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THIRD SESSION

OF THE

LEGISLATIVE ASSEMBLY, 1923.

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LEGISLATIVE ASSEMBLY.

Thursday, 15th February, 1923.

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

Mr. President: Members desiring to take their seats will advance to the table to take the oath or to affirm in the manner prescribed.

MEMBER SWORN:

Mr. Hubert Arthur Sams, C.I.E., M.L.A. (Director General of Posts and Telegraphs).

QUESTIONS AND ANSWERS.

Duties of Income-Tax Commissioners.

347. ***Beohar Raghubir Sinha:** Will the Government be pleased to state the duties of Income-tax Commissioners and Assistant Commissioners?

The Honourable Sir Basil Blackett: The Honourable Member is referred to paragraph 22 of the Income-tax Manual.

Representation *re* Stringency in Money Market.

348. ***Mr. W. M. Hussanally:** (*a*) Have the Government received any representation from the Bombay Indian Merchants' Chamber in regard to the stringency in the money market, and suggesting remedies as announced by the Associated Press in a telegram dated 27th January? If so, will the Government be pleased to place the same on the table?

(*b*) Will the Government be pleased to state what action they propose to take in the matter?

The Honourable Sir Basil Blackett: (*a*) The representation referred to appeared in the Press; a copy is however laid on the table.

(*b*) Government are of course closely watching the money market. They are not prepared to make any statement at present on this subject which in any case does not lend itself to treatment by way of question and answer in this House.

Telegram, dated Bombay, the 27th January, 1923.

From—The Secretary, Indian Merchants' Chamber, Bombay,

To—The Secretary to the Government of India, Finance Department, Delhi.

Committee Indian Merchants' Chamber beg to draw attention of Government to the prevailing acute stringency in the money market and to the serious and chaotic condition of the present currency arrangements of the country and urge on them the necessity of immediately repealing the hasty legislation of 1920 in order to enable natural forces to operate freely on our exchange position.

Mr. Jamnadas Dwarkadas: May I ask a supplementary question. Is Government prepared to give out whether it is their intention to make the sale of Council Bills more frequent than once in a week, or do Government think that they will keep the rate of exchange steady?

The Honourable Sir Basil Blackett: The Government will be prepared to give the matter consideration, though I am not sure that it will provide a remedy.

INDIANS IN EUROPEAN COSTUME ON RAILWAYS.

349. ***Rai Bahadur Lachmi Prasad Sinha:** (*a*) Will the Government be pleased to state whether Indians in European costumes can travel in Intermediate and Third class compartments reserved for Europeans or Anglo-Indians?

(*b*) If not, why not?

Mr. C. D. M. Hindley: The Honourable Member is referred to the answer given on the 8th February, 1923, in this Assembly to question No. 334, asked by him in a similar connection.

RAILWAY REVENUE EXPENDITURE.

350. ***Rai Bahadur G. C. Nag:** Have any orders been issued to railway administrations to curtail programme revenue expenditure? If not, what steps have Government taken to assure themselves that the full amount of renewals as represented by the amounts of money shewn in the answer given on 17th January 1923 to starred question No. 164 as having been sanctioned for the East Indian and the Great Indian Peninsula Railways, shall be worked up to?

Mr. C. D. M. Hindley: The answer to the first part of the question is in the negative. The two railway administrations have been asked to push on with the renewals as much as possible.

RE-ORGANISATION OF RAILWAY DEPARTMENT.

351. ***Rai Bahadur G. C. Nag:** With reference to item 6 of the statement at page 993 of the Legislative Assembly Debates, Volume III, do Government propose to give the Assembly an opportunity to discuss the proposed reorganisation of the Railway Department before the proposals are embodied in the Budget?

Mr. C. D. M. Hindley: The reply is in the negative.

UNSTARRED QUESTIONS AND ANSWERS.

ARRESTS IN N.-W. F. PROVINCE OF PERSONS CONNECTED WITH CONGRESS AND KHILAFAT AGITATION.

167. **Mr. Ahmed Baksh:** (1) Will the Government please state as to how many persons, if any, in the North-West Frontier Province have been arrested up to date in connection with the Congress and Khilafat agitation?

(2) How many persons have been after full trials sentenced to imprisonment and to what terms? And how many have been released?

(3) Will the Government be pleased to inform the House as to how many prisoners are serving in the jails for failure to give the security under section 40, Frontier Crimes Regulation, and how many under section 17 of the Criminal Law Amendment Act?

(4) Whether the convicts under section 40, Frontier Crimes Regulation, have invariably been sentenced to rigorous imprisonment or any of them have been sentenced to simple imprisonment also? Will the Government please also explain as to why this distinction was made, and if it was made on any particular principle, what is that principle?

(5) Are all or any of these above referred to convicts treated as political prisoners, and if not, why not?

KHILAFAT PRISONERS IN PESHAWAR JAIL.

168. **Mr. Ahmed Baksh:** (1) What was the number of Khilafat prisoners detained under section 40, Frontier Crimes Regulation, in Peshawar jail in May, 1922, and what is the number now? If there is any decrease, how has the same been caused?

(2) Whether or not it has been brought to notice of the Government that the authorities of Peshawar jail had forcibly snatched away the caps of a number of prisoners sentenced to simple imprisonment in connection with the Khilafat agitation, on account of there being crescents fixed on the same, if so, whether such action was justified under the Jail Manual or ordered by the executive Government of the North-West Frontier Province?

(3) Is it a fact that the other batch of Khilafat prisoners serving rigorous imprisonment were kept in solitary confinement for over one month at a time and fetters were put on them, if so, why?

CONVICT GHULAM RASUL KHAN OF SAFEDA.

169. **Mr. Ahmed Baksh:** Will the Government please state as to whether there is a convict of the name of Ghulam Rasul Khan, of Safeda, Mansehra tehsil in the Hazara district, now serving his term in the Peshawar jail for failure to deposit security under section 40, Frontier Crimes Regulation?

(*a*) If so, when and where was the security demanded from him?

(*b*) Where was he sentenced?

(*c*) What security was demanded?

(*d*) Is it a fact that Rs. 5,000 cash and Rs. 5,000 personal security was demanded from him, if so, why such heavy security demanded?

(*e*) Is it a fact that he was already under security at the time of his arrest?

(*f*) If so, whether the previous security was forfeited, and if not, whether there was any justification for the demand of fresh security?

MARTIAL LAW IN MANSEHRA TEHSIL.

170. **Mr. Ahmed Baksh:** Do the Government know that Martial law was proclaimed in the Mansehra Tehsil in the year 1921? If so, whether His Excellency the Governor General accorded sanction to it, if not, under what authority was such step taken?

CONGRESS AND KHILAFAT AGITATION PRISONERS.

171. **Mr. Ahmed Baksh:** Is it intended at all to treat prisoners convicted in connection with the Congress and Khilafat agitation as political prisoners? If not, why not?

IMPRISONMENT OF ABDUL QAIYUM KHAN SWATHI AND MALIK KHUDA BAKSH.

172. **Mr. Ahmed Baksh:** Will the Government please state as to how many times since their conviction have Abdul Qaiyum Khan Swathi, B.A., of Hazara, and Malik Khuda Baksh, B.A., LL.B., late of the Bannu Bar, been sent to solitary and separate confinement and for what length of time were they respectively kept in any such confinement at a time?

The Honourable Sir Malcolm Hailey: The information is being collected and will be supplied to the Honourable Member on receipt.

THE CANTONMENTS (HOUSE-ACCOMMODATION) BILL.

Secretary of the Assembly: Sir, I beg to lay on the table the Bill further to amend and to consolidate the law relating to the provision of house-accommodation for military officers in cantonments as passed by the Legislative Assembly and amended by the Council of State.

THE MARRIED WOMEN'S PROPERTY (AMENDMENT) BILL.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, I beg to move:

"That the Report of the Select Committee on the Bill further to amend the Married Women's Property Act, 1874, be taken into consideration."

On a former occasion, Sir, I explained the object of my Bill. For the information of some new Members I wish to recall what I said on the previous occasion. The object of this Bill is to remove certain doubts created by certain conflicting decisions of the three High Courts—Madras, Bombay and Calcutta. The Madras High Court has held that the Married Women's Property Act applies to Hindus, Muhammadans, Jains, etc. The other two High Courts, Bombay and Calcutta, have held that this Act does not apply to Hindus, Muhammadans, etc., with reference to policies of insurance taken out by husbands for the benefit of wives. My object is to remove this conflict of decisions with a view to give the benefit of section 6 of the Married Women's Property Act to the two communities which I have mentioned. Section 6 of the Married Women's Property Act says that a policy of insurance effected by any married man on his own life and expressed on the face of it to be for the benefit of his wife or of his wife and children or any of them shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband or of his creditors or form part of his estate. If this section does not apply to Hindus, the disadvantage is that even in a case where the husband insures for the benefit of his wife, either his creditors or members of a

joint Hindu family practically claim an interest in the insurance money, and the benefit of that insurance is taken away, so far as the wife is concerned. If, therefore, section 6 of the Married Women's Property Act is applied to insurance policies effected by Hindu husbands or Muhammadan husbands, I believe it would be to the benefit of the wife inasmuch as creditors or other members of a Hindu joint family will not be able to take away the benefit of the policy. That is the object I have in view. I am glad the Select Committee have reported in a way so as to support my object. The changes effected by the Select Committee are only two. As regards the first, I originally proposed to apply this section to Buddhists. The Select Committee has reported that it is not desirable in enacting this particular measure to include the Buddhists, as there are very few Buddhists in India, and, supposing the benefit of this is to be extended to Buddhists, the Government of Burma have said that they are willing in case of necessity to pass a measure of this kind in their local Council.

The second important change effected by the Select Committee is with reference to the question whether retrospective effect should be given by this Bill to policies of insurance already effected by certain people either in Madras or elsewhere. It was thought that it would not be desirable to give any retrospective effect inasmuch as people may have taken out policies on the understanding that they would be able to borrow money against the policies. Therefore the recommendation of the Select Committee now is that if at all this change in the law is to be made it should come into effect after April, 1923.

During the discussions of the Select Committee we have given careful consideration to the views and representations of Insurance Companies so far as the aspect of insurance is concerned. It was thought that the change in the law as proposed now might make certain classes of policies unpopular. After careful consideration the Select Committee came to the conclusion that if Insurance Companies properly explained the objects of this Bill to the proposers there would be no hardship and therefore there would be no disadvantage even from the insurance point of view in making the change. On the whole the Select Committee has supported this Bill; all the Local Governments are in favour of it; I believe that the Government of India are not against it, and I trust this House will support it. If it is carried I am sure it will be a great benefit and a great advantage so far as the Hindu, Muhammadan and Jain communities are concerned. I trust therefore that I shall get every support from this House for this Bill. Further, if it passes this House and if it passes also in another place, which I hope it will, I believe that this will be the first non-official Bill to go on the Statute Book under the new regime.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, under Standing Order 44, I beg to move that the Bill be re-committed to the Select Committee.

I am one, Sir, who is in agreement with the principle of the Bill, but to my mind there are certain very weighty considerations which seem to have been overlooked by the Select Committee. There is no doubt that the Married Women's Property Act, as appears from the Preamble and the opening sections of the Act itself, was intended for a certain class of persons who are not affected by the special doctrines of Hindu or Muhammadan law, or the general law, for the matter of that. The House will see that the Act now in force contemplates principally the persons in India who come under the operation of the Indian Succession Act. What the Married Women's

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Property Act seems to secure for the benefit of a man's wife and children by way of insurance has been laid down by section 6 of the Act. It is to some extent something in lieu of a marriage settlement, a consideration as it were for the marriage, in many cases governed by the Indian Succession Act. Such cases have concern with the contractual forms of marriage, to a great extent. We are now trying by direct legislation to extend the principle of the existing Act to Hindus, Muhammadans and Jains. The intention of the Bill is no doubt a very good one, but at the same time we have to consider certain aspects of the matter which affect Hindus, Muhammadans and Jains in a special sense. Now, so far as Bengal is concerned, there may not be much difficulty; but as regards other parts of India very often the communities concerned are governed by the Mitakshara school of Hindu law. Under that school, very often the *karta* or manager of the joint family has dominion over the entire joint family property. Further, according to the Hindu law of the Mitakshara school, the sons are coparceners by birth with their fathers as well as with the other members of the joint family; they have a vested interest in the coparcenary property as soon as they are born and the property becomes the property not only of the father and the *karta* of the family, and of his sons, but of them and the other coparceners as well. So that, any special provision for the sons by way of insurance, by the father will have to be effected with joint family property. That is to say, a *karta* or the head of Hindu coparcenary property can by heavily insuring his life in favour of his wife and children very often do away with or segregate a portion of the joint family property for the special benefit of his wife and children. That is an aspect of the case, Sir, which seems to have been overlooked by the Select Committee. The Honourable Mover of this Bill placed before the House the points which were really taken into consideration by the Select Committee and the report also refers to them. He did not mention, nor does the report itself mention, that these points were considered by the Select Committee. To my mind, Sir, they are questions of great importance. If a policy is effected by means of joint family property, the people affected have the right to know what the exact position should be of the benefits which are to arise out of that policy in relation to the claims of creditors and others. Then, Sir, it has been pointed out in some of the opinions elicited on the Bill that a Hindu—when insuring his life very often insures it with the idea that the policy is negotiable, so that during his life time he may have the benefit of the policy himself by being able to deposit it with the insurance office and raising money on it, and by otherwise assigning it. Whether upon the passing of the Bill the policy will still remain negotiable or it will have full effect as the Bill intends, that is to say, by imposing a sort of trust for the benefit of the wife and children is another question which requires careful consideration. At any rate, if the effect of this Bill, if passed into law, be that persons of this class will be deterred from insuring their lives for the benefit of wife and children and that they will thereby be deprived of their right of negotiating on the policy, it will perhaps have an effect opposite to what it aims at securing. That is to say, the object of the Bill being to benefit the wife and children of the person insuring his life, it will perhaps by that process have a deterrent effect, and the Bill will fail to achieve its own purpose. These are considerations, Sir, which lead me to think that more careful attention should be given to the Bill itself and these different aspects of the question should be considered in greater detail. The insurance companies have also raised certain objections and the House

may also take into consideration whether we should insist upon a trustee being always named in such cases so far as Hindus, Muhammadans and Jains are concerned. I find, Sir, that Mr. Darcy Lindsay who represents the insurance interests in the question, has not signed the Select Committee's report and I regret I do not find him present here to-day. He would have been able to throw more light on this question, if he had been present here to-day, from the insurance point of view, that is to say, he could have stated, whether the Bill will have a discouraging effect on insurance business, if passed in the form in which it is now presented to the House. If greater facilities for insurance had been offered by the Bill and more detailed consideration been accorded to the subject, it would, instead of defeating its own purpose, perhaps help to secure the end it has in view. All these points, I submit, Sir, the House may be pleased to take into consideration, and to re-commit the Bill to the Select Committee, specially because there is no haste in the matter. The country has done without the Bill so long. It does often suffer to my mind from hasty legislation; and the House should stop and consider whether it should now pass this Bill in its present form, which is foreign to the social organization of the classes contemplated by it, without more detailed consideration of the points indicated. We should not take away the existing system simply by considerations of haste and speedy legislation. With these observations, Sir, I move that the Bill be re-committed to the Select Committee.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I cannot help saying, with all deference, that the Honourable Member who has just spoken has not understood the scope of this Bill. Sir, the object of this Bill is to place Hindu widows in the same position as widows belonging to the Christian community. Under the Married Women's Property Act, section 6, if an insurance is effected in favour of wife and children, a trust is created and the insurer is thereby debarred from dealing with the insurance as if it were his own property, and his creditors after his death cannot attach it as if there has been no trust. That is the object of section 6 of the Married Women's Property Act. That benefit has been secured to Christian women and we want to secure it for Hindu women. That is the object of this Bill. That would not affect the questions which my Honourable friend has raised in the debate just now. My friend Mr. Subrahmanayam, for example, has some doubts of an analogous character and those doubts also will not in any way be solved or made worse by the provisions of this Bill. For example, Sir, supposing an individual out of joint family property pays premia and at the same time declares that the amount of the policy should go to the wife and children. Undoubtedly, if this Bill becomes law a trust will be created in favour of the wife and children. He himself cannot deal with it; his creditors cannot deal it. It would not defeat the rights of the joint family if the members of the joint family choose to claim it, because a man cannot be creating a trust of somebody else's property, defeat the rights of the true owner. Those rights will always remain intact. They will not in the least be affected by anything that he has done. Those rights will remain and continue to remain, notwithstanding anything that he may say or do. The object of this Act is to prevent the man himself from again borrowing a loan upon the insurance, to prevent his creditors after his death from attaching the property as if there has been no trust. These benefits are given to women of other communities and these benefits are intended to be secured by this Act to Hindu women. That is the only object of this Bill and I do not see how the considerations which have been put forward so elaborately by my

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Honourable friend arise at all in connection with this Bill. This is a simple Bill. I had intended, Sir, to bring in a Bill which was somewhat more ambitious, and if my Honourable friend had in mind the provisions of my Bill, probably he would be justified in making the remarks; but that Bill is not before the House. The short Bill before the House is to give Hindu women the same rights which are possessed by Christian women under the Married Women's Property Act. That is all, and without understanding that object of this Bill if criticism is directed towards showing that Hindu families will suffer, I think that would prolong the discussion and would result in no good whatsoever.

There is one point which I want to put before you, Sir, and it is this. Undoubtedly the ruling would be from you, Sir, but I want to mention the point. Very often motions are made for re-committing a Bill to the Select Committee. If I may say so, it is only for acts of omission and commission by the Select Committee that you can ask that the Bill do go back to the Select Committee. If you object to the principle of the Bill, if you say that the Bill itself should be defeated, it must be on the floor of this House. All these points must be debated and you must vote against the Bill. What has the Select Committee done in this particular case? What are the acts of commission and omission which can be charged against the Select Committee and why should a motion for taking back the Bill to the Select Committee be made in the manner in which it has been made. Sir, I make these general observations, because very often we find that without adverting properly to the meaning of the motion of sending a Bill back to the Select Committee, these motions are made in this House; and my remarks, Sir, are intended generally for all motions of this kind. On this particular matter, Sir, my submission is, the remarks of the Honourable gentleman who spoke just now are beside the point altogether.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, I would be very unwilling to say anything that would retard the progress of what Mr. Kamat has rightly called the first non-official Bill ready for the consideration of this House. At the same time I do feel the difficulties that Mr. Mukherjee has raised. I am afraid, like him, I shall be charged with not understanding the scope of the Bill. Well, if Mr. Mukherjee and I did not sufficiently appreciate the scope of the Bill, Mr. Seshagiri Ayyar has made the position quite clear. The Bill aims at placing the Hindu widow in the same position as her Muhammadan and Christian sister with regard to certain matters. So far it is undoubtedly a liberalising measure, and we should welcome all liberalising measures if they are a part of a well-considered organic whole. Fortunately or unfortunately it is difficult for us now to understand why the Hindu law-givers, with whom Dr. Gour, Mr. Seshagiri Ayyar and many more would have no patience at this long distance of time did not choose to put the Hindu widow under same schools of Hindu law in the same position as her more fortunate sisters under other systems. Times are undoubtedly changing. Insurance policies are a thing which have come from the West, like the Law of Trust . . . .

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Not known in Mr. Manu's time.

Sir Deva Prasad Sarvadhikary: Not known in Mr. Manu's time as Mr. Chaudhuri informs me. Mr. Manu was not a longheaded man. Any

way it is there and we must reckon with it. Anyhow intricate questions arise if the insurance has been at the expense of the family, as it may well be, and often is. Mr. Seshagiri Ayyar would go so far as to say, better far, (Dr. Nand Lal will no doubt assert) better far pamper the already pampered profession of the law, augment the chance of family litigation; let the family fight out whether the trust is maintainable or not, let the creditor be kept at arm's length, but give the widow rights which according to some High Court she does not enjoy—Would this be right and desirable? Sir, in my early days, the Law of Trust used to be explained by some in a very short fashion as the Law of Distrust. It was supposed to be invented only to keep some people at arm's length. The King then was acting in a very untrustworthy fashion, and the lawyers of Great Britain evolved the Law of Trust. Supposing the creditor has to be kept at arm's length, which I understand from Mr. Seshagiri Ayyar is, not the sole, but one of the objects of the Bill, he would and could be so kept if the debt had not been incurred under terms sanctioned and contemplated by the particular school of law. If these terms were satisfied the property may be available for the satisfaction of that debt. There are complications which we cannot, however much we may desire, fail to take note of. The Hindu law of succession has its difficulties, judged by modern standards. We are not discussing that big question on its merits or demerits. And we cannot ignore these difficulties. There are sections of the community that think that what is proposed is a method of circumventing the wise or unwise provisions of the Hindu law that cannot appeal to the general body of people. It seems to me therefore that there is room for a little more careful consideration of the situation as a whole than has been bestowed on this Bill particularly when premia have been paid out of this Joint Estate. I for myself am not prepared to endorse the whole of Mr. Mukherjee's objections to the Bill because I do feel that in a proper manner and as a part of a well-considered organic whole, liberalising influences have to come into play. But whether we can take big questions piecemeal like this is what I am unable to understand. Mr. Seshagiri Ayyar has drawn your attention to the desirability or otherwise of moving for the Bill being sent back to the Select Committee as a blocking measure, if I may put it shortly for him. Well that is a constitutional method open to Members and I do not see, if necessity arises and if a case is made out why the method should not be resorted to. For my purposes however there is in Mr. Mukherjee's proposal more than that. I would not consent to the Buddhist being excluded from the purview of the Bill for any of the reasons that have been put forward in the Report of the Select Committee. One reason is that there is no Buddhist Member present in this House. Well, Sir, communal representation is in the air; but it is carrying matters a great deal too far to say that because for the time being there does not happen to be a representative of a particular community present in the Assembly, is a reason why what is otherwise right and proper should not be done. The Government must have consulted Buddhist representatives, and their opinion must be before the Government. That is not all; the Burma Government, we are told, is prepared to have local laws with regard to the matter, but Burma has by no means the monopoly of Buddhist subjects of His Britannic Majesty. I come from a Province where there is a large Buddhist population who could not get the benefit, if it is a benefit, of the Burma Act. And, therefore, if the principle of the Bill is to be made applicable to Indians, I do not see why the Bengal Buddhists should be excluded. And there are Buddhists in other provinces, not to the same extent as in Bengal, that is one of the reasons

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why this matter should be reconsidered. I shall probably be told that, as was attempted in another matter not many days ago in this House, to effect a remedy in this direction by an amendment to bring the Buddhist within the purview of the law. Possibly that course was open; but the point of view that has been put forward by the Select Committee would be better considered even from the Burmese point of view, if the Bill went back to the Select Committee. For all these reasons, Sir, I think the motion for re-committal of the Bill is not as ill-conceived as Mr. Seshagiri Ayyar would suggest, and I support Mr. Mukherjee.

