my Honourable friend has stated to the House more than once.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sardar Dyal Singh's case?

Mr. J. N. Mukherjee: Yes. And the House has been told that the Privy Council has decided that Brahmans are Hindu dissenters governed by Hindu Law. This has never been the decision. We have the highest respect for the Privy Council, and I cannot think that they have ever decided anything of that kind. The fine gradations between one defined community and another will always exist, and the line of separation between the larger communities has always to be drawn somewhere, and in the practical application of the law to communities questions of detail will always crop up, which will have to be solved from time to time, by reference to the general principles laid down in the law. I may say that I have paid some attention to the subject, and with all humility, I would ask the House to take it, that I could quote authority for my statement of the law. At page 551 of this book (Henderson's Law of Succession) the House will find it stated that the word "Hindu" mentioned in section 331 of the Indian Succession Act is meant to denote persons professing any form of the Brahmanical religion.

At a time, Sir, when others thought that all complicated questions connected with the original Bill of Dr. Gour's would be satisfactorily solved by the Select Committee, I confess I had my doubts as to such a possible achievement; and, when the Bill emerged from the Select Committee, I found that confusion with reference to matters of law had been worse confounded. All this confusion must have emanated from an anxiety to minister to the desire of a small class of people to appear to be something or to profess to be something, which is not the reality. Well, it is always very difficult to reconcile two different systems of law in one enactment and the difficulty of the situation in the present instance was considered for some seven or eight years by those eminent men who were at the helm of affairs at the time, the Law Members in and before the seventies, and after all the various suggestions for a non-sacramental general marriage law for India were placed before them, they ultimately came to the conclusion that unless persons who belonged to the Hindu, Mussalman, Jaina, Christian, Sikh or Buddhist communities were excluded from its operation, any General Act of the nature of the present Civil Marriage Act, was not possible. Such a General Act, they decided, could not be made applicable to these communities as they had special marriage and succession laws of their own. That was the line of least resistance in fact, the only line possible which was followed by the Legislature in those days. Now we hope to achieve the impossible, or the impracticable. Sir, take the case of a man who marries under the provisions of the Bill and his wife then dies. He continues to be a Hindu, and then he marries a second wife in the Hindu form. He has sons by both wives. Now, what will

[Mr. J. N. Mukherjee.]

be the law of succession applicable to the widow and the children? The law of succession in the case of one class of children will be under the Indian Succession Act and in the case of the other class of children, that under the Hindu law. How will they claim their right of succession to their common father and how in each case will the succession be governed?

Sir, I need not detain the House with details of this character, but I should like to draw its attention to one more point, namely, to the case of impartible estates. Sir, suppose a man, who is the possessor of an impartible estate or zamindari, marries under the provisions of the Bill and dies leaving sons and daughters. What happens? If the Indian Succession Act is to apply to the case, the estate has to be divided. A portion would go to the widow if she survives the husband, one-third in the circumstances, it would be one-half in other circumstances, *i.e.*, if there were no children or lineal descendants but certain other relatives. Now, I ask, again, what will be the law applicable to the succession in such a case? It is very easy for those who are impatient for reforms and things of that kind, to clamour for reformed laws without waiting to examine them, immediately the law is formulated, or even before it is formulated. I do not address myself to that class of impatient reformers, but to those who would calmly think over and consider the situation. Of course, we must admit, that the Honourable Mover of this Bill has behaved like a skilful general, like a Napoleon or a Von Moltke. He believed in the art of defeating the enemy by divisions, and therefore, he thought it proper to exclude from the operation of his Bill, the Muhammadan and other communities who, he thought, might by that means be brought over to his side on his march to victory. Well, I can admire his generalship—his strategy.—but I cannot admire his legislative capacity. He thinks his Bill is good for the class of people who wish to have the benefit of his reforms whatever his Bill for reforms may be, his Bill to amend the Civil Marriage Act, and to amend it practically out of existence, if not to do worse.

Sir, if there is already on the Statute Book a general Act like the present Civil Marriage Act, and if the liberty of conscience which is proclaimed in this House in season and out of season is not in the slightest degree limited or restricted in the case of any marriage performed under that Act, by anything contained in that Act, I submit, Sir, that when there is absolutely no interference with the free exercise of a man's choice, or of his conscience,—in any manner whatsoever, there is hardly any occasion for introducing monstrosities, into our legislative system if I may so characterise a measure of the character proposed by the Bill. Nothing is gained by the process. A new Bill may be framed if anybody thinks that such a Bill ought to be framed for the benefit of mankind, but let it be framed after taking notice of all the difficulties, or, at least, of the fundamental difficulties which exist in connection with legislation of the character proposed by the Honourable Mover. It is very easy to hastily adopt anything that may smell of reform and things like that; but it is quite another thing to legislate for all. One must not consider himself merely as a separated individual airing his own opinion, in such circumstances, but when he is supposed to legislate for everybody within the reach of his authority, he must place himself in that position of trust and take note of and realize all the difficulties of the situation. We have had already instances of incongruities arising out of the Bill placed before

