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LEGISLATIVE ASSEMBLY DEBATES

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OF THE

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LEGISLATIVE ASSEMBLY.

Tuesday, 20th February, 1923.

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

QUESTIONS AND ANSWERS.

Military Requirements Committee's Report.

384. ***Sardar Gulamjilani Bijlikhan:** (*a*) Will the Government be pleased to state when they propose publishing the report of the Military Requirements Committee?

(*b*) If the Secretary of State has passed any orders on the same, will Government be pleased to lay the same on the Assembly table?

Mr. E. Burdon: (*a*) The question of publishing the Report referred to is under the consideration of Government, and a decision has not yet been arrived at.

(*b*) The Government of India have not yet received the Secretary of State's orders on the report.

Racial Distinctions Committee's Report.

385. ***Sardar Gulamjilani Bijlikhan:** (*a*) Will the Government be pleased to state when it is intended to publish the report of the Racial Distinctions Committee?

(*b*) If the Secretary of State has passed any orders on the same, will the Government be pleased to lay them on the table?

The Honourable Sir Malcolm Hailey: (*a*) The Report was published on the 3rd February.

(*b*) The proposals of Government are embodied in the Criminal Law Amendment Bill which has been introduced in this Chamber.

Princes Protection Bill.

386. ***Sardar Gulamjilani Bijlikhan:** With reference to the Princes Protection Bill, when do Government propose to introduce an amending Bill as stated by the Honourable Member in the Council of State in September last?

Mr. Denys Bray: The question of introducing an amending Bill will be duly considered if and when it becomes necessary after the Act has come into operation. The Act has not yet received His Majesty's assent and has therefore not yet come into effect.

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MR. SASTRI'S MISSION.

387. ***Sardar Gulamjilani Bijlikhan:** (*a*) Will the Government be pleased to state the sum of money spent out of Public Revenues on the mission of the Right Honourable Mr. Sastri to the Dominions?

(*b*) Will they also be pleased to state the results of that mission, so far as New Zealand and Canada are concerned?

(*c*) Is there any intention of sending a similar mission to South and East Africa in the near future?

Mr. J. Hullah: (*a*) I am unable to state at present the actual cost of the Mission of the Right Honourable Srinivasa Sastri to the Dominions as the accounts have not yet been finally settled. It is understood however that the grant voted by the Assembly for this purpose has not been exceeded.

(*b*) The Government of India hope very shortly to publish the report of the Right Honourable Srinivasa Sastri on his Mission to the Dominions. As this contains the information asked for by the Honourable Member I would ask him kindly to await its publication.

(*c*) No.

Mr. K. G. Bagde: When will the account be complete?

Mr. J. Hullah: Very shortly; I cannot say the exact date, but we have received the accounts.

Mr. K. Ahmed: What are the difficulties with regard to the settlement of accounts? Do the Government think that they should not pass any item which the Right Honourable gentleman has submitted, asking for a good deal of money to be knocked out of the revenues?

Mr. President: Order, order.

FIJI AND BRITISH GUIANA DEPUTATIONS.

388. ***Sardar Gulamjilani Bijlikhan:** (*a*) Have the Government passed any orders on the report of the Fiji and British Guiana Deputations?

(*b*) If so, will they be pleased to place them on the table?

Mr. J. Hullah: No. The Report of the Fiji deputation is under consideration while that of the British Guina deputation is being printed.

Mr. K. Ahmed: Sir, when will they be published? How long will it take?

Mr. J. Hullah: I do not know.

Mr. K. Ahmed: Will it come within the course of this Session and will it be placed before the Assembly for the consideration of the Honourable Members?

Mr. J. Hullah: I do not know.

INDIAN MARINE FORCES.

192. **Mukhdum Sayad Rajan Baksh Shah:** What was the total expenditure on Indian Marine Forces kept for the protection of Indian shores during 1911 and what was it in 1921?

Mr. E. Burdon: India makes an annual contribution of £100,000 to His Majesty's Government towards the naval protection of the country. This amount is fixed and does not vary from year to year.

Certain expenditure is also incurred in connexion with the supply of coal to vessels of His Majesty's Navy in the Persian Gulf. An endeavour is being made to ascertain the exact figures and I will let the Honourable Member know the result as soon as possible.

ADMINISTRATION OF ADEN.

193. **Sardar Gulamjilani Bijlikhan:** (*a*) Will Government be pleased to state if any final decision about the administrative control of Aden has been received?

(*b*) If the answer is in the affirmative, will they place it on the Assembly table?

(*c*) If not, will they kindly state what steps they have taken to expedite the same?

(*d*) Will Government be pleased to lay the correspondence they had with the authorities in England on the table?

Mr. Denys Bray: (*a*) No.

(*b*) Does not arise.

(*c*) Everything possible is being done to expedite a decision.

(*d*) As the question is still under discussion it would not be in the public interest to do so.

DEWAN BAHADUR VIJIARAGHAVACHARIAR'S WORK ON EMPIRE EXHIBITION.

194. **Sardar Gulamjilani Bijlikhan:** Will the Government be pleased to state the terms on which Dewan Bahadur Vijiaraghavachariar has agreed to work in connection with the Empire Exhibition to be held in London in 1925?

Mr. A. H. Ley: Dewan Bahadur T. Vijiaraghavachariar, B.M.E., was appointed Commissioner for India for the British Empire Exhibition on a consolidated pay of Rs. 2,000 a month *plus* the usual subsistence allowance while on duty in England. The question of revising this rate of pay is under consideration. The Exhibition will be held in 1924, and not in 1925.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I beg to present the Report of the Select Committee appointed to consider the amendment of the Code of Civil Procedure, 1908.

(AMENDMENT OF SECTION 4.)

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

"That the Bill further to amend the Code of Criminal Procedure, 1898, (Amendment of section 4) be referred to a Select Committee consisting of the Honourable the Home Member, Rao Bahadur T. Rangachariar, Lala Girdharilal Agarwala, Mr. Pyari Lal, Mr. K. C. Neogy, Mr. J. Chaudhri, Mr. J. N. Mukherjee, Rai Bahadur Sankata Prasad Bajpai, Rao Bahadur C. S. Subrahmanayam, Mr. Baidyanath Prasad Singh, Rai T. P. Mukherjee Bahadur and myself."

Sir, this Bill was introduced in this House last session and on a further motion by myself it was circulated for opinion by the Legislative Department. I had to wait to take any further action till now, because the opinions were not received. Sir, in making this motion I want to make some brief observations and to remove certain misapprehensions which do exist in the minds of some Members of this House. It is considered that by this little amendment I am going to give certain privileges to a class of lawyers known as Mukhtars which they do not at present in practice enjoy, and that an attempt is being made to raise the status of these men. Nothing of the kind is contemplated. As these Mukhtars are a class of lawyers who exist only in the provinces of Assam, Bengal, Bihar and Orissa and the province of Agra, it does not practically affect the other parts of this country; and as Members of this House belonging to other provinces may not know what are the qualifications and the field of activities of these men, I may tell them that the Mukhtars are a class of people who have to submit themselves to an examination conducted by the High Court of the province concerned, and after passing the examination which I may add is rather stiff and hard, they are enrolled as Mukhtars in various districts. They have to take out a licence from the High Court and they practise under the authority of that licence in the courts and in the places mentioned and enumerated in that licence. But it is an anomaly in the Code of Criminal Procedure that these lawyers have been placed in a class with the man in the street, if I may quote the words of the District Judge of Hooghly; they have got no rights under this Code, no privileges beyond that of any man in the street whom the accused or complainant may choose to represent him in Court. They have to appear in the Courts with the permission of the Court, in spite of the fact that they have got a general licence to practise, granted to them under the authority of the High Court after passing an examination. This is a disability which, I think, this House ought to remove. Sir, I am not very wrong when I say that the Code of Criminal Procedure is perhaps an Act which has been the subject of more numerous attacks in this House than any other Statute. Many disabilities have been removed and many are in the process of being removed and my motion is that it should do justice to a deserving class of people by removing a grievance, if we may like to call it so a sentimental grievance, under which they suffer. I have been told, Sir, by some of my lawyer friends from provinces other than those in which the Mukhtars practise that by placing them in the same class as advocates, we will be giving them a right to practise in all Courts, even in the High Courts of the provinces. But I am not a lawyer and I do not know whether the effect of this amendment from a legal point of view would be such or not; but this much I know as a matter of fact, that the licence that is granted to these Mukhtars by the High Courts restricts them to practice not only in the subordinate

courts, but also limits the territorial area as well; the licence is not granted to them to practise anywhere beyond the limits of the district for which the licence is granted. It has been also said, Sir, that the number of qualified pleaders and advocates are now numerous and as such there is no necessity for creating third class lawyers who are as numerous as blackberries. I submit, Sir, that this Bill does not contemplate the creation of any class of lawyers, good, bad or indifferent. What I want to do and what this Bill proposes to do is to remove a disability to which the existing practitioners are subject on account of having to get the permission of the Court on every occasion in which they appear before the Magistrates. Sir, in spite of the fact that this class of Mukhtars has been mentioned in the Criminal Procedure Code, no High Courts, except those of Calcutta, Patna and Allahabad, hold examinations for Mukhtars, nor are they allowed to practise. Even in the provinces of Agra and Oudh, now Mukhtars are not allowed to practise in Oudh.