Rao Bahadur C. S. Subrahmanayam (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, I support this Bill in its entirety. The position is simply this. There is a section of the Married Women's Property Act of 1897 which I shall read, for it is necessary to understand what it is because many a Member here may not have had the opportunity to know its contents:

"A policy of insurance effected by any married man on his own life and expressed on the face of it to be for the benefit of his wife or of his wife and children or any of them, shall endure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate."

That is the law as laid down by the Legislature. The question arises whether Hindus could take the benefit of this section. The High Courts have differed in their opinions of the Act. The High Courts differed in their opinion. The cause of difference was this. Section 2 says: "Nothing herein contained applies to any married woman who at the time of her marriage professes the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion, or whose husband at the time of such marriage professes any of those religions." This section has been the subject of controversy between the various and even among Judges of the same High Court. It is unnecessary for me to enter into the particulars of that controversy, but the result of this doubt has led to considerable hardship to widows and orphans, for whose benefit the husband or the father had effected an insurance. I will instance to you a case which came within my own professional experience. A schoolmaster on not a very large salary insured his life for a sum of Rs. 10,000 in one of the Indian companies. He died prematurely. His wife and children applied to the insurance company for the money. The brother of this schoolmaster, almost a scamp, if I may put it so shortly, put in a caveat and wrote a letter to the insurance company saying "Do not pay that money. My brother is a Hindu and I am a Hindu, and I have got some claim to the amount." What did the insurance company do? When two people claim the same amount, the company has to protect itself. It cannot hand over the money to one of them, even though it believes that person to be the rightful claimant. What it did was to say to the two parties "Go and settle your quarrel in Court, we will pay later on." The result was they had to go to Court and there was a delay of nearly two years before the widow and the sons, who were minors, could get that money. Now, that hardship is a hardship which, apart from being a Hindu, apart from being a member of any other community, I suppose Members of this House will recognize to be a hardship which ought to be removed. Now, Sir, it is that hardship which is sought to be removed by this Bill, namely, to make the insurance companies safe, to protect the insurance companies, and, at the same time, to protect the widows and

orphans who require protection and who cannot, under the circumstances in which they live, carry on a war against adult male relations of the deceased. Well, I had another case in regard to a foreign insurance company. The companies were already dealing with the matter very correctly, but there were difficulties when claims of this sort, Hindu joint family claims, Hindu Mitakshara family claims, Hindu Dayabhaga family claims, and all kinds of family claims are put forward. Now, the Bill seeks to do away with, or, at least, to minimise, such troubles, and it is not a new provision. It is a provision which exists in an Act of the Legislature and, owing to this clause which is in the earlier section of this Act, and the difference between two High Courts, this Bill is introduced. After all, this Bill does not affect any vested interests of people in the property of the deceased. Now, what does this section say? It says that this policy shall not form part of his estate. Hindu lawyers may rest assured that, if there is a joint family estate, it will not affect that, that claim will subsist; if there are other claims, those claims will not be defeated.

Now, there is another aspect of this insurance business. A man insures his life immediately after marriage or before marriage, and that means a provision for his wife and children. That is a well-understood method at any rate among Europeans and those who have learnt that method of provision for their families from Europeans. Now, take the case of a Hindu who is in service and earning his living. He insures his life for the benefit of his wife. The man dies suddenly. The opponents of this measure say: "No, that money should not be given to his widow." The policy, as expressed on the face of it, is for the benefit of his wife, or his wife and children. If a man pays month after month a certain share of his earnings and has said in express terms that it is for the benefit of his wife and children, what injustice is there to prevent his wife and children receiving that money. It is a pure act of justice which this Bill wants to provide for, because, owing to the interpretation of Judges, some difficulty has been felt upon this matter. Therefore, Sir, I would say that, so far as this Bill is concerned, it is a very simple measure and it only touches one part of it; it does not affect any vested interests and any persons connected with the deceased. Therefore, it ought to receive the acceptance of the House.

Mr. P. P. Ginwala (Burma: Non-European): Sir, I had not the slightest desire to intervene in this debate, because, I frankly confess, that this is a department of law in which I am very little interested under my peculiar circumstances in Burma and I am not at all concerned with what "Mr. Manu" and other legislators in India have said about the rights of married women; but certain remarks were made by my Honourable friend from Bengal (Sir Deva Prasad Sarvadhikary) which I cannot allow to pass unchallenged. I am aware, that an all-powerful and an all-knowing Legislative Assembly is entitled to legislate for the whole of India, but there are conditions under which I think it would be perilous for this Assembly to meddle with the interests of a province about which it knows little or nothing. (*Sir Deva Prasad Sarvadhikary*: "Though it was well represented.") The two objections that have been taken to any legislation being passed by this Assembly are, I submit with great respect to this House, valid, first of all, that there is no Buddhist in this Assembly. There is no doubt there is no Buddhist in this Assembly though there are some Burmans—we like to call ourselves Burmans. I see an Honourable Member (Mr. H. Tonkinson) opposite me who is also a Burman. The Buddhist law is, I submit, a law about which the ablest practitioners in India are expected to have very little

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knowledge because it is entirely different from the law that is prevalent in India. I do not think that we claim too much when we say " For Heaven's sake do not legislate for us because we do not wish to trouble you: you have got to make a special study of our law and it is quite possible that you may go wrong." I do not see any justification whatsoever for my Honourable friend from Bengal wishing to impose his law upon my province. Then he said that he objected to the Local Government saying that they wanted to legislate for Burma. What objection does he see to it? Why does not he ask the Government of Bengal to legislate for his province; we will not raise any objection whatsoever. It is an admitted fact, I think, it has been recorded in constitutional documents and elsewhere, that the conditions of Burma are so different from those of India that Burma ought to be allowed to work out its own salvation in its own way as far as possible. And I see every justification to the Local Government's claim that this legislation, if it is required in the Province, must be undertaken by the Local Council. But I may point out to the House generally that there is a gentleman corresponding to " Mr. Manu " in Burma whom we call Manugye.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): I am sorry, Sir, to interrupt on a point of order, but I must protest against a name which is sacred and held in the utmost respect by Hindus being spoken of in this manner. I hope my Honourable friend will have some regard for the feelings of Hindus in this matter.

Mr. P. P. Ginwala: I know, Sir, that my Honourable friend from Bombay has the utmost reverence for everybody, legislators and others, in the past, and I am very glad, Sir, he has drawn my attention to this merit of his. But this did not originate on this side of the House. However, I may point out that Manugye is one of those legislators for whom we have the highest respect and his writings are considered to be of the utmost authority in the Province of Burma at the present moment. And according to him,—he has devised a very simple form of law applicable to widows and husbands too,—whatever property is jointly acquired during the lifetime of the two partners to a marriage goes over to the survivor, subject to the rights of the eldest child; and therefore whatever difficulties you may have in the rest of India, we have no such difficulties in our Province. That is an additional reason why this Assembly should not try to impose its will upon a Province which has no desire to interfere with the affairs of India. And I beg Honourable Members in this House not to misunderstand me. There is a very strong feeling in Burma that her affairs are not understood by India and that on other occasions, when the least interference is required, much interference is made by India in the affairs of Burma; I do not think that there is any occasion for allowing Burma to feel that that is the way in which her affairs are to be managed in India both by this Assembly and the Government of India. It is for these reasons that I thought it necessary to intervene in this debate. I do not wish that this Assembly should in any way be misunderstood by the people of Burma who have only recently embarked on their new and independent political career.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I should like very briefly to refer to the criticisms of my learned friends Sir Deva Prasad Sarvadhikary and Mr. Mukherjee.

The whole trend of Sir Deva Prasad's argument, I submit, is too late at this time of the day. He objects to the principle of the Bill which was

accepted by the House when it committed it to the Select Committee. It has now come out of the Select Committee and all my friend can object to now is not the principle but the details of the Bill. Sir Deva Prasad has appealed to the authority of Manu. My learned friend is aware that in the days of Manu not only wives but children had no property. They were all classed with slaves . . . . (*Some Honourable Members*: " No, no.") . . . . as chattels. Those of my learned friends who shout " No " have not read Manu. They were all classed with slaves as chattels. (*Some Honourable Members*: " No, no.") In course of time they emerged from that servile condition. Surely my friend does not want to relegate his wife and children to the status assigned to them in the Manu Smriti which was composed 3,000 years ago. I am perfectly certain that that is not my friend's object.

My friend, the Honourable Mr. Mukherjee, while directing no direct attack on Mr. Kamat's Bill . . . .

Mr. J. N. Mukherjee: I did not object to the principle of the Bill.

Dr. H. S. Gour: He now assures me and the House that he does not object to the principle of the Bill. He nevertheless follows the Fabian policy of recommittal to the Select Committee. But surely yesterday you, Sir, indicated very clearly that if a Member desires that a Bill should be re-committed to the Select Committee he should indicate the lines upon which the Select Committee are to set to work. But my Honourable friend has not done so.

Mr. J. N. Mukherjee: I did. You were sleeping perhaps.

Dr. H. S. Gour: No, I was very much awake. What is the good of the Bill being re-committed to the Select Committee? The two grounds upon which my learned friend would like the Select Committee to re-cogitate on this Bill are that there are such husbands who are members of a joint family, and if they have used joint family funds for the purpose of insuring their lives for the benefit of their wives, it is the joint family under Hindu law that should participate in the benefit. And further my friend pointed out that if the husband happens to be the manager a further complicated question would arise under Hindu law. That, I venture to submit with due deference to the Honourable Mr. Mukherjee, again raises a question of principle and not one of detail. But I am prepared to answer his queries.

Mr. J. N. Mukherjee: In Bengal no such difficulties arise.

Dr. H. S. Gour: My friend interjects the remark that in Bengal no such difficulties arise. Now take the ordinary Mitakshara law. What is the position? Assume that the husband is a member of a joint family and assume, for the sake of argument, that he is its manager. Assume further that he has drawn upon the joint family funds for the purpose of insuring his own life for the benefit of his wife and children. So far as his sons are concerned, they are co-partners in the estate, and they present no difficulty under Hindu law. So far as his unmarried daughters are concerned, they are entitled to the daughters' portion. They present no difficulty. I am prepared for the sake of argument to assume that this manager has drawn upon joint funds for the purpose of insuring his own life for the benefit of his wife and children. Now what is the position under Hindu law? It is a well known principle that if a member of the coparcenary does an act inconsistent with its continuance, it causes a disruption. If the other members of the coparcenary feel aggrieved by the conduct of the manager in insuring his wife and children's lives at the family cost, they are entitled to call for

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a partnership. That is the first principle which the great law giver Manu has laid down. And by the way in one of his *slokas* he points out that partition is a very righteous thing to do and he strongly commends it, because the Brahmins profit by the partition. Two families are born out of one, and two independent sacred rites have to be performed and the Brahmins benefit thereby.

12 Noon.

Consequently, partition is held commendable in law. My submission, therefore, is that my friend Mr. Mukherjee's objections do not in any way touch the point. They create no practical difficulties so far as a joint orthodox Mitakshara family is concerned. Under the Bengal school subject to the Dayabhaga law, there is no difficulty. Where is this difficulty? That, I submit, is the plain question. The Madras High Court in I. L. R. 37 Mad. 483 have laid down that a husband has a right of insuring his wife and children or his own life for the benefit of his wife and children so as to create a trust in their favour. My friend the Honourable Sir Deva Prasad Sarvadhikary pointed out and referred to Mr. Seshagiri Ayyar's speech on the Bill and said " will it have the effect of keeping the creditors of the family out?" I venture to draw his attention to the proviso to section 6 of the Married Women's Property Act which lays down: " Nothing herein contained shall operate to destroy or impede the rights of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud the creditors." It is a well-known principle laid down in section 53 of the Transfer of Property Act, and apart from the Transfer of Property Act, it is part of the general law that no policy in favour of a wife and children could be used to the detriment of the claims of creditors, and section 6 which Mr. Kamat's Bill is intended to extend by a legal expression to Hindus, Muhammadans and the rest safeguards the rights of creditors against any attempt at fraud upon them. So I submit that difficulty does not confront us. What is then the Select Committee to do? Surely, Sir, neither my friend, Mr. Mukherjee, nor Sir Deva Prasad Sarvadhikary have indicated any lines upon which the Select Committee is to further examine the details of this Bill. I therefore submit that a recommittal would merely delay the further progress of this Bill and would not be conducive to its further progress.

Now, Sir, a few words on the merits of the Bill. I suggest that section 6 was intended, as has been laid down by the Madras High Court, to extend equally to Hindus and Muhammadans. The Bombay and Calcutta Courts have taken a different view. If this Bill is not passed into law, this conflict of authorities will still remain, but is it not the business of this House and of the Indian Legislature to set at rest conflicting decisions of the High Courts which would certainly lead to litigation and delay in the settlement of claims? On these grounds, Sir, I think that this Bill should now be passed by this House without its recommittal to Select Committee.

(*Several Honourable Members*: " I move that the question be now put.")

The motion was adopted.

The motion to recommit the Bill to Select Committee was negatived.

The motion to take the Bill into consideration was adopted.

Clauses 1 and 2 were added to the Bill.

The Title and Preamble were added to the Bill.

Mr. B. S. Kamat: Sir, I beg to move that the Bill, as amended, be passed.

The motion was adopted.

THE EXCLUSION FROM INHERITANCE BILL.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I move:

"That the Bill to amend the Hindu law relating to exclusion from inheritance of certain classes of heirs, and to remove certain doubts, be referred to a Select Committee consisting of Mr. J. Chaudhuri, Rao Bahadur C. S. Subrahmanayam, Rao Bahadur T. Rangachariar, Mr. B. Venkatapatiraju, Dr. H. S. Gour, Lala Girdharilal Agarwala, Mr. Harchandrai Vishindas, Sir Deva Prasad Sarvadhikary, Mr. K. B. L. Agnihotri, Rai Bahadur J. N. Mazumdar and myself."

Sir, the rumbling noise which the House heard just now is only the prelude to the thunder which is coming down upon my head in regard to this matter. They began, Sir, by referring to Hindu law and Hindu sacrament only for the purpose of showing that I am attempting something which is irreligious and which is opposed to the sacramental law of the country. At this time I do not propose to go very minutely into the details of the Bill. I have spoken about it on more than one occasion. On the last occasion when this matter came up in Simla for consideration I explained very fully the reasons which led me to bring this Bill before the House.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, may I ask whether this is not an adjourned debate? I understand that my Honourable friend has already moved his motion for referring this Bill to a Select Committee; he made a speech on the Bill on that occasion and it was followed by another speech. As far as I know my Honourable friend *only* proposes to add two names to the Select Committee which he then proposed. Is that not so?

Mr. T. V. Seshagiri Ayyar: I am very willing, Sir, to be ruled out of order because I do not want to make a speech. As a matter of fact I was only prefacing my remarks with a view to lead up to this. It is unnecessary to make a speech now and if you agree with the objection taken I shall be very glad to be told that it is not necessary to make a speech. I do not want to repeat what I said on the last occasion, and if there are any remarks made by others I shall have time enough to consider the whole matter and give my reply later. On this particular occasion I ask, Sir, that the Bill be referred to a Select Committee consisting of the Honourable the Home Member (the name is not in the printed list), Messrs. Chaudhuri, Subrahmanayam, Rangachariar, Venkatapatiraju, Dr. Gour, Lala Girdharilal Agarwala, Mr. Harchandrai Vishindas, Sir Deva Prasad Sarvadhikary, Mr. K. B. L. Agnihotri, and, instead of Rai Bahadur J. N. Mazumdar I would put in the name of Mr. Allen, and the Mover. As suggested by Mr. Tonkinson, for the reasons given in Simla I move that the Bill be referred to a Select Committee.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, it is rather with some regret, which is personal, that I rise to oppose this motion. The personal regret, Sir, is due to the fact that I have a great esteem for the author of this measure. He is one of those persons who has taken us into his confidence about the pilgrimage which he has made to Delhi at an early part of our career on this new Legislative Assembly. He told us, Sir, that he was yearning for improving the Hindu law, and that if his mission failed he thought that he was serving no useful

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purpose by being in this Assembly. Sir, we have lived two years after that statement made by my Honourable friend to my left and we have found him useful in many other directions. He took rather a modest view of his capacity. I venture to say his capacity in other directions has been more useful than his activities in this direction. Sir, as a student of law when in the eighties I began to learn Hindu law, I was struck with a famous passage in Mayne's Hindu Law,—the preface to his first edition which still rings in my ears and which I believe is still true. In the preface which he wrote to his famous book on Hindu Law this is what he said:

"A third class of opinion is that of the common-sense Englishman, whose views are very ably represented by Mr. Cunningham,—now Judge of the Bengal High Court—in the preface to his recent 'Digest of Hindu law.' He appears to look upon the entire law with a mixture of wonder and pity. He is amused at the absurdity of the rule which forbids an orphan to be adopted. He is shocked at finding that a man's great grand-son is his immediate heir, while the son of that great grand-son is a very remote heir, and his own sister is hardly an heir at all. He thinks that everything would be set right by a short and simple Code which would please everybody and upon the meaning of which the Judges are not expected to differ."

Proceeding he points out:

"The age of miracles has passed, and I hardly expect to see a Code of Hindu Law which shall satisfy the trader and the agriculturist, the Punjabee and the Bengalee, the Pundits of Benares and of Rameswaram, of Amritsar and of Poona, but I can easily imagine a Code very beautiful and specious Code which should produce much more dissatisfaction and expense than the law as at present administered."