the House, and are they going to be completely ignored? And again, what do I find in the personnel of the Select Committee? No one, I find, from Bengal, or Bihar and Orissa, Assam or the United Provinces likely to be affected by the Bill, was on the Select Committee,—only Bombay, Madras and the Central Provinces, were represented on that Committee. Sir, the world has been going on as before all this time. Then, why when the whole of the original Bill has been changed, lock, stock and barrel,—when practically nothing remains of its identity, there should be such hurry about it? It took my breath away when I found that even under such circumstances, the Committee did not think that the Bill should be re-circulated. It is said that the opinions urged against the original Bill have been sufficiently met by the revised Bill, and its sponsors cannot therefore agree to its re-publication. They fail, however, to consider that new principles have been enunciated in the amended Bill, a new process of hybridisation has been started which did not exist before, and the country is perhaps gazing with wonder and curiosity upon a new legislation of the kind, formulated by the Bill. Here is a patchwork on the fabric of our Statute Book, and nobody knows as yet, how it will succeed in working itself harmoniously into the existing texture. These, Sir, I venture to think, are weighty considerations which have to be taken into account. This amended Bill was never circulated with a view to obtain opinion thereon. The important questions of principle involved in the amended Bill, the deviations from the scheme of the original Bill, were never placed before the country, and opinion was never obtained thereon. I submit, Sir, there never was a better case for re-circulation than in the case of the present Bill. I beg to support the motion for re-circulation.

Mr. S. C. Shahani: (Sind Jagirdars and Zamindars: Landholders): Sir, I beg to oppose the amendment that has been proposed, namely, that the Bill be re-circulated for opinion. I fail to understand what further opinion would be forthcoming on the Bill if it were re-circulated. The scope of the Bill has been restricted and I suppose it is the intention of some of those who have supported this amendment to have it ascertained if those who are for more thorough going reform would oppose the Bill on account of its restrictive character. That then would not be, I take it, the intention of those who are supporting the amendment. According to me no useful purpose will be served by once again referring it to Local Governments and to local bodies for their opinion. As we know, something is better than nothing. It is to me ludicrous that Sikhs should be distinguished from Hindus. In our Province Sikhs marry freely from among the Hindus, and the Hindus marry freely from among the Sikhs. But in Gujrat and Kathiawar, for instance, a Bunnia cannot marry from a Sikh family and a Sikh cannot take to wife a Bunnia girl; and if this Bill can in places like Gujrat afford some relief, I do not understand why we should not welcome it. Why should spouses be compelled anywhere to forswear themselves before marriage by declaring that they belong to no religion. It is very desirable that we should for homogeneity go in for inter-marriage. I am on that account very sorry that the scope of the Bill has been restricted. I was hoping to see that permission would be granted to Muhammadans to intermarry with Hindus and *vice versa* in these days of advancing social progress. I am greatly disappointed. I must confess that Muhammadans, Parsis and Christians have been excluded; but as I have said, something is better than nothing, and we should therefore whole-heartedly go in for the measure under consideration, which will, I hope, be passed by the House.

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): Sir, as a Jaina, on behalf of my community I most strongly support the amendment which has been moved by Mr. Bhargava. Before I proceed any further, Sir, I am bound to say that I am a little surprised at the attitude which my Honourable friend, Mr. Shahani, has taken up in this matter. Of all persons in the world I expected that he would repudiate most the idea of a man being false to himself. As I take it, under this Bill you make a declaration that you are a Hindu or a Jaina or a Buddhist or a Sikh, and yet by the very provisions of the Act you put yourself beyond the pale of Hinduism and beyond the pale of the social and religious laws of the Jainas and Sikhs. For instance, a most cherished principle either among Jainas or among Buddhists or Hindus is that of adoption. This Bill takes away that. One of their most cherished principles is that marriage is a sacramental right the object of which is that the father should derive some spiritual benefit from his having sons. The Hindu joint family which is the unit of Hindu society and not the individual as in European countries, that Hindu family will be broken up because of this Bill. Their cherished laws of succession which have been handed down for generations for so many centuries will be absolutely demolished by a stroke of the pen of Dr. Gour. Now, Sir, when he does all those things, I wonder whether there is any Hinduism left; yet he wants to go before the world and he wants to be a Hindu. (*Dr. Gour here interrupted the speaker.*) Please do not disturb me because I am sitting near you, therefore, it does not mean that I should be disturbed like this. The man is pledged to stultify himself. It is said by Dr. Gour "Oh, under the Act of 1872 a Hindu in reality, in order to contract a marriage, has to make a declaration that he is not a Hindu. He was false to himself." But under the present law, I say, a man wants to be a Hindu and yet not a Hindu. How is he going to reconcile that position? Therefore, I submit under this Bill the position is worse than under the former Bill. Well, Sir, the observations made by my Honourable friend from Burma in regard to Buddhists apply with equal force to Jainas in this country, and I have their authority to state in this Council as emphatically as I possibly can, that they too oppose this measure tooth and nail. Sir, my learned friend, skilful lawyer that he is, in order to placate his Muhammadan colleagues in this Assembly and Members of other communities, has exempted them from the operation of this Act, thereby thinking to win them over to his side. Now he wants to concentrate his affections on the Hindu and Jaina communities and I think they are very thankful to him for it. Like a bad penny the Bill always turns up. But this time it has come to us in its most ugly form, I say, it is neither fish, flesh nor red-herring. At first, it pretended to be something, but now it is mutilated in such a way and has introduced changes of such far-reaching character that its re-submission to the public is inevitable. How are the people to know the Bill in its present form? The Select Committee's Report was put into our hands only two days ago and Dr. Gour introduced it only last week. The public had no opportunity of considering the measure as to how far they can agree with it and how far they cannot. Under these circumstances, I defer going into the merits of the question any further, and I would strongly support the proposition that the Bill be re-circulated for public opinion.

