

21st February, 1924

**THE  
LEGISLATIVE ASSEMBLY DEBATES**

**(Official Report)**

---

**FIRST SESSION**

**OF THE**

**SECOND LEGISLATIVE ASSEMBLY, 1924**



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# LEGISLATIVE ASSEMBLY.

Thursday, 21st February, 1924.

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

## QUESTIONS AND ANSWERS.

### TRAFFIC STAFF OF THE NORTH-WESTERN RAILWAY.

405. **\*Mr. Harchandrai Vishindas:** Will Government be pleased to state:

- (a) the percentage of N. W. R. Traffic Station staff of Hindus and Moslems drawing Rs. 150 per month who are responsible for the safety of passengers, merchandise and Government cash transactions aggregating lakhs of rupees as compared to that of Anglo-Indians, Christians and Parsees?
- (b) the percentage of the Traffic superior staff of the same Railway of the first two communities with a service of less than three years and whose services have been dispensed with owing to retrenchment as compared to the percentage of Anglo-Indians, Christians and Parsees similarly dealt with?
- (c) the number of supervising officers reduced owing to slackness of work for retrenchment in subordinate establishments?

**The Honourable Sir Charles Innes:** The Government understand that no member of the Traffic Superior Staff and no Supervising Officers have been discharged. That being so, they do not think it necessary to institute the inquiry involved in the Honourable Member's question.

### TRANSFERS OF THE TRAFFIC STAFF OF THE NORTH-WESTERN RAILWAY.

406. **\*Mr. Harchandrai Vishindas:** Is it a fact that several members of the Traffic staff of the N. W. Railway are transferred despite the medical opinion that such transfer would be detrimental to their health?

**The Honourable Sir Charles Innes:** The Government have no information. The transfer of staff within the Railway is a domestic matter and is carried out in the best interests of the Railway and with due regard to all the circumstances of each case.

### LEAVE OF THE TRAFFIC STAFF OF THE NORTH-WESTERN RAILWAY.

407. **\*Mr. Harchandrai Vishindas:** Is it a fact that members of the Traffic staff of the N. W. Railway are refused leave although due and urgently needed?

**The Honourable Sir Charles Innes:** The Government have no information. But leave cannot be claimed as of right and the Administration can refuse leave at any time if necessary in the interest of the service.

#### TERMINATION OF THE SERVICES OF THE TRAFFIC STAFF OF THE NORTH-WESTERN RAILWAY.

408. **\*Mr. Harchandrai Vishindas:** Is it a fact that members of the Traffic staff of the N. W. Railway are threatened with termination of service under a covenant in their agreement that they could be discharged with or without cause, if they appealed to higher authorities against ill-treatment?

**The Honourable Sir Charles Innes:** The Government have no information, but will make inquiries.

#### VENTILATION OF THE GRIEVANCES OF GOVERNMENT SERVANTS.

409. **\*Mr. Harchandrai Vishindas:** Have Government been pleased to consider the desirability of withdrawing the ordinance issued some time ago against their servants ventilating grievances through the Members of the Legislatures?

**The Honourable Sir Malcolm Hailey:** The orders in question only warn the members of the Secretariat establishments against the breaking of Rule 17 of the Government Servants' Conduct Rules, and Government do not propose to withdraw them. The Government Servants' Conduct Rules are in the Library.

#### FLOODS IN INDIA.

410. **\*Mr. Bhubanananda Das:** (a) Have Government inquired into the causes of the floods which are happening in several parts of the country?

(b) Are Government aware of the popular belief that the ravages of the floods are due to natural waterways being blocked up by Railways which have failed to provide sufficient bridges and culverts?

(c) Have the Government made or do they propose to make a full inquiry into the matter?

**Mr. M. S. D. Butler:** (a) and (c). It is for the Local Governments concerned to inquire into the causes of floods which happen within their jurisdiction.

(b) The Government of India are not aware of the popular belief referred to in the question and have no information justifying any such idea. In individual cases where a flood has been proved to be partly due to the insufficiency of water-way in the railway embankments the necessary additional water-way has been provided as early as possible.

**Mr. Gaya Prasad Singh:** Will Government be pleased to suggest to the Local Governments to make inquiries into the causes of floods?

**Mr. M. S. D. Butler:** So far as we are aware, they have made their inquiries. In Bihar and Orissa they have made very full inquiries.

**Mr. Abul Kasem:** Is it not a fact, Sir, that the Local Governments say they have no control over the railways and that they cannot compel them to make bridges and culverts?

**Mr. M. S. D. Butler:** As I explained, wherever it is shown that the lack of waterway is the cause of the trouble, the railway authorities at once take the necessary steps to put matters right.

**Mr. Gaya Prasad Singh:** Sir, have the Government of Bihar and Orissa made any inquiries to enable them to come to a conclusion that the cause of the floods is not due to the insufficiency of water-ways?