Sir, when I read my learned friend's Bill, I was struck with the truth of that remark. Sir, it is not an easy matter to draft a Code. It is an art in itself. I was more forcibly struck with the difficulty of drawing up a Code even when the draftsman tore up to shreds small amendments to the Code of Criminal Procedure, and I truly felt that the draftsmen of the Legislative Department have developed it as an art, and it is true, Sir, it is not that every hand that can attempt successfully to draft a Code. Sir, my Honourable friend's Bill is based on wrong assumptions, hastily drawn up in his enthusiasm to modify the Hindu Law and which, if I may say so, is fraught with difficulties and traps which will benefit the lawyer. It is a simple Bill and consists of only one section. But still, Sir, when we compare it with the law as it is, I rather prefer the law as it is to his Bill. My Honourable friend's object, as he states in his Statement of Objects and Reasons, is to repeal the Hindu law or so much of the Hindu Law which excludes certain persons from inheritance. Sir, what is his title of the Bill? The title is: "This may be called the exclusion from the Inheritance Act," whereas he wants to repeal the law which excludes people from inheritance. He is enacting a law, he tells us, for the exclusion from inheritances of certain classes of heirs. Then, Sir, he wants to repeal a rule of Hindu law which he thinks or assumes exists. Where he gets that rule from I find it difficult to gather. I ransacked all the sources, but I cannot find the rule of Hindu law which he seeks to repeal. It is non-existent. What my Honourable friend says is, "Notwithstanding any rule of the Hindu law or custom to the contrary no person shall be excluded from inheritance or from a share in the joint family property by reason only of any disease." There is no such rule in the Hindu law that a person should be excluded by reason of any disease, or any physical or mental defect. It is not stated in any rule of Hindu law. The rule of Hindu law is contained in Manu and added to by Yajnavalkya which, if Honourable Members will permit me to read, will see how different it is from what

my Honourable and learned friend has assumed it to be. Sir, this is the rule as stated by Manu. "Eunuchs," I omit the outcaste, "eunuchs,"—surely nobody ever contends that to be a eunuch is a disease,—"eunuchs, persons born blind and deaf"—that is not a disease, it is incapacity,—"the deaf and the dumb,"—that is not a disease, and "Nirindriya" such as the loss of the use of a limb are excluded from heredity. Sir, I fail to see where the rule is that a person afflicted with a disease is excluded from inheritance. Persons born deaf and dumb or blind, that is congenital, such as the loss of the use of a limb are excluded from inheritance, to which Yajnavalkya adds "and persons afflicted with an incurable disease" which is quite different from disease. Sir, if you want to state a rule of law and you want to repeal that rule of law, state it correctly. And then there is no rule of law which causes inclusion by reason of any physical or mental defect. It is exposing Hindu law to ridicule in the way in which my Honourable friend has stated it. Sir, the Hindu law is not so idiotic, as my Honourable friend would suppose it to be. It is based on reason, it is based on justice, it is based on well-conceived notions, so that if you want to repeal a rule of law, state it correctly, and repeal it. But do not mis-state it and try to ridicule a thing which does not exist. Sir, let us see what is it my Honourable friend has stated in his Statement of Objects and Reasons, and which he reiterated in his speech introducing the Bill. He says, certain persons, classes of persons, have been excluded from inheritance presumably on the ground that their present condition is due to sins in the former birth and are therefore not entitled to share in the family patrimony. Without questioning the soundness of this reason I am of opinion that in the times that we live in,—are we living in godless times, is that the idea? Does he mean that in these progressive times such grounds of exclusion should not be allowed to deprive a man of temporal rights? Why is it opposed to a sense of natural justice and equity? Is that my learned friend's contention? And is he right in assuming, in presuming rather, that the cause of exclusion is that the present condition is due to sins in the former birth? I do not know if my learned friend believes in a former birth. (*An Honourable Member*: "Very much.") I am glad to hear that he very much believes in it, so that, it is not intended to ridicule our faith in these matters. If it is intended to catch votes from other people who do not believe in it, I must take exception to such a thing. What is the object of making that statement? A gentleman who is I know thoroughly religious in these matters, who has strong faith in a previous birth and subsequent re-births, could use it as a reason here,—I do not understand that,—and what is the reference to present day times,—present day times, unless he means we are all living in godless times when we have no faith and no religion. I can understand that, but I do not see where the trouble comes in at all. In the first place, it is wrong to presume that it is founded on any such rule of law,—except in the case of incurable diseases which Yajnavalkya has added, the other cases are cases of exclusion from inheritance based on well known principles. One well known principle on which the Hindu law of inheritance is based is this,—the capacity to offer oblations. Does my Honourable friend believe in that or not? Will you kindly read it? Does my Honourable friend believe in the efficacy of oblations? Has he to-day performed his *Amavasya Tarpana* in honour of his ancestors, in memory of his ancestors? He says, yes. We believe in it, Sir. Our theory of the law of inheritance is based upon that. It is all very well for men like Dr. Gour who scorn at religious and orthodox persons, to indulge in such talk, but for my

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Honourable friend to my left who believes in and acts up to it, he should know that the theory of inheritance is based upon the capacity to offer oblations, upon the capacity to take part in religious worship, upon the capacity to contribute to the spiritual welfare of the family, so that it is based on that, and by this measure you want to destroy the very foundation on which the law of inheritance is based according to the Hindu law. And these people are incapable of performing it,—what can deaf and dumb people do? (*An Honourable Member*: "They can offer prayers.") It is not a question of prayers, it is a question of performing the *Shradhas*. Well, at any rate the Hindu law believes they are incapable of doing it, at any rate they are disqualified, and if they do it, it is no good; we believe in it. It is all very well for persons who have no faith in religion, that is the real secret of it, who have no faith in religion, to proceed to criticise it. Once you have faith in religion, then you feel the efficacy of it. As Mayne points out, the theory of inheritance is that it descends upon the heir—talking on this very Chapter—to enable him to rescue his ancestor from eternal misery. Consequently one who is unable or unwilling to perform the necessary sacrifices is incapable of inheritance; that is the foundation of the rule, because they are incapable of performing the ceremonies that are ordained for a householder, that they are incapable of inheriting; and look at it also not exactly from the religious point of view, but look at it from the point of view of natural justice and equity. Is it opposed to natural justice and equity to exclude persons from inheritance when they are incapable, when they would be incapable, of taking charge of and managing the property? For whose benefit are they to take charge? The Hindu law is not oppressive in that respect; it is purely a personal disability; the children of the excluded person are let in; provided they are not disqualified, they are let in, and they take the place of the excluded persons in the family. It is a pure personal disability attaching to this unfortunate individual no doubt, but as he is unable to take care of the property, it will get into the hands of scheming people if persons who are born deaf and dumb, or who are idiots, if this property is entrusted to them, it will merely get into the hands of scheming people, agents and others; and, on the other hand, the law provides that they shall be provided with maintenance. They will not be thrown into the streets,—in the shape of maintenance they get their share; their children get the property in their places; and if, by God's grace, they are cured—of course in these cases it is very difficult to expect a cure—but if really they are cured, they are put back in their position. Once they have got the property, it is not liable to forfeiture. Property vested is not taken away, and if the disability is removed, they get back the property, they get back to their position, and it is only during the continuance of the disability that they are not given a share in the property, but they are maintained out of the family fund. Now, Sir, what is the injustice in that law? For whose benefit are you giving them a share in the family property? And coming to the needs of the family, what is the object in giving him a share in the property? Is it your object to give the property to his heirs? But his heirs get it; therefore, it is not a disability which applies for ever, therefore it is only a temporary disability, a personal disability attaching to the man who is unfortunately afflicted with this incapacity. I won't call it a disease. It is a pure incapacity, a disability which attaches to the man. Therefore, Sir, I do not think that this Bill is at all necessary in so far as it attempts to remove or repeal the law as it exists.

Then, Sir, as regards this clause about " Nirindriya " persons who have lost the use of a limb, there has been some doubt. If my learned friend had attempted to remove the doubt created by a conflict of decisions in regard to whether insanity should be congenital in order to exclude a person from inheritance, he would have done some good; because on that matter there is some doubt though the consensus of opinion is that unless insanity is congenital it does not exclude from inheritance. The law has also settled it now that unless the man is from birth deprived of the use of essential limbs, that is a disability which make him a useless person, then also he is not excluded from inheritance. These points may be made certain.

Now, as regards leprosy, that is the only thing where this question of *karma* comes in, that is, the sins of a former birth, which my Honourable friend referred to and believes in. So far as this is concerned also, it has been settled that it is now limited to the worst possible form of leprosy. That is what Mayne says at page 870—the worst form of leprosy. If he has already inherited and subsequently becomes a leper, he is not deprived of the property. If at the time the inheritance opens he is suffering from the worst and incurable form of leprosy, what can be said in such a case? His children are not disinherited. If he has a son already that son takes his place. Therefore it is only the unfortunate individual himself who is excluded and he will be maintained out of the family funds. I do not see anything opposed to a sense of natural justice or equity in a case like that. What is it that these people who are thirsting to reform the Hindu law see in it? Do they know the principles on which these rules are based? It is a mere anxiety on their part to pose as codifiers of the law and to take the place of " Mr. Manu " as he was called this morning.

I really do not think, Sir, that we are doing any good by this piecemeal legislation. The Hindu law is not so inelastic. Customs have grown gradually; the enormities which at one time grew upon the Hindu law have been removed by judicial decisions and the growth of custom. We would have welcomed the removal of doubts on account of a conflict of decisions between various High Courts. And then there are only two points on which there is a conflict of decisions between Calcutta, Bombay and Madras, and the doubt on those two points my friend has not attempted to remove, although he calls his Bill a Bill to remove certain doubts. He has not said what the doubts are or how he proposes to remove those doubts. He simply wants, Sir, to remove root and branch this chapter on exclusion from inheritance. That is the object of this Bill. Are we going to endorse it? I will join hands with him if he seeks to remove any doubts on account of judicial decisions. But when he seeks to remove root and branch one portion of the law relating to inheritance, then I say he is doing a thing which is quite unnecessary, quite uncalled for and in utter disregard of the principle on which the Hindu law of inheritance is based.

One more word, Sir. My Honourable friend, Dr. Gour, has set a very vicious example to this House, and my Honourable friend, Mr. Seshagiri Ayyar, has followed that example. Directly one community takes up its cudgels against them they drop their own cudgels. Dr. Gour told the House when he was moving the Civil Marriage Bill: " the Muhammadans are opposed to it; very well, I will drop the Muhammadans. The Parsis are opposed to it; I will drop the Parsis also." What remains? There is only the one poor community whom he can go for, the disorganized,

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disintegrated and divided Hindu community which is an easy prey. Similarly my Honourable friend, Mr. Seshagiri Ayyar, quietly gives up Bengal. Why so? That rule of exclusion, Sir, is opposed to natural justice, opposed to equity and good conscience. He wishes to repeal it. What is good for Madras must be good for my friend, Sir Deva Prasad Sarvadhikary, and my friend, Mr. Mukherjee. But why does he drop Bengal? They are also governed by the same rule; but, Sir, he is afraid of their votes, of their opposition. Is that the way of dealing with root principles of Hindu law? Just as Dr. Gour was afraid of the Muhammadans and dropped them, so also my friend is afraid of Bengal opposition and he says so in his Objects and Reasons and he wants to drop Bengal. I can see through it. But I hope this House will not endorse any such view. I oppose this Bill.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Sir, I do not know whether it is a happy or an unhappy position, but in this instance at any rate I am opposed to the motion made by my Honourable friend, Mr. Seshagiri Ayyar. I do not for a moment wish to be misunderstood. I do not subscribe to all the views expressed by my Honourable friend, Mr. Rangachariar, that no Hindu reformer has a right to suggest modifications in the law of Manu. Nor do I agree with him that my Honourable friend, Dr. Gour, has, as it were, done a disservice to the community by introducing his Civil Marriage Bill. I am one of the staunchest advocates of that reform introduced by Dr. Gour. But I want to say that in dealing with questions of Hindu law one has got to understand clearly the principle on which the whole of the Hindu law is based. Not being a lawyer I am not able to define in legal terms what I believe is the principle on which the whole of the Hindu law is based. But I can express it as I understand it from what I should call, if I may be pardoned for doing so, the common sense point of view. The whole of the Hindu law is based on the principle that it does not recognize an individual as the individual is recognized in the western civilization. Its definition of the individual consists not merely of an individual but along with him his family, his wife and child. And wherever questions of the holding of property or questions of a similar character are concerned, they are not looked at from the point of view of an individual as understood in the West but from the point of view of an individual as understood here, an individual consisting of himself, his wife and his child. Now, the other thing to be taken into consideration is that in certain instances this subordination of the individual has been carried too far to a point where it affects the fundamental rights of every individual. Wherever that takes place, I think you would be justified, as my Honourable friend, Dr. Gour, has always attempted to introduce, you would be justified in introducing reform which might preserve the right of the individual against being merged too much in the rights of the family. But there is a danger of carrying this theory of the individual right so far as to subordinate altogether the fundamental principle on which the Hindu Law, I believe, is based; and it is because I believe that the proposal aims at the absolute subordination of the principle on which the Hindu Law is based that I venture most respectfully to oppose his motion. Now, why is a man, under the Hindu Law, entitled to inherit the property of his ancestor? Not because he wants to enjoy through the possession of that property. He has no right—in Hinduism—he has no right to inherit property in order only to have for himself all the worldly pleasures that are at his command which he can

purchase by means of holding property. (*A Voice*: " Is that your view?"). My view of the Hindu Law is this, that a Hindu has a right to possess the property of his ancestor only if he has the capacity to perform the five sacrifices that he is called upon to perform because of his being a Hindu. Now, wherever you find an instance where the son of a Hindu is incapable of performing those sacrifices which is the only justification of his holding the property of his ancestor, you take away from him the right of holding that property. You withhold from him that right, but you do not take away that right from his children; and so far as that principle is concerned, it appears to me that it is a very wholesome principle. The difficulty would arise where this principle would be exploited by scheming members of a family, by hook or crook, to settle upon a person who is not insane nor otherwise has any deformity, insanity or some other incurable disease which deprives him of the right of holding property. At the same time one has to remember that there is a greater danger if this was removed from the Hindu Law of scheming persons, as was pointed out by my Honourable friend Mr. Rangachariar, of scheming persons, of lawyers, taking advantage of the deformity of a man by making him a puppet in their hands and enjoying the fruit of his possession of property. But I want again to emphasise this fact that the Hindu Law does not recognise the individual right of holding property unless the holder of such property is capable of efficiently performing the sacrifices which by the reason of his being a Hindu he is called upon to perform. And in so far as that is concerned, I am opposed to the motion of my Honourable friend, Mr. Seshagiri Ayyar. I repeat that I do not think that the Laws of Manu should not be modified in accordance with the needs of the times. I believe that if the laws of Manu can be so modified as to bring about a reconciliation between the rights of the family which they insist on, and the right of the individual as understood in the West, if they can be modified so as to bring about that reconciliation, that modification ought to be welcome to everyone who loves this country and its civilization. But wherever there is a danger of either of the ideal being carried too far so as to bring about the subordination of the other ideal absolutely, there we should stand out to oppose such a modification. It is on these grounds, Sir, that I oppose the Resolution.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I have as high regard for Hindu Law as my Honourable friend, Mr. Rangachariar, but I have no blind faith in it. The history of the Hindu Law shows that it has changed and it has progressively changed and at the present moment when Hindu Law is being administered by European Judges this growth has been arrested. Now, with regard to what my learned friend Mr. Rangachariar said about the offering of oblations and succession, that is one of the things in which I do not believe. I myself offer oblations; I do that as moral duty to my ancestors. But I believe that the theory that succession depends on the offering of oblations, is a legal fiction which was introduced into Hindu Law and which is now discredited. I have got high authorities to support my view that this theory has done more harm than otherwise. I am not arguing a case before a Law Court and I need not cite those authorities. I only mention this to show that my friend, Mr. Rangachariar, is not right in his view. I say that not only Hindu Law, but Hindu civilisation, Hindu literature, have been very progressive and they have even a scientific foundation. For instance, I do not entirely sympathise with my friend, Mr. Seshagiri Ayyar, with

[Mr. J. Chaudhuri.]

regard to his object, but I have agreed to act on this Select Committee, because I feel that in certain respects the law might be modified. For instance, these disqualifications are based on what some would call, in scientific language, rules of eugenics. It seems reasonable that a leper should not inherit and insane persons should not inherit. Modern science tells us and modern lawyers too are also trying to legislate that such persons should be excluded from inheritance in the interest of society and our Hindu Law anticipated that. But I see no reason why a man who became blind early or even late in life and was in possession of all his intellectual faculties should not inherit. He is disqualified under Manu's Code. But the judge-made-law that we have now has departed from that in many respects. Take the case of other incurable diseases, they have been held to be no bar to inheritance or succession. So, I say these matters are the subject-matters for inquiry in connection with this Bill.

Now, something has been said about excluding Bengal. But Bengal has been rightly excluded as she is not affected in any way. I maintain that we are more progressive in regard to Hindu Law than other parts of India. We can hold individual property and we can dispose of our property just like an Englishman or any other civilized and progressive people in the world. We can give it to anybody we like. That is the reason why my Honourable friend, Mr. Seshagiri Ayyar, has excluded us. If we find sons, heirs or other members of the family to be insane, we have the absolute right to settle or dispose of the property in any way we like. We would leave it to other persons, male or female, and we would not leave it to an insane person. It is not through any fear of our fighting or desperate character that the Mover has excluded us from the scope of this law. I do not wish to detain the House, but I will only say that, although I do not agree with the scope of the Bill in all its details, I have agreed to serve on the Committee because in certain cases I feel that some of these disqualifications might be inquired into, and if possible, modified, and conflicts of decision removed. So I do not think that either my friend, Mr. Rangachariar, or others who are opposing it have made out any case for not referring this Bill to a Select Committee.

Mr. S. C. Shahani (Sind Jagirdars and Zamindars: Landholders): Sir, I feel obliged to you for permitting me to give expression to my views on this question. I am a Hindu hailing from Sind, and I have listened therefore with interest to what has been said by previous speakers from other parts of India with regard to the question under consideration. I am going to say something with regard to myself. My uncle's family will probably come to an end so far as the male issue of that family goes, and according to the Hindu law, I will be entitled to inherit some of the property that belongs to my uncle. But it is a fact that it does not even enter my mind, or the mind of any member of my family, to seek to secure the property which is really due to the daughters of my uncle's line. Just now we have been told that the essential principle on which the devolution of Hindu property depends is capacity to offer oblations. No female can offer oblations to the *manes* of her ancestors under the Mitakshara law.

Mr. Jamnadas Dwarkadas: May I rise to point of order? The point of order is this that we are at present not discussing that principle of the law which incapacitates females; it is only a question of deformed and otherwise incapacitated individuals.

Mr. President: I do not see the relevance of the Honourable Member's point of order.

Mr. Jamnadas Dwarkadas: I thought the point was not relevant to the issue before us.

Mr. S. C. Shahani: Sir, I want to point out that this doctrine that is being held out for acceptance by my friend, Mr. Rangachariar, is an exploded doctrine with some of the Hindus at least. I am a Hindu. Of course Mr. Rangachariar is a very orthodox Hindu, and I have listened with very great interests to what he had to say with regard to this question. I have nothing but admiration to offer for the imaginative manner in which he has handled his untenable point, a point which cannot be maintained, according to me, by any reasonable Hindu in the present day. He has run down the present times and he thinks that those who hold contrary views are uncivilized; but I want to point out to him that I am as great, if not as orthodox, a Hindu as he imagines himself to be . . . . (*An Honourable Member*: "If not greater.") Yes, if not greater. I am not a slavish observer of ritual. I believe less in the credal part of religion, and more in the cultural part of it. Such a belief alone will enable me to unify myself to others who profess different world-religions here in India. It is therefore that I make bold to come forward and say that in my own family I think it would be unimaginable that anyone should on the ground of capacity to offer oblations seek to secure for himself the property which ought to devolve upon the daughters of his uncle's line. I have another instance to give, and that is this. Two brothers lived in a joint family. One brother died leaving an only daughter, who has lost her mind now. Are the surviving brother and his sons to be deemed entitled to the property that has been left by the father of this maniac girl who needs protection so badly? According to the Hindus of the class to which I belong the purposes of the property are quite different to the purposes which have been enumerated by my Honourable friend, Mr. Rangachariar. I have got to point out that it was Mr. Rangachariar who had the courage on a former occasion here on the floor of this House to get up and justify the institution of *deva dasis* in the temples that exist in Madras. Of course he is true to his own faith, but such a faith to be recommended to others who belong to communities which can think rightly and consistently with regard to men and things in life, is, I think, at least a wrong procedure. That this sensible Bill which has been proposed by my Honourable friend, Mr. Seshagiri Ayyar, should be run down on these grounds is a pity; and it will be indeed a greater pity if this Bill comes to be rejected on these grounds. One real defect in the Bill has however been referred to by my Honourable friend, Mr. Rangachariar, namely, that our Honourable friend, Mr. Seshagiri Ayyar, has omitted Bengal from the purview of his Bill. I really do not understand the reasons for this omission. I do not impute motives, and I do not think that it is the desire to capture votes that has led to this omission. The omission to my mind has yet to be accounted for. If the Bill is good for all, it must be good for the Bengalees too. Bengalees are said to be a progressive people who can help themselves in the matter of inheritance. Quite true. Precisely on that ground it would not matter if the Bengalees were deliberately included amongst those who would be affected by the new Bill.

The Bill under consideration is a wholesome Bill from every point of view. So far as I see, on grounds of truth, justice and expediency this Bill ought to find favour with all of us here in this House.

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): On this Bill the Government have, after careful consideration of the opinions received from the various Provinces, decided to adopt a neutral attitude, leaving it to Honourable Members, including official Members, but excepting Members of the Executive Council who in accordance with past practice will not take part in the voting to vote on the motion as they like. (*An Honourable Member*: "Why not leave it to the Hindus?") That being the position of Government, it is hardly necessary for me to make a speech on this motion. But there is one point to which I think I might be permitted to invite the attention of the House. It has been said by more than one speaker that the real basis of the right of inheritance in Hindu law is the capacity to perform oblations. Well, until the passing of a certain enactment, apostacy or conversion to a religion other than Hinduism was a disqualification for inheritance, because the converted person, having ceased to be a Hindu, was thereafter incapacitated from performing oblations. Nevertheless, the Indian Legislature passed an Act (*Dr. H. S. Gour:* "The Lex Loci Act of 1850." *Dr. Nand Lal*: "Act XXI of 1850.") known as the Freedom of Religion Act, XXI of 1850, whereby apostacy or conversion from Hinduism to another religion no longer deprives a person from inheriting to his Hindu relations.