Secondly, Sir, I beg to submit that, as has been described more than once by no less a personage than the late Leader of the House, Sir William Vincent, the Mukhtar is known and deservedly known as the poor man's lawyer, and as such it will be a wrong policy either to deprive the poor man of the advocate of his choice or of his right of being defended in a criminal Court by a lawyer whom his means permit him to engage. Thirdly, Sir, it will not be right to place these lawyers at the mercy of the Courts, that is to say, if the Courts permit them to appear they may do so, otherwise not. In many cases, Sir, in my province, and I believe in the Province of Agra as well, the Magistrates hold their courts at a distance from headquarters while they are on tour in connection with their executive and administrative duties, and the accused have to appear at certain places with their lawyers, and if they take a lawyer, and a Mukhtar, from the headquarters to that place, and if the Magistrate there takes upon himself the idea of not permitting that Mukhtar to appear in his Court, the poor man loses the chance of any legal assistance in that Court. I do not mean to say that such things do happen generally, but such things are possible and sometimes happen.

It has been said, Sir, by some of the men whose opinions have been collected by the Legislative Department that this is a sentimental grievance, and that in practice no Mukhtar has ever been disallowed to appear in a Criminal Court. I submit, Sir, even if it is a sentimental grievance, it ought to be removed because after all sentiment counts, at least in this House.

Sir, the other thing is that it is not only a sentimental objection, because I can at least give instances in which Magistrates had taken upon themselves the responsibility of refusing permission. Sometimes high officials of the Government and sometimes the High Courts had to come to the rescue of these Mukhtars; and it was after a good deal of agitation, if I may so call it, that the wrong was set right. However, I think that the basis of all wrongs was in the drafting of the Criminal Procedure Code, as it stands, because it gives the right to the Court to allow or disallow a Mukhtar from practising in that Court. Sir, I do not like to waste the time of the House by dilating on this question at great length, because it is a very simple matter. But before I take my seat, I have only to add that if my lawyer friends think that the Bill as drafted is misleading and that it contemplates or in actual practice it does give the Mukhtars a right which they do not at present enjoy or exercise, then, I submit, Sir, that they will have the amplest opportunity in the Select Committee in which I have taken particular care to include some of the distinguished Members of the

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profession of law to set that defect right and to place it on a satisfactory footing, so that there may be no objection on either side. Neither I nor the people for whom I speak want any privileges more than they do enjoy at present.

As regards, Sir, there being a large number of able advocates and pleaders, I might say that the number of lawyers in this country is quite large, and if that be a reason for shutting out the Mukhtars from practising in Courts as of right, I think it will be extremely regrettable, and it will be better to stop all the law examinations in this country and prevent the admission to the English Bar of the people of this country.

It has also been said, Sir, that these Mukhtars were the creation of an age when education was at a very low ebb in this country; so was the case, Sir, with all classes of people in this country. When education on western lines was first started in this country, pleaders and barristers were enrolled and admitted who had no high qualifications such as are possessed by the Members of the Bar at the present day. With the advancement of education the curriculum and their status have been raised, but the Mukhtars have not remained the same since those early days. In former days they had to pass only a vernacular examination to qualify and appear at these examinations. Since then the qualifications for admission have been raised, and now they are required to pass a University examination, though not a very high one, for qualifying themselves to appear at these Mukhtarship examinations and I might add that the examination to which they submit is, so far as the curriculum and the percentage of pass marks go, in no way inferior to that held for the enrolment of pleaders. With these words, Sir, I commend this motion to the House, and I hope that it will receive the approval of this House and of the Members of the Government.

Mr. President: The question is:

"That the Bill further to amend the Code of Criminal Procedure, 1898, (Amendment of section 4) be referred to a Select Committee consisting of the Honourable the Home Member, Rao Bahadur T. Rangachariar, Lala Girdharilal Agarwala, Mr. Pyari Lal, Mr. K. C. Neogy, Mr. J. Chaudhuri, Mr. J. N. Mukherjee, . . ."

and some others whose names the Honourable Member has not given me.

Mr. Abul Kasem: Rai Bahadur Sankata Prasad Bajpai, Rao Bahadur C. S. Subrahmanayam, Mr. Baidyanath Prasad Singh, Mr. T. V. Seshagiri Ayyar, Rai T. P. Mukherjee Bahadur . . . .

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I decline to serve on the Committee.

Mr. President: After the name "Mukherjee" the amendment moved to insert Rai Bahadur Sankata Prasad Bajpai, Rao Bahadur C. S. Subrahmanayam, Mr. Baidyanath Prasad Singh, Rai T. P. Mukherjee Bahadur, and Mr. Abul Kasem.

Before putting the question I assume that the Honourable Members whose names appear in this motion have given their assent to their names so appearing. Mr. Seshagiri Ayyar apparently has not.

Mr. Abul Kasem: Yes, Sir.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, the sole object which the author of this Bill has in view is to do away with the condition that the Mukhtars' appearance in Court should not be contingent

upon the permission accorded to them by the Courts concerned, and my friend says that is his sole object. If that be his sole object, his whole Bill is misconceived. Honourable Members will turn for a moment to the Legal Practitioners Act, sections 6 and 11. Section 6 lays down that the High Court may from time to time make rules consistent with this Act as to the following matters: Qualification, admission and certificates of proper persons to be Mukhtars of the subordinate Court. And section 11 lays down:

"Notwithstanding anything contained in the Code of Civil Procedure, the High Court may from time to time make rules declaring what shall be deemed to be the functions, powers and duties of Mukhtars practising in the subordinate Courts and in the case of a High Court not established by Royal Character in such Courts."

It is abundantly clear that the enrolment and the definition of powers and duties of the Mukhtars are entirely and solely left to the High Courts concerned and they can make rules for their appearance, functions and duties as they may deem fit. Now, my friend does not wish to amend the Legal Practitioners Act. He wishes by a small but nevertheless a sweeping change to alter the definition of a pleader as given in the Criminal Procedure Code. Now, let me read to the Honourable Members the amendment, which, if enacted into law, would convert that definition of a "pleader" in the Code of Criminal Procedure. I will first read the definition as it exists to-day, then read the definition as my learned friend would have it amended and then present to the House the effect of the amendment if passed by this House. The word "pleader" under the present Code of Criminal Procedure is defined in the following terms:

"'Pleader' with reference to any proceeding in any Court means a pleader authorised under any law for the time being in force to practise in such Court and includes (1) an advocate, a vakil, (2) and any mukhtar or other persons appointed with the permission of the Court to act in such proceeding."

Honourable Members will observe that this definition is in consonance with section 4 of the Legal Practitioners Act which deals with advocates, vakils and attorneys as a class apart from the generic class of pleaders. That section says:

"Every person now or hereafter entered as an advocate or vakil on the roll of any High Court under the Letters Patent constituting such Court or under section 41 of this Act or enrolled as a pleader in the Chief Court of the Punjab under section 8 of this Act shall be entitled to practise in all the Courts subordinate to the Court on the roll of which he is entered, and in all revenue Courts situated within the limits of the Appellate jurisdiction of such Court subject nevertheless to the rules in force relating to the language in which the Court or Office is to be addressed by pleaders or revenue agents."

I leave out the rest of the section because it is unnecessary for my purpose. The policy of the Legislature, therefore, was to place advocates, vakils and attorneys in a class apart. Once they are enrolled they become *ipso facto* as of right under section 4 of the Legal Practitioners Act entitled to appear and act in the manner stated in that section. No rules of the High Court are necessary. No permission of the Court is necessary. They become authorised under law as laid down in the Code of Criminal Procedure to appear in all cases as enumerated in that section. It is with reference to this section of the Legal Practitioners Act that clause 2 of the Criminal Procedure Code including advocates, vakils and attorneys was inserted. Now look at the amendment and what effect it will have upon the whole law relating to legal practitioners. Remembering as we do that a pleader is a pleader who is authorised under law to appear in Court, and remembering as we do that an advocate, vakil or attorney is merely included in the

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generic term of pleaders, now let us see what the effect of the amendment will be. The section defining pleader after the amendment would read as follows:

"'Pleader' used with reference to any proceeding in any Court means a pleader authorised under any law for the time being in force to practise in such Court, and includes (1) an advocate, a vakil and an attorney of a High Court and a mukhtar so authorised, and (2) any other person appointed with the permission of the Court to act in such proceeding."