**Mr. M. S. D. Butler:** The Government of Bihar and Orissa recently issued a very full communiqué on the subject.

**Diwan Bahadur M. Ramachandra Rao:** May I suggest to the Honourable Member that he might also call for reports from the Railway Administrations as to whether their bridges and culverts afford sufficient outlets to carry the drainage across the railway lines?

**Mr. M. S. D. Butler:** I may inform the Honourable Member that on the Bengal Nagpur Railway, East Coast section, it is proposed to provide additional bridges so as to allow more water-way, as the result of the recent experience.

**Mr. Bhubanananda Das:** Will the Honourable Member call for reports from the various Local Governments? In view of the fact that all the Local Governments are concerned in this matter, will the Government of India ask all the Local Governments to go into this matter quickly? I consider that it is an Imperial question, not a provincial question.

**Mr. President:** The Honourable Member's opinion about it, I am afraid, does not affect the matter. Local Governments are entrusted with the control of these questions, and only in so far as the administration of the railways is brought into the matter is the Imperial Government directly concerned.

## UNSTARRED QUESTIONS AND ANSWERS.

### PROVINCIAL GOVERNMENTS OFFICES MECHANICAL BRANCHES OF THE CLERICAL ESTABLISHMENT.

157. **Mr. Jamnadas Mehta:** (a) Will Government be pleased to give the scales of pay in the Provincial Governments Offices Mechanical Branches of the clerical establishment in the Presidency towns of Calcutta, Bombay and Madras as also the Post Office scales in the said three places for the same kind of work?

(b) If the Post Office scale in Bombay be lower than the Provincial Government scales, will Government be pleased to give reasons for the difference?

**Mr. G. B. Clarke:** If the Honourable Member will explain what he means by Provincial Governments Offices Mechanical Branches of the clerical establishment, I will see whether it is possible to provide him with an answer to his question.

### LENGTH OF I, II AND III CLASS RAILWAY CARRIAGES, ETC.

158. **Mr. Bhubanananda Das:** (a) Will Government be pleased to place on the table a statement shewing:

- (a) The total length in feet of 1st and 2nd class carriages and compartments running on State and guaranteed Railways;
- (b) The total length in feet of 3rd class carriages running on these Railways;
- (c) The total length in feet of refreshment carriages or compartments provided for 1st and 2nd class passengers on running trains;
- (d) The total length in feet of refreshment compartments provided for 3rd class passengers on running trains;
- (e) The percentage ratio of (i) (c) to (a); (ii) (d) to (b).

**The Honourable Sir Charles Innes:** Apart from the fact that many carriages are composite, the length, both of carriages and of compartments of different types, varies so much on all railways and on each individual railway that the figures for which the Honourable Member asks cannot be obtained. I would, however, direct his attention to statement V on page 10 and statement 6 on pages 71 to 76 of Volume II of the Administration Report of Indian Railways for 1922-23.

### RECEIPTS FROM I, II AND III CLASS TICKETS, ETC.

159. **Mr. Bhubanananda Das:** Will Government be pleased to lay a statement on the table shewing:

- (a) Gross receipts from sale of 1st and 2nd class tickets on State and guaranteed railways for last three years;
- (b) Gross receipts from sale of 3rd class tickets on these Railways for last 3 years;
- (c) Capital expenditure on refreshment cars on running trains provided for 1st and 2nd class passengers;
- (d) Capital expenditure on refreshment cars on running trains provided for 3rd class passengers;
- (e) Capital expenditure on all 1st and 2nd class carriages;
- (f) Capital expenditure on all 3rd class carriages;
- (g) Percentage rates of (i) (c) to (e); (ii) (d) to (f).

**Mr. A. A. L. Parsons:** A statement giving the information asked for in (a) and (b) of the Honourable Member's question is placed on the table.

As regards (c) to (g) information concerning the number of dining cars and the seating accommodation provided for 1st, 2nd and 3rd class passengers on railways will be found in statement 6 (pages 71 to 74) and statement 18 (pages 140 to 142) of Volume II of the Administration Report on Indian Railways for 1922-23. The exact capital expenditure on the accommodation provided for each class of passenger is not known, as



many of the carriages are composite and many types are in existence on all railways and on each individual railway.

*Statement showing Gross receipts from the sale of I, II and III class tickets on State and Guaranteed Railways during the three years 1920-21, 1921-22 and 1922-23.*

Railways.	Year.	Class of tickets sold.	Gross receipts.
			Rs. (in thousands.)
All State and Guaranteed Railways.	1920-21 . . .	1st . . .	1,27,09
		2nd . . .	2,18,00
		3rd . . .	27,81,54
	1921-22 . . .	1st . . .	1,84,97
		2nd . . .	2,21,45
		3rd . . .	27,57,90
	1922-23 . . .	1st . . .	1,86,32
		2nd . . .	2,04,58
		3rd . . .	30,92,40

#### SEATING AND SLEEPING ACCOMMODATION FOR RAILWAY PASSENGERS.

160. **Mr. Bhubanananda Das:** Will Government be pleased to state the number of passengers ordinarily allotted for the purposes of:

- (A) Seating accommodation,
- (B) Sleeping accommodation,

in the (a) first, (b) second, (c) intermediate, and (d) third class compartments, respectively, and the floor space allowed for a person in each case?