1 P.M.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, my friend, Mr. Rangachariar, has made a gratuitous reference to me in connection with his very orthodox views on Mr. Seshagiri Ayyar's Bill. I can only reciprocate the compliment by correcting a misstatement into which he has undoubtedly fallen in giving a historical basis for the rule enunciated by, not only by Manu, but also by the author of the Mitakshara, Vidyaneshwar, whom I shall presently cite, disqualifying from inheritance persons who are suffering from any disease. (*A Voice*: "Incurable disease.") Not incurable disease. Now, my friend's argument—and I hope the House will recall his argument—was that the whole doctrine of the Hindu law of inheritance is based upon the doctrine of spiritual efficacy. That, no doubt, is true, but it is a later doctrine. If you go far back into antiquity, you will find that the very same doctrine pervaded the archaic laws of Greece, Rome, Egypt and China, and the foundation for all these ancient laws was that in the nomadic life which our ancestors led the fighting man was the only man who was entitled to share the spoils of war and, consequently, a man who was impotent and devoid of sense or limb was incapable of fighting, and was therefore held to be incompetent to inherit. A spiritual form was in later days given to this extremely utilitarian doctrine which was the common doctrine of all ancient societies; but in later days when the disability survived the occasion which gave birth to it, it was said that, as the disabled people were incapable of performing sacrifices and of offering oblations to the deceased, they were incompetent to inherit. Unfortunately, the very narrow doctrine enunciated by the earliest lawgivers was enlarged upon by the later Smritikars, Yajnavalkya, and his commentator Vidyaneshwar in his Mitakshara, expanded the doctrine beyond all reasonable limits. If Honourable Members will turn to the Mitakshara they will find two clauses. He first cites Yajnavalkya who says: "An impotent person, an outcast, and his issue, one lame, a mad man, an idiot, a blind man and a person afflicted with an incurable disease and others similarly disqualified must be maintained excluding them however from the participation," upon which the author of Mitakshara says: "those who have lost a sense." Any person who is deprived of an organ of sense or action by disease or other causes is said to have lost that sense. He

expands the doctrine much beyond the original scope of the law of inheritance. Surely, Sir, the Mitakshara will disqualify from inheritance any of our Hindu brethren who went to France and lost their limbs fighting for their King and country. (*Rao Bahadur T. Rangachariar*: "But not the law as it is.") That is the law of the Mitakshara, that is the orthodox law, that is the law to which my friend appeals. Surely my friend could never expand the doctrine to that extent. The fact is that, inspite of the rigid orthodoxy and unbending and stern conservatism of my friend, the law has been expanding from time to time, and, at the present moment, the original purpose for which the narrow restrictions placed by the doctrine of inheritance were enunciated have been practically swept away. Cases after cases have made an inroad upon this narrow doctrine and my friend himself admits that now nothing but the shell remains, the core has been eaten up by a series of decisions of their Lordships of the Privy Council and of the Indian cases. What is the good of my friend now asking this House to re-iterate an old obsolete doctrine which is not the living law? What is the good of my friend appealing to the orthodox sentiments of my Hindu friends and saying "Please do not make any inroad upon your ancient law?" What is the good of my friend standing up here and saying that our law is based upon that transcendental fact that he who is incapable of performing a sacrifice is incompetent to inherit. My friend, Mr. Jamnadas Dwarkadas, while apologising for not being a lawyer, pointed out that the law we are now administering is the law of Manu. Will my friend be surprised to hear that, if he wishes to bring himself under the law of Manu, he had better vacate the rich possessions which he has inherited from his father, because Manu does not recognize the right of a son or wife to inherit; they are classed as chattels and have no rights of their own. (*Rao Bahadur T. Rangachariar*: "That is not correct.") Read that flagged portion, you will find the statement there. But surely my friend must not labour that point. These are ancient doctrines. The moment you examine them you find they are like geological seams lying imbedded in ancient history, and, as you come up, you see tier after tier of fresh and new growth. Coming to modern times, you find that, while you have the deepest reverence for the ancient law, you follow not the ancient law to its letter, but you revere that ancient law to the extent which is consonant with custom. Manu himself says so. He says in the closing chapter that custom is transcendental law and he points out, and that is a maxim repeated by Gautama, that, whenever people wish to know what is the correct law, let five people, learned in the law, sit together and decide. Surely, Sir, that is an injunction to this House to decide what is right. I shall give to the Honourable Members the *ipsissima verba* of that very ancient and sacred inculcation:

"In cases for which no rule has been given that course must be followed of which at least ten Brahmins who are well instructed, skilled in reasoning and free from covetousness, approve."

Consequently, I submit, Sir, this is the ancient rendering of the modern Reforms Act and what is contained in the sacred law books themselves. There is justification for the doctrine that these matters must be all settled by the consensus of opinion of the wise. When he speaks of the Brahmins he speaks of the learned—he does not speak of people who are ignorant Brahmins. (Laughter.) I therefore submit that this House has not only the secular authority of the Government of India Act but the sacred authority of the best law books, for going into this question and deciding it in accordance with what is right and just.

[Dr. H. S. Gour.]

The Honourable the Law Member has pointed out, Sir, that as far back as 1850, the Indian Legislature enacted a rule adopting the unanimous recommendation of the Royal Commission appointed by the Parliament Act of 1832, sweeping away the restriction which existed under Hindu law by which the conversion to another faith was held to deprive a man of all rights to inheritance of property. Now, Sir, Mr. Seshagiri Ayyar's Bill surely does not make such a sweeping change. It is a Bill which is founded on the elementary principle of reason and justice. Two brothers are born, one of them is born blind and the other is born possessed of sight. Is there any reason, I ask, why the brother who is afflicted with blindness should be excluded from inheritance? I say, Sir, that if out of the two our sympathies should go out to any one it should be to that afflicted brother. (Hear, hear.) And yet my friend would perpetuate the cruel wrong excluding those people who suffer from the loss of sight or limb from inheriting their patrimony. What justification is there for such a course? I have already pointed out that there is absolutely no justification, if you examine the question in the light of reason. Sir, I do not wish to labour this point. I can only hope that my friends, my Hindu friends in particular, will rally to the support of a measure which is intended to place Hindu law alongside the other modern laws. As my friend Mr. Chaudhuri unwittingly remarked, under the Bengal law he can dispose of his property like any civilised man. I ask, Sir, shall not our law be in line with the laws of other civilized peoples?

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, this is a very useful measure which has been introduced by my friend Mr. Seshagiri Ayyar. My learned friend, the advocate of orthodoxy, I mean the Honourable Mr. Rangachariar, has told us to look at the soundness of the Hindu law. The soundness which he has suggested is this—" that a man who is suffering from an incurable disease cannot look after himself; therefore he is deprived of the property, so that that property may not go to outsiders. There is a provision in the Hindu law that a man who is born blind, who is a leper, who is dumb, who is deaf—the other members of the family are bound to maintain him." That is the main ground which he has set forth in refuting the arguments which were advanced in favour of this Bill. While recognizing the sanctity and superiority of Hindu law in many respects, other than the aspect before us now, may I ask him, is he not aware of some cases in which maintenance to these unfortunate men was disputed by their litigious relations. Their brothers, their relations, will go to Court and they will say " Such a man is not entitled to maintenance on this ground and that." So my learned friend must admit that, though it stands, and very rightly, intact in some cases, the orthodox stands broken, to a certain extent, in some quarters. Customs have been introduced, and, at some places, even Hindus are not governed by the strict provisions of Hindu law which he has expounded on the floor of this House. Perhaps he is being guided by what happens in his own Presidency of Madras. The fact remains, however, as has been argued by a number of previous speakers, that some of these ancient principles of Hindu law are not adhered to strictly in some parts of India. We cannot deny that fact. After all we are not living 3,000 or 4,000 years back. We should not ignore the circumstances that should guide the Legislature of to-day. My learned friend wishes that these poor Hindus may not, even in some fit cases, be allowed to see the light of day. He wishes that they may be confined to all those old provisions which under the present conditions and in some cases, do not

satisfy the present time. On these grounds, Sir, I support the measure which is, if I mistake not, a very wholesome one and should have the unanimous vote of the House.

Mr. N. M. Joshi (and other Honourable Members): I move that the question be now put.

The motion was adopted.

Mr. President: The question is:

"That the Bill to amend the Hindu Law relating to exclusion from inheritance of certain classes of heirs, and to remove certain doubts, be referred to a Select Committee consisting of Mr. Chaudhuri, Rao Bahadur C. S. Subrahmanayam, Rao Bahadur T. Rangachariar, Mr. B. Venkatapatiraju, Dr. H. S. Gour, Lala Girdhari Lal Agarwala, Mr. Harchandrai Vishindas, Sir Deva Prasad Sarvadhikary, Mr. K. B. L. Agnihotri, Mr. B. C. Allen and Mr. Seshagiri Ayyar."

The motion was adopted.

THE HINDU LAW OF INHERITANCE (AMENDMENT) BILL.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I believe that the objections to this Bill were fully set forth by the previous speakers, and I also think the answers to those objections have been given by previous speakers. This Bill is absolutely necessary in order to enable certain female members to inherit before agnates to the seventh degree. This place would be earlier. I find that even my friend, Rao Bahadur Rangachariar, says this is a reasonable Bill, so there is no necessity for me to say any more on the subject. I move:

"That the Bill to amend the Hindu Law of inheritance in certain particulars and to remove certain doubts, be referred to a Select Committee consisting of the Honourable the Home Member, Rao Bahadur T. Rangachariar, Rao Bahadur C. S. Subrahmanayam, Rao Bahadur P. V. Srinivasa Rao, Mr. B. Venkatapatiraju, Munshi Iswar Saran, Rai Bahadur Nishi Kanta Sen, Mr. Harchandrai Vishindas, Mr. B. N. Misra, Mr. K. G. Bagde, Mr. K. C. Neogy, Dr. Gour, Mr. T. P. Mukherjee and myself."

The motion was adopted.

THE MUSSALMAN WAQFS REGISTRATION BILL.

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

"That the Bill to provide for the Registration of Waqf estates and the proper rendering of accounts by the Mutawallis of such estates in British India be referred to a Select Committee consisting of the Honourable the Home Member, Mr. P. E. Percival, Khan Bahadur Saiyid Muhammad Ismail, Mr. Zahid Ali Subzposh, Mr. W. M. Hussanally, Mir Asad Ali, Khan Bahadur, Rao Bahadur T. Rangachariar, Chaudhri Shahab-ud-Din, Mr. Muhammad Yamin Khan, Khan Bahadur Sarfaraz Hussain Khan, Khan Bahadur Zahiruddin Ahmed, Mr. Abdur Rahim, Haji Wajihuddin, Mr. Kabeer-ud-Din Ahmed, Maulvi Miyan Asjad-ul-lah, Nawab Ibrahim Ali Khan, Lala Girdhari Lal Agarwala, Maulvi Abdul Quadir, and myself."

Sir, this Bill was introduced some time back, and I had to wait taking any further action on it because the Government of India had asked for opinions from the Local Governments and they were awaiting the replies. This is a very simple measure though it might look rather a cumbrous one on the face of it. The object of this Bill and the principle which I want to press before this House is that there should be some sort of control over the

[Maulvi Abul Kasem.]

administration of waqf estates. It is well known not only to my co-religionists in this country but to all my fellow-countrymen and also to members of the Government that trust properties in this country are very much mismanaged, and the mismanagement and misconduct in the administration of these trust properties has become an outstanding scandal in this country. Several attempts were made from time to time by various individuals and public bodies to get a remedy, but unfortunately they have always failed for one reason or another. I have purposely confined myself to Muhammadan trust properties because I wanted to proceed on the line of least resistance. I know for myself and I have been told that the case of the trustees of Hindu charitable endowments are not better than that of the Muhammadan institutions. But, Sir, I thought it better to confine it to the endowments affecing Mussalmans only. It is not intended in any way by this Bill to interfere with the rights, the privileges or the powers of the mutawallis or trustees of these waqf estates, nor is it intended to give anybody a right of interference with their work. The only thing which is wanted essentially is that every mutawalli of a waqf estate should get his waqf properties duly registered in a public office and that the mutawallis should be liable to render accounts of his receipts and expenditure. Unfortunately, Sir, we have found it the case that mutawallis of waqf estates generally and the majority of cases treat trust property as their own personal property. Cases are numerous where these mutawallis have not only used the usufruct of these properties as their own, but have borrowed money by mortgaging those properties and have sometimes even effected a sale of waqf properties. As long as they have some of these properties left they never admit that it is waqf property, but when every inch of land appertaining to that trust is sold and goes into the hands of non-Muhammadans the mutawalli appears before the members of the community in a plaintive mood and says "This is Muhammadan property which has gone into the hands of Hindus." But primarily the mutawalli himself is responsible. In fact a large portion of waqf trust properties in my province has gone into the hands of either non-Muhammadans or to Muhammadans as their personal property. In any case where litigation was started to recover these waqf properties, it was found that the interests of third parties and of *bonâ fide* purchasers were affected, and in equity and justice our claims could not be pressed further. Therefore, Sir, I want, and I have been asked by my constituents to demand it, that all these waqf properties should be duly registered in public offices so that if anybody advances money on these properties or if anybody wants to purchase those properties he has an opportunity of ascertaining whether it was the personal property of the mutawalli or whether it was trust property in his charge. He will do so with his eyes open and without any misapprehension.

The second point is that there should be some sort of control. This control is to be exercised by a committee consisting of Muhammadans only over the accounts and the work of the mutawallis. I am not a lawyer myself and I do not claim to be at all a good draftsman. I have drafted the Bill to the best of my ability; in fact I have copied the sections from various Bills presented either in the Viceroy's Legislative Council or elsewhere by distinguished lawyers and other people; and I admit that there is much to be improved. The best course to do that would be to refer the Bill to a Select Committee and therefore I have taken particular care to include in the Select Committee distinguished lawyers so that we may have good legal opinion and draftsmanship and a large number of my

Muhammadan friends so that all shades of opinion may be expressed and the matter thoroughly discussed in the Select Committee. I have been told, Sir, that the Local Governments in their opinions are unanimous in saying that this a measure which ought to be left to the provincial Legislatures and that this Assembly should not legislate for the whole country, this being one of the transferred subjects or subjects which should be dealt with provincially. I beg to submit, Sir, as I did when introducing this Bill, and as the then Leader of the House, Sir William Vincent, remarked, that although it may or may not be a question from a technical point of view to be decided by the provincial Governments and by the provincial Legislatures, I think that in such an important question as the administration of waqf estates there should be a uniform law for the whole country and not conflicting Acts, one for Bengal, a second for the Punjab, a third for Madras and a fourth for Bombay. Therefore, Sir, I hope this House will agree with me that the time is ripe now when we should do something about the proper management of trust estates and trust properties.

It does not, fortunately for me, interfere with any personal law, that is to say, Muhammadan law or with any religious institution, and therefore I have no apprehensions of treading on delicate corns. Certainly it will affect the vested interests of the Mutawallis, but here we have to consider not the interests of Mutawallis who are in charge of trust properties but of the beneficiaries who are to be benefited or who have to enjoy the trust properties. Waqf properties were created by pious men for the benefit of humanity and their co-religionists and it will be a great misfortune to the country if the money which was ear-marked for the benefit of humanity and certain classes of people, were to be misappropriated by other people which was never the intention of those who created these Waqf Estates. The Mutawalli of the biggest waqf properties in my province is the Government of Bengal, and even under their management carried by a subordinate I am afraid the waqf is not properly managed and controlled. Therefore, Sir, the necessity was felt, and felt keenly for a long time for such a Bill as this. Mr. Rangachariar said that when my friend Mr. Seshagiri Ayyar came to this Council he did it with the object of introducing certain reforms in the Hindu law. Sir, I came to this House not with that purpose, but with a distinct mandate to press this Bill before this House, because attempts were made previously by myself and my friends in the local Legislature to introduce a legislation of this kind, in fact this very draft was sent to the Bengal Government and they sent it to the Government of India. The Government of India then refused sanction for its introduction in the local Legislature, because at that time they said it was not a matter for the Provincial Council but for the Viceroy's Imperial Legislative Council. But now that my people in Bengal have sent me here with a distinct mandate to press this Bill, I have been told that I have brought it after the reforms and this is a subject which devolves upon the Provincial Governments and it is not for the Members of this House to consider. I submit, Sir, again, that in an important measure like this there should be uniformity of law for the whole country, and the law that prevails in the Punjab should prevail in Bengal and other parts of India as well. Therefore, Sir, I hope that the Government and the House as a whole will support this measure. Of course the Bill will have to be redrafted and reconsidered and minor defects will have to be removed in the Select Committee or when the Bill comes before this House at a later stage. I hope, Sir, that the House will accede to my request and commit this Bill to the Select Committee for its proper consideration.

Mr. President: The motion moved is:

"That the Bill to provide for the Registration of Waqf Estates and the proper rendering of accounts by the Mutawallis of such Estates in British India, be referred to a Select Committee consisting of the Honourable the Home Member, Mr. P. E. Percival, Khan Bahadur Saiyid Muhammad Ismail, Mr. Zahid Ali Subzposh, Mr. W. M. Hussanally, Mir Asad Ali, Khan Bahadur, Rao Bahadur T. Rangachariar, Chaudhri Shahab-ud-Din, Mr. Muhammad Yamin Khan, Khan Bahadur, Sarfaraz Hussain Khan, Khan Bahadur Zahiruddin Ahmed, Mr. Abdur Rahim Khan, Haji Wajihuddin, Mr. Kabeer-ud-Din Ahmed, Maulvi Mian Asjad-ul-lah, Nawab Ibrahim Ali Khan, Lala Girdharilal Agarwala, Maulvi Abdul Quadir and the Mover."

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, there are certain difficulties which . . . .

Mr. President: Is the Honourable Member raising a point of order?

Mr. K. Ahmed: Yes, Sir. You will see, that my friend, Maulvi Abul Kasem, has no justification at this stage to refer this Bill to a Select Committee, because it was first introduced in September, 1921. After that, we have had three Sessions of this Assembly, and my friend's Bill is suffering from that disease which is incurable. I would refer Honourable Members in this connection to page 29 of the Manual of Business and Procedure of this House. Paragraph 80A, page 29, of this Manual reads as follows: "On the termination of a Session, Bills which have been introduced shall be carried over to the pending list of business of the next Session: Provided that, if the Member in charge of a Bill makes no motion in regard to the same during two complete Sessions, the Bill shall lapse,"—as it has lapsed, Sir, "unless the Assembly, on a motion by that Member in the next Session, makes a special order for the continuance of the Bill." Sir, my Honourable friend in his opening speech to-day said that he was not quite sure of his drafting. At the same time he said that we shall try again to sit together to re-draft the Bill. Sir, it is not a question of re-drafting only nor is it a quesion of putting additional Members on the Select Committee, but he is afraid, Sir, because I am sure he has been sleeping over this Bill not only at the last Session but at the Session previous to it also . . . .

Mr President: I would like the Honourable Member to state his point of order.

Mr. K. Ahmed: Sir, then I take the objection that my friend cannot refer his Bill to a Committee at this stage after the expiry of two Sessions, because it infringes the rules laid down in our Manual of Procedure and Business, and, I submit, Sir, that this Bill should be thrown out . . . .

Mr. President: I do not quite appreciate the Honourable Member's point.

Mr. K. Ahmed: Sir, if you will kindly read section 80A, at page 29, of the Manual of Business, you will see . . . . .

Mr. President: Quite so, I have referred to the section. Will the Honourable Member show me how that applies to the motion made by Maulvi Abul Kasem?

Mr. K. Ahmed: Maulvi Abul Kasem introduced the Bill on the 26th of September, 1921. That is clear, I suppose, Sir. If that is so, then after the September Session, 1921, at which he introduced this Bill, we had two Sessions last year and then again this year . . . . .

Mr. President: Does the Honourable Member suggest that Maulvi Abul Kasem has not made the necessary motion within these two Sessions?

Mr. K. Ahmed: Yes, Sir, he has not.

Mr. President: Then the Honourable Member is wrong, because he has made the motion . . . . .

Mr. K. Ahmed: I do not find it, Sir. If he has, I shall be very thankful if that will be pointed out to me, Sir.

Mr. President: I would recommend the Honourable Member to exercise his intelligence in finding out why Maulvi Abul Kasem is in order.

Haji Wajihuddin (Cities of the United Provinces: Muhammadan Urban): Sir, I heartily support the motion brought forward by my Honourable friend, Mr. Abul Kasem. I only wish to say that the name of Sayad Rajan Baksh should be added to the Select Committee.

Mr. President: The amendment moved:

"That the name of Sayad Rajan Baksh be added to the Select Committee."

The motion was adopted.

Mr. K. Ahmed: Sir, I oppose the Bill, because it cannot be moved at such a late stage. I have shown you the rule. I do not understand how in the last three Sessions . . . . .

Mr. W. M. Hussanally (Sind: Muhammadan Rural): Sir, the Chair has given a ruling, and Mr. Kabeer-ud-Din Ahmed is not right in again speaking on this question . . . .

Mr. President: The Honourable Member can leave the Chair to take care of itself. I recommended the Honourable Member (Mr. Ahmed) to exercise his intelligence in understanding the Standing Order, but apparently he does not propose to do so.

Mr. W. M. Hussanally: Is it right for Mr. Kabeer-ud-Din Ahmed to speak again when the Chair has given a ruling once?

Mr. President: It was not a ruling—merely a recommendation to the Honourable Member from Bengal.

Mr. K. Ahmed: Sir, now I shall have to oppose the Bill. The principle of this Bill stated by him in the Statement of Objects and Reasons is already contained in our existing law. We have got section 92 of the Civil Procedure Code, 1908, and under this section we can file a suit for rendering a proper account or for a declaration invalidating candidature of certain Mutawallis if they have misappropriated any thing out of the waqf property. Besides this, Sir, my friend admitted that this Bill was pressed in the Bengal Council, and they said that it was the look-out of the Imperial Council and hence it was referred to this Assembly to move this Bill. Thereafter, Sir, in 1920, there was an enactment in regard to this; it is Act XIV of 1920, called the Charitable and Religious Trust Act, framed with the same object, Sir, with which probably my friend has been induced to bring in this Bill before this Assembly. Therefore, Sir, we have got sufficient protection under the present law, as it is,—it is Act XIV of 1920, which has simplified the whole matter with regard to charitable and religious trusts in this country, and section 3 of this Act applies also equally to waqf property and Mutawallis in this country.

[Mr. K. Ahmed.]

Therefore, Sir, it is not only unnecessary but it is really contrary to the principle and object for which Government has already provided enough law, sufficient safeguard, for the people of this country.

Mr. W. M. Hussanally: Is that a Provincial or a Government of India Act?