(*Voices from several parts of the House "The question be now put."*)

The motion that the question be put was adopted.

Dr. H. S. Gour: Sir, I shall very briefly reply

Dr. Nand Lal: I thought the order of the Chair was that the question be now put.

Dr. H. S. Gour: I shall not take up the time of the House a minute longer than is absolutely necessary. Nine Honourable Members have spoken on this subject, five are in favour of the principle of the Bill and four are for circulation, but their social complexion I was not able to clearly discern. Now, Sir, I ask one question. Suppose this Bill goes back to the country for eliciting public opinion. What public opinions are likely to enlighten this House? Surely this House is the forum of public opinion and we are the representatives of the public opinion in the country, and all that could be said of the pros and cons has already been said by the protagonists of the measure and its opponents. A very large number of members complain that if this provision is passed into law, it would deprive the Hindus of certain valued rights and thus place them in a much worse position than they are at present. That was an argument which I met at the outset of my speech. Did I not point out to the House that the measure is a purely permissive measure and it makes absolutely no advance upon the existing law unless you wish to take advantage of the special provisions which have been inserted. You may turn an absolutely deaf ear and a blind eye to these provisions. Treat them as if they were non-existent. How are you damnified by its provisions? That, I submit, is a short question and a short answer to my friend Mr. Basu who says 'what about the Burmese Buddhists?' Burmese Buddhists have to tear up their copy of the Statute there if they do not wish to abide themselves by its provisions. If you wish to come under the provisions of this measure, you are subject to certain disabilities and entitled to certain rights. You contract the marriage with your eyes open, and after that you have no right to complain. If you do not wish to take advantage of the provisions of this Bill, you are at liberty to ignore it. Well, that is my answer to a very large number of friends who have spoken and emphasised upon the disabilities which this Bill casts upon those contracting marriages under my Bill. I have already said, Sir, that they need not marry under this Bill; they can continue to make false declarations of which they complain under Act III of 1872. It remains unaffected by the supplementary provisions which

5 P.M. this Bill seeks to add to Act III of 1872. Then, Sir, it has been said public opinion has not been consulted. Now, I wish to ask the Honourable Members whether public opinion has not been consulted. (*An Honourable Member:* "No.") I think those who cry "No!" must have for the time being forgotten that elementary axiom with which we start the study of Euclid, namely, that the greater includes the less. When on the larger measure public opinion was consulted, on this narrower and more restricted measure public opinion need not have been consulted and all the objections of which we know and which have been presented to us, not during the last 10 or 12 years but during the last 50 years, have been considered and given effect to, so far as it was necessary, in the Select Committee. I submit those who oppose this measure, those who want that we must once more go to the country for the purpose of eliciting public opinion, are trailing a red-herring. If they are honestly opposed to the Bill, let them move a motion that the Bill itself be rejected. Let them not, I submit, deliver a flank attack on the measure. And those of my friends who profess to be supporters of the measure and yet desire to widen its scope, I warn them that no public opinion, no delay is likely to widen the scope of the Bill because the more you widen it the more opposition it is likely to receive from the orthodox section of the community.

[Dr. H. S. Gour.]

I make no secret of the fact that the Bill is a compromise and you cannot justify all the provisions of a compromise. You must take it as a whole or not at all. That is my answer to my friends who say I have gone too far. That is my answer to my friends who say I have not gone far enough. I say, Sir, I have taken a middle course and that middle course I ask this House to endorse by their vote.

Mr. President: The original question was :

“ That the Report of the Select Committee on the Bill further to amend the Special Marriage Act, 1872, be taken into consideration.”

Since which an amendment has been moved :

“ That the Bill as reported by the Select Committee be re-circulated for the purpose of obtaining further opinion thereon.”

The question I have to put is that the Bill be re-circulated.

The Assembly divided.

AYES—31.

Achariyar, Rao Bahadur P. T.
Srinivasa.
Agarwala, Lala Girdharilal.
Amjad Ali, Maulvi.
Asjad-ul-lah, Maulvi Miyan.
Ayyangar, Mr. M. J. M.
Barua, Mr. D. C.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Bishambhar Nath, Mr.
Hussanally, Mr. W. M.
Iswar Saran, Munshi.
Jatkar, Mr. B. H. R.
Lakshmi Narayan Lal, Mr.
Latthe, Mr. A. B.
Man Singh, Bhai.