**The Honourable Sir Charles Innes:** The average seating and sleeping accommodation provided in a modern bogie carriage on the standard gauge is as follows:

	A Seating accommodation.	B Sleeping accommodation.
(a) First class . . . . .	25	16
(b) Second class . . . . .	51	25
(c) Inter class . . . . .	81	} Not usually allotted.
(d) Third class . . . . .	106	

Sleeping accommodation is ordinarily allotted for the first and second class but not for the inter and third class. No passengers can claim sleeping accommodation as a right.

The floor space per seat in typical bogie carriage stock is as follows:

- (a) First class . . . . . 16 sq. ft. per seat.
- (b) Second „ . . . . . 8 sq. ft. „ „
- (c) Inter „ . . . . . 6½ sq. ft. „ „
- (d) Third „ . . . . . 5 sq. ft. „ „

This does not include stock specially designed for suburban services.

### REFRESHMENT ACCOMMODATION ON TRAINS FOR INDIAN PASSENGERS.

161. **Mr. Bhubanananda Das:** Will Government be pleased to state:

- (a) how many long distance running trains are provided with refreshment compartments in the Indian style for the travelling Indian Public?
- (b) how many such trains have refreshment accommodation in Muhammadan style?
- (c) and how many such trains have refreshment accommodation in the Hindu style?

**The Honourable Sir Charles Innes:** The information is not available but is being obtained and will be communicated to the Honourable Member in due course.

### TAXATION INQUIRY.

162. **Diwan Bahadur M. Ramachandra Rao:** Will the Government be pleased to state:

- (a) whether the opinions of the Local Governments on a comprehensive inquiry in regard to taxation have been received,
- (b) when it is proposed to undertake this inquiry?

**The Honourable Sir Basil Blackett:** I would refer the Honourable Member to the reply which I gave to the Honourable Mr. Rangaswami Iyengar's Question No. 316 on the 18th instant. It is hoped that the Committee will be able to get to work at the beginning of April.

### APPLICATIONS FROM LOCAL GOVERNMENTS UNDER RULE 27 OF THE DEVOLUTION RULES.

163. **Diwan Bahadur M. Ramachandra Rao:** With reference to the answer given by the Honourable Sir Basil Blackett to Question No. 52 asked at the meeting of the Assembly held on the 1st February 1924, will the Government be pleased to state when the information will be made available?

**The Honourable Sir Basil Blackett:** The collection of the information is proving to be a much more laborious business than I expected and I cannot yet say when it will be completed. I will make a further communication to the Honourable Member as soon as I am in a position to do so.

### REDUCTION OF STAFF.

164. **Diwan Bahadur M. Ramachandra Rao:** Will the Government be pleased to place on the table a statement showing all references made by the Government of India to the Secretary of State for India in Council and now pending with him for the reduction of staff paid for from the Central Revenues and also for the reduction of staff paid for from the revenues of local Governments, the date on which each of those references was made and the time during which these references have been pending with the Secretary of State for India in Council?

**The Honourable Sir Basil Blackett:** The Government are unable to see what purpose would be served by the compilation of such a statement and they are not prepared without further justification to impose on their staff the labour of collecting the information.

## STATEMENT OF BUSINESS.

**The Honourable Sir Malcolm Hailey** (Home Member): With your permission, I will outline the course of business for next week.

On Monday, the 25th February, it is intended to move that the Reports of the Select Committees on the Indian Coinage (Amendment) Bill and on the Central Board of Revenue Bill, which were presented to the House on Monday, be taken into consideration. It is proposed also to introduce a Bill to amend section 20 of the Sea Customs Act, 1878. If an election is necessary to constitute the Standing Committee on Emigration, it will take place on that day, as already decided by you, Sir. It is also proposed to move an amendment of the Standing Orders to provide for a quorum in Select Committees. Tuesday, the 26th will be devoted to the discussion of non-official Resolutions which have already been ballotted for. On Wednesday, the 27th, I intend to move that the Report of the Select Committee on the Indian Penal Code (Amendment) Bill, which was presented to the House last Tuesday, be taken into consideration. It is intended also to ask for leave for the introduction of a Bill to amend the Code of Civil Procedure to provide for the reciprocal enforcement of judgments in the United Kingdom and British India. If an election for the constitution of the Advisory Publicity Committee is necessary, that election will take place on Wednesday. Thursday, the 28th, is a day for non-official Bills which have already been ballotted for. On Friday, the 29th, the annual Financial Statement will be presented, and leave will also be asked to introduce the annual Finance Bill. It is proposed also that there will be a short meeting on Saturday, the 1st March.