Mr. K. Ahmed: I cannot follow my friend.

Mr. W. M. Hussanally: Is the Act you are quoting a Provincial or a Government of India Act?

Mr. K. Ahmed: It is an Act called Act XIV of 1920, passed here only two years ago, Sir. I suppose my friend now will find that it is a Government of India Act. If that is so, he will find also that it was only a few months before this Bill was introduced into this Assembly that Government brought out safeguards for meeting my friend's difficulties and, therefore, this part of the Bill is unnecessary. Further, Sir, my friend has been saying in this Assembly this morning that the Government of Bengal now is afraid because the Bill has been introduced here and they do not like that this portion of the law should be passed everywhere, but every provincial Government has got a right to pass its own law. The Government of Bengal has given its opinion and it says this: "The proposed Bill, however, appears to be badly designed and proposes a scheme which will interfere with the legal rights of the Mutawallis and bring itself into conflict with the Muhammadan law. Having regard to the general trend of Muhammadan opinion which is opposed to the Bill, the Governor in Council is unable to lend its support to it. The times, too, are not propitious for this legislation." That being so, my friend's questions with regard to it probably will be swept away from the opinion that has been read. Then, Sir, we find other difficulties because in the Charitable Endowment Act, in respect of the Muhammadan religion the Government has always followed the policy of non-interference. The Mutawallis have to do certain acts, as far as their Mutwalliship is concerned, and then they will have to follow certain guidance or direction of the donor that has been set out in the trust deed: in the Waqfnama the Mutawallis are empowered to perform some functions set out there, as for instance to say their prayer, ask persons engaged or appoint persons to offer certain things in the prayer house, and so forth. And the proposed Committee under sections 2 and 3 of this Bill, I think, will have the power of appointing even agents or naib Mutawallis; which will be interference with the Mutawalli's power at least, and that sort of interference is not allowed by the Muhammadan Law. And since, the Muhammadan Law interferes with the principle of my friend's Bill the Muhammadans of India would not approve of it. There is something which has been mentioned in regard to legislation of these Waqf properties. My friend proposes to simplify matters, so that the money-lender may not be misled. Well, Sir, he may be the benefactor of the money-lenders who are very much fond of lending money to the Mutawallis and taking mortgage of their property. But for this purpose if they go to the Registrar in the Registration Office, they will find who the Mutawallis are and where the properties are situated; so the names of the Mutawallis and the description of the property are available there. In every district there is also a Collectorate where there is a Record Office which will furnish the required particulars.

Mr. W. M. Hussanally: I rise to a point of order. I believe my Honourable friend, Mr. K. Ahmed, is now criticising the details of the Bill, which I believe at the present moment he has no right to do. The question before us is whether the Bill should be committed to a Select Committee or not, and I think he ought to confine his speech to that.

Mr. K. Ahmed: If my Honourable friend will kindly confine his attention to follow the principle which is exactly against the points that I am describing, I suppose the whole matter will be simplified. We see, Sir, the principal object of my friend who introduces the Bill is that there must be a Registrar, and if there are already registers kept by the Government officers which will be of great benefit to the people who want to lend money, what is the necessity, Sir, for this Bill? What is the principle and object set out in the Statement of Objects and Reasons of the Bill? Their position is not in any way better off, but as it is stated therein that it is difficult under the present law to find out the names of Mutwallis and the description of the properties. If they are, Sir, already safeguarded by the present law, and since 1920 at least when Act XIV was passed in this House there is enough provision of law, what is the necessity for introducing this Bill? I say there is no necessity for bringing this Bill at all. Then, Sir, since the principal objects of this Bill is contrary to our tenets of the Muhammadan religion, because it interferes with the functions of the Mutwalli, and because it will interfere with the donors' intentions in settling a property and saying that the income should be spent for certain purposes and it should be managed by certain persons—as a matter of fact we find from generation to generation, from son to grandson, people of the family manage the property,—why should there be this law, Sir, to interfere with that poor Mutwalli and to establish a District Committee? Sir, the District Committee or the District Magistrate or the Collector has not got any money, he has not got the money to defray the expenditure that is necessary. Then section 3 of the Bill contemplates a Central Committee, that is to say, in every province there will be a Central Committee, whose duty will be to go to the district and supervise the activity of the branches of the District Committee over which the District Magistrate will sit, and preside. The District Magistrate will preside over it as ex-officio member. Therefore my friend in the way he has put it is not accurate. Here he has certain rules of law of the waqf estate, but how is that to be put in practice without sufficient money in hand. Government is not going to help in the matter unless they can show sufficient funds in hand. Where is that money coming from? Is there anything in the Bill to provide for the maintenance of those branch district committees and the central committee? The Chief Justice of the Bengal High Court and of the majority of the other Judges of the same Court have in fact opposed this Bill on this particular ground. The Calcutta High Court says:

> "The Chief Justice and Judges do not think that a case has been made out for amending the procedure under section 92 of the Code of Civil Procedure, 1908. The provision as to damages would, in their Lordships' opinion, probably encourage fraudulent claims."

So there will be multifarious cases instituted against the Mutwallis and the object for which the endowment has been made will be defeated. Any person having a grudge against a Mutwalli or his rival relatives will bring a suit against him and that will interfere greatly with the discharge of his duties and the donor's object will be frustrated. That being so, Sir, I

[Mr. K. Ahmed.]

vehemently object to the Bill. There is behind this Bill Sir, a sinister motive: A person bringing a false suit against a Mutwalli may have that suit dismissed with costs, but there is nothing in the whole Bill which provides for the recovery of that money from the person bringing the suit. With regard to the balance which may be outstanding in the hands of the Mutwalli, there is no provision as to how it is to be spent, and that point the central committee or the branch district committee will have to determine. I understand that Dr. Gour has the intention of supporting this Bill. I shall be glad if he will enlighten us as to the principle of the Bill and I shall wait to hear him with great pleasure.

But since, Sir, there are so many difficulties and my friend, who has introduced the Bill, has kindly selected me and others to sit together and to redraft the Bill, we will have to recast the whole thing. That duty must be undertaken by the Honourable Member who introduces the Bill. He must know what the Bill is. If there are mistakes and additional alterations are necessary here and there, it can be carried out, but I do not think there is any practice in this House for the Honourable Members to redraft the whole thing and recast it altogether. In that case matters will be simplified if my friend will withdraw his Bill to-day, and take our help and introduce another Bill probably before the expiry of the Session. With these few words I oppose the Bill.

The Assembly then adjourned for Lunch till Five Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Five Minutes to Three of the Clock. Rao Bahadur T. Rangachariar was in the Chair.

Mr. W. M. Hussanally: I rise, Sir, to support my friend Mr. Abul Kasem in his proposal to refer this Bill to a Select Committee.

Mr. C. A. H. Townsend (Punjab: Nominated Official): On a point of order, may I ask if there is a quorum present?

Mr. Chairman: Yes.

Mr. W. M. Hussanally: Sir, this Bill has now been before the public for a considerable length of time and opinions in almost every part of the country have been expressed in regard to it. The state of Muhammadan Waqfs all over the country, from one end to the other, has been such as to call for remedial measures urgently to protect them in almost every province, and the misappropriations that have been committed by Mutwallis have run into almost a proverb. In my own part of the country there have been several cases of that kind in which mutwallis have actually sold mosques or lands attached to mosques or graveyards. (*Mr. K. Ahmed*: "Please speak up.") I thought my friend Mr. Kabeer-ud-din Ahmed had better ears. At the present moment there is a case of the kind pending in the Judicial Commissioner's Court in Sind in which some Saiyids, who are mutwallis of a very important graveyard in Karachi, have sold large plots of land for a large amount of money. So far as enlightened Muhammadan opinion is concerned, Mr. Abul Kasem cannot

be too much thanked for having brought this measure forward before this House. I am sorry, Sir, that I could not follow my friend Mr. Kabeer-ud-din Ahmed. (*Mr. K. Ahmed:* "Nor can I follow you.") I am sorry, Sir, I could not follow my friend Mr. Kabeer-ud-din Ahmed in his attack upon this Bill. No doubt he made a very coherent speech, but to me, unfortunately, it was almost Greek. So far as I remember, Sir, he quoted the opinion of the Bengal Government as being against this measure, but, if he had turned over the pages of the Blue-Book, which is now before me, he would have found that almost all intelligent and enlightened Muhammadan opinion in all provinces is in favour of this Bill, and several Local Governments have also pronounced their opinion in favour of the principle of the Bill, though some do not agree with the details.

I will begin, Sir, by quoting the Madras Government. Here is what they say:

3 P.M.

"The Honourable the Minister in charge of the Religious and Charitable Endowments has had the advantage of discussing the main principles of the Bill with the leading Muhammadan representatives in the Legislative Council, and the views expressed and the observations made in the following paragraphs have their full support.

Enlightened Muhammadan opinion in this, as in other Presidencies, is practically unanimous that a very large number of endowments made by pious Muhammadans in the past have been wasted or converted to the private benefit of individuals contrary to the wishes of the original founder, that their administration in many cases has come to vest in the hands of inefficient and unscrupulous mutwallis and that effective measures should be adopted at an early date for preventing waste and mismanagement of Muhammadan public trusts and to ensure that the endowments are appropriated to the purposes for which they were founded. The need for suitable legislation is therefore obvious.

* * * * *

The law governing Muhammadan religious endowments in this province is Act XX of 1863 and a few Muhammadan committees exist in certain districts. They have not been successful in preventing misappropriation and mismanagement."

Sir, I shall proceed further. Let us come to Bombay and see what the Bombay Government say. It is this:

"It will be observed that the Anjuman-i-Islam, Bombay, while approving the proposal for the registration of waqfs, is opposed to the complicated and detailed interference in their management which the provisions of the Bill would entail. * * *

There is, however, a very considerable body of opinion in favour of some measure for compulsory registration of waqf estates and for the maintenance and publication of accounts. If a practical measure of this nature can be devised, the Government of Bombay would favour it. It would be necessary to prescribe that all expenditure should be met from fees prescribed for the purpose or otherwise and that no part should fall on Provincial Revenues."

The Honourable Mr. Justice Aston says:

"I approve of the provisions of the Bill."

In Bengal, again, I find Maulvi Shams-ul-Rahman, Secretary, District Muhammadan Association, Khulna, says:

"I have the honour to inform you that the Registration of Waqf Estate Bill was discussed at a meeting of my Association and am of opinion that the Bill is a necessity in order to prevent misuse of waqf estates by their mutwallis, but with these following modifications in the Bill itself."

Then he goes on to suggest certain modifications with which for the time being we are not concerned.

[Mr. W. M. Hussanally.]

I could go on quoting, Sir, from several opinions, both of European and Muhammadan officers, as well as public men; but I do not wish to waste the time of the House. The United Provinces Government say:

"It will be observed that the majority of those consulted are emphatically of opinion that some machinery for improving the administration of waqfs is eminently desirable, since there are undoubtedly many cases of mal-administration, though possibly the case is stated somewhat too strongly in the preamble to the Bill"

The Punjab Government say:

"I am to point out that the opinions of none of the large holders of shrines, who in the Punjab are fairly numerous and very influential, have been received, but it is anticipated that these men's influence would be thrown against the Bill, as undermining their prestige and requiring a stricter system of accounts than most of them have been in the habit of keeping.....His Excellency in Council suggests that the Bill should confine itself to the compulsory registration of waqfs and the publication of accounts and these processes should be carried out not by the Collector, but (as with companies) by the Inspector-General of Registration."

Then, Sir, I would quote the opinion of the Honourable Khan Bahadur Mian Fazl-i-Husain, Minister for Education, Punjab:

"The Muhammadan public opinion is in favour of a Bill providing for registration of waqf estates and the proper rendering of accounts by the mutwallis of such estates."

The Burma Government say:

"So far as the Bill simplifies the procedure by which dishonest mutwallis may be brought to book, it seems to meet with general approval."

Bihar and Orissa say:

"Muhammadan opinion in Bihar and Orissa generally welcomes the Bill in principle, and the Governor in Council accepts the need for some better regulation of the administration of waqfs than the existing law provides."

Sir, it will thus be observed that perhaps with the exception of the Bengal Government almost all the other Governments are in favour of the principle of the Bill. My friend, Mr. Kabeer-ud-Din Ahmed referred us to Act XIV of 1920; in his opinion that Act is quite sufficient for the purpose for which this Bill is intended. But if he had read that Act a little more carefully he would have found that that Act does not affect the question that is in issue at the present moment. The Bill as brought forward by my friend, Mr. Abul Kasem, is a sort of preventive measure and has for its object the compelling of mutwallis to register their estates and keep regular accounts; whereas Act XIV of 1920 applies only when a breach has been committed by these mutwallis. Until a breach has been committed I do not think that that Act can apply. Moreover so far as that Act is concerned, only a man having *an interest* in the property can move the Court, and I am not sure whether *any Muhammadan* can move the Court, because the word 'interest' is a very wide one, and I do not know if Courts would hold that any Muhammadan has got sufficient interest to move them.

Then again, Sir, what is the eventual remedy under this Act XIV of 1920? We must go once more to section 92 of the Civil Procedure Code, that is to say, we must go again and file a suit for the mismanagement of the estate. The only difference, if one proceeds under this Act XIV of 1920, would be that whereas under section 92 of the Civil Procedure Code, the sanction of the Advocate General is required, under this Act no such sanction would be necessary when a District Judge has decided that a

breach has been committed. Therefore, I believe, that this Act XIV of 1920 has absolutely no application to cases which would be covered by this Bill if it passes into law. I wish, Sir, my friend Maulvi Abul Kasem had made his Bill more general so as to apply to all kinds of trusts, whether Hindu or Muhammadan. In that case, perhaps all my friends here would have helped him all the more readily. But all the same, I would beg of my Hindu friends to support this Bill, because if they do so and if this Bill is passed into law, their turn will come next, and so far as the Hindu endowments are concerned, I have not the slightest doubt that in every part of the country there are very large endowments, perhaps larger than even Muhammadan endowments, which require protection as much or perhaps more than what Muhammadan endowments require. So far as the Government in this matter are concerned, I am sorry to say that it is my impression that they are going to oppose the Bill, not because that they do not like the principle of the Bill, but because they consider that times are not propitious. That would be, I believe, their principal objection that they will take to the Bill. I am not sure, Sir, that times are not propitious for a Bill of this kind. On the contrary, I am strongly of opinion that times are more propitious now than what they would be any time hence. The feeling of the Muhammadans all over the country, more especially of enlightened Muhammadans, barring those who have got vested interests in these endowments, is generally in favour of a measure of this kind, and the feeling of the Muhammadan public generally is changing from day to day with regard to the management of these estates. I am not sure, Sir, if this Bill is thrown out, that we will not be having another Akali movement in India so far as the Muhammadans are concerned, because the Muhammadan public feel keenly that their endowments should be managed well and regular accounts should be kept and should not be misappropriated. I therefore warn the Government that if they do not allow this Bill to pass into law, they will have very considerable difficulty with the Muhammadans of the country in a very short time. Sir, I support the Bill and also the motion that it be referred to a Select Committee.

Maulvi Miyan Asjad-ul-lah (Bhagalpore Division: Muhammadan): (The Honourable Member spoke in the Vernacular*.)

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I rise to a point of order. The Honourable Member is commenting on the details of the Bill. Will the Honourable Chairman decide whether it is relevant?

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): The Honourable Member has long since dealt with the principle of the Bill. Now he is going on clause by clause analysing its purpose and commenting upon it and what it should contain. At this stage I submit this discussion is a little out of order.

Mr. Chairman: The Honourable Member is bringing his remarks to a close.

(Maulvi Mian Asjad-ul-lah intimated that he had finished.)

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I wish in the first place to express the sincere sympathy of Government with

* The original speech together with an English translation will be printed in a later issue of these Debates.

[Mr. H. Tonkinson.]

the object of the mover of the present motion. He desires to ensure that the religious endowments which have been made by pious Muhammadans in the past shall not be wasted. That, Sir, is an object which I think must commend itself to all Members of this House. The Bill, Sir, was introduced on the 26th September, 1921 and was circulated by order of Government. My Honourable friend Mr. Hussanally has referred to some of the opinions of Local Governments. I think that it is of the utmost importance in connection with this Bill that we should carefully consider those opinions, and accordingly I do not propose to apologize for again reading out some of the opinions. We will take the Government of Madras. My Honourable friend read paragraph 4 of their letter; he omitted paragraph 5. Paragraph 5 says:

"I am however to point out that such legislation is more appropriately left to the local Legislatures, and though the latter may not, without the previous sanction of the Governor General, modify or repeal any of the provisions of the Charitable and Religious Trusts Act of 1920, they have still ample scope for legislation in this direction. The case for all-India legislation on a matter of this kind is therefore in the opinion of this Government extremely weak.

A deeper analysis of existing conditions, however, indicates that for many years to come it will be the part of wisdom to continue this policy. Muhammadan feeling is very sensitive to outside interference with their religion and particularly so under the present political conditions. This Government are therefore emphatically of opinion that it is from a political and administrative point of view unsafe to cast on the Collector of a District, as Mr. Abul Kasem's Bill proposes to do, duties which are bound to bring him into frequent and serious conflict with Muhammadan religious feelings of the orthodox type."

I submit, Sir, that the whole principle of this Bill is involved in the control given to the Collector. We will turn to the Government of Bombay. The Government of Bombay commence their remarks as follows:

"The Government of Bombay are of the opinion that the adoption of the Bill would involve a decided reversal of the long-established policy of non-interference in religious matters. The opinions elicited indicate a wide divergence of opinion both as to the principles of and as to the practical expedients proposed in the Bill. Though endeavours were made to ascertain the views of the Muhammadan community, very little interest has been evinced, and many of the local officers report that they have not succeeded in eliciting any reply from the Muhammadan Anjumans and Associations consulted."

Then follows the passage that was read by my Honourable friend:

"In addition to this,"

the Local Government go on to say:

"the burden of labour and responsibility which would be entailed on the executive officers of Government would be excessive. On these grounds, the Government of Bombay consider that the Bill should be opposed."

My Honourable friend read the next paragraph, which I submit is a paragraph not applying to the present Bill. He then referred to the remarks of Mr. Aston, the Additional Judicial Commissioner in Sind. He read the first six words or so which were to the effect "I approve of the provisions in the Bill", he omitted the following words "*except those in Chapter III (which should in my opinion be omitted)*"—those, Sir, are all the provisions in the Bill relating to Committees—"and the subsequent provisions relating to central and district committees". If all the machinery goes, Sir, then there is nothing left in this Bill.

I do not think my Honourable friend referred to the opinion of the Government of Bengal. They say:

"In reply, I am to say that there is a general consensus of opinion that something should be done in order to prevent the misappropriation of charitable and religious

endowments by dishonest mutwallis, and to recover charitable funds which have fallen into the hands of private parties as there can be little doubt that there are many and valuable *waqf* estates throughout India, including Bengal which are grievously mismanaged and misapplied by their mutwallis or trustees. . . . .

The Governor in Council would therefore welcome a well designed Bill to deal with such endowments."

"3. The proposed Bill however appears to be badly designed and proposes a scheme which will interfere with the legal rights of the mutwallis and bring itself into conflict with the Muhammadan Law. Having regard to the general trend of Muhammadan opinion which is opposed to this Bill, the Governor in Council is unable to lend his support to it. The times too are not propitious for such legislation."

We then go on to the United Provinces. The first sentence was read by my Honourable friend; the next sentence was not. It runs:

"On the other hand, those who have been consulted are almost unanimous in condemning the provision of the Bill which proposes to throw upon Collectors the onerous and invidious duty of improving the administration of *waqfs*,"

and so on, Sir. We can go through all the opinions of the Local Governments who have really summarised the opinions of the different authorities —official and Muhammadan—consulted by them. While it might be said that there is very general opinion that endowments made by pious Muhammadans in the past are being wasted, there is practically an unanimous opinion, Sir, from all the authorities consulted against the Bill. One of the great objections taken is to the work to be thrown upon the Collectors. My Honourable friend, Mr. Hussanally, objects to references to detail, but, Sir, under the Standing Orders of this House I think details must be referred to in so far as they are necessary to explain the principle of the Bill. Under section 4 of the Act the Mutwalli is bound to submit information to the Collector within whose jurisdiction the waqf property is. Under section 5 the Collector has to call for further information, and so on. Accounts have to be submitted to the Collector. Then the Collector is *ex-officio* President of the District Committee. This District Committee, presided over by the Collector, under clause 18, has to obtain full information from the public records or by inquiries respecting all waqfs, and so on. Sir, this Bill does not distinguish at all between waqfs of large value and waqfs of small value, and the labours which will be thrown upon the Collector by its provisions would be intolerable. Sir, I ask the Assembly to recognise that this Bill deals with a transferred subject, the subject of charitable and religious endowments. How, Sir, can we properly and rightly in this Central Legislature throw upon the Ministers who are responsible for the administration of that subject, the burden which it is proposed by this Bill to throw upon them notwithstanding their opinions, as expressed in these letters from the Local Governments. I do not wish, Sir, to refer to the long discussion which took place in the sixties of the last century which led to the Act of 1863 by which Government executive officers were dissociated from the exercise of authority over religious trusts. Nor do I wish to refer at length to the very lengthy discussion which eventually resulted in the Act of 1920, which in my opinion was very relevantly referred to by my Honourable friend, Mr. Kabeer-ud-Din Ahmed. The main principle of that Act I may say was that any general all-India enactment should not authorise or sanction any system of control over these endowments by the executive authority, but should recognise the agency of the civil court only and through them afford further facilities for obtaining information regarding the working of these endowments and controlling the action of dishonest trustees. The scope of this provision may in time be extended by local or general enactment, but this Bill is fundamentally opposed to the principle adopted in the Act of 1920. The Indian Legislature may pass this

[Mr. H. Tonkinson.]