Misra, Mr. B. N.
Muhammad Hussain, Mr. T.
Mukherjee, Mr. J. N.
Nand Lal, Dr.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Ramji, Mr. Manmohandas.
Sarvadhikary, Sir Deva Prasad.
Singh, Babu B. P.
Singh, Mr. S. N.
Sinha, Babu Adit Prasad.
Sinha, Babu Ambica Prasad.
Sinha, Babu L. P.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.

NOES—42.

Abdul Majid, Sheikh.
Abdul Rahman, Munshi.
Abul Kasem, Maulvi.
Ahmed, Mr. K.
Ahmed Baksh, Mr.
Aiyer, Sir P. S. Sivaswamy.
Allen, Mr. B. C.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Barodawalla, Mr. S. K.
Bradley-Birt, Mr. F. B.
Bridge, Mr. G.
Chaudhuri, Mr. J.
Clark, Mr. G. S.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Faiyaz Khan, Mr. M.
Faridoonji, Mr. R.
Ginwala, Mr. P. P.
Gour, Dr. H. S.
Haigh, Mr. P. B.

Holme, Mr. H. E.
Jafri, Mr. S. H. K.
Jamall, Mr. A. O.
Jamnadas Dwarkadas, Mr.
Joshi, Mr. N. M.
Lindsay, Mr. Darcy.
Moncrieff Smith, Sir Henry.
Muhammad Ismail, Mr. S.
Nag, Mr. G. C.
Percival, Mr. P. E.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Sams, Mr. H. A.
Sarfaraz Hussain Khan, Mr.
Schamnad, Mr. Mahmood.
Shahani, Mr. S. C.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.

The motion was negatived.

Mr. President: Clause 2.

Mr. J. N. Basu: The clause includes Buddhists. It says:

“The following words shall be inserted, namely:
and for persons who profess the Hindu, Buddhist, Sikh or Jaina religion.”

From the Statement of Objects and Reasons, the Select Committee mean apparently the Indian Buddhists. Reference is not made to Burmese Buddhists or Chinese Buddhists in Burma. As their wishes have not been consulted,—I have said that their personal law is different and this Bill affects seriously the Burmese Buddhists and Chinese Buddhists. Therefore, I submit that the word ‘Buddhists’ may be deleted, or at least that Burmese Buddhists and Chinese Buddhists may be excluded from the operation of this Bill. I move therefore my amendment.*

Mr. President: Amendment moved in clause 2:

“Omit the word ‘Buddhist’.”

The amendment was negatived.

Clauses 2 to 4 were added to the Bill.

Mr. President: The question is that clause 5 stand part of the Bill.

Dr. Nand Lal: I rise to a point of order. We have not had a sufficient debate so far as opposition to this motion is concerned.

Mr. President: I do not catch the Honourable Member’s point of order.

Clause 5 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble to the Bill were added.

Dr. H. S. Gour: I move that the Bill be passed.

Dr. Nand Lal: So far as I know, no measure of this character has excited so much criticism and hostility as this Bill has done. You know this is a private Bill and a private Bill can be passed only when the community which is concerned with it approves of it. There is no approval of that kind here. In any case, no need or necessity for this Bill is shown in the form of a Resolution or expression of opinion at the bar of the public. But on the contrary, the whole orthodox Hindu community is against it. (*Cries of “No, no.”*) (*Cries of “Yes, yes.”*) Barring Mr. Jamnadas Dwarkadas’s community whom he represents, as he says (*Cries of “No, no.”*) The other day in Delhi there was a big meeting and in that meeting Resolutions were passed unanimously and, if I mistake not, a copy of those Resolutions was sent to the Government of India and to us, the representatives of the people of this country. If I were to give my individual opinion, perhaps I may not have opposed the motion, but I am here to represent the views of the public and echo their voice. Therefore, I feel constrained to oppose this Bill. Marriage with the Hindus is a sacrament. It is not a contractual tie. They look upon this measure as an encroachment upon and a dreadful violation of the sanctity of their personal law. They cannot tolerate this sort of measure which may violate the sacred canons and principles which are involved in the sacred Hindu Shastras, which are the outcome of the brain and intelligence of the great Jurists Manu and other Hindu Law-givers. A good many novel expressions have been used on the floor of this House. Mr. Jamnadas Dwarkadas has coined and so often

*“Omit the word ‘Buddhist’.”

[Dr. Nand Lal.]

repeated the phrase "liberty of conscience". In the first place the phrase is inapplicable here. I remember an anecdote—A thief, who had committed a theft. When asked why he stooped to this crime, he said "It is according to the liberty of my conscience. Because I wanted to relieve the big *sowkar* (rich man) of his excessive wealth—a burden of anxieties. I have acted up to my conscience." Mr. Jamnadas Dwarkadas, do you seriously take it as liberty of conscience, when a man falls a victim to passions and vicious impulses?

Mr. President: I think the Honourable Member had better address the Chair.