The effect of the amendment proposed by my Honourable friend would be to include the word "mukhtar" within the comprehension of the words "advocate, vakil and attorney of the High Court so authorised." Therefore, the question about their appearance with the permission of the Court is not solved by the amendment at all. By merely transposing the word "mukhtar" from clause 2 to clause 1 my friend's purpose is not served. "So authorised" must be "by any law for the time being in force." That law is the Legal Practitioners Act. The Legal Practitioners Act lays down that, so far as the advocates, vakils and attorneys are concerned, they are entitled as of right to appear in all Courts. So far as mukhtars are concerned, the High Court shall make rules for their appearance and the conditions subject to which they are entitled to appear in subordinate Courts. That section, which I have just read to the House, is not sought to be amended. That section, which confers upon the High Court the power to prescribe rules, would remain unaffected. How is then my friend's purpose to be served by merely transposing the word "mukhtar" and putting it alongside of advocates, vakils and attorneys? Their authorisation to appear without permission has still to come. It is true that the permission required by the Code will cease but the authority to appear and act as of right must be derived from the High Court. And what is the power, what is the authority that can give them that unconditional power to appear without the permission of the Court? Surely, Sir, not merely the Criminal Procedure Code. It must always and necessarily be in the discretion of the High Court to make rules consistently with the Legal Practitioners Act from time to time. Does my friend wish to trench upon the provisions of the Legal Practitioners Act, which confers upon High Courts the power of making rules relating to mukhtars, as I have pointed out, under the specific provisions of sections 6 and 11 of that Act. My friend, as I have said, has no intention of modifying or amending the Legal Practitioners Act. He says that by the simple transposition of the one word "mukhtar" from one clause to another his purpose will be achieved. I deny it and I have shown to the House how the purpose he has in view cannot be attained by this amending Bill, whatever alterations and modifications may be made therein by the Select Committee. That is my first submission.

My second submission is that, assuming for the sake of argument that we are here dealing with the larger question of the powers and qualifications of mukhtars as such, untrammelled and unfettered by the specific provisions of the Code of Criminal Procedure which he wishes to amend, I ask this House, Sir, if it will take upon itself the powers and duties which the Legal Practitioners Act has conferred upon the High Courts and High Courts only? Is this House in a position to say that mukhtars shall be entitled to appear in all Courts along with the other legal practitioners described as advocates, vakils and attorneys of a High Court? I submit

this House would be arrogating to itself a privilege, which it undoubtedly possesses, of doing what the High Courts have been doing for a long time past and which, under the policy enunciated in the Legal Practitioners Act, the High Courts are entitled to do to-day. If my friend has any grievance, I submit that he should address his grievance for redress to the High Courts concerned.

I have a third objection, and I submit an equally strong one, to the passage of this amendment to the Code of Criminal Procedure. Honourable Members will find that there is a provision in the Legal Practitioners Act which entitles a pleader to appear as of right to defend an accused in all Courts. That is the first principle. No permission is required and in all Courts a pleader is entitled to appear and defend a case. Now, Sir, if the mukhtar is transferred to clause 1 and he becomes an advocate, a vakil, an attorney of a High Court and a mukhtar so authorised, he becomes *ipso facto* included within the definition of the word " pleader " and as a pleader he would become entitled to practise and defend cases in all Courts. The mukhtars themselves do not claim that privilege. So far as I have been able to understand, what the mukhtars say is this—" safeguard our rights; do not make our appearance in Court contingent upon the sanction of the Court in cases in which we are employed. If you wish to exterminate our class, do so by all means; we have no objection to offer. But so far as the existing mukhtars are concerned, safeguard our rights." That is all that the mukhtars want. My friend the Mover of the amendment nods assent. This is all then that they want. Well, Sir, that can easily be done by a Bill *ad hoc* dealing with the mukhtars at present enrolled under the Legal Practitioners Act and I submit if such a Bill is moved in this House it will receive the sympathy of this House. But to introduce a measure which is liable to be misunderstood and which in fact would be in conflict with the terms and tenor of the Legal Practitioners Act and the rules framed by the various High Courts, is, I submit, carrying the purpose my friend has in view, too far. On these grounds, Sir, I oppose the motion.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, I oppose the motion, not upon any sentimental ground, but upon the simple ground that if this Bill is made law it will create hopeless confusion and will not substantially improve the position and practice of the mukhtar. The Preamble to the Bill tells us that it is expedient to give a legal status to these mukhtars, and it is sought to give this body of legal practitioners that legal status by amending definition. No consequential amendments of other laws are suggested, and if this Bill becomes law hopeless confusion will result. My friend, Dr. Gour, in his clear enunciation of the subject has referred to section 4 of the Legal Practitioners Act. I would draw the attention of the House to sections 6 and 9. Section 6 is the beginning of Chapter III. Chapter III relates to pleaders and mukhtars. The Legislature deliberately draws a distinction between those two classes of legal practitioners. It lays down separate rules with regard to qualification, admission, certificate, right to appear and so forth. The Code of Criminal Procedure lays down that every accused person may of right be defended by a pleader. That word is designedly used, no doubt with reference to the class of legal practitioners who fall within the purview of the word " pleader." It was never the intention of the Code of Criminal Procedure to lay down that, as a matter of statutory right, any one but a pleader should appear to defend an accused without permission. Now, if we

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turn to section 9 we find it to be a special section relating to the mukhtear. It reads:

"Every mukhtar holding a certificate issued under section 7 may apply to be enrolled in any civil or criminal court mentioned therein and situate within the same limits and, subject to such rules as the High Court may from time to time make in this behalf, the presiding Judge shall enrol him accordingly."

—that is definite enough—"and thereupon he may practise as a mukhtear in any such Court and any Court subordinate thereto, and may"—now, here is the reference—(subject to the provisions of the Code of Criminal Procedure) "appear, plead and act in any such Criminal Court and any Court subordinate thereto." Now, that parenthesis is deliberate. "Subject to the provisions of the Code of Criminal Procedure" means that the mukhtear must have the permission of the Court in each case as he appears. If the Bill now proposed becomes law, this parenthetical phrase will become nonsense. That is one point of confusion. Then, again, how will the definition help mukhtears if amended in the way proposed? I hope the House will bear with me in patience if I ask it to go back for one moment to the definition of 'pleader' in the Criminal Procedure Code. "'Pleader' used with reference to any proceeding in any Court, means a pleader authorised under any law for the time being in force to practise in such Court"—not a pleader or a mukhtear, but a pleader authorised, and includes certain classes of legal practitioners who are called by different names in the Legal Practitioners Act, namely, advocate, vakil and attorney. But the main part of the definition is that it applies to a pleader. Now, my friend would say "Bring into the meaning of the word 'pleader' in this section a mukhtear." It will be an absolute confusion. That is to say, in the Legal Practitioners Act, 'pleader' is to be a word which is distinguished from mukhtear, while in the Criminal Procedure Code 'pleader' is also to mean 'mukhtear.' It will be difficult to imagine anything more opposed to the ordinary and elementary rules of legislative drafting than to introduce an amendment of that kind. Then, again, even an advocate, vakil, attorney and mukhtear must be "a pleader authorised under any law for the time being in force to practise in that Court." If a mukhtear is not entitled to practise in that Court, this definition would not help him. The proposed definition would not give him anything at all; it would simply make confusion worse confounded. The Honourable the Mover has said quite frankly that he does not profess to be a lawyer. I quite appreciate and sympathise with his desire to place mukhtears above the caprice of a Magistrate in some outlying place, but the simple way to secure what he wants is not by an amendment which will be far-reaching and create confusion, but by an executive order from a High Court, as my friend, Mr. Rustomji Faridoonji, pointed out to me. That is the remedy, and it can be got in that way if any abuse exists. My friend admits that so far as his province is concerned, the habit—if ever there was a habit—of capriciously refusing permission to appear to a mukhtear was a wrong which has been righted. I must say, speaking for myself, that in no other province—I have no experience of the province of Bengal—have I come across a single case where a Criminal Court has refused an accused the benefit of the assistance of his mukhtear or his legal adviser. Whether all mukhtears usually help accused is not a point to be considered now. It does not rest with a Court to anticipate whether the mukhtear will or will not really do any service to the accused. There is no evil in existence. My friend says, it is possible, but it would