Bill, but if the Bill is passed, I think there is little doubt that the Muhammadan public will not accept this as evidence that the Bill was really needed. I think there is no doubt that the conservative section of Muhammadans will undoubtedly be hostile to the operation of this Act. I believe I am merely stating a fact, and I do so with no intention to cast any discredit upon them, but is it not true that the Muhammadan masses are singularly ignorant, gullible and fanatical? Would not the persons entrusted now with religious endowments organise opposition to this Bill if it ever becomes law, and would they not quite easily be able to excite fanatical feeling in connection with this subject? The Executive Government of India is responsible for law and order, but we do not wish to have to meet all the odium which will arise from the administration of such an Act as this. That odium, Sir, will fall on the Executive Government and not on the Legislature. And is the Legislature prepared to accept responsibility for the manner in which this Bill will be administered? Government frankly admit the needs for effective control, but the present measure is, in our opinion, unsuitable. We are not opposed to the principle of better supervision over these religious endowments, but we think, that any legislation going widely beyond the lines of the Act of 1920 should generally be local legislation. Machinery for control must be machinery designed or accepted by the responsible Ministers. It must also not associate the executive authorities of Government with the detailed control. You, Sir, are well aware of the Bill now before the Madras Council. I believe that that Bill has met with a good deal of opposition. It possibly goes too far, but, so does the present Bill. I may add, Sir, that, if any Local Government desires to pass legislation dealing with the subject, and does pass such legislation in their local Councils, then the Government of India are prepared to take all steps required to supplement such legislation as may be necessary. We, Sir, cannot, however, accept the principle of this Bill, and, therefore, I must regretfully oppose it.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): Sir, after hearing my friend, Mr. Hussanally, I thought that the Bill was supported generally by Government, but I fear that his not having read lower down would mislead the House. I wish to be fair, and, after listening to these two gentlemen, Mr. Tonkinson and Mr. Hussanally, I thought that, unless I dealt with these two paragraphs, I would be misleading the House. The Madras Government says:

"I am, however, to point out that such legislation is more appropriately left to local Legislatures; and, though the latter may not, without the previous sanction of the Governor General, modify or repeal any of the provisions of the Charitable and Religious Trusts Act, 1920, they have still ample scope for legislation in this direction. I am to add that this should not be understood as a mere technical argument based on the letter of the Devolution Rules. The conditions of the different provinces vary considerably. Muhammadan public opinion in religious matters in this province, for instance, is far less advanced than in certain other provinces of India, and is not prepared to accept legislative inroads into custom and usage with the same readiness that those other provinces appear to be. The case for all-India legislation on a matter of this kind, is, therefore, in the opinion of this Government, extremely weak."

I have also seen the opinions of other Local Governments and, in my opinion, they are generally opposed to the Bill. Now, with regard to the opinion of Muhammadans, I have been trying to read these opinions. Baluchistan is a Muhammadan country and with regard to that province it is stated:

"The matter has been referred to the Anjuman-i-Islam at Quetta which represents the organised Muhammadan opinion of Baluchistan. That body has presented a

unanimous opinion against the introduction of the measure in this province. Its members view with suspicion any official interference with the management of what is purely private religious property and would strongly resent any attempt to hamper the unfettered administration of these pious trusts by members of the community for whose use they were ordained. The ordinary law should in their opinion be able adequately to provide for differentiation between fraudulent dispensations and genuine charitable provisions."

After reading these opinions one cannot help saying that the Government generally are opposed to the Bill, not to speak of the people also. The organised opinion of the Muhammadans in Baluchistan is opposed to the Bill.

Mr. J. Chaudhuri: Are the Indian Muhammadans opposed?

Khan Bahadur Sarfaraz Hussain Khan : Yes.

Now you have to look to the condition of the country also. In paragraph 7 the Madras Government say:

"Proceeding to the principles of Mr. Abul Kasem's Bill, I am to refer first to the main point raised in your reference, viz., whether a departure should now be made from the principle which Government have followed since 1863 that the executive officers of Government should be entirely free from any connection with religious trusts. It is quite possible to argue that, with the introduction in the provinces of an executive responsible, though partially, to a representative Legislature based upon a wide electorate, this policy of non-interference need not continue to be sacrosanct. A deeper analysis of existing conditions, however, indicates that for many years to come it will be the part of wisdom to continue this policy. Muhammadan feeling is very sensitive to outside interference with religion and particularly so under the present political conditions."

Then I wish to place one more point before the House and it is this—We have got Ministers now and these Trusts are under those Ministers. Is this all-India Legislature entitled to pass this legislation and force it upon them unless they want it? That is a point for the whole House to consider. If they consider that this all-India Legislature is entitled to force legislation upon them without their consent and without having consulted them, then I have nothing more to say and will not oppose the measure. But I want to place these different points before the House: Firstly, that the Government, almost all the Governments are opposed to it; secondly, that Muhammadan opinion, though divided as I have said, yet reasonable and sound Muhammadan opinion is also opposed to it. This is a very important piece of legislation. It affects not merely the interests of one or two men, but the whole of India. Looking at the Khilafat movement, if you go deeply enough into the matter you will see there is something very deep in it. Please look at every side of the question. Do not merely think of the mismanagement of certain Waqfs, pass over such things, brush them aside. You must go more deeply into the matter and see what the effect of this legislation on Indian Muhammadan public opinion and especially on the religious minded section of it will be. I have placed all these facts before you and I do not think that an all-India legislation would be very desirable. It should be left to the Provincial Governments. But if the House considers that the Bill should be referred to a Select Committee, I shall do what I can for it there; only I must take exception with regard to this point, whether it is not a matter which should be left to the local Councils.

Khan Bahadur Abdur Rahim Khan (North-West Frontier Province: Nominated Non-Official): Sir, I must first apologise to my friend, Mr. Abul Kasem. To tell you the truth, up to the last moment I agreed with him and promised to support the Bill; but after listening to the different speeches, I

[Khan Bahadur Abdur Rahim Khan.]

do not think I can keep my promise. It is in the interests of Muhammadans that I wish to appeal to him. I have got some observations to lay before him in particular and before this Honourable Assembly in general. The first thing is that we know that unfortunately the Muhammadans are not so much educated as other communities. I am coming to that point. That would mean open war with our religious heads and it will also be a great discouragement to our political propaganda, because the educated people who are few in number will go against the religious heads who are worshipped by the masses, and the masses will go against the educated classes. That would mean that there will be no co-operation between the educated and the uneducated masses, and so I think it is in the interests of the Muhammadans in particular that this Bill should be dropped at once.

I will now come to the other point; an Honourable Member said that this will lead to an Akali movement. If we were all educated it would not have mattered—I think in fact it would have been the best thing for us that could happen. But unfortunately we are not all educated. In the case of the Akalis they were all of one mind and one voice. But unfortunately there is a difference of voice and a difference of mind here. Moreover there is another point which I wish to make out. The Assembly will excuse me if I say it, but I do wish to say, what is the opinion of local Governments? I speak as a Muhammadan and I think that should have more weight than the opinion of the Government. Government has to look at it from its own point of view and we have to look at it from our point of view. I am certainly one with the Government in thinking that it will have a lot of troubles if it will interfere in this matter. I think that Government will be ungrateful to a good many religious heads who have been helping it in many ways. At such a time as this if the Government interferes I think it will create a lot of troubles of no end for itself. I think Government should not interfere on this point and I would appeal to my Honourable friend, Mr. Abul Kasem, that he should drop the Bill because he has gained his point; the Akali movement has awakened every religious head and they know how they stand; I do not think they will misuse the trust properties in their hands; if they do misuse I think they have had enough warning and in future we can take care against such misuse. At present I think they will be careful and will not give us an opportunity to move this Bill again. So I appeal to my friend to drop the Bill and I appeal to my Muhammadan friends to look at it from a broad point of view. I think we are few in number and the masses outnumber us and they are not educated; these religious heads, these *Pirs* have got great influence over them and I think we will be ruining our political propaganda if we go against them at such a time.

Chaudhri Shahab-ud-Din (East Central Punjab: Muhammadan): Sir, I make no apology either to the Mover of the Bill or to any other Member of this House for the remarks which I propose to make. The Honourable the Government Member began by an expression of sympathy with the principle of the Bill and ended in certain fears which he entertained about the actual operation of the Bill if it was passed into law. I have heard diverse opinions of Members from the farthest town in British India on the North-West Frontier and from the most southern town where Muhammadan voice appears yet to exist and I regret to find that they hold diametrically opposite views. I belong to a province which claims the

largest percentage of Mussalman population. (*Cries of* 'No, no', Bengal.) Please listen. In the Punjab the Mussalmans are 55 per cent. and in the five districts of the Frontier they are 93 per cent. In Bengal the Mussalman population is not 55 per cent. I say this without any fear of contradiction. (*A Voice:* "You mean percentage.") Yes, that is what I said and meant. Therefore, I think, Sir, that so far as my own province is concerned, and so far as my capacity as a representative of the Muslim community allows, I am in a position to voice its views better than those gentlemen who come from provinces where the Mussalman population is only 2, 3 or 4 per cent. Sir, this is a very important question and has been exercising the minds of the Muslim public, at least in my province, for the last 25 years. One of our recognised leaders, the late lamented Mr. Justice Shahdin, took considerable interest in this question. He collected information and he even corresponded with all the leading Mussalmans of India, and he was determined to see the Muslim Waqfs managed properly, but circumstances did not permit him to do so. Sir, whatever may be the views of the Honourable Mian Sir Muhammad Shafi as a Member of this Government, I hope he will stand up as a member of his community to say whether I am right in saying that that is the feeling of the Mussalmans of the Punjab. Years ago they formed an association in the Punjab called the Anjuman Auqaf-al-Muslimin. They have been trying to protect certain Waqfs from being wasted or misused, but as there is no legal sanction to back them up they have not succeeded in their efforts. I think, Sir, it is the duty of the Government to put a stop to misappropriation of Waqf income or Mutwallis committing criminal breach of trust. That is what is needed. We do not want more. Can the Government say that it is not its duty to stop criminal breach of trust in the country? I think it is the first duty of a State to protect the Waqf property from being criminally misappropriated or criminal breach of trust being committed with regard to it. We do not want the Government to interfere with our religion, and by putting a stop to the criminal breach of trust by Mutwallis they will not be interfering with our religion in any way. If our religion allows the managers of endowments to commit criminal breach of trust, then, of course, the Government may refuse to interfere because they will not interfere with our religion. But I fail to see how interference with religion can come in. Our religion expressly enjoins that every Muslim should discharge his trust most faithfully and honestly. Therefore if the managers of religious endowments act dishonestly, they deviate from the path of rectitude, righteousness and honesty, and it is the duty of the Government to protect the public money from being wasted. If Government is afraid of doing that, I think they are afraid of performing a duty which is the first function of every Government to perform.

With regard to some of the dangers to which reference was made by the Honourable Mr. Tonkinson, I must say that I realise them. There are difficulties indeed and our path is not so smooth as some may imagine it to be. There are rocks and shoals, and we must take care that we steer clear of all difficulties. But that is not a reason for throwing out the Bill. Let us accept its principle; let it be committed to the Select Committee; let the Select Committee modify it, let its language be improved and embellished and let all objectionable clauses be omitted or modified. And then, if necessary, we can again send the Bill in its improved form to Local Governments for opinion. Section 74, clause (*c*) of our Business Bye-Laws says: "After the presentation of the final

[Chaudhri Shahab-ud-Din.]

Report of the Select Committee of a Bill, the Member in charge may move that the Bill as reported by the Select Committee be re-circulated for the purpose of framing further opinion thereon ". So if necessary, when the Bill comes up again before this House, it may be recirculated. But there is reason to throw out the Bill at this stage while expressing sympathy with it. In the words of Sir Walter Scott " Should the path be a dangerous one "—" The danger's self is lure alone "—I think a strong Government, as the Government of India is, should not be afraid of doing its duty. It must do it and do it manfully. I must point out that unless the Government is prepared to catch the bull by its horns, it is possible, I don't say it is probable, that the Akali movement to which reference has been made by certain speakers, might be repeated in certain provinces; at any rate in certain districts of my province. I think in saying this I am doing my duty towards the Government as well as towards the community which I represent. We should gauge public opinion now and try to satisfy its legitimate demand so far as we can. As regards the opinions of Local Governments, we can very easily meet them by inserting in the Bill a little clause to the effect that a Local Government may when it deems expedient or necessary introduce the Act in the whole or part of its Province. That is to say, it may be provided in the Bill itself, that it may be introduced by a Local Government with the sanction of the Governor General in Council, when the Local Government deems it expedient or necessary to do so. But we should not shirk our duty and responsibility, we must do it, and do it well. No one can deny that the income of religious endowments is being wasted, misappropriated, and mis-spent, and yet no one can raise his voice. We must see that every trustee performs his duty as a trustee. Government is perhaps the biggest and strongest trustee, and I expect it to perform its own duty as a trustee. With these remarks, I support the principle of the Bill, and not, of course, its provisions, nor its language. The principle must be kept in view, and the whole Bill may be re-drafted by the Select Committee; and if necessary opinions will be re-invited by re-circulation of the improved Bill, I have to make one remark about the personnel of the Select Committee. I do not know what reasons actuated the Honourable the Mover in recommending the personnel of the Committee, but I think that the personnel is not what it ought to be: I would suggest, if the President will allow me to do so that the names of the Honourable Mr. Tonkinson and the Honourable Dr. Gour should be added on so that they might help us with their experience and knowledge.

Maulvi Abul Kasem: Sir, in offering a few words of reply, I have in the first place to congratulate the opponents of the Bill for having secured the services of my distinguished friend, Mr. Kabeer-ud-Din Ahmed, to lead the opposition. He made an excellent speech, but from what I did understand of that speech, I could only gather that he said that the present law was quite sufficient to meet the occasion and to control the trustees of these religious endowments. I may remind him that in the province from which he and I come, there are various endowments, big and small, but in the course of the last fifty years of which I have got information, there were only two cases instituted in the Civil Courts under the provisions of the law as it stands, and one was by the Maharaja of Giddhaur against the Mahant of Deoghar, and the other by the Government of Bengal against the Mutwalli of a Waqf estate. But, Sir, where can we get wealthy territorial

magnates to come forward to take upon themselves the responsibility, the expense and burden of carrying on litigation on behalf of poor people who are deprived of their rights in religious institutions? And where can we get a strong Muhammadan Member of Government to agitate and to convince the Government of the necessity in these hard days of spending Rs. 65,000 simply to remove a mutwalli? The provision lays down that any two Muhammadans or any two persons interested can go to a Court. But why should anybody go and take upon himself all the worries, the troubles of litigation in a Civil Court and bear the expense and risk chances of paying the expenses of the other side as well? We in this country have enough of litigation for our own private reasons: and we want to avoid litigation as far as possible. And sometimes peace is purchased at a sacrifice. Will anybody venture to come up and at least invite litigation, and invite it without any personal gain? I do not believe it.

Now, Sir, Mr. Tonkinson on behalf of the Government began by saying and the same thing was said by other members of the Government, that he was full of sympathy with the principle of the Bill. What I ask to-day, Sir . . . . 4 P.M.

Mr. H. Tonkinson: Sir, I never said that I was full of sympathy with the principle of the Bill. I said that I wished to express the sincere sympathy of Government with the object of the Mover of the Bill, not with the principle of the Bill at all, Sir.

Mr. Abul Kasem: That was a technical mistake on my part. The sympathy was for the object I had in view. I am grateful for that. But they admit that Muhammadan waqf estates are mismanaged. They admit that the situation is such as to call for some remedy, for some action. What do they propose to do? We in this country, Sir, have been accused times out of number of being destructive critics; we are known only as hostile critics; we have no constructive programme to offer. I find, Sir, that in this instance the Government comes forward with sympathy with the object of a motion, recognizes the necessity for some action, but at the same time only offers the destructive motion that it should be thrown out; they have brought forward no constructive suggestion in this connection. This is not the first time that this question of Muhammadan endowments and all endowments has engaged the attention of the Government. Greater men than myself, distinguished men, have brought it to the notice of Government. Committees have been formed: meetings have been held: conferences have been held: but all have ended in smoke. Sir, my Honourable and gallant friend from the North-West Frontier Province and the Members of the Government have both made much of the masses who, they say, will rise in arms if a measure like this is brought forward. Unfortunately, Sir, the illiterate masses of India are made use of by everybody in this country for his own purposes. Whenever the Government has to defend or stick to a reactionary measure, or to oppose a liberal movement, they come forward on behalf of the masses of this country and they say that the illiterate masses do not want it, it is the infinitesimal minority of the educated classes who do. Whenever any public man, if you like to call him a public agitator, wants to throw his programme on the Government, he just gets up on the platform and says that the masses are behind him. But the masses never speak. Unfortunately they do not. I think if they could and did speak out, they would be emphatic in their support of the measure which is now engaging the attention of this House.

[Mr. Abul Kasem.]

Sir, a good deal of the opposition of the Local Governments is based upon the fact that the Collector of the District has been made responsible in many cases and because a good deal of the burden and responsibility will fall on his shoulders. And my Muhammadan friends Mian Asjad-ul-lah and Khan Bahadur Sarfaraz Hussain Khan have also expressed apprehensions on that head. Sir, I have repeatedly said when introducing this Bill and when making this motion this morning that I am myself not enamoured of the provisions of this Bill, and I have admitted that, not being a lawyer and not being a qualified draftsman, I have only copied out the provisions from various Bills and proposals submitted before the public from time to time, and that the question whether the District Collector should be the Chairman of the Committee, or whether it should be elected by an electorate or appointed by Government is a matter purely of detail with which we are at the present moment certainly not concerned. Sir, the principle lays down that endowed properties are to be duly registered in a public office, naturally the revenue office. And the second point is that there should be committees supervising and controlling, at any rate supervising and exercising a sort of control over the trustees of these waqf estates both in the districts and at headquarters of the province. These are the two main principles. If you are opposed to these two principles, you are welcome to throw it out. As I said at the outset, so I say again that I have a mandate from my constituents, who unfortunately happen to be Muhammadans, to press this Bill before this House and my duty is finished. I will have to press it to the last and if it is thrown out, the responsibility for it will lie on the Members of the Government and the Members of this House and not on my shoulders.

Then, Sir, it has been said that it is a matter entirely for provincial legislation, because it is a transferred subject and that Government does not want to interfere with religious usages and religious institutions. Whoever asked the Government to interfere with these institutions or to control them? The only thing is that we want authority from the Legislature to constitute a body which could exercise some sort of control over these trustees, who are, as my distinguished friend Chaudhri Sahab-ud-Din said, criminally misappropriating public funds. What would have been the state of these trust properties if we had a Muhammadan Government in this country? There would have been a Department of *Waqf* in the Cabinet itself, a portfolio dealing with *Waqf* estates, such as there are in all Muhammadan countries. Do those Governments interfere with the religious institutions of those countries? Somebody has said, Sir, I believe Mr. K. Ahmed, that the intention of the *waquif* will be destroyed. He ought not to forget (*Mr. K. Ahmed*: 'I said intention of the donor.')—donor, well, you will find that *waquif* merely means donor. He ought to remember that the object of this Bill is that the *waqfnama* in which the intentions of the donor (if he understands it better) are detailed should be registered, so that people may find out what the intentions and instructions of the donor were. I have been told, Sir, that my sympathies are with the money-lender. However much I may admire the business capacity of these money-lenders, I am not one of them. My interest is for the protection of trust properties, and why I referred to these money-lenders was that Mutwallis have their names registered as owners in the Collector's register, with the result that they mortgage the property and sell them to money-lenders and others and after they are sold the Muhammadan community cannot regain

them, because the Courts will not allow a third party and a *bonâ fide* purchaser to be cheated out of his money. To protect that I intended the registration of these properties. It will protect the estates and if any money-lender hereafter went and gave money to a Mutwalli on his *waqf* property, he will do so with his eyes open and will have no defence when he is called upon to give back that property. That was my object, and, Sir, I happen to be Mutwalli of a small *waqf* estate. I would challenge anybody to go to the Collector of Burdwan and find out anywhere that I am the Mutwalli, that I am not the real owner of the property. My name is registered as the owner of the property in the register. My father's name was similarly registered, and if I choose to call myself the owner, there is nobody who can prevent it. To give you one instance about the seriousness of the situation, a big *waqf* property was left by a pious Mussalman to another gentleman, not a member of his family, who became the Mutwalli. After his death, there was a dispute in the city of Burdwan among the various relatives of the dead Mutwalli as to who should be the Mutwalli and the members, and the leading members of the Muhammadan community, if I may so call them, by which I mean the Muhammadan pleaders, Muhammadan Mukhtears and one or two merchants, sat there to settle up this dispute among the family members of the Mutwalli and to make the award. And what decision did they come to?

They said the best course would be to divide the property according to the Mussalman law of inheritance and have their names registered separately, and it has been done, and it has been done after the introduction of this Bill. It is not a question of private trust for *waqf* is a charitable endowment unless it is *waqf al il aulad*. Therefore, Sir, I do not want to detain the House, but I extremely regret, and reciprocate the regret of my friend, Mr. Abdur Rahim Khan, that I cannot accede to his request and withdraw the motion, because I have a duty to discharge to the people who have sent me here, and I will feel I have done it if I press the motion, and if the House rejects it, the responsibility will rest with the House.