Dr. Nand Lal: Sir, is it liberty of conscience if a man violates the canons and the sanctity of one's personal law? I think no Member in this House, who has got respect for his own religion and faith, will come forward and say that an infringement of personal law can be taken synonymous with or equal to the liberty of so-called conscience. I may say, the word "Conscience" is a relative term. Conscience among robbers is to rob others. Conscience among honest people may be to act up to a certain standard of honesty. But really the question of the liberty of conscience has got no force whatsoever here. Will any orthodox Hindu have the courage of saying that this Bill is an improvement? To my mind, so far as the useful institution of adoption is concerned, it seems to be violated, it seems to be mutilated. I think, Sir, that when a law is to be made, the first thing which should be given prominence by every legislator is the view of the people whom that law is going to govern.

(At this stage Mr. Deputy President took the Chair.)

How can you thrust a law on any community when the whole community is opposed to it? Has the author of this measure any sort of support from any quarter? Not at all. There has been opposition after opposition. Take the United Provinces (I say this subject to correction). Take the Punjab. Take Delhi. And what is this Bill after all? I submit, an unnecessary burden on our Statute Book. The Muhammadans are very lucky, very intelligent. They are out of the clutches of this. I should give them great credit for their wisdom, for the sincerity which they have evinced on this occasion, in paying due regard to the sacred principles of their Muhammadan law. They in the last debate on this measure said—"No, we are not going to countenance a measure of this character. We are Muhammadans. We have got better character and calibre." It is the Hindus who have shown their weakness, who have shown, I may be allowed to say, that they have not so much respect for their religion, and for their sacred and wholesome canons. This is a direct violation of the sanctity of orthodox principles. And, Sir, the Mover said in this House that "after all I have met the various objections that were raised by the Members of the Select Committee." In other words, he admits that the Bill as it stood originally has been mutilated. What is then the object he has in view? Simply to show that he is the author of a certain Bill. On the one hand he says that the stringency of the law, as embodied in the original Bill, has been removed; on the other hand he still holds very vehemently and urges that this Bill, as it has been recommended by the Select Committee, may be accepted. I do not find any consistency in that at all. There should be some good object in passing a measure, which,

to a certain extent, directly contravenes the views of the people. The other day, on the floor of this House, a number of speeches were made, when we were discussing the question of salt, to the effect that it was the voice of the people, the opinion of the people of this country against the proposed increase in duty, and, therefore, we felt constrained to oppose it. Can any one here, especially the Hindus, say with any show of force that there is public opinion in support of this measure? Not at all. Can any gentleman, who is an advocate of this measure, place on the table any appreciable and sufficient expression of opinion, favouring this Bill? If I were the author of a private measure I would place my cards on the table and I would have said, "here is the necessity for this measure, here you can see I have been pressed to put forward this measure before the House." There is no support, no moral support even, no support backed up by the opinion of the orthodox people at any rate, and, yet, this measure is being passed, a measure which is diametrically opposed to the sacred views of the orthodox Hindus in this country. And I am sorry to say that after all the whole Assembly will be considered responsible for passing this measure, which is uncalled for and which is wicked and vicious altogether. What good will be done, Sir? The object, as I have submitted before to the House with which this Bill brought forward, most probably was that to a certain extent it may bring about the political unity of different classes of various religious in this country. Now the Muhammadan community does not come within the purview of this Bill; where is the political object? That argument loses force at once. The natural result of this measure will be that this Assembly will be criticised, and very rightly criticised, especially, by the orthodox Hindu community.

Another argument which has been advanced by the Honourable author of this measure is that the Honourable Mr. Rangachariar has subscribed to it and some other gentlemen have subscribed to it who are strong advocates of orthodoxy—these gentlemen have yielded. Well, they may have yielded for reasons best known to themselves. But I would submit before this House that after all you cannot ignore the feelings of the largest majority of the other orthodox people. They are, in fact, in the large majority and if you are going to set their sacred views at naught, there will then, I am afraid, be discontent and unfortunately the Government of India will, to a certain extent, be wrongly held responsible, by some ill informed critics, though it is the work of one or only some of us. I may say at once here, that our Government is not responsible for this measure at all. With these few remarks I strongly oppose this motion and I submit that this Bill be not passed at all.

Bhai Man Singh: I had given notice of these amendments. I do not know what has happened to them. At least I was in the Hall and I did not hear my names being called. I should like to know whether they have been ruled out of order.

Mr. Deputy President: I am afraid I am not in a position to help the Honourable Member. It was his duty to be here and protect his own rights.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan): Sir, I am very proud indeed to have a neighbour so staunch, so eloquent in defence of orthodoxy, in defence of Hindu sentiments and feelings. Sir, it reminded me of our habit, when I saw my Honourable friend, on his feet, of being afraid of dead cobras. "When we see a cobra on the road, dead

[Rao Bahadur T. Rangachariar.]