be unwise to introduce legislation of this kind to meet a remote possibility, one which past experience also has shown to be improbable. Therefore, I think the House would be well advised not to enter upon this Bill.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, it is rather difficult to enter into the field now after the judicial pronouncement of a very judicial friend, Sir Henry Stanyon, for whose opinion I entertain the greatest respect, but I am afraid he has allowed himself to be persuaded by the bad advocacy of Dr. Gour in this case. He has forgotten that the term 'pleader' is defined for the purposes of the Criminal Procedure Code by the Criminal Procedure Code. It is a generic term. It is not used in the limited sense in which the term 'pleader' is used in the Legal Practitioners Act, so that for the purposes of the Criminal Procedure Code we have to be guided by the definition in the Criminal Procedure Code only. What my Honourable friend, Mr. Abul Kasem, is trying to do is to improve that definition. Now, the very thing which my Honourable friend Sir Henry Stanyon thinks can be done by an executive order is prohibited by this definition. The High Court cannot make a rule over-riding the provision of law. The law, as it stands, requires every mukhtear to be entitled to appear in a criminal Court, has to obtain the permission of the Court in which he has to act and that in each case. Now, my friend wants to remove that disability. Any amount of executive order . . . (*An Honourable Member*: "Compel the Court to give permission.") You cannot by executive order compel the Court to do a thing which the Law leaves it to the discretion of the Court. The law leaves it to the discretion of the Court to allow a mukhtear to appear or not before that Court. I do not think any High Court would so act as to issue an order ignoring the provision of law. Now, Sir, let us look at it from the practical point. I do not understand the necessity for retaining this class of mukhtears as pleaders. They are really a class of pleaders. Unlike private pleaders as they are called in Madras, these are a recognised class of people in these provinces. Apparently this is retained, regard being had to the peculiar circumstances of the provinces. Apparently they correspond to the class of second grade pleaders we have in Madras. I see, Sir, they have to undergo a stiff examination both in civil and criminal law. I see they have to study Contracts, Specific Relief, Procedure, Evidence Act, etc. Now, it is a legal examination held under the authority of the High Court and under rules framed by the High Court. They have to get about 50 or 60 per cent. in these subjects before they are enrolled as mukhtears. Under the laws as they stand, there are three classes of practitioners. The High Court frames rules as regards what persons shall be admitted as advocates, attorneys or vakils to the said Court, so that even a pleader under the Legal Practitioners Act is not of right entitled to appear in the High Court unless he is enrolled as an advocate, vakil or attorney of the High Court. A pleader as such is not entitled to appear in the High Court. Therefore there need be no fear that by including mukhtear in the definition of pleader in the Criminal Procedure Code, a mukhtear will be entitled to practise in the High Court. I see some of my friends entertain that doubt. I do not think they are going to trench upon the field of the High Court. Unless the High Court by its rules provides for enrolling mukhtears as advocates or vakils, I think we may leave it to dreamland and not to actual practicalities. The best course will be not to leave it to the sweet will and pleasure of each Magistrate or Judge to decide whether he will allow a particular person to appear in a particular case

[Rao Bahadur T. Rangachariar.]

or not. When you have got a class of legal practitioners recognised by the law, how are they different from pleaders, pleaders enrolled under the Legal Practitioners Act, I mean first grade pleaders or second grade pleaders as they are called. How are these mukhtears different from them? Therefore, if you enlarge the definition of the word "pleader" in the Criminal Procedure Code so as to give the right to a mukhtear to appear for an accused person or for a complainant under the chapter relating to practitioners in the Criminal Procedure Code, these people will also become "pleaders" under the Code and for the purposes of that Code. Therefore this legal disability, which is put in there by virtue of this definition, will be taken away by this amendment sought to be made by my Honourable friend, Mr. Abul Kasem. Sections 6, 7 and 9 of the Legal Practitioners Act merely provide for creating different classes of practitioners. That is to say the High Court holds examinations and gives *sanads*, and such and such a person is entitled to practise either as a pleader or as a mukhtear in such and such a district in all the civil and criminal courts in a district. That is what the High Court does, and taking this certificate wherever he wants to practise under section 9, the man takes it to the District Judge or the District Magistrate as the case may be in any civil or criminal court and asks to be enrolled in that court. The District Judge has no option but has to enrol him. Under section 9 as it stands, every mukhtear, by presenting this certificate under section 9, gets himself enrolled. The court has no power to refuse to enrol him. Then why make him take permission in each case. He is enrolled in a court and given a general *sanad* by the High Court and as the definition stands this disability is imposed on him of taking permission in each case. What happens is that the mukhtear cannot afford to be independent before Magistrates. We know Magistrates are after all human. If you give them power to allow or refuse permission to appear—of course they have likes and dislikes—the particular mukhtear who pleases them in particular ways will often get permission, whereas the mukhtear who does not do so will not get permission. It is creating a class of *jo hukum* legal practitioners and there is the trouble. I quite agree there is no need in these days for this class of practitioners. It is not Mr. Abul Kasem who has chosen the wrong remedy; it is those who oppose Mr. Abul Kasem who have chosen the wrong kind of remedy to achieve their object. It is for Dr. Gour to amend the Legal Practitioners Act. and remove the power to enrol this class. But so long as the law recognises a class of legal practitioners called mukhtears, they are entitled to appear in the Civil Courts as it stands without any permission. When they are enrolled as mukhtears, they are entitled to appear in the Civil Courts. but we impose this disability only in regard to criminal courts. Why should you leave it to the discretion of the Magistrate to allow him to appear or not? You do not give that discretion to the subordinate Judge or to the District Judge, but to the Criminal Court you give that discretion. It seems to me an anomaly, a defect which is bound to be removed. One of two remedies has to be chosen, namely either abolish this class of mukhtears or allow them to practise. I will support Dr. Gour in that if he moves for their abolition. But so long as you allow the class of mukhtears to exist and now there are four thousand of these people in all the Provinces, surely it is an act of injustice that they should be driven to seek permission in each case? It is an indirect method to crush. If there are drafting defects in the Bill, by all means set them right, but let us not stand in the way of the Bill going to the Select Committee. I support the motion Sir.

12 Noon.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): I join with Mr. Rangachariar in saying that almost all the Non-Official Members of this Assembly have got the highest respect for Sir Henry Stanyon for the very able and illuminating speeches which he has been up to now delivering. Judge then of my dismay, Sir, at finding him going off the right track on this occasion. Before Mr. Rangachariar stood up, I could not assign any reason for this operation, but Mr. Rangachariar has furnished a clue, which I think is the true explanation, *viz.*, that Sir Henry is in the neighbourhood of Dr. Gour, who, if he will pardon my saying so, is an adept in sophistication, a master of sophistry. Now I think a very clear and simple answer can be given to Dr. Gour. But I will first of all deal with Sir Henry Stanyon's objections, and I will not repeat what Mr. Rangachariar has said in reply to Sir Henry Stanyon; I will take up one after another of his objections seriatim. He says this will create a hopeless confusion. Why? Because section 9 of the Legal Practitioners Act says, "subject to the criminal procedure." Yes, it will not create any confusion at all, I submit, because now that Legal Practitioners Act section will be interpreted as subject to the present Criminal Procedure Code as amended by Maulvi Abul Kasem, there will be no confusion at all. And I think this one particular reply can be given to both Dr. Gour and Sir Henry Stanyon. Dr. Gour, with his usual eloquence, and with his flights of rhetoric has laid great stress upon and made great play with the fact that the word "authorised" appears there, and that there is some kind of inconsistency between a Mukhtar being authorised, as Maulvi Abul Kasem wishes him to be authorised, and the High Court having got the power of making rules for Mukhtars. I do not see any inconsistency in that at all. It is only such Mukhtars who, under the rules of the High Court, will be authorised to practise, that will come within the definition. Where is the anomaly? There is no anomaly at all. And therefore I submit, Sir, that this is a very wholesome Bill that has been brought forward by Maulvi Abul Kasem, and although he does not belong to the legal profession, still I think all that body of Mukhtars should be indebted to him for the service he is doing them. Another thing, Sir Henry Stanyon has said that, as a matter of fact, never has permission to these Mukhtars been refused. Well, that is precisely an argument for saying that permission is not at all necessary. If in practice permission is never refused it means that commonsense, reason and justice require that it should not be refused. That is the interpretation I should put upon Sir Henry Stanyon's language. Then why should there be the necessity for permission? There should be no necessity for permission because it demoralises the man and puts it within the power of the Magistrate to tyrannise over him and frighten him, at least to create some kind of impression in the mind of the Mukhtar that if he does not behave according to the wishes of the Magistrate, he would not be properly treated. I will not go into the question of corruption at all. It may or it may not give rise to corruption, but even otherwise, why should you, when you prescribe very stiff examinations, when you put these men through all the trouble of going through examinations, make their appearance subject to the will of the Magistrate? I think it is a gross piece of injustice. Then Mr. Rangachariar says that the plague spot upon which Dr. Gour and Sir Henry Stanyon should have placed their fingers was the profession itself. I do not agree with him at all. The profession of Mukhtars has been existing for a number of years. I have, of course, sometimes heard that Mukhtars generally are capable of shady practices, but are there not black sheep in all folds of life, in the highest folds? But one black sheep does

[Mr. Harchandrai Vishindas.]

not make the whole flock black. I think the Legislature conceived this idea of creating this class of practitioners with the object, and a very laudable object, of giving the poor man an opportunity of having a cheap practitioner. Whereas the pleader would charge 50 or 30 rupees, a Mukhtar would be quite content with two or three rupees. That being so, why should you deprive the poor man of the cheap assistance that he can now get. This profession should not be abolished. I can say that that part of the country from which I come does not possess any profession of Mukhtars. Many years ago, persons who, without any examination, could take to the law, were allowed to appear in remote places, and I think they served a very useful purpose. Of late, about 15 or 20 years ago, our High Court thought there was such a superabundance of pleaders that they could get to every remote corner of the province, and, therefore, they have abolished Mukhtars altogether. There is no examination for Mukhtars, as in the case of provinces which have been mentioned by Mr. Abul Kasem, but in the case of those people who practised as Mukhtars of course permission was necessary because there was no examination for them. That class has now been abolished. This profession of Mukhtars therefore does not now exist in our part of the country, but I do sympathise with the Mukhtars of the provinces where their profession does exist. I have therefore very great pleasure in supporting Mr. Abul Kasem.