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### THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

**Diwan Bahadur T. Rangachariar** (Madras City: Non-Muhammadian Urban): Sir, I beg to move for leave to introduce a Bill to amend the Code of Criminal Procedure with reference to Chapter IX of that Code.

The object of this Bill is to regulate the use of fire-arms in dispersing unlawful assemblies. Honourable Members will notice that under sections 127, 128, 129, 130 and 131 of the Code of Criminal Procedure civil force can be used under section 128 to disperse an assembly under certain restrictions, and military force can be used under section 129 under certain other restrictions, either with the order of a Magistrate or without it in certain cases as provided for in section 131; and section 132 provides that no prosecution against any person for any act purporting to be done under that Chapter shall be instituted in any Criminal Court except with the sanction of the Local Government. It also provides certain safeguards in favour of officers *bona fide* acting under that section; and in certain other cases the sanction of the Governor General in Council is required before a prosecution can be instituted against any officer or soldier in His Majesty's Army. Now, the object of my Bill is to provide that the use of fire-arms in dispersing unlawful assemblies should be resorted to in the last instance when it is absolutely inevitable and under certain safeguards. We are all familiar with the incidents which happened in the Punjab and also which happened in Madras and Madras, where there have been loud complaints against the indiscriminate use of fire-arms in dispersing unlawful assemblies. It has been felt by many people in the country that certain safeguards are necessary in that direction. With that object in view the Right Honourable Srinivasa Sastri moved a Resolution as early as March

[Diwan Bahadur T. Rangachariar.]

1921 in the Council of State to provide certain safeguards against the use of fire-arms. His Resolution was accepted in part and rejected in part in the Council of State and the Government of India then felt the necessity for introducing a measure to safeguard the use of fire-arms and they introduced a Bill in the Council of State in 1921 providing this measure to a certain extent. They proposed to add section 181-A under that Bill, namely :

“ Where under the provisions of this Chapter any person determines to disperse any such assembly by the use of fire-arms, such person shall, before directing that the assembly be fired on, warn the assembly by such means, if any, as may be available at the moment that, unless it disperses forthwith, it will be fired on.”

When this Bill came to this Assembly, some of us felt that the provision contained therein was inadequate and therefore proposed certain amendments on the lines indicated in my present Bill. When Government were faced with these amendments, they took time to consider the amendments and later on they made up their minds to abandon the whole Bill and withdraw it from the Assembly; and when the Criminal Procedure Code was being amended in this Assembly last year, this section was not one of those sections which was sought to be amended and therefore it was impossible for private Members to introduce amendments of that section; and my attempt to introduce this amendment when the Criminal Procedure Code was under consideration failed on that account; so that Honourable Members will see that some amendment of section 181 is needed in order to provide safeguards against the indiscriminate use of fire-arms in dispersing unlawful assemblies. What the extent of these safeguards should be I have indicated in the various sub-clauses which I have introduced in clause 181-A as I propose to enact it. Honourable Members will notice that it consists of six sub-clauses. In the first place, I accept the position which the Government themselves took up in sub-clause (1) that fire-arms should be used only if such assembly cannot otherwise be dispersed, and no fire-arms should as a rule be used except on the written authority of a Magistrate of the highest class available on the spot; and I also suggest a proviso there that in case of extreme urgency, the police or military officer present on the spot may give the written authority instead of the Magistrate. That would be in extreme cases where there will be no time to get the written order of a Magistrate. I also provide that before the assembly is fired upon, the fullest warning should be given by all available means to the assembly that, unless it disperses within a given time, it will be fired on. Then I provide that the person giving the authority to fire shall ordinarily give such interval between the warning and firing as he considers sufficient in all the circumstances of the case. And oftentimes it is very difficult to get at the exact facts connected with incidents of this sort and we get all sorts of reports later on as to how the firing was resorted to, and in order to provide a safeguard against augmenting the evidence subsequently by later additions, I provide that a full report of the occurrence should immediately be made as soon as the unlawful assembly has been dispersed. A report should be made by the officer who is responsible for the use of fire-arms within 24 hours, which is the time recognised, as Honourable Members conversant with the Code will remember, in other matters. Sub-clauses (4) and (5) provide for such report. And sub-clause (6) of my Bill provides that, while retaining the provisions of section 182, there should be no unnecessary or vexatious restriction on prosecution in respect of the use of fire-arms. The use of fire-arms is a very serious

matter and oftentimes innocent persons are injured—persons who are away from the crowd perhaps. It is due to the nature of the weapon which is used. We have heard of women being injured, we have heard of little boys being injured, by the use of fire-arms in the case of dispersal of unlawful assemblies. So I provide :

“ Notwithstanding anything contained in section 132, any person injured by the use of fire-arms or any parent or guardian, husband or wife of a person killed by the use of fire-arms may make a complaint against any person for any offence committed by him by reason of any act purporting to be done under this Chapter.”