or alive, we always get afraid. That is the feeling which came upon me when I heard my Honourable friend, Dr. Nand Lal, haranguing against this proposed measure. Sir, I have been accused of unholy alliance in having concerted with Dr. Gour. Sir, there is an unholy alliance over this Bill. It is a Civil Marriage Bill and a Civil Death Bill. We have conceded by the proposed measure all that can reasonably be conceded to orthodoxy of the most rigorous type. What is it that man wants? He wants a son who will perform his *shraddhas* and what else can be a greater loss to him than the loss of a son. Here, by this measure if a son is so dead to his parent's sentiments that he feels so strong on such a point that he would marry in the way he likes, you give him liberty and at the same time you liberate the parents from possessing such a son; and therefore Dr. Gour was perfectly right; when he advocated liberty of action on the part of one, he freely conceded liberty of action on the part of the others also whose happiness is involved by the liberty of action of this individual; so that, Sir, the compromise effected in this case concedes rights to individuals, concedes also liberty of action to others. My Honourable friends complained, who are whole-hoggers in this reform like my friend Munshi Iswar Saran, "Why not retain for him all the personal law of the Hindu, why do you allow him to marry and deprive him of the personal law of succession, adoption and all that?" Let us think about it a little. Who are the people who are likely to marry under these special provisions? Persons who are grown up and, who are so imbued with love, and decide to act, that is to say, sentiments of love come into play in this case, and drive them to this course because it is a marriage which will take place after the man or woman has begun to be capable of thinking for himself or herself. So it is a marriage of love, which we all respect. In such cases if you allow personal law to come into play, what will happen? According to the personal law of the Hindus, the sons take everything to the detriment of the daughters. The sons take everything to the exclusion of the widow. Therefore, in a case like this, what is the injustice in allowing a different Law of Succession to prevail? The man marries a woman and she contracts this alliance and both of them, as society now stands, will be put out of it, by contracting such an alliance. Therefore the woman stands to gain by the provision we have made, and the man stands to gain by the provision we have made in that the sons will not exclude the parent from inheritance. That is a great advantage. The daughters of this marriage will get a share in the estate of the parent. So that there was every advantage in applying this Indian Succession Act to alliances of this sort. If people are willing to resort to this course, why should we prevent them from resorting to it? Is Hinduism going to be affected by this? Your home is safe; your joint families are safe; your religious trusts are safe; your charity is safe; where is the danger to society? I fear, and that fear is not unaccompanied with a feeling of joy also, that very few people will really resort to this form of marriage, and if they do, they are not worthy of keeping in society—I mean from the point of view of the people who oppose it. If people are prepared to leave our society and contract this form of alliance with their eyes open that the personal law of the Hindus will not apply to them, then why should the family care for such people? Therefore I do not see why any reasonable objection should be taken to this measure. Sir, orthodoxy is not blind to world forces; I wish to emphasize that proposition by my attitude to this Bill as recast.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I do not wish to make a long speech on this occasion, but I thought it was my duty not to allow this occasion to pass without saying one word in appreciation of the services rendered by my Honourable friend, Dr. Gour. Sir, as my friend, Mr. Jamnadas Dwarkadas has said, this is a matter of the freedom of conscience for the progressive section of the Hindu community, and if there had been a fight, it was a fight for this principle. There are a large number of Hindus who, when they marry, have to renounce their religion, and this Bill only helps them to retain their religion and marry among themselves. This Bill has done nothing more than this. Sir, while we pressed forward this reform we were not oblivious of the rights of the orthodox section of the Hindu community. If we wanted our freedom of conscience to be preserved, we were anxious to recognise the right of the orthodox section for their freedom of conscience, and with that object in view, we made every concession that was required to be made, and the fact that my Honourable friend, Mr. Rangachariar is in favour of this Bill ought to satisfy any orthodox member of this Assembly. (*Honourable Members*: "No, no.") Sir, I do not wish to argue this point in order to satisfy those Members of this Assembly who are not yet satisfied. I hope time will change their attitude if nothing else will. Sir, on behalf of the progressive section of the Hindu community I therefore offer a hearty vote of thanks to my Honourable friend, Dr. Gour.

Sir P. S. Sivaswamy Aiyer (Tanjore *cum* Trichinopoly: Non-Muhammadan Rural): Sir, I wish to say a few words in support of the proposition which has been moved by my Honourable friend, Dr. Gour. In the first place I think we ought to congratulate him upon the persistency with which he has piloted this measure in the face of very considerable opposition, and congratulate him upon the success which has so far attended his efforts, and will, I believe, crown his efforts this evening. The fact that the Bill as it has emerged from the Select Committee has exposed Dr. Gour to a fire from all sides is, I think, some proof of the earnest attempt which has been made by the Select Committee to meet all reasonable objections. He has been exposed to criticism from those gentlemen who think that this Bill ought never to have been launched. He has been exposed to criticism from gentlemen who think that it has not gone far enough to meet the views of the social reformers. On a former occasion when Dr. Gour sought to introduce this Bill, I put forward the necessity for providing safeguards in the interests of those members of the orthodox community who might entertain a reasonable objection to being put to any hardship or inconvenience by such marriages being contracted by members of their families. The objections which I put forward on the last occasion have been met, the safeguards which I desired have been provided. I do not think that it can be reasonably suggested that the orthodox relations of a person who wishes to contract a marriage in this form are likely to be put to any hardship at all by reason of the provisions of this Bill. Now, if the question merely were what is the sentiment of the community at large which is likely to be effected by this measure, I must admit that that sentiment will be almost entirely against Dr. Gour's legislation. If I vote in favour of this legislation, it is not because I flatter myself or flatter my conscience that it is in accordance with the sentiments of the orthodox Hindu community at large, but it is because I think that a higher consideration comes into play, namely, the liberty of the conscience of the individual.