Mr. President: I think the time has come when I may appeal to the House on a point of procedure. If Honourable Members desired this discussion to follow the line it has taken, the normal thing to do would have been to move that the Bill be taken into consideration on the floor of the Assembly, for the discussion which is now taking place is precisely the discussion which must of necessity take place in the Select Committee. I am not here intervening in order to prevent the discussion continuing, because the discussion is technically in order, but to point out that we shall probably have this discussion three times over, now, in the Select Committee, and again when the Bill comes back from the Select Committee. Therefore, I would suggest to Honourable Members to take that into consideration in the further course they pursue on this Bill.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, when Mr. Abul Kasem's Bill was introduced in the Assembly, the attitude of Government was one of neutrality. Mr. Abul Kasem suggests that Sir William Vincent was sympathetically neutral; I would prefer to say perhaps that he was not unsympathetic. What Sir William Vincent did in fact say was that this Bill was a Bill which Government thought might very usefully be circulated for opinion, and, therefore, he did not raise any opposition to the introduction of the Bill; Government preferred to hold its hand until the opinions had been received. It is naturally a Bill of the class on which Government's attitude would be very largely guided by the opinions expressed on its provisions, by the opinions of outside authorities, in the first place, and, in the second place, by the attitude of the House in general towards the Bill. Sir, the opinions have now been received, and they are in Honourable Members' hands. Government's idea of them was that, on the whole, the balance of opinion was weighted against the Bill, but before deciding what definite action it should take against the Bill, it laid the Bill before a Standing Committee of the Legislature, the Standing Committee attached to the Home Department. Government sought the

advice of that Committee and the advice of the Committee was that the Bill should be opposed. The main reason, I think, for that attitude of the Committee was that every step should be taken to raise the standard of legal practitioner in this country and they thought that, if the principle of this Bill were adopted and given effect to, the reverse might possibly be the result. Sir, to come back to the opinions of the Local Governments on which, as I say, Government's attitude must be largely based. In the first place, I think we found that to a large extent the favourable opinions, or those opinions which merely indicated no objection to the Bill, emanated from those areas where, admittedly, there are no Mukhtars. For the most part in the areas where Mukhtars do practise doubts have been expressed as to the wisdom and expediency of this measure. The reasons which have been urged against the measure are all quite simple. I listened very carefully for some definite and positive advantage that Maulvi Abul Kasem expected from the passing of his measure. The one positive advantage was that it would remove a sentimental objection. All his other arguments in favour of his Bill were, I think, of a negative character, that this objection that had been raised in one quarter was over-estimated, that another objection really was not sound, and so on. The real point that the main objectors to the Bill bring out is that the legal profession is already over-stocked, that the public of this country can get their legal advice readily and cheaply, and that the Bill, if it were passed in this form, would have the result of very largely increasing the number of unqualified legal practitioners. There are, it is quite true, many very competent and very excellent Mukhtars. Possibly the majority of the Mukhtars are quite competent to appear in the Magistrate's Court, but it is another thing to say that you should, therefore, give the whole class of Mukhtars the absolute right to appear before a Magistrate and also before a Sessions Court. If, Sir, we remember that the real reason for which the legal profession exists, namely, to assist the courts in this country in the administration of justice, I would put it to the House whether that reason, that object, will be achieved, will be furthered by a measure which will tend to increase the number of practitioners who have not got the best and fullest qualifications. (*Mr. K. B. L. Agnihotri*: "What about the Honorary Magistrates?") (*Mr. Sarfaraz Hussain Khan*: "What about the Barristers?") I think, Sir, that those are the main objections to the Bill. The standard of legal attainments among the Mukhtars, as a class, is somewhat low, and if you bring them in with an absolute right to appear before the criminal courts, will it not tend to lower the standard of the legal profession as a whole? Some critics have even suggested, I do not put it forward as my own criticism at all, but it has been suggested, that the inclusion of Mukhtars as a regularly recognised branch of the legal profession might even tend to a deterioration of the very high standard of professional morality which does exist in the Bar in India.

Sir, I have nothing more to say on the subject. Government was rather anxious to hear the views of the House on this subject. Those who have spoken against the measure have taken objections on technical grounds. Sir, I have not followed them into that field of criticism at all, because some of those technical objections might possibly be removed if this Bill were referred to a Select Committee, though I would point out to the House that the Select Committee might find it somewhat difficult, if those objections are valid, to remove them within the ordinary terms of reference to the Select Committee.

On the merits, Sir, as I say, the opinions which guide Government in this matter seem to be slightly weighted against the Bill.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): I have only a few words to say with regard to this Bill. I will not make the blunder of discussing it in detail but I shall refer only to certain facts. It is well known that in Bengal in the Magistrate's Court the ordinary cases are conducted by Mukhtars. I need tell this House what I have often said publicly, that I advocate the reduction of the various grades of legal practitioners in this country. I am adverse to the multiplication of these grades and classes. I would have only two classes, namely, one should plead before the Courts and others should instruct them. There is a class of practitioners the advocates, who do not like to communicate directly with their clients or to take their instructions; and it is very desirable in the interests of the profession that there should be a class to instruct the advocates. That is my own personal opinion. With regard to this particular class, the Mukhtars, they exactly fulfil in the mofassil the same functions as Attorneys do in the High Court. They interview clients; they get ready the cases, and then instruct the pleaders or advocates. Over and above that, what these Mukhtars do is, as I have said, conduct criminal cases in the Magistrates' Court. There they are the poor man's counsel. All over Bengal, all over Behar, if you go to any Court you do not find in an ordinary Magistrate's Court the pleaders pleading; you find in Bengal that it is the Mukhtars, who conduct the cases. As criminal practitioners there are many of them who are as able as pleaders. (Hear, hear). I take into consideration the facts as they exist, and I may refer to the dictum of a Judge who was highly respected all over the country—I mean the late Mr. Justice Chandra Madhab Ghose. The question was raised once, namely, whether the Mukhtars as a class should be abolished or not, and he expressed an opinion adverse to it, saying that the Mukhtars were "the poor man's counsel." We are not now going into the larger question of amending the Legal Practitioners Act. That is not the scope of this Bill. We may, if we like, pass a Resolution and appoint a Committee of the House to go into the question as to whether the different classes of legal practitioners, the different grades of legal practitioners should be reduced. But any such question is beside the point at the present moment. At the present moment the question before the House is whether Mukhtars who ordinarily practise in criminal courts all over Bengal and all over the Province of Bihar and Orissa, and I am assured by my Honourable friend Mr. Nag, in Assam too, and I believe, as also in the United Provinces, should be freely allowed to appear. Of course, I have no personal knowledge of the United Provinces, but I can say from my personal knowledge that Mukhtars are the ordinary legal practitioners who conduct cases every day in the Magistrate's courts all over Bengal, all over Bihar and Orissa and I am told also in Assam. So these Mukhtars are the counsel of poor people in three or four provinces. Why then should they have to approach the Magistrate in each individual case with an application to be allowed to plead, or allowed to appear. The sections referred to by my Honourable friends Dr. Gour and Sir Henry Stanyon—this is not the time for me to discuss those sections; but I may say the substance of them is this:—One of them provides that the High Court shall hold examinations and give certificates; another that they should be enrolled. But it is the Criminal Procedure Code that affects their privilege even after they are enrolled in a criminal court; in each individual case, when they appear they have to obtain the permission of the Magistrate. Is this reasonable or rational? The House will agree with me that if every individual has a right to be defended, and if the Mukhtars are the poor man's counsel, why

should the poor man's counsel have to take permission of the Magistrate to appear in every case? So all that my friend Maulvi Abul Kasem asks is that this invidious distinction between pleaders and Mukhtars in their own sphere should be done away with. As Rao Bahadur Rangachariar and Mr. Harchandrai Vishindas said, it leads to favouritism, and sometimes a Mukhtar who is more independent and who looks to his client's interests regardless of any fear or favour and who puts the case forcibly before a Magistrate, if he irritates any particular Magistrate in any way he may not give him permission to appear in another case. So that is the whole question before the House—whether the present law which gives an opportunity to the Magistrate to give or refuse permission in each individual case should exist. Other matters are matters of detail altogether and those matters of detail might be discussed in Select Committee. But as we are entitled only to discuss, or rather we should discuss only the principle and not the details of the Bill, I would ask this House whether this is not a question of principle, and whether the House would not agree with me that this is a wrong principle in the administration of justice and that when you allow a class of practitioners to practise in the Magistrate's Courts whether you would leave them free to appear in each and every case, as pleaders or advocates do, without any previous permission before High Court Judges, District Judges or Sessions Judges. You may limit them, pin them down to the Magistrate's Courts. That is where they usually practise. But all the same you must take away this arbitrary power from the Magistrates to give leave to appear or not as they please. These Mukhtars have been given licences by the High Court; they have been given certificates by the High Court; they have been enrolled by order of the High Court; but here you leave this power in individual Magistrates arbitrarily to refuse them permission to appear in individual cases. So that is a question of principle, and a very simple question that is before the House, and I am sure that now that I have explained it, the whole House will agree to lay this Bill before a Select Committee.