It has often been felt that the Government naturally are reluctant to initiate prosecutions where their officers are supposed to maintain law and order. Law and order are the very essence of the Government and they therefore think that there should be leniency shown to officers who have to act under difficult circumstances. In England, Honourable Members know, there is no such protection afforded either to the individuals or to officers who have to act in an emergency of this sort; and, unfortunately, here even in gross cases we have not heard of Government taking action in prosecuting individuals who have misbehaved under this section, and therefore this acts almost as an encouragement to carelessness or recklessness in the matter of dispersing unlawful assemblies; so that I provide a limited safeguard in allowing an opportunity to persons who have been injured and close relations of persons who have been killed to go before a Magistrate and complain that the officer has exceeded his authority and has in fact indiscriminately used his power. These are the questions which will have to be considered carefully. Some people consider that these provisions are not themselves adequate; other people may consider these provisions are more than adequate. It is, however, recognised that some provision should be made in the Code in order to impose restrictions on the use of fire-arms. Oftentimes we have heard that the attitude of the crowd was threatening and therefore fire-arms were used; brickbats were thrown and therefore fire-arms were used. There may be justification. It is very difficult for us sitting in a deliberating House to decide all these questions which may arise on the spot. I quite recognise the difficulty of executive officers doing their duty. But at the same time, unless there are salutary restrictions in law which will make them think twice, thrice, before they resort to the use of these deadly weapons, I think we will be putting a weapon in the hands of Magistrates and police and military officers which may be dangerous to use. I therefore ask, Sir, for leave to introduce this Bill.

**Mr. President:** The question is :

“ That leave be given to introduce a Bill to provide that, when fire-arms are used for the purpose of dispersing an assembly, preliminary warning shall, in certain circumstances, be given.”

The motion was adopted.

**Diwan Bahaqur T. Rangachariar:** I introduce the Bill, Sir.

## THE INDIAN REGISTRATION (AMENDMENT) BILL.

**Mr. K. Rama Aiyangar** (Madura and Ramnad *cum* Tinnevely: Non-Muhammadian Rural): Sir, I beg to move for leave to introduce a Bill further to amend the Indian Registration Act, 1908.

[Mr. K. Rama Aiyangar.]

My Bill is for amending section 32. The Statement of Objects and Reasons explains why I have brought this Bill before the Assembly. In 37 Allahabad 49, their Lordships of the Privy Council went into the matter of the right of a party to present a document and it was held that even when the executant is present and registers the document, the presentation by a person not duly authorised will not amount to a proper presentation. It is a highly technical construction that is put upon the law. Their Lordships in a subsequent decision also have dwelt on the question and have said that it is a matter for the Legislature to remedy. In these circumstances I have brought this Bill for the consideration of the Assembly.

Section 32 says :

"Except in the cases mentioned in section 31 and section 39, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration-office,—

- (a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or
- (b) by the representative or assign of such person, or
- (c) by the agent of such person, representative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned."

So that by clause (a) we find that some person executing or claiming under the same is entitled to present a document at the proper registration-office. In such a case there should not be much difficulty in accepting the document when the executant is present. In the decision in question however their Lordships felt that, as the Act at present stands, the presentation of a document by a person who is not duly authorised will present difficulties and they have held that the provisions of the Act debar the registration being valid. It has been found by courts that it is a very important matter, and therefore I beg to introduce the Bill for the consideration of this House.

**Mr. President:** The question is :

"That leave be given to introduce a Bill further to amend the Indian Registration Act, 1908."

**The Honourable Sir Malcolm Hailey** (Home Member): As the House is aware, it is not our general practice to oppose Bills on introduction even though we feel that they are in themselves undesirable. I must however ask your permission to refer to this Bill, not for the purpose of opposing its introduction, but for the convenience of the House, as I think they will agree with me when they have heard me. I want to take this opportunity of asking the Honourable Member if he can, between now and the date of any subsequent motion, make his position more clear than he has done either in the Statement of Objects and Reasons or in his speech. The fact is this: The difficulties mentioned in the judgment of the Privy Council in the first case mentioned by the Honourable Member were, we believe, met in a Bill introduced by Pandit Madan Mohan Malaviya and finally passed in 1907. Honourable Members will find that the Statement of Objects and Reasons of that Bill specifically refers to the same judgment of the Privy Council as that quoted by Mr. Rama Aiyangar. He refers, in the second place, to a judgment of the Patna High Court which we have been unable to trace; it appears to be a misquotation. We have referred the matter to the Honourable Mover and he has himself, so far, not been able to provide us with a copy of that judgment. (Mr. Devaki Prasad Sinha: "I will give it to you.") It certainly cannot

be the one which is referred to in the Statement of Objects and Reasons for that does not refer to this particular difficulty. It is merely with the object of facilitating subsequent deliberations somewhat that I put this request before the Honourable Member.