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

[Sir P. S. Sivaswamy Aiyer.]

No community has any right to dictate to any individual that he shall be obliged to make a declaration against his conscience if he wishes to take a particular line of action in regard to one of the most solemn relationships of life. It is because I felt that the cause of liberty of conscience was sacred and must override other considerations that I have supported the introduction of this Bill. On the one hand it grants that liberty of conscience, which all civilised Governments must recognise and which the Government of India has always recognised in its past legislation. It is that principle which has underlain the Freedom of Religion Act and many other measures affecting Hindu society. Much of the opposition to this Bill is due to the fact that people do not sufficiently realise the changes which have already been brought about by the Freedom of Religion Act. It is because people think that the Freedom of Religion Act has made no encroachment upon Hindu usages that they think that Dr. Gour's Bill makes a novel and unprecedented attack upon Hindu usages. Now I think the principle of individual liberty requires that we should grant to the individual the right to contract a marriage without being put to the necessity of making a false declaration. On the other hand, I do not think that this principle of individual liberty gives any right to a person to cause any serious inconvenience to the members of the family from which he separates by his conduct. The attitude of some of those gentlemen who criticised Dr. Gour's Bill as amended by the Select Committee is that while departing from actual Hindu usages and customs, they should have all the privileges conferred upon Hindus—without any of the responsibilities or duties forming part of such customs. That, I think, is a proposition which is not demanded by the exigencies of the principle of individual liberty. You have no right, if you depart from social usages to inflict your company upon those relations who wish to remain in the orthodox fold and from whose ways you have parted. Nor have you any right to thrust upon your orthodox relations heirs to their property whom according to the existing usages they would not be bound to recognise. These would be objections founded not merely on sentimental but on reasonable grounds, and the Bill as amended by the Select Committee has provided for all these reasonable objections. It is because I think the Bill has met all possible reasonable objections which may be urged in orthodox circles, and on the other hand, it recognises that principle of individual liberty which has been in the past acted upon by the Government in legislation of this kind, that I vote in favour of the motion.

Mr. Harchandrai Vishindās (Sind: Non-Muhammadan Rural): Sir, although it is not an illegal practice, still I think it is rather a novel practice and I do not remember its having been followed at any time previously, that after a Bill has been passed, clause by clause, when the Mover moves for its passing, there is opposition raised. But there was one particular occasion for that in the present instances. That is, that Dr. Nand Lal has been honestly feeling very strongly on this question, and as he did not get any opportunity in the course of the debate to speak, I am glad he has ventilated his grievances sufficiently and of those whom he considers he represents here.

But some remarks have fallen from some other Honourable Members in the course of the debate which require to be answered. Now, great play has been made with the fact that the Hindu marriage is a great sacrament and not a civil contract. Well, what follows? Supposing this Bill is

passed, is this sacramental nature of Hindu marriage going to be changed? So far as this sacramental nature of marriage as recognised in Hindu law, is concerned, certainly not. Then again those people who are great sticklers for every particular form of Hindu law forget that thousands and thousands of years have elapsed since the great Manu laid down his laws, and forget in how many directions we have undergone changes, revolutionary changes, in the Hindu law. Mr. Pyari Lal was very keen on the fact that we are violating the principles of Hindu law, that we are offending against Hindu law because this form of marriage was not recognised by the Hindu law. Is that so? Is there any passage in the law laid down by Manu which would go against a marriage of this kind? I think this point need not be laboured at great length. The very dresses that you are wearing, the very atmosphere that you are breathing, the very food that we are eating in many cases is not strictly orthodox as it existed in the days of Manu. Without naming names, but only looking in that direction, I can point out people who have opposed Dr Gour's Bill and ask them whether they really adhere to all the rules of clothing and diet and other things that prevailed amongst Hindus. Certainly not. I think we shall be false to our education, we shall not be true to the civilization which we have inherited if we did not adapt ourselves to the changing circumstances. Therefore all those sentimental objections that have been raised to the Bill, according to me, are of no value whatever. Now, Sir, this Bill recognises a very great principle. What does it recognise? Briefly summed up, it is to put it in a nutshell, contained in a proverb which prevails both in Hindustani and other vernaculars, namely: *Mian bibi rasi to kya kerega qazi*. "If husband and wife are agreed, then why is it the business of anybody else to interfere?" Therefore, I say that those people who are opposing this Bill are doing great violence to this great principle of freedom which has been recognised in all countries. Why, an Englishman can marry an Irishwoman or a Frenchwoman; but a Brahmin cannot marry a Kshatriya, nor a Vaisya. Why should that be so? Mr. Jamnadas Dwarkadas tells me—his knowledge of Hindu law is better than mine—that in old days it was allowed.