Mr. K. B. L. Agnihotri (and other Honourable Members): Sir, I move that the question be now put.

The motion was adopted.

The motion that the Bill be referred to a Select Committee was adopted.

THE HINDU COPARCENER'S LIABILITY BILL.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I move:

"That the Bill to define the liability of a Hindu Coparcener be referred to a Select Committee consisting of the Honourable the Home Member, Mr. P. P. Ginwala, Rao Bahadur T. Rangachariar, Munshi Iswar Saran, Mr. B. Venkatapatiraju and myself."

Honourable Members will find that when I asked the leave of this House to introduce this Bill I pointed out that the Privy Council in a long series of cases had laid down the law relating to Hindu Coparceners and amongst the principles enunciated by their Lordships of the Privy Council one principle was that the son was liable to pay the debt of his father known as the antecedent debt, and the definition of antecedent debt given by their Lordships and since accepted by the several High Courts was a debt antecedent in point of time and not connected with the debt in suit. But in a case decided by their Lordships of the Privy Council known as Sahu Ram's

[Dr. H. S. Gour.]

case, Lord Shaw, delivering the judgment of the Privy Council, pointed out that that was not the definition of an antecedent debt and that the term 'antecedent debt' in the case of a Hindu son meant a debt which was wholly unconnected with the security of the family property. This gave rise to a very large conflict between the various High Courts and the Madras High Court in a Full Bench sought to distinguish the judgment of their Lordships of the Privy Council, and pointed out that the Privy Council could not have intended to change the law which they had themselves enunciated in a series of cases ranging for over fifty or sixty years. This Full Bench case of the Madras High Court was followed by another Full Bench case of the Patna High Court. In the United Provinces, however, there has been a great conflict. In some cases the old view of the Privy Council has been reiterated and followed, while in other cases the narrower view understood to have been enunciated by the Privy Council in Sahu Ram's case has been given effect to, and the Lahore High Court has followed also the narrower view of their Lordships of the Privy Council. I wish to point out to the House that there has been a great confusion in all the High Courts because of these cases decided by their Lordships of the Privy Council, and I think it is the accepted policy of the Legislature that whenever the courts are not agreed and there is a conflict of decisions between the various High Courts on a vital point of law, the Legislature should interfere and define and remove the conflict. My Bill is intended to serve that purpose. It will be for the Select Committee to decide as to whether they wish to accept the previous view of their Lordships of the Privy Council or whether they wish to stereotype the narrower view enunciated in Sahu Ram's case; whether in fact they wish to follow the Full Bench decisions of the Madras and Patna High Courts or whether they wish to follow the later decisions of the Patna and Lahore High Courts. Honourable Members will find that this question about the liability of a Hindu coparcener to pay a debt incurred by the father or by any other manager is a question which has been agitating the courts in this country for a very long time past; and the question of what is the burden of proof in a case of mortgage and what is the burden of proof in a case where the alienation is complete and the property has passed out of the family, are questions very closely connected with the question I have just now referred to. This and allied questions are therefore questions which I ask the leave of the House to refer to this Select Committee consisting of the Members I have named. I shall be very glad indeed to add the names of any other Member who may desire to serve on the Select Committee. I feel, Sir, that so far as the opinions are concerned a body of opinion is in favour of the Bill; the Calcutta High Court for instance says that this is a question which is generally concerned with the question of the codification of the Hindu law; and their Lordships point out that this question has the same underlying principle as Mr. Seshagiri Ayyar's Bill. I think that Bill has gone to the Select Committee, and I think it is therefore also necessary that this Bill should go before the Select Committee. I move, Sir, that the Bill be referred to the Select Committee consisting of the Members I have already named, with Sir Henry Stanyon and Mr. Pyari Lal in addition.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, I oppose this motion. The question of the liability of a Hindu coparcener is a question which was, if I may say so, of some doubt fifty years ago, but during the last fifty

years the cases have settled the matter and no practitioner of any consequence has any doubt about the liability of a coparcener in a joint Hindu family. An attempt at legislation like this would be justified if there was a demand from the public or from those concerned in the administration of law and justice. Well, there is absolutely no demand. Is there any pressing evil existing which requires removal? Is there any particular hardship which ought to be relieved? Those are the questions which arise when a new piece of legislation is put before the Legislature. There is none. Well, the litigation that has centred round this matter is like other kinds of litigation which arise in certain relationships. Take the case of an agent. The question was whether the acts of an agent bind the principal, and to what extent they bind him. In spite of the fact that there is an Act defining the liability of the agent, in spite of the existence of an Act, such questions do come up before the Courts, because in the variety of transactions which arise in the course of business, there must be disputes and such disputes must necessarily come up before the Courts if the parties do not agree. So also in the case of partnership. What are the particular acts of one partner which will bind the other partners or the firm? There again we have a codified law, and yet we find on record a large number of cases in regard to disputes arising between parties. Therefore, a legislation like the one proposed by the Honourable Mover is not going to cut down litigation or stop disputes between parties in disagreement, and therefore it is unnecessary on these two grounds to undertake the present legislation.

Sir, there is another wider aspect of this matter. Members seem to think that legislation is a game at which they could all play. Legislation has nothing to do with mere legal knowledge or ability to advocate causes in Court. Legislation, I am afraid, seems to be a sphere of activity which, unless the Assembly takes it into its head to put down at an early stage, will grow to inordinate dimensions. It may also be said by an unkind critic that it advertises a particular name all over the country. But I would not charge my friend Dr. Gour with any such desire because by his works he is well known all over the country, and therefore let him not take that remark as applicable to him. But yet it will create in this matter that impression; whatever Dr. Gour's eminence may be as an author or compiler of books, as an advocate and as a legislator, people competent to speak on such matters have not been good enough to approve of this piece of legislation. Well, Mr. Justice Wallace of the Madras High Court says that the drafting seems to be crude and amateurish. Well, that is some thing like what Mr. Seshagiri Ayyar said some time ago 'every one trying to practise his prentice hand at legislation.' Mr. Justice Coutts-Trotter, another Judge of the Madras High Court, who has recently edited a Hindu law work, which is a classical work in India, says "The Bill has a comprehensive title 'to define the liability of a Hindu coparcener' which is not justified by its contents." Well, its contents I could find in any well known book on Hindu law. It is an analysis of the various circumstances, of the various heads which are generally noted down by every practitioner of standing and by every diligent student when he studies this portion of the Hindu law; that is, he analyses for his purpose the various heads, and the various conditions under which the subject is brought. Now legislation is something different from a text-book, from an analytical statement of the law, and therefore Mr. Justice Coutts-Trotter's commentary about the title of the Bill is quite justified.

Now coming back for a moment to Mr. Justice Wallace's criticism, he says "The definition of 'antecedent debt' is faulty. The phrase

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' unconnected therewith ' is too vague. In a sense a mortgage executed to discharge a prior debt is ' connected ' with it " and so on. Now, Sir, the answer to all these criticisms has often been, " I will put it before the Select Committee; the Select Committee will set the defects right." That is, it seems as if the practice is growing to throw a rubble stone at us, and we are to polish it, give it shape and see whether it has got anything inside it. That seems to be the practice in putting forward Bills before this Legislature. Another Judge of the Madras High Court, Mr. Justice Kumaraswami Sastri, is dead against the Bill. He says " It is not necessary."

Now as to the conflict arising from Sahu Ram's case, well, there is no conflict in any one particular High Court. There is a difference of opinion between one High Court and another. Such differences of opinion have always occurred and do exist, especially in regard to Hindu law. If on that basis you were to legislate on every occasion when there is a difference of opinion between one High Court and another, I think the Legislature would have nothing else to do but go on examining these decisions on Hindu law. Well, as to the particular case on which my Honourable and learned friend has based his legislation, no sooner that case was reported than a number of suits on the basis of that or on the supposed authority of that suit were filed in Madras and they were set at rest by the decision of the Madras High Court, which said that it would prefer to follow its own long course of decisions. Therefore, there is no trouble in Madras where probably the largest number of cases arising out of these joint family liabilities are to be found.