**Mr. President:** The question is:

"That leave be given to introduce a Bill further to amend the Indian Registration Act, 1908."

The motion was adopted.

**Mr. K. Rama Aiyangar:** Sir, I introduce the Bill.

## THE INDIAN PENAL CODE (AMENDMENT) BILL.

**Dr. H. S. Gour** (Central Provinces Hindi Divisions: Non-Muhamadan): Sir, the short Bill I ask the leave of this House to introduce is intended to raise the age of consent in section 375 of the Indian Penal Code from 12 to 14. From the Statement of Objects and Reasons appended to my Bill, which is in the possession of the Honourable Members, it will be seen that in 1891 for the first time the age of consent was raised from 10 to 12. In the last Assembly, Bakhshi Sohan Lal introduced the Bill to raise that age from 12 to 14. It was introduced but at a subsequent stage the Bill was defeated. Sir, I find that my Bill synchronises with two similar measures one of which has been passed by the Egyptian Government and the other is now before the House of Commons. The Egyptian Government have passed a measure raising the age of consent to 16 years and making it penal for any person to have sexual intercourse with a girl below 16 years of age. In England, the Children's Young Persons Protection Bill was introduced by Mr. Almond on January, the 18th, which makes a provision similar to that which I seek the permission of this House to introduce. The only difference is that there they are raising the age of consent for marriage to 16 years.

When this Bill was last before this House, a body of opinion was collected. I do not wish, Sir, at this stage to go into the opinions of the several persons and bodies. But I will only say this that the principle of my Bill was generally concurred in in the majority of cases, though some Governments suggested that a salutary safeguard should be introduced in section 376 where, if the husband had connection with his wife between the age of 12 and 14, his offence should be visited with a more lenient sentence. That is a matter for future consideration. For the present, Sir, I seek the leave of this House to introduce my Bill.

**Mr. President:** The question is:

"That leave be given to introduce a Bill further to amend the Indian Penal Code (Amendment of section 375)."

The motion was adopted.

**Dr. H. S. Gour:** Sir, I introduce the Bill.

## THE INDIAN EVIDENCE (AMENDMENT) BILL.

**Mr. K. Rama Aiyangar** (Madura and Ramnad *cum* Tinnevely: Non-Muhammadan Rural): Sir, I beg for leave to introduce the Bill which has been circulated to the Members. The object of the Bill is mentioned

[Mr. K. Rama Aiyangar.]

in the Statement of Objects and Reasons appended to it. In the decision of the Privy Council (35 Madras 607) it is held that in the case of mortgage instruments, attestation means practically seeing the executant sign the document. This created considerable trouble and the High Courts and other courts have felt the need for the amendment of the Indian Evidence Act, 1872. I may also say that some of the Judges have also expressed this opinion to me. What I actually propose to do is only to add one more illustration to section 114 and also a method of showing how a presumption that is asked to be made may be rebutted ordinarily. That is the frame of that section and I propose it for this purpose also. What I want is that the courts should be given power in cases in which evidence is either kept out or is not easily procurable, to make a presumption in favour of documents which appear to be duly executed. That presumption is desirable in all cases, and therefore the object of the Bill is only to further the ends of justice, and I beg leave to introduce it.

**Sir Henry Moncrieff Smith** (Secretary, Legislative Department): Sir, I regret that it should fall to my lot to disturb the harmony of this morning's proceedings, but I have unfortunately, on behalf of Government, to oppose the Honourable Member's motion. He has told us that the decision of the Privy Council in 1912, in the case to which he refers in his Statement of Objects and Reasons, has created difficulty and that some commentators have suggested an amendment. The case goes a little further than that, Sir. In 1912 the Privy Council laid down a definition of the word "attest" or "attestation." In their judgment, Sir, they made it quite clear what their own view of the law was, and they went a little beyond that, they indicated I think very clearly what they thought the law ought to be. I will just read half a dozen lines from their judgment in that case:

"Section 59 of the Transfer of Property Act, in requiring that in a certain class of cases a mortgage 'can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses', could only mean that the witnesses were to attest the fact of execution. Any other construction in Their Lordships' opinion would remove the safeguards which the law clearly intended to impose against the perpetration of fraud."

And right at the end of their judgment they say:

"Nor do Their Lordships agree with the views expressed by the learned judges (of the Madras High Court) regarding the policy of placing a particular construction on a word in consequence of the 'social institutions of the country'. These very institutions, Their Lordships consider, make it necessary that 'the barriers against perjury and fraud,' to use the language of the Master of the Rolls in *Ellis v. Smith*, should not be removed upon speculative considerations."