However, there was one remark in this connection which must not be allowed to go unchallenged. Mr. Rangachariar has found himself in a dual position. Having been a member of the Select Committee and having attempted his best to truncate the Bill to the utmost possible limits—for which I am very sorry and I share the disappointment of Mr. Shahani,—he has signed the report of the Select Committee and by doing so has roused the ire of those of his orthodox colleagues who had seen him valiantly and with great pleasure fighting the battles of orthodoxy before the Bill went to the Select Committee. Now, Sir, finding this inconsistency of the dual position, when he was attacked here, he managed to reconcile his irreconcilable position by making a sneering attack upon those who will take advantage of this Act and marry according to its principle; and the remarks that he made—with due submission and with all the respect that is always due to him—were rather unwarranted. He said that these marriages will be love marriages and therefore he did not oppose them. But a man who takes advantage of the Act and marries under it will be like an outcaste; he should be driven out of society. That is to say, he is against this Act being taken advantage of. Now, Sir, I ask him to reflect as to what was the original object of the author of this Bill as well as of his predecessors to have brought about this Bill? Cases which Mr. Rangachariar condemns will be, I say, only one in a million. The

[Mr. Harchandrai Vishindas.]

cases for which Dr. Gour, Mr. Patel and Mr. Basu were striving to provide for are cases of inter-caste marriages which are at present prohibited. According to a ruling that was quoted by Munshi Iswar Saran, the Allahabad High Court ruled that a marriage between a Brahmin and a Kshatriya was null and void, and I say, Sir, with all confidence that in 99 cases out of 100, advantage of this Act will be taken by men with the consent of their parents. When there is a Brahmin and a Kshatriya family who are very friendly to each other, when the Brahmin father wishes his Brahmin son to be married to his friend Kshatriya's daughter, then alone these marriages will be contracted, and does Mr. Rangachariar dare say that that man becomes an outcaste and unworthy of society? Certainly not. There may be very rare instances of such a nature as are contemplated by Mr. Rangachariar, but I think the original object of the authors of this Bill has always been to provide for those hard cases, those cases which are an outrage to society, where man and woman come under the pale of different societies, under different labels, and are prevented from marrying each other on account of the existence of such a horrid law. If they come together, if both love together, is it not a much better marriage than when two people are forcibly brought together? Do the latter class of marriages prove happy marriages? If this Bill has for its object the provision for all kinds of marriages, it is a Bill that we should heartily welcome, and let me add my congratulations to those that have been very rightly heaped upon Dr. Gour by Mr. Joshi and Sir Sivaswamy Aiyer by saying that where the great Basu failed, and where Mr. Patel failed, Dr. Gour has succeeded, and it is another feather in his cap and a crown of glory.

(Cries of 'The question be now put' from different parts of the House.)

The motion that the question be put was adopted.

Mr. President: The question is:

"That the Bill further to amend the Special Marriage Act, 1872, as amended, be passed."

The Assembly divided:

AYES—37.

Abdul Majid, Sheikh.
Abdulla, Mr. S. M.
Abul Kasem, Maulvi.
Ahmed, Mr. K.
Aiyar, Mr. A. V. V.
Aiyer, Sir P. S. Sivaswamy.
Ayyar Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Barodawalla, Mr. S. K.
Bridge, Mr. G.
Chaudhuri, Mr. J.
Clark, Mr. G. S.
Cotelingam, Mr. J. P.
Faridoonji, Mr. R.
Gingwala, Mr. P. P.
Gour, Dr. H. S.
Haigh, Mr. P. B.
Holme, Mr. H. E.
Jamall, Mr. A. O.

Jamnadas Dwarkadas, Mr.
Joshi, Mr. N. M.
Latthe, Mr. A. B.
Lindsay, Mr. Darcy.
Man Singh, Bhai.
Misra, Mr. B. N.
Mudaliar, Mr. S.
Muhammad Ismail, Mr. S.
Nag, Mr. G. C.
Percival, Mr. P. E.
Rangachariar, Mr. T.
Schamnad, Mr. Mahmood.
Shahani, Mr. S. C.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.

NOES—27.

Achariyar, Rao Bahadur P. T.
 Srinivasa.
 Agarwala, Lala Girdharilal.
 Amjad Ali, Maulvi.
 Asjad-ul-lah, Maulvi Miyan.
 Ayyangar, Mr. M. G. M.
 Barua, Mr. D. C.
 Bhargava, Pandit J. L.
 Bishambhar Nath, Mr.
 Jafri, Mr. S. H. K.
 Jatkar, Mr. B. H. R.
 Lakshmi Narayan Lal, Mr.
 Muhammad Hussain, Mr. T.
 Mukherjee, Mr. J. N.

Nand Lal, Dr.
 Neogy, Mr. K. C.
 Pyari Lal, Mr.
 Ramayya Pantulu, Mr. J.
 Ramji, Mr. Manmohandas.
 Sarfaraz Hussain Khan, Mr.
 Sarvadhikary, Sir Deva Prasad.
 Singh, Babu B. P.
 Singh, Mr. S. N.
 Sinha, Babu Adit Prasad.
 Sinha, Babu Ambica Prasad.
 Sinha, Babu L. P.
 Sohan Lal, Mr. Bakshi.
 Srinivasa Rao, Mr. P. V.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Saturday, the 24th March, 1923.