From Bengal the same opinion has come. " The Governor in Council feels very doubtful as to the wisdom of undertaking piece-meal codification of Hindu law with a view to bringing about uniformity of interpretation between the different High Courts." Now in regard to this matter our late Law Member, Dr. Tej Bahadur Sapru, was strongly of opinion that piece-meal legislation in the Hindu Law would be a very dangerous attempt, for it is silly, it is almost inconceivable to think that the Hindu law which we have in regard to our personal rights is a piece of law which any one of us can at once say is wrong, and that it is not founded on justice, equity and good conscience, and that any one of us, because in our individual conceptions we think that something ought to be different, can try and rectify it. I think, Sir, it is too much of a presumption to think that we can really improve upon a piece of law which exists and which has reached its present stage, not by any process of tinkering but by a process of evolution, which evolution has always had regard to the changing circumstances of environment and civilization in life. Now, that an attempt should be made to break off such legislation from the process of evolution it has attained is, I think, an attempt which requires a good deal of hardihood, if not a great deal of juristic and legal knowledge.

As I think on this occasion only the principles of the Bill ought to be discussed, this attempt to legislate on this matter is an attempt which ought not to be encouraged: on the contrary it ought to be discouraged.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, with reference to a Bill of this sweeping character, I feel, Sir, that I should join in the debate as a representative from Bengal. No doubt, cases occurring under the Mitakshara law in Bengal are not so numerous as in

other parts of India, but still Mitakshara law is administered in Bengal as well. I should like, therefore, to place certain points of view before this House with reference to the operation of the Bill. The *prima facie* object, if I may say so, of the Bill is to clear up disputed matter and that is the view point with which we are principally concerned. The next point is the question of piece-meal legislation with reference to Hindu law as detached from the entire system of Hindu law. Now, Sir, as regards the first point, I will at once submit to the House that, so far as I have been able to understand the opinions of the different Judges and other eminent persons who are qualified to speak on the subject, the conclusion, in a remarkable degree seems to be that the Bill itself will add to the difficulties, rather than take away anything from the difficulties. In this connection, Sir, I may place one or two observations before the House coming from the Honourable Sir B. C. Mitter, who was Advocate General in Bengal for some time. He says in his opinion given on the subject:

"If I were convinced that the Bill would serve the purpose which the private Member introducing it has in view, namely, really to remove doubts and difficulties, I would welcome it. The fundamental position of those governed by Mitakshara law is that property is held by the family and not by the individual as in the case of Hindus governed by the Dayabhaga law, Muhammadans or Christians. The property being held by the family, it seems to me that it is not right that the manager should have increased powers of dealing with it."

Then, Sir, analysing the different provisions of the Bill, he comes to the conclusion—"If the plaintiff has to prove that the manager has incurred liability within the scope of his authority, I believe, he will get his decree binding the family property under the present law and from that point of view, clause 9 is not only unnecessary but positively mischievous." Then he goes on to say:

"What justification is there for a statutory provision that the decree will be enforcible even though the other members who may be adults have not been made parties to the suit."

Then again:

"The whole difficulty at the present moment is to prove that the manager has incurred liability within the scope of his authority and clause 9 as drafted begs the question by making it incumbent on the plaintiff to prove that fact."

Now, Sir, if some time was devoted to the consideration of the question now before the House, it would be evident at once that it is not only the opinion of eminent lawyers who were consulted and who are entitled to speak on the subject that the Bill instead of diminishing them adds to the difficulties of the present situation, but the question in the end will resolve itself into one of fact. That is to say, the fundamental principles of the Mitakshara school being admitted and there being no attempt in Sahu Ram Chandra's case to change the fundamental principles of that school, the thing that will give trouble will generally be a question of fact and not so much of law. Therefore, Sir, apart from the second question, to which I shall presently draw the attention of the House, the main question about the removal of the difficulties relating to the liabilities of a son to pay his father's debts will not only remain, it seems, unsolved by the Bill, but in certain respects, it will add to the difficulties of the situation. If we go to the Madras Judges, the House will find that a similar opinion has been expressed, and, in some cases, in a very pointed form. I will not detain the House with any further discussion of the

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question of the expected removal of the difficulties by the present Bill, because anybody who has taken any trouble to go through the opinions which have been expressed on the subject from different parts of India will find that a large body of the opinions expressed, and in fact the major portion of it, tends that way, and I propose to leave the matter there.

The second point is the question of piecemeal legislation. Honourable Members will remember that in the very first year of its existence, the House had to face that question of codification of Hindu Law at the instance of my Honourable friend Mr. Seshagiri Ayyar. That question of codification of Hindu law has engaged the attention of the Government of India, I do not know for how long—it may be quite forty years now. (*Mr. T. V. Sheshagiri Ayyar*: I never asked for codification.) I beg to correct an error—it was Dr. Gour. (*Dr. H. S. Gour*: Error No. 2. I never asked for codification either.) It was Mr. Bagde, then. Some Member, Sir, initiated the debate. I am speaking from memory, and the House will forgive me if I have made a mistake. But ultimately the Resolution asking for codification was withdrawn. Sir Tej Bahadur Sapru—Honourable Mr. Sapru as he then was,—went very fully into the question and placed the pros and cons of the subject before the House. The difficulty seems to be this,—in all codification we give a fresh starting point, as it were, to the proposition that is to be enunciated as codified law. This codified form in the present instance is enunciated irrespectively of the context of the Hindu law which may have any bearing or relation to the point under codification. In other words, if the proposition is formulated in a particular way in a Code, we have to refer to the formulation itself and according to the primary laws of interpretation we have to consider the words of the Code itself and not the previous literature on the subject, unless of course, there is some doubt on any point. But, where the wording is clear and the proposition of law is clearly enunciated, we cannot introduce any such mode of interpretation. Now, Sir, I will just refer the House to one or two observations made by one of the Honourable Judges of the Madras High Court. Mr. Justice Deva Das says in his note on the subject:

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"I am not in favour of piecemeal legislation. If the whole of the Hindu law is to be codified it will be a tremendous task and unless the large majority of Hindus are in favour of it, it will be unwise to attempt legislation as regards the personal law of a large community which is supposed to be intimately connected with their religion."

He then goes on to consider the particular merits of the case of Sahu Ram Chandra:

"In a recent case Mr. Justice Spencer and I had to consider Sahu Ram's case and the two cases decided by the Privy Council following Sahu Ram's case."

Then he says:

"One of the points decided in Sahu Ram's case was: a mortgage was not an antecedent debt. In the three Privy Council cases, the personal remedy was not outstanding. We were inclined to the view that if the personal remedy against the father was outstanding at the date of the subsequent mortgage, the previous mortgage would be an antecedent debt. The present Bill if passed into law will create more difficulties than those it is intended to remove." etc.

And then he goes on to consider in detail the provisions of the various sections of the Act.

Now, Sir, as has been pointed out by some of the Honourable Members who have spoken on the subject already, the Hindus as a community have not come forward to have their law on the subject formulated or added to or altered in any particular manner, and specially in the manner in which it is proposed to be formulated by the Bill. And the House will see that in the opinions which have been obtained on the subject it has been pointed out that the formulation of the rights and liabilities in question in the Bill itself is not in accordance with the statement of the law as it is found in the Mitakshara school, and various instances have been given in these opinions of such divergences. So that, the Bill, in the garb of codifying the law, is modifying the law in certain respects. The Bill will really create a new law on the subject to some extent. That is one point which emerges very clearly from the Bill as at present drafted. There is a conflict of rulings if I may say so, on various other points of Hindu law and the courts subordinate to any particular High Court follow the interpretation of the law given by that particular High Court, unless that interpretation is overruled by the Privy Council. Therefore, Sir, the case in point, Sahu Ram Chandra's case so far as this particular point of a coparcener's liability is concerned, will be the law for any particular court which has to follow the interpretation which has been put upon it by its own High Court. (*Dr. H. S. Gour*: "There is a conflict of the High Courts themselves.") Yes, but there is separate machinery in the Charter of the High Courts for setting that right. I mean, that in case of conflict between two decisions of the same High Court on any point, there is the full Court, and directly there is a conflict of judicial decisions in any single High Court, it is for the full Bench of that Court, or the Full Court, to set the conflict at rest, and to lay down any particular proposition of law which may be taken by it to be the correct interpreation of law. I have already said that the Judicial Committee of the Privy Council has the power to set aside any incorrect interpretation of the law by any High Court in India. Sir, here I may remind the House of a well-known dictum of Lord Halsbury's which I may say has been reiterated and re-affirmed over and over again—that a case is only authority for what it actually decides, that the *ratio decidendi* in any particular case cannot be extended even by a logical process to other correlated cases, even where you think that you can so extend its operation, by a process of natural inference. Even there you will not be justified in extending its operation in that way as a matter of law. There lies the danger of a sweeping generalization, of codification from the particular to the general. Therefore I submit the House will consider the question now before it with great care, and if the House is satisfied in its innermost heart that the difficulties which are supposed to have been created by a certain Privy Council ruling will be really removed by the provisions of the Bill now before it, then and then only can the House think of committing a Bill of this kind to a Select Committee upon an acceptance of its principles. Now we are getting more and more familiar with the activities of the House in reference to various intended alterations of the Hindu law. I for one, Sir, have never made a secret of the fact that I always look with suspicion upon any such attempt to alter the Hindu law. Yes, it is suspicion because some times it is found that where we want to codify Hindu law, in reality the intention is to modify it. And if my suspicion has been justified whenever I have taken the pains to analyse the propositions as to codification which have been placed before the House now and again, I think, Sir, the fact will afford some justification for the opposition to the Bill, I am now placing before the House. Therefore, Sir, I request the House

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in all fairness to go through the opinions of eminent judges and eminent lawyers whose opinions have been elicited on the Bill, and I feel sure the House will think it prudent not to commit a Bill of this kind to a Select Committee and allow it to become law at a later stage.