Sir, that established the law, and there it remained until in 1916 the Honourable Pandit Madan Mohan Malaviya introduced a Bill, which has already been referred to. That Bill had two objects. In the first place it introduced a definition of the word "attest". In fact that is one object of my Honourable friend's Bill this morning, to provide that acknowledgment by the executant should be sufficient for the purpose of attestation and that it should not be necessary for the attesting witnesses to see the signature made. The second object was to validate all previous mortgages that had been executed in accordance with that idea. That Bill was referred to a Select Committee, and in Select Committee the Honourable Pandit himself abandoned the idea of introducing a definition of the word



"attest". He agreed that the Bill should be confined merely to validation, and in the end the Bill which was passed into law merely validated a limited class of instruments executed in the United Provinces between the date of the Privy Council decision and a period of about three years afterwards. On that occasion, Sir, the Legislature decided that they would make no change in the law regarding attestation. Then, Sir, three years ago, the Honourable Mr. Rangachariar introduced a Bill. I need not go into the details of that Bill. It was not quite a parallel Bill, but at all events the result was that the Legislature decided again that it would make no change in the law regarding attestation. Now, Sir, that brings us to the present Bill which the Honourable Member has devised to remove, as he says, the "considerable difficulty in administering justice in suits relating to mortgage deeds". It has two objects. One of those objects is rather closely concealed in sub-clause (2) of clause 3 of his Bill in the last two or three words. That object, Sir, is to alter the law of attestation and make an acknowledgment sufficient, not to require any longer that the attesting witnesses should see the executant sign. The second object is really to shift the burden of proof. At present the law regarding proof of documents which require attestation is very clearly laid down in the Indian Evidence Act, and I was rather surprised that the Honourable Member did not refer to these provisions in his opening speech. If he will look at sections 68 to 71 of the Evidence Act, the law which has stood for 50 years and more, he will see that if a document is required by law to be attested, it shall not be used as evidence till one attesting witness at least has been called for the purpose of proving its execution, and so on, and if no such attesting witness can be found, proof shall be given of hand-writing. Now the Honourable Member's Bill distinctly contradicts those provisions and he has made no attempt to justify it. What he says is that in certain circumstances the court shall presume that a document has been duly attested. In other words, Sir, he shifts the burden of proof.

Now, Sir, to come to this question of altering the law so as to make acknowledgment sufficient, the Honourable Member has introduced it right at the end of his Bill by a sort of side track. Nowhere else in his Bill does he indicate that he is attempting to get away from the necessity of attesting witnesses actually witnessing the signature of an executant. I think, Sir, the House will agree with me that this is not the proper way to tackle a subject like this. In the first place the matter is introduced by way of illustration. Substantive law by way of illustration I think we are all agreed is bad and should be avoided. It would leave the law in a very great state of uncertainty if the Honourable Member's Bill were passed in anything like the form in which it now is. In any case, Sir, I think section 114 is not the proper place to make this amendment. The section lays down that the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in public and private business. Now, Sir, can it be said that in the ordinary course of human life every document that requires to be attested has been properly and lawfully attested? My experience, and I have had a considerable experience of such documents, is that the presumption is indeed the other way, and that it is most necessary that the plaintiff in every suit on a document of this sort should be called upon to prove his case. Actually the section lays down that, where in a certain set of circumstances, there is a practical certainty that an event had happened, then the court may presume that that event has happened. Here there is no certainty whatever. I would

[Sir Henry Moncrieff Smith.]

suggest to the House that this Bill, should it be circulated for opinion, would meet with such opposition that the House would never be able to proceed with it, and that therefore we should save our time by killing it in its inception.

**Mr. President:** The question is:

"That leave be given to introduce a Bill further to amend the Indian Evidence Act, 1872."

(A Division was called for.)

**The Honourable Sir Malcolm Hailey** (Home Member): I do not think that we should care to take a division on the question of introduction. I do not feel that the case is of sufficient importance for that.

The Assembly divided:

# AYES—34.

Abdul Karim, Khwaja.  
Aiyangar, Mr. C. Duraiswami.  
Aiyangar, Mr. K. Rama.  
Aiyer, Sir P. S. Sivaswamy.  
Belvi, Mr. D. V.  
Bhat, Mr. K. Sadasiva.  
Chaman Lal, Mr.  
Chanda, Mr. Kamini Kumar.  
Das, Mr. Bhubanananda.  
Duni Chand, Lala.  
Dutt, Mr. Amar Nath.  
Hari Prasad Lal, Rai.  
Iyengar, Mr. A. Rangaswami.  
Kartar Singh, Sardar.  
Kazim Ali, Mr. M.  
Kun Maung.  
Lohokare, Mr. K. G.  
Mahmood Schamnad Sahib Bahadur,  
Mr.