(*An Honourable Member*: "I move that the question be now put.")

Mr. H. Tonkinson: I wish to offer just a few remarks on the course which this debate has taken. I would like, first of all, to invite the attention of the House to the fact that this Bill is not in principle simply a Bill providing for the registration of *waqfs* and the *waqf* accounts. It goes far beyond that. The whole principle of the Bill is in the control, control in clause after clause, which is given to the Collector.

Maulvi Abul Kasem: Those clauses may be deleted.

Mr. H. Tonkinson: Sir, we are asked to approve the principle of a Bill which gives this control in one clause after another to executive authorities, control over religious endowments, a thing, Sir, which the Government of India, so long ago as 1863, definitely decided that their executive officers should be disassociated from . . . . .

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): How did Government assent to its introduction?

Chaudhri Shahab-ud-Din: Cannot those clauses be omitted if the Bill is put to the House?

Mr. Chairman: The Honourable Mr. Tonkinson will proceed.

Mr. H. Tonkinson: Sir, much play has been made of the fact that we on the Government side have merely given destructive criticism to this Bill, but, Sir, under the present constitution the whole of this subject is a Provincial matter. What responsibility have we, I would like to ask my Honourable friend, Chaudhri Shahab-ud-Din, over the control of charitable and religious endowments here? I have said, Sir, that Government are quite prepared to supplement, so far as may be necessary, any legislation which any Minister may introduce in any local Council. That, Sir, is, as I said, absolutely as much as we can undertake to do. To judge from the letters received from Local Governments, we have practically all the Ministers who will be responsible for the administration of this Bill opposed to it. I therefore, Sir, oppose the motion.

Chaudhri Shahab-ud-Din: Sir, with your permission, may I just say a word?

Mr. Chairman: No, I cannot permit the Honourable Member to speak now.

The motion before the House is:

"That 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 referred to a Select Committee consisting of the Honourable the Home Member, Mr. P. E. Percival, Khan Bahadur Saiyid Muhammad Ismail, Mr. Zahid Ali Subzposh, Mr. W. M. Hussanally, Mir Asad Ali, Khan Bahadur, Rao Bahadur T. Rangachariar, Chaudhri Shahab-ud-Din, Mr. Muhammad Yamin Khan, Haji Wajih-ud-Din, Khan Bahadur Sarfaraz Hussain Khan, Mr. Abdur Rahim Khan, Khan Bahadur Zahiruddin Ahmed, Maulvi Mian Asjadullah, Mr. K. Ahmed, Nawab Ibrahim Ali Khan, Lala Girdharilal Agarwala, Maulvi Abdul Quadir, Mukhdum Sayyid Rajan Buksh and the Mover."

Chaudhri Shahab-ud-Din: May I suggest, Sir, the addition of two names for the Select Committee, and, if the House commits the Bill to the Committee, those two names may be included. They are the names of Mr. H. Tonkinson and Dr. H. S. Gour.

Mr. Chairman: The Honourable Member can move that with the leave of the House. Has the Honourable Member the leave of the House? (Cries of "Yes, yes.")

The names were added.

The Assembly then divided as follows:

AYES—41.

Abdul Majid, Sheikh.
Abdul Quadir, Maulvi.
Abdulla, Mr. S. M.
Abul Kasem, Maulvi.
Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Ahmed Baksh, Mr.
Akram Hussain, Prince A. M. M.
Asad Ali, Mir.
Asjad-ul-lah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Barua, Mr. D. C.
Basu, Mr. J. N.
Bijlikhan, Sardar G.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Das, Babu B. S.
Faiyaz Khan, Mr. M.
Gajjan Singh, Sardar Bahadur.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Jamnadas Dwarkadas, Mr.
Joshi, Mr. N. M.
Kamat, Mr. B. S.
Latthe, Mr. A. B.
Misra, Mr. B. N.
Muhammad Hussain, Mr. T.
Mukherjee, Mr. T. P.
Nag, Mr. G. C.
Nand Lal, Dr.
Nayar, Mr. K. M.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Shahab-ud-Din, Chaudhri.
Shahani, Mr. S. C.
Singh, Babu B. P.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.
Wajihuddin, Haji.

NOES—30.

Abdul Rahim Khan, Mr.	Ibrahim Ali Khan, Col. Nawab Mohd.
Allen, Mr. B. C.	Innes, the Honourable Mr. C. A.
Blackett, Sir Basil.	Ley, Mr. A. H.
Bradley-Birt, Mr. F. B.	Mitter, Mr. K. N.
Bray, Mr. Denys.	Moir, Mr. T. E.
Burdon, Mr. E.	Moncrieff Smith, Sir Henry.
Cabell, Mr. W. H. L.	Percival, Mr. P. E.
Chatterjee, Mr. A. C.	Rajan Baksh Shah, Mukhdum S.
Crookshank, Sir Sydney.	Reddi, Mr. M. K.
Faridoonji, Mr. R.	Sams, Mr. H. A.
Ginwala, Mr. P. P.	Singh, Mr. S. N.
Haigh, Mr. P. B.	Stanyon, Col. Sir Henry.
Hindley, Mr. C. D. M.	Tonkinson, Mr. H.
Holme, Mr. H. E.	Townsend, Mr. C. A. H.
Hullah, Mr. J.	Tulshan, Mr. Sheopershad.

The motion was adopted.

THE LAND ACQUISITION (AMENDMENT) BILL.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadan Rural): Sir, I move:

"That the Bill further to amend the Land Acquisition Act, 1894, be referred to a Select Committee consisting of Mr. N. M. Samarth, Mr. J. N. Mukherjee, Sardar Bahadur Gajjan Singh, Mr. Hussanally, Mr. B. Venkatapatiraju, Mr. Jamnadas Dwarkadas, Rao Bahadur T. Rangachariar, Rai T. P. Mukherjee Bahadur, and myself."

I find some difficulty in providing for the representation of the official Members on the Committee, since neither the Law Member nor the Revenue Member to whose department the subject matter of this Bill relates is a Member of this House. If the Government proposes to add any official Members to the Committee, Sir, I shall be quite agreeable to that. Now, Sir, the House will remember that I introduced this Bill in the Delhi Session last year. It was subsequently circulated for opinion and a large body of opinion, both official and non-official, has been collected. I proposed to move this Resolution last September, but the Government then said that they were contemplating the introduction of a larger and more comprehensive measure to amend the Land Acquisition Act and suggested that I might await the result of that. I find, Sir, that the Government has put forth no measure of their own so far, and I do not know whether they have got materials ready for framing a Bill even now. This House is coming very near to its close and I do not wish, therefore, to put off this matter any further and I therefore make this motion for referring this Bill to Select Committee.

Sir, the object of the Bill is threefold. One is to provide a statutory remedy against unlawful or vexatious acquisition of land. Another is to prevent the officer responsible for selecting the site and making the preliminary inquiry in regard to it, being appointed Collector for the purpose of making the award; and the third object is to prohibit the Collector from enforcing his own order. Of these three, the first is the most important and I shall devote the greater part of my remarks to that object.

In all civilised countries, Sir, the right of private property is recognised. Every individual has a right to hold and keep his property not only as against every other individual but also against the Government. But Government is in all civilised countries given power to compulsorily acquire

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private property when that course is necessary in the public interest, and therefore we see the Government in India also is empowered to compulsorily acquire land for public purposes. That power is conferred by Act I of 1894 on the Government. The power to acquire land compulsorily is given by an Act of the Legislature and therefore it follows, Sir, that the provisions of the Act should be strictly followed and it also follows that there must be some safeguard provided against excessive or improper use of the power given by the Legislature. There is no such safeguard provided now under Act I of 1894. Section 4 of the Act provides that "When it appears to a Local Government that land in any locality is needed for a public purpose a notification to that effect shall be published in the official Gazette, and the substance of that notification made known at convenient places in the said locality." Thereupon it shall be lawful for an officer authorised by Government to enter upon the land and take measurements, fix boundaries and do all necessary acts preliminary to the acquisition of the land. This is called the preliminary investigation. When this is over, and it is decided to acquire the land, section 6 of the Act provides that a declaration to the effect that the land is needed for a public purpose or for a company be published in the official Gazette, and "the said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be, and after making such a declaration the Local Government may acquire the land in the manner hereinafter appearing." Section 11 which deals with inquiry and award by the Collector gives power to the landholder to raise objections only in regard to three matters, namely, in regard to the measurements of the land, the value thereof and the respective interests of the several persons claiming compensation. If the landholder does not accept the award of the Collector, he can, under section 18, ask the Collector to refer the matter to the Civil Court. It will thus be seen, Sir, that the landholder has no opportunity to object to the acquisition itself on the ground that the purpose for which it is proposed to acquire the land is not a public purpose or that the acquisition is improper. As soon as a notification stating that the land is required for a public purpose is published, the notification by its very publication becomes conclusive evidence that the land is required for a public purpose and the question cannot be re-opened. Thus you will see, Sir, that under the law as it is, the owner of the land which is proposed to be acquired has no opportunity to raise any objection to the acquisition itself. I do not mean to deny that in certain provinces there are some departmental rules requiring some sort of notice to be given to the landholder before the notification is published in the Gazette, but that is not a statutory remedy, and it can be changed at any time by the Local Government. Moreover, Sir, from my experience of the working of that rule in the Madras Presidency, it affords very little protection to the landholder against improper acquisition. He puts in a petition objecting to the acquisition, and does not know what has become of it. No inquiry is held. He is given no opportunity of showing how the acquisition would be improper. He knows in fact nothing about his petition, and the only thing he knows of the whole matter is when he gets a notice from the Collector informing him that he proposes to make an award. The Collector says to him in his notice "I am holding an inquiry as to the amount of compensation that is payable to you on such and such a day, so you can come and make your representation." That is the only notice the landholder gets about the matter. Till then he knows nothing, because

no inquiry is held, and he is not given an opportunity to adduce any evidence to show how the acquisition will be improper. Therefore, I say, Sir, that although there are departmental rules in some provinces, they do not afford the protection to which the landholders are entitled. I shall now show, Sir, that there is ample ground for supposing that the existing law does not contain any effective remedy against improper acquisition of land. I shall first quote, Sir, some of the official opinions that have been received on the Bill itself. I shall take the Government of Bombay first. The Bombay Government admit, " That the present procedure for the acquisition of land causes occasional hardship and gives rise to complaints which are not always without foundation." I am quoting their opinion. " And it is in view of the compulsory nature of the action taken that it is desirable that opportunities should be given to the owner of the land which is sought to be acquired to state his objections to the acquisition." Here is the opinion of the Consulting Surveyor to the Government of Bombay. " I am thoroughly in sympathy with the proposal to allow persons interested in the land which it is proposed to acquire, the fullest opportunity of registering their objections before acquisition. Dealing with the acquisition of property all over the Presidency including Sind, as I have to, I have been impressed over and over again with the real grievances of the owners of properties who have never had the slightest opportunity of objecting to the acquisition of their properties. It must be definitely recognized that Government is to be the final arbiter to decide as to whether the land should be acquired or not, and if this statement is accepted, I strongly urge the desirability of the abandonment of the policy which has been in vogue hitherto of exercising over the owners of landed property such vast powers as are possessed by Government. It is of the utmost importance that the public should feel that they will be given every opportunity of a full and unbiassed hearing of the other side of the case. I am fully convinced that if the public were given such opportunity, many of the objections which come to my notice of compulsory acquisition of properties would be reduced to almost vanishing point." Sir, what can be more convincing than such an opinion coming from such a source? Then, Sir, this is what the Chairman of the Bombay Trust says on the subject: " The present procedure for the acquisition of land causes occasional hardship and gives rise to complaints for which there is considerable foundation. It is, in view of the compulsory nature of the action taken, desirable that an opportunity should be given to the owner of the land which is sought to be acquired to state his objections to the acquisition, but these objections should be limited to the grounds that the acquisition is not for *bonâ fide* public purposes, or that the land has been selected for some private reason." The Judges of the High Court of Bombay have " no doubt that considerable dissatisfaction has been caused in recent years by Government acquiring land under the Act for private Companies." The Government of the United Provinces says that, after consulting certain officers who have much experience of land acquisition work. it " is of opinion that there is some justification for allowing the owner of the land sought to be acquired the right of objecting on the ground that the land is not required for a public purpose, or that more is being acquired than is really necessary." The District Judge of Ahmedabad, in the Bombay Presidency, says that " there have been cases in which it has been argued with considerable force that the proposed acquisition was being made not because it was absolutely necessary for the purposes of the Company but because it was a cheaper alternative to another course which the Company was bound to take," and then he proceeds to give a concrete case which came before

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him, which illustrates the present method in a very striking manner. This is, Sir, what he says about a matter which came before him in Compensation case No. 10 of 1919:

"Four *gunthas* out of a plot of land belonging to one Manicklal Motilal by which stood a Bungalow, a well and several outhouses and abutting on the Kaira Trunk Road, which provided the most convenient passage to the bungalow and its surroundings were acquired for the Nadiad Kapadvanaj Railway; compensation was allowed for the same, the owner being assured at the same time that another passage would be provided. This passage was not promptly provided, and a long correspondence ensued between the owner on one side and the Collector of Kaira and the Railway authorities on the other. Subsequently a plan of the proposed road was sent to the owner and he was informed that arrangements were being made for providing him with an outlet. The Collector, however, refused to recommend the acquisition of a plot of land for the purpose of providing the outlet, and informed the claimant that since the Railway Company were arranging to acquire the bungalow and its compound there would be no necessity for constructing a road. He wrote again to the claimant informing him that the Railway Company had preferred acquiring his bungalow and outhouses to providing him with a metalled approach road. After this, a Government notification was published declaring that the claimant's plot, with the superstructure thereon was required for a public purpose, namely for the Railway Company. It was eventually acquired and on the case coming up before me, the claimant's pleader argued that this notification was illegal and *ultra vires* and that any acquisition of the claimant's bungalow and compound on the ground that it was more costly in the eye of the company to provide an access thereto in place of one removed by their own act was neither an honest nor a legal exercise of the powers conferred by the Land Acquisition Act. I had, with great regret, to disallow this argument, in view of the clear provisions of section 6 of the Act, though I felt no doubt after reading the correspondence between the claimant and the Railway Company that the acquisition of the bungalow was decided upon because it was considered preferable and cheaper to providing an access to which the Railway were bound under the terms of the first award."

This is what the officials themselves have to say upon the subject. Now I propose, Sir, to take you to the Madras Presidency and show you what is being done in certain parts of that Presidency in the matter of assigning house-sites. The power of acquiring land to be assigned as house-sites was introduced for the first time in the Act of 1894 after a good deal of opposition and discussion, and it was only by a narrow majority that that point was carried. Recently the Madras Government issued orders that land should, whenever necessary, be compulsorily acquired to be granted as house-sites to the members of the depressed classes who generally possess no houses of their own. The cost of the acquisition is to be borne by the Government in the first instance and to be recovered from the assignees in easy annual instalments—15 or 20 I suppose. This is done in pursuance of the policy of Government of ameliorating the condition of these unfortunate people. So far no objection can be properly taken to this policy. But see how it is worked in practice. I have got with me printed copies of memorials presented to the Government and the Legislative Council of Madras by Mr. T. Somasundaram Mudaliar—a landlord in the Tanjore district and a Member of the Madras Legislative Council, concerning the doings of the Labour Department in that district. The memorial states that the Assistant Labour Commissioner is overzealous and, contrary to the orders of Government, acquires land for assignment as house-sites to persons other than those of the labouring classes—*i.e.*, to money-lenders, Government employees, mirasidars, merchants, persons who already own houses and even to persons who are not residents of the village in which the land is acquired. This allegation is supported by several annexures giving particulars of individual cases. One of these annexures states that one Maruthamuthu Naickar to whom a house-site is given in a certain

village was not a resident of that village at all and that he owns a tiled house and wet and dry land in another village. The memorial further states that the principles laid down by Government that where Government land is available it should be utilized, and that the cheapest land available should be taken, are ignored. "Kandaswami Pillai of Ammanadapuram offered to give land at Re. 1 and this was not accepted and more costly lands the acquisition of which caused great hardship has been taken and the reason for such action is not apparent and the motive does not seem to be praiseworthy." I am quoting from the memorial. I know that some of the statements were controverted by the Labour Commissioner in the course of a debate in the Legislative Council, but the very fact that such a memorial is presented not by an irresponsible private person, but by a Member of the Legislative Council itself is very significant. Sir, the doings of the Labour Department in the Tanjore District have a family likeness to what they are doing in my own district of Godavari. Here also the Labour Department started with the idea of acquiring house-sites for the depressed classes only, but subsequently they extended it to other classes, chiefly to the community of toddy drawers locally known as *Idigas*. This class is by no means a depressed class. There are some very rich men among them in my own taluq of Amalapuram. My Honourable friend can support me in that respect.

Mr. T. E. Moir: (Madras: Nominated Official): I demur to being asked to support any of the Honourable Member's statements.

Mr. J. Ramayya Pantulu: Several of them own lands of their own and very many of them cultivate others' lands as tenants. As a rule these people live in their own houses and are certainly able to buy more land if required. Nevertheless, the Labour Department (for which my Honourable friend was responsible for some time) compulsorily acquire lands to be given to these people on the same terms as to the Panchamas. I have got with me a list of not less than 65 cases in which lands were assigned to people who already own houses, in my own village and the bulk of these lands are covered with valuable cocoanut topes and are worth a thousand rupees or more per acre. I am sure that few or none of these people to whom houses are granted would have applied for those lands if they had to pay the value of the lands in lump sum. They applied for the sites because they thought or they knew that they would get them almost for the asking. It would occur to most people to inquire why these people who are able to buy their own house-sites should be given sites acquired by Government compulsorily. Well, it is difficult, Sir, to answer that question by anything that I can adduce to the satisfaction of the House.

There is another aspect of this question, which I must bring to the notice of this House, and that is one of the principles on which the Labour Department seems to be acting in my district. In that part of the country we have got field servants, and generally every landholder gets one or more of his field servants to live on his own land in huts erected by the landholders at their cost. It is for the purpose of watching those lands. It is especially so in the case of cocoanut topes which require to be watched and guarded. It is usual to build huts in those topes and get one or more servants to live in them. They live in the huts for a number of years. Now, under the system of acquiring house-sites for the depressed classes, the Labour Department has, it appears, made it a rule to acquire the very sites on which these people are living. See how much hardship this must

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cause to the landlords. This must be a source of friction between the landholder and the man. I do not object if all these people are given sites in one locality, if you are forming a new village where all the people could live. But you employ a man on your own land as your servant and the Government says "We will acquire that piece of land and give it to him." See how inconvenient that is to the landholder.

Mr. Chairman: Does the Honourable Member not think he is travelling too far into details and unless they bear upon the principle he may omit them?

Mr. J. Ramayya Pantulu: I want to say that the present law affords no safeguards, no relief to the landholder in the matter of acquiring land. That is my point. I believe I have said enough on the subject that the law as it stands does not afford a satisfactory remedy against the improper acquisition of land. I shall then proceed with what I propose should be done to remedy that evil. Before that I propose to refer to the law of England on the matter of land acquisition. According to Halsbury's Laws of England there are three ways of acquiring compulsory powers over land:

(1) by the passing of a public general Act;

(2) by promoting a private Bill which, when passed, becomes a local and personal Act; and

(3) by proceeding under existing Acts to obtain an order which is commonly referred to as a Provisional Order.

The last method approximates most to our law and it has been described thus:

"In order to save the expense and trouble of proceeding by private Bill to obtain compulsory powers to acquire land, Parliament has, in a number of public general Acts, provided simple methods of procedure. This procedure varies somewhat in the different Acts, but its principal characteristic is that an order conferring the powers is made by some person or body mentioned in the particular statute, which order however, is not operative until it has been confirmed in a manner provided in the general Act. Until that has taken place it is said to be provisional only; hence this method of obtaining compulsory powers is known as procedure by Provisional Order. The main features are alike in the different statutes. The first requisite is that the person or the body seeking the power should give ample notice of their intentions. This is done by advertisement in the local newspapers, in which full particulars are given, and by the service of notices on every owner, lessee or occupier, or reputed owner, lessee or occupier of the lands proposed to be taken. The next step is to petition the authorities who have the power to make the orders. This authority is usually one of the Government departments. The petition must give full particulars and be supported with evidence to show compliance with the provisions of the Act. If the authority are satisfied with that evidence, they will consider the petition, and if, in their view the matter should proceed, they direct that a local inquiry shall be held, at which all persons affected have an opportunity of being heard. The making of the Provisional Order empowering the petitioner to acquire the land follows if the authority are satisfied on the report of the person making the inquiry. It has next to be confirmed, and in the majority of cases, confirmation is obtained by the passing by Parliament of a Confirming Act, the Bill for which is usually submitted by the department making the order. In its passage through Parliament it is treated as a private Bill and owners of the land proposed to be taken or injuriously affected may oppose its passage before the Select Committee of both Houses."

Thus, you will see, Sir, that, under the English law, the owners of land which is proposed to be compulsorily acquired, have got ample opportunities of making their objections and having their objections inquired into and disposed of, whereas under our law there is no opportunity given to

them at all for making any objection. What we have to consider, Sir, is how this defect can be removed. The procedure that I have proposed is that the owner of the land should be allowed to raise this point along with any other objection before the Collector during the inquiry that he makes prior to the making of the award, and that, failing to get satisfaction there, he must, as in the case of other objections, be allowed to ask the Collector to refer the matter to the Civil Court. I am aware that there is a great difference of opinion on this point, but non-official opinion is, as a rule . . . .

Mr. Chairman: The Honourable Member must bring his remarks to a close.

Mr. J. Ramayya Pantulu: I find that non-official opinion is, as a rule, in favour of that procedure. I admit that official opinion is rather against it, and the opinion of the Judges, which I have carefully examined, is divided on that point; some of the Judges of the High Courts, who were consulted, are in favour of it and some are against it, but I admit, Sir, that the official opinion is against the making of any reference to the Civil Courts. This objection is based on three reasons. One is that the Government cannot possibly do anything wrong.

Mr. Chairman: I have allowed the Honourable Member sufficient latitude. I do not think he need go into so many details.

Mr. J. Ramayya Pantulu: Very well, I will not go into details. I recognise, Sir, that there is a good deal of official opposition to the matter going before a Civil Court, but the chief ground on which that objection is based is that it causes delay. Well, on reading all these opinions and also by virtue of my experience as an executive officer. I do admit that there is some force, Sir, in the argument that, if every case in which an objection is made should go before a Civil Court, there might be much delay. So, I, personally, Sir, am inclined to reconsider that point. I will remove that, subject to some other method of inquiry, but this is a matter which could be considered by the Select Committee. I, for one, would not raise any objection to that provision being taken away and some more speedy procedure being adopted. That, however, is a matter of detail. The principle underlying my Bill is that the owner of the land must be given an opportunity to raise an objection. That is the principle underlying my Bill. If the Government admit that principle, as they ought to admit, because there is such a strong official opinion in support of it, they ought not to oppose my motion which is only to refer the Bill to the Select Committee where the agency by which the objection should be heard can be determined. I therefore move my motion.

The Honourable Mr. B. N. Sarma (Revenue and Agriculture Member): Sir, it is clear from the speech of the Honourable Mover of this Bill that, having gone carefully through all the opinions which have been received, he sees that the main principle for which he has been fighting, namely, that there should be a remedy to a Civil Court open to the aggrieved party, is one that cannot be accepted, and he is therefore prepared to drop it for himself.

5 P.M.

Mr. J. Ramayya Pantulu: Oh, no.

The Honourable Mr. B. N. Sarma: To drop that portion of the Bill. Honourable Members have had these opinions circulated and it is clear that all, the Local Governments who have been consulted are clearly of

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opinion that the Bill is neither necessary nor desirable. The Government, it is true, have stated, and do state even now, that they have under consideration the question of amending the Land Acquisition Act, especially with regard to the recommendations made by the Industrial Commission. As to whether the Land Acquisition Act has to be amended or not is a subject on which the Government of India has been in correspondence with the Local Governments, whose replies have been received and the whole matter is being considered by the Government. We recognise that it may be, as has been pointed out by some of the Local Governments, that an opportunity may by means of a Statutory provision be given to the landholders or other persons whose lands may be acquired, to state their objections which at present they can state under various departmental rules. Such rules have been formulated by Bengal, Madras and other Provinces so that the Local Governments may have them always before them and consider them before they come to any decision in the matter. But that is entirely different from accepting the various principles for which my Honourable friend has been contending. It is clear from his statement that he has been largely influenced by the unhappy controversy which has been raging in some parts of the Madras Presidency during the last 2 years. It may be that some landholders feel aggrieved by the proceedings which have been taken for the acquisition of land to better the condition of the depressed classes. It may be that in individual cases the procedure has not been correct. I am not for a moment saying that it has not been correct; but to argue from a position due to temporary causes, where the Government, according to the Honourable Member himself, have been striving their level best to improve the depressed classes, and to say that the whole Act has to be revised in view of the experience which has been his unhappy lot to notice during the last few years, I think, is going too far. The Local Governments emphatically say that it would be absolutely unsafe to prolong these inquiries in the manner suggested in this Bill. Honourable Members who are lawyers will also remember that the Privy Council, in their latest judgment on the subject, have approved quite clearly and emphatically of the procedure under which the Government decide as to whether land acquisition is desirable in any particular instance or not. It is absolutely impossible to lay down categorically what is a public purpose. Nor does this Bill lay down what is a public purpose. If it is impossible to define what is a public purpose, what is the criterion which the Civil Court would have before it in coming to a decision as to whether the proceedings which have been taken are legal or illegal? The problem bristles with difficulties. The Act has been working fairly smoothly for the last 30 or 40 years (*Honourable Members*: "No, no.") excepting in one or two recent cases which have come into prominence in Bombay.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Most glaring instances.

The Honourable Mr. B. N. Sarma: It may be, and it is in respect of those acquisitions for public companies and for industrial concerns as I have said already that the Government has legislation in contemplation; and Honourable Members may rest assured that it is the desire of Government to get this matter at rest so that a satisfactory solution may be

reached from the public as well as the governmental point of view. The Government have no desire to acquire land for public companies and industrial concerns which would act as a hardship to the public at all. Therefore they do mean to provide a remedy and the necessary procedure is being evolved. But the Honourable Mr. Ramayya Pantulu asks us to agree to a measure under which all acquisition for a railway company, for a local board, for a municipality or for a proper Government purpose has to be brought before a civil court or any other tribunal and that the whole matter should be adjudicated upon before the proceedings are concluded. It would be impossible, I think, and it would be extremely costly to undertake any such inquiry whatsoever or to refer these matters to a civil court, and I think the Local Governments are perfectly right in stating that the procedure is one which cannot be acceptable to any Member of this Legislature. I venture to suggest that the remedy that is sought to be provided by this Bill is one which would lead to infinite difficulties, delays and excess cost, and is one which has not been accepted even in the United Kingdom. Even in the United Kingdom it is not the civil courts that adjudicate as regards the purpose. Here as I have already said the Industrial Commission has made certain recommendations as to whether acquisition for private companies and for industrial concerns could not be placed on a more satisfactory footing and that is a matter which is being considered; but this Bill does not confine its operation to merely industrial companies, but extends its purview to every act of acquisition for any public purpose, whether it be governmental, municipal, local or otherwise. Take the case of a railway company. Land has to be acquired in several districts; thousands of pieces of land have to be acquired. Well, are we to be told that a detailed inquiry of the sort adumbrated in this Bill would be possible or that any railway project would be feasible if all persons who object to particular patches of land being acquired are going to be given the liberty of going before a tribunal and questioning the legality and the equity of land acquisition? If A says that the railway need not run through his land and points out to B's land as the more appropriate one, notice will have to be given to B; the whole alignment will have to be changed. It would be impossible to do anything whatsoever if questions of that description are to be left to the determination of any court whatsoever or any tribunal which may be constituted for the purpose. So far as I am aware the only objections that have been raised in the past are with regard to the acquisitions for these industrial companies. I am not aware that the Government have been abusing their power in arbitrarily acquiring land for railway companies or for legitimate public purposes or local and municipal purposes. The whole of the machinery would come to a standstill, no project would be possible of completion if the elaborate machinery that is sought to be provided by this Bill is going to be accepted by this House. It would be extremely difficult, and we shall not know where we shall be. I therefore would suggest, Sir, that it would be impossible for Government to agree to the principle of this measure in so far as it asks that every question of this description should be arbitrated by a tribunal before the acquisition proceedings are concluded. But that does not mean that the Government do not realise the difficulties that have been pointed out. As has been observed by the Honourable Mover, some of the Local Governments themselves have suggested a slight modification whereby opportunities ought to be given to the public who may be affected by the proceedings under the Land Acquisition Act to state their case before the Government determines as to what has to be done. I think it is but fair that the persons

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who are affected should be allowed to have their say and that the Government should have all the proceedings before them before they come to any final decision: but once the Government come to a decision, I submit to the House that that decision should be final. It is not likely that they would tolerate any vexatious or malicious proceedings or that they would acquire land unnecessarily especially in these days when every grievance can be ventilated in a Council. I may further point out, Sir, that every project has to be brought before the Councils for financial sanction, and therefore there is a definite amount of control now exercised both by the Central Government as well as by the Provincial Governments in the matter of acquisition. It is not that there is no remedy whatsoever. I have already said that the Government, when they bring in a Bill to modify the provisions of the Land Acquisition Act for the purpose of acquiring land for industrial concerns or for private companies, and not merely for governmental purposes, would certainly sympathetically view the position that has been placed before the House to provide a machinery whereby individuals who may feel aggrieved should be able to state their case fully and inquiries made before the Government comes to a decision. I would therefore suggest to the Honourable Mover that he has achieved his purpose in bringing this grievance to the notice of Government and that he might withdraw his motion. It is impossible to proceed with the Bill as it is. The wording is imperfect; it is impossible to define what "public purpose" is. If it is impossible to define what "public purpose" is, it is impossible also for a civil or judicial tribunal which cannot exercise its discretion arbitrarily but must proceed upon well defined lines, to come to a proper decision. I therefore think, Sir, that this Bill has been misconceived and that the motion should be withdrawn by the Honourable Mover. If he does not, I must oppose it.

Mr. Jamnadas Dwarkadas: I believe, Sir, that I shall not be doing justice to the wishes of my constituency if I do not speak on this question of the Land Acquisition Act while it is being discussed by this House. My Honourable friend, Mr. Sarma, has just pointed out that the Government themselves are considering the matter and probably in course of time they will themselves introduce a measure to amend the present Land Acquisition Act. I am very glad that the Government are going to do that, but I only hope that this desire on their part will soon materialise into action. If I am not mistaken, I think on one occasion, about a year ago it was perhaps, when a similar measure was introduced, the Government stated that they themselves desired to introduce legislation to amend this Act . . . .

The Honourable Mr. B. N. Sarma: May I make a personal explanation, Sir? I have already said that on a distinct reference, apart from this Bill, which has been made by Government, all the Local Governments have now replied, that the matter is being examined by the various departments and would be ripe for an early decision. We hope to be able, therefore, to proceed with such measures as may be ultimately decided upon by the Government at an early date.

Mr. Jamnadas Dwarkadas: Sir, I wish to emphasise the urgency of taking measures to amend the Land Acquisition Act at a very early date. I emphasise this fact particularly because this House I think is soon going to launch upon a policy of rapid industrialization so far as this country is

concerned, and however anxious I am—and there can hardly be anyone who is more anxious than myself—that this country should adopt a policy that will encourage rapid industrialization, no one is more anxious than myself to avoid the dangers that will come into existence with the adoption of that policy. One of the dangers will be that the necessity of acquiring land will come into the forefront. We have had an instance in Bombay where a good deal of agitation has been created, and a righteous indignation was caused at the acquisition of land under the present Land Acquisition Act. I want to point out to the Government that if they are going to introduce a Bill to amend the Land Acquisition Act, they must see to it that as far as possible the Land Acquisition Act that will be introduced now will be in conformity with the Act such as obtains in England. My Honourable friend, Mr. Sarma, pointed out the difficulty of determining as to what. . . .

Mr. Chairman: I can only allow the Honourable Member an opportunity, if he desires, to discuss the principle of the present Bill, not the details of an intended Bill about which he has already made ample reference.

Mr. Jamnadas Dwarkadas: I bow to your ruling, Sir. I am now discussing the principle. I only wish to say that there are safeguards in the English Act which do not exist under the present Land Acquisition Act here, and it is necessary that those safeguards should also be introduced into the Land Acquisition Act here, specially to determine the public purpose; the Legislatures of the country in the various provinces must be given a voice, a predominant voice in determining what is a public purpose and what is not a public purpose and the matter should not be left to the discretion of the executive. With regard to the other question as to who should determine the compensation and what should be the compensation, there, too, there are safeguards provided in the English Act which do not obtain here. Here, the man who notifies that a particular portion of land will be acquired, and the man who determines the amount of compensation, happens to be the same man. (*Voices*: "No, the Court.") Well, the Court comes in only when the matter is taken to the Court, but otherwise I think the Collector himself determines both. Well, my only point is this, that Government should try their best to bring the Act here in conformity with the English Act. That alone will be acceptable, I believe, to this country.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, as I have given some thought to this matter, I should like to detain the House with one or two observations with the object of removing certain impressions from the mind of the Government Benches. The first thing is that the Government is under the impression that it is only the industrial undertakings which necessitate some change in the view point of Government as regards acquisition. The case of the public is,—"No, when land is acquired by Government itself even for big undertakings, such as those for railway purposes, or canal purposes, as well as for other purposes, Government does so without taking into consideration the difficulties caused by its procedure as to compulsory acquisition, and often makes up its mind to acquire land even when it is not prepared with the money and means necessary for carrying out its project." I would detain the House for a longer time than I thought it necessary to do, at this late hour, if I were to cite instances of large acquisitions which have been lying unsued for 10, 12 or

[Mr. J. N. Mukherjee.]

even 15 years, without Government being able to put them to any use whatever. On top of that what Government does is this; if plots are acquired on which there are some machinery and structures, costing say about five lakhs of rupees, the Deputy Collector of his own accord goes into some sort of arrangement and says to the owner of the plot, " I will acquire some other land and give this land to you, so that Government will not have to pay compensation." That is what is in my mind. So that if the Government wishes to improve the Act the improvement cannot be effected within these narrow limits indicated by the Honourable Member for Revenue and Agriculture.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): I rise to a point of order. Is the promise of the Government under discussion by this House or the Bill moved by the Honourable Mr. Pantulu?

Mr. J. N. Mukherjee: The Bill is, Sir. It is proposed that the whole Bill should be rejected because there are two principles involved: one is the determination of the necessity for the acquisition and the reality of the purpose, and the other is the mode in which that purpose of the acquisition is to be achieved. As regards the last point I think Honourable Members of the House will agree that the civil court is not the proper place for these questions to be discussed and determined, and some other speedy method is required. What the public think is that it should not be left in the hands of one individual. There should be a Board in which the public have confidence for determining these questions as speedily as possible. The executive members of the Board may be officials and non-officials. (*A Voice*: " Educationists?") No, not educationists. They can be selected and various other questions which are incidental may be considered when the Bill is being considered. There is therefore not one point but several, but I will not detain the House by saying anything more. With these observations, Sir, I will resume my seat.

Mr. T. E. Moir: Sir, I greatly regret that I should have been drawn into the discussion on this Bill at all; and, strictly speaking, I suppose that the remarks I am going to make are irrelevant and if it is the ruling of the Chair that they are irrelevant, I am quite ready to submit to that ruling. But whatever view the House may take of this Bill, of the principles it contains, I do wish to protest against the manner in which Mr. Ramayya has brought in the Labour Department of Madras. I wish to protest against that being taken as relevant to his Bill or supporting it. His speech was presumably directed, or should have been directed to the principle of the Bill, not to making an attack on the Labour Department of the Madras Presidency. I should perhaps not have felt it necessary to intervene even on that score, but he further proceeded to point me out to the House as having been personally responsible for those enormities of which he stated that the Labour Department had been guilty. He not only did that, but he asked me to support him in bringing these charges against that Department of which after all the administration is the concern of the provincial Government; he asked me to support him in the allegations which he made against that Department. Now, the contributions of my Honourable friend to the debates in this House are generally marked by experience and knowledge and a freedom from prejudice. But I am afraid I cannot say that they have been marked by those attributes in this case, and I at any rate must refuse, in order to support his Bill, to blacken my own face and to sit on a stool of repentance.

I would turn now to what he has placed before the House as evidence in support of his Bill. He referred to the action which has been taken in respect of the depressed classes in Madras, and he said that that action had led to all sorts of irregularities, oppression and so on, which presumably his Bill, if it had been in existence, would have prevented. But he did not say why that policy to which he referred had been adopted by the Madras Government. Most Members of this House are aware that one of the greatest problems with which we are faced in the Madras Presidency is the position of the depressed classes, and may I say that it is not merely, as possibly members who come from the North of India may suppose, a social question. It is not a social stigma or social or religious disabilities. It is very largely an economic question—a question of economic disabilities. And the position in reference to the depressed classes in the districts to which my Honourable friend referred is that they are mainly agricultural labourers. Further, that for generations untold they have been practically bound to the soil . . . .

Mr. W. M. Hussanally (Sind: Muhammadan Rural): Sir, I must rise to a point of order. This speech justifies the action of the Labour Commissioner of Madras, with which we have nothing to do. I am afraid my Honourable friend is not speaking on the Bill. Whatever the arguments of Mr. Pantulu may have been, the question before us is whether the Bill is to be referred to a Select Committtee or not. We have nothing to do with the actions of the Madras Government or the Labour Commissioner.

Dr. H. S. Gour: Sir, I also think that a side remark made by the Honourable Mover of this Bill cannot be made the pivot for a long discourse on that subject.

Mr. Chairman: I allowed the Honourable Mr. Moir to make a short reference to it, and I think, having done it, he will confine his remarks to the Bill. Now, I think he has sufficiently refuted the charge against the Labour Department.

Mr. T. E. Moir: Sir, I would merely say that my remarks are strictly relevant possibly not to the principles of the Bill but to remarks which were allowed and to arguments which were allowed to be adduced by the Honourable Mover of the Bill. But I of course bow to your decision, Sir, and I say nothing more. I should have liked, if I had been permitted, to explain how entirely wrong an idea the Hcnourable Member . . . .

Dr. H. S. Gour: I rise to a point of order. If one Honourable Member makes some irrelevant remarks, does it justify another member making an irrelevant reply?

Mr. T. E. Moir: If I might rise to a point of order, Sir; if a Member of this House, who happens to be an official Member, is attacked in respect of his administration of a department in this House, is he to be attacked without a right to defend himself?

Mr. Chairman: Mr. Moir will resume his seat. I have already permitted Mr. Moir, having reference to the remarks made by Mr. Pantulu, to travel outside the régime of strict relevancy in order to give him an opportunity to refute the remarks. Having done that, I must call upon him to speak on the Bill.

Mr. T. E. Moir: Sir, I only rose in order to point out to the House that the so-called evidence adduced by the Honourable Member was not relevant . . . .

Mr. Chairman: The Honourable Member is still repeating the same remarks. If he is not going to speak on the Bill, he must close his speech.

Mr. T. E. Moir: And I have no desire, under the circumstances, to say anything further.

Mr. J. Ramayya Pantulu: In the first place, Sir, I must say that I never meant to attack my Honourable friend, Mr. Moir. I never meant to ask him, Sir, to support all that I said. All that I wanted his support for was . . . .

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Is that relevant, Sir?

Mr. Chairman: The Honourable Member will proceed to reply to any remarks made on the Bill.

Mr. J. Ramayya Pantulu: The Honourable the Revenue Member said there was no necessity for this Bill, as the present Act was working smoothly. Well, Sir, it is not working at all smoothly. Several instances of hardship under the Act have recently come to the notice of the public, but the fact that more instances have not come to our notice is because of section 6 of the Act, which acts as a guillotine and does not allow these objections to be raised before the Court. If that was not the case there would be hundreds of cases of hardship brought before the Courts and reported in the newspapers and in the law reports. It is because this section acts as a closure that the world does not hear much more of these cases.

The Honourable the Revenue Member also said that the Government proposes to do something in regard to the acquisition of land for companies. But is it only in the case of the acquisition of land on behalf of companies that hardship is caused? You will find it is caused not only in connection with acquisition on behalf of companies, but also by Government. I have quoted the remarks of the Consulting Surveyor to the Government of Bombay, who says that wherever he travels he hears objections on all sides to the acquisition of land made by Government. If the remedy that Government is going to provide is to be confined to cases of acquisitions on behalf of companies, it will be a most inadequate provision. There ought to be provision made in regard to the acquisitions of land on behalf of the Government, the Local Board or the Municipality or companies.

The Honourable Mr. B. N. Sarma: I have said that the question whether the public ought to be given an opportunity, when they are aggrieved, to state their case so that the Local Government may have all the materials before them, will not be confined to industrial companies but will include all acquisitions. With that assurance, I ask the Honourable Member to withdraw.

Mr. J. Ramayya Pantulu: The Honourable the Revenue Member said that the Legislative Councils have even now control in the matter of acquisition. What control have they? They may have control in regard to sanctioning a certain sum of money for a certain object, that is all they have. They have absolutely no control in regard to the acquisition of land.

That does not come before the Councils, it is all done by the officers of Government.

The bulk of the Honourable the Revenue Member's speech was devoted to showing that, if every one of the cases where there was an objection were referred to a civil court, there would be an enormous delay. I quite understand that references to court are likely to cause delay, but that is a point which can be remedied. It is quite open to the Select Committee to remove that portion of the Bill and substitute a less costly and more expeditious method of hearing and disposing of petitions. That is a matter which I think can be gone into by the Select Committee. Therefore there is no merit in dwelling too much upon a point of detail which could be remedied in the Select Committee. I, therefore, think that the Bill ought to go to the Select Committee where it can be altered into a form which will be suitable for all purposes.

Mr. Chairman: The question is:

"That the Bill further to amend the Land Acquisition Act, 1894, be referred to a Select Committee consisting of Mr. N M. Samarth, Mr. J. N. Mukherjee, Mr. W. M. Hussanally, Sardar Bahadur Gajjan Singh, Mr. B. Venkatapatiraju, Mr. Jamnadas Dwarkadas, Rao Bahadur T. Rangachariar, Rai T. P. Mukherjee Bahadur, Mr. J. Hullah and the Mover."

The motion was negatived.

The Assembly then adjourned till Eleven of the Clock on Friday, the 16th February, 1923.