Mehta, Mr. Jamnadas.  
Nambiyar, Mr. K. K.  
Narain Dass, Mr.  
Neogy, Mr. K. C.  
Patel, Mr. V. J.  
Piyare Lal, Lala.  
Ramachandra Rao, Diwan Bahadur M.  
Ray, Mr. Kumar Sankar.  
Reddi, Mr. K. Venkataramana.  
Samiullah Khan, Mr. M.  
Sarda, Rai Sahib M. Harbilas.  
Sarfaraz Hussain Khan, Khan  
Bahadur.  
Singh, Mr. Gaya Prasad.  
Sinha, Mr. Devaki Prasad.  
Tok Kvi, Maung.  
Venkatapatiraju, Mr. B.

# NOES—45.

Abdul Qaiyum, Nawab Sir Sahibzada.  
Abul Kasem, Maulvi.  
Ahmad Ali Khan, Mr.  
Ahmed, Mr. K.  
Ajab Khan, Captain.  
Allen, Mr. B. C.  
Bell, Mr. R. D.  
Blackett, The Honourable Sir Basil.  
Burdon, Mr. E.  
Butler, Mr. M. S. D.  
Calvert, Mr. H.  
Chatterjee, The Honourable Mr. A. C.  
Cocke, Mr. H. G.  
Dalal, Sardar B. A.  
Datta, Dr S. K.  
Faridoonji, Mr. R.  
Fleming, Mr. E. G.  
Fraser, Sir Gordon.  
Ghulam Bari, Khan Sahib.  
Hailey, The Honourable Sir Malcolm.  
Hira Singh, Sardar Bahadur Captain.  
Holme, Mr. H. E.  
Hyder, Dr. L. K.

Innes, The Honourable Sir Charles.  
Joshi, Mr. N. M.  
Lindsay, Mr. Darcy.  
Moir, Mr. T. E.  
Moncrieff Smith, Sir Henry.  
Nag, Mr. G. C.  
O'Malley, Mr. L. S. S.  
Owens, Lieut.-Colonel F. C.  
Parsons, Mr. A. A. L.  
Perceival, Mr. P. E.  
Pilcher, Mr. G.  
Rhodes Sir Campbell.  
Roy, Mr. K. C.  
Rushbrook-Williams, Prof. L. F.  
Shams-uz-Zoha, Khan Bahadur M.  
Singh, Rai Bahadur S. N.  
Singh, Raja Raghunandan Prasad.  
Stanyou, Colonel Sir Henry.  
Tottenham, Mr. A. R. L.  
Turing, Mr. J. M.  
Utiagar Singh Bedi, Baba.  
Willson, Mr. W. S. J.

The motion was negatived.

## THE HINDU RELIGIOUS AND CHARITABLE TRUSTS BILL.

**Dr. H. S. Gour** (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I beg to move for leave to introduce a Bill to make provision for the better management of Hindu religious and charitable trust property and for ensuring the keeping and publication of proper accounts in respect of such properties. Honourable Members will find that a similar measure applicable to Muhammadans was introduced and passed by the Central Legislature and is now Act XLII of 1923. After that measure was passed, the Honourable author of that measure, Maulvi Abul Kasem, was besieged by Hindu inquirers as to why he had introduced a purely sectarian measure instead of making it a general measure applicable to Hindus as well as Muhammadans. I have his authority to state that the Hindus of his province would welcome this measure to the same extent as the Muhammadans welcomed the measure which is now on the Statute-book of this land. Sir, the measure differs but little from the measure which is now a part of the Statute Law of this country—I say, but little, because there is one small change that I seek to introduce in section 10 regarding the penalty. On that point the House was sharply divided on the last occasion when Maulvi Abul Kasem's Bill was before this House and it was at the instance of Maulvi Abul Kasem that the penalty on subsequent convictions was reduced, which I have re-inserted in clause 10. But this is merely a detail of the measure, the principle of which has been accepted by this House in a Bill now applicable to Muhammadans and I think I am on safe ground in asking this House to give me leave to introduce a measure which will extend its salutary provisions to Hindu religious endowments.

Sir, I beg for leave to introduce the Bill.

The motion was adopted.

**Dr. H. S. Gour:** Sir, I introduce the Bill.

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**Mr. President:** Before adjourning the House, I think it will be for the convenience of Members if I inform them that, on Thursday, the 28th instant, I shall adjourn the House to Friday, probably at 4 or 4-30 P.M. Honourable Members are aware that a suggestion has been made that the speech of the Honourable the Finance Member introducing the Budget should be delivered late in the day and not early; and I understand that the suggestion commends itself to the Finance Member; and if that is so, I shall be prepared to meet him by adjourning the House till Friday afternoon. I think it will be for the convenience of Honourable Members to let them know of this intention of mine in good time.

The Assembly then adjourned till Eleven of the Clock on Monday, the 25th February, 1924.

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