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): It is no doubt, Sir, a very difficult matter to legislate in regard to Hindu Law. Say what you will, Sir, the fact remains that in the country the Hindu law as it is administered, is according to the decisions of the various High Courts and of the Privy Council. Now, Sir, in the matter of the liability of sons for the antecedent debts of the father, I know as a matter of fact that in districts this question is always in dispute, and a very difficult question it is always for courts to decide because the various High Courts have decided this point differently, and in some case our High Court in one case has decided in one particular manner and at another time in another manner. It is I think fit and proper that the Legislature should come to the assistance of those persons who are governed by the Mitakshara law and put all these points at rest.

As regards the different provisions of the Bill, it may be that they are not very happily drafted. That matter might be considered in the Select Committee. But on principle I think the Select Committee will be only doing its duty if it succeeds in however small a degree in removing the doubts on most important parts of Hindu law which exist at present because of the decisions of the various High Courts. Now, Sir, on this very subject as to the liability of Hindu sons for the antecedent debts of their father I have in my hand the opinions received here, and among them is the opinion of the Marwari Association in Calcutta. The letter of the Secretary of the Association says:

> "My Association is of opinion that in view of doubts and difficulties at present existing as to the state of the law on the subject and considering all the circumstances, it is expedient that the Legislature should intervene and lay down clear provisions. My Association represents a class of persons who are subject to the Mitakshara Law and who are vitally concerned in the subject-matter of the proposed legislation."

Sir, it is not quite correct to say that this is a matter, as decided by the various High Courts, which does not cause any difficulties or any troubles on the parties. People in the United Provinces are governed mostly, with the exception of a few Bengalee gentlemen who may be there, by the Mitakshara law and I know how frequently the Courts are used by the parties for the purpose of deciding questions bearing on this branch of the Hindu Law.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, Honourable Members will remember that when this Bill was before the Assembly on the last occasion, my Honourable friend, Dr. Gour, had proposed that it should be referred to a Select Committee. The Assembly then agreed that the Bill should be circulated for the purpose of eliciting opinion. Well, Sir, those opinions are not yet complete. Government were waiting until they were complete to decide the attitude they should adopt as regards the principle of this Bill. When the opinions are complete, they would normally be referred to the Standing Committee of this House attached to the Home Department, and then we should be able to come to some conclusion as to whether the principle of this Bill is sound or otherwise. We are not therefore prepared to say that the principle of

this Bill is sound if, on the other hand, the Assembly considers that the principle is unsound, Government are not prepared to contest that view. But, Sir, we do not think that if, on the other hand, the Assembly are rather inclined to take the view that the Bill should be referred to a Select Committee, before they do that, they should see the complete opinions, and that therefore, instead of accepting the present motion, it should rather be postponed. I think, however, Sir, that out of courtesy to the House, I should cite the opinions of the Bombay Government. They were included in a letter from that Government dated the 17th of February, which was received in the Legislative Department yesterday and was given to me after the Assembly adjourned last night. I propose, therefore, to cite the opinions in that letter and its enclosures somewhat at length, so that Honourable Members may be aware of them. The Bombay Government state:

"In the opinion of the Governor in Council the main arguments against the Bill are that:

(1) it is piece-meal legislation;

(2) it strengthens the idea of a son's pious duty to pay his father's debt;

(3) it unduly favours the creditor;

(4) it will break up the coparcenary system;

(5) it is unnecessary; and

(6) it attaches liability to non-contracting parties. Moreover, the Mitakshara law has been interpreted differently in different provinces and an attempt at All-India legislation will merely create confusion."

The Bombay High Court state:

"I am directed by the Honourable the Chief Justice and Judges to state that they are not in favour of the Bill and some of the Honourable Judges object strongly to such piece-meal legislation relating to Hindu Law."

The Honourable Mr. Justice Fawcett said:

"I am against weakening the safeguards which the Privy Council have laid down as to the doctrine of 'antecedent debt.' A recent case heard by Marten J. and myself has well exemplified the necessity of those safeguards. Otherwise a money-lender will be easily able to avoid the onus of proof, that ordinarily lies upon him of showing 'legal necessity' or family benefit for his loans to a Hindu father, who is a member of a joint family."

The Judicial Commissioner of Sind writes at length against the Bill. (*Mr. J. Chaudhuri*: 'Is anybody in favour of it?') Practically, I believe, no one from Bombay. That is practically the main line of the Bombay opinion. The opinions of various High Court Judges have been referred to by Mr. Subrahmanayam and Mr. Mukherjee. I would like to cite definitely the opinion of the Madras Government, because I believe the Mitakshara Law is the main law in force in that Presidency. They state:

"His Excellency the Governor in Council does not consider that this measure is likely to be useful unless its intention is to break up the Hindu joint family system and make what hitherto has been understood to be joint family property as between a father and his sons to be the absolute property of the father."

Then, the Honourable the Chief Justice of Madras notes:

"If it is desired to codify Hindu Law this does not seem to be the way to do it. I should imagine that every line of this Bill would result in litigations and conflicting decisions of the court."

Well, Sir, as I have said, if this House is not prepared to endorse the principle of this Bill, then we also are not prepared to contest that view. If, on the other hand, they wish to refer it to a Select Committee, we would suggest rather that the motion should be postponed than that such a

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decision should be arrived at now when the opinions are not complete. The opinion of the United Provinces Government, I would point out, has not yet been received. The leading case, Sahu Ram's case, which, it may be suggested, led up to this Bill, and the later case, Chet Ram's case, which, it may be suggested, rightly or wrongly, has already settled the alleged conflict of opinion, were both cases from the United Provinces, and as I have observed, that Government's opinion has not yet been received.

Dr. H. S. Gour: In view of what has fallen from the Honourable Mr. Tonkinson, I would ask leave of the House to withdraw my motion for reference to the Select Committee. I would particularly point out that the three Governments vitally concerned with this branch of the law are the Governments of the United Provinces, Bihar and Orissa and the Central Provinces (*A Voice*: 'And Madras'), and Madras. Of these, the Central Provinces and the Bihar Governments are unequivocally in favour of the Bill, but at the same time I should like to have the opinion—and very valuable opinion it would be—both of the Government and of the High Court at Allahabad. I ask, Sir, for leave to withdraw this motion. I shall renew it later on.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): Sir, I think the sense of the House is to throw out the motion altogether. Therefore, I am against withdrawing it. Dr. Gour first of all gave us . . . .

Mr. President: The Honourable Member objects to leave being given?

Mr. Harchandrai Vishindas: Yes, Dr. Gour in his opening remarks gave us to understand that the balance of opinion received was in favour of the Bill. But from the passages that have been read out to us I think there is not a single favourable opinion quoted anywhere, perhaps except what Mr. Pyari Lal has quoted. In view of that fact, I think it will be in the interests of saving time that we should not trouble any Select Committee with this Bill or trouble other people about it. Sending this Bill to any Committee is pure waste of time. I think if the House is consulting their best interests, they should throw out this Bill straight off.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): I also oppose the motion for giving leave to withdraw this motion. We have considered it at length. We have to see whether really this Bill is needed at all. There was . . . .

Mr. President: Is the Honourable Member speaking on the motion for withdrawing the Bill? The only question before the House is that the Bill be referred to a Select Committee. No question has been put from the Chair regarding withdrawal. If a Member asks for leave to withdraw and the Chair says 'Is it your pleasure that leave be given to withdraw the motion?' then, if objection is taken, the debate proceeds. There is no question of leave being given to withdraw before the House now.

Rao Bahadur T. Rangachariar: I speak on the merits of the Bill itself. The only justification urged in support of this measure is the conflict of decisions between the various High Courts following Sahu Ram's case, but it is rather curious that the author of this measure, who introduced it in November 1921 has not taken note, has not cared, to inform the House that subsequent to his Bill in March 1922, after he introduced the Bill, Sahu Ram's case was re-considered by the Privy Council in the light of the

conflict of decisions of the various High Courts. They re-affirmed the decision in Sahu Ram's case, in Chet Ram's case reported in XLIX Indian Appeals, and reported also in 44 Allahabad. So that the only ground urged for this measure to set at rest the alleged conflict of views disappears altogether. So the Privy Council has once for all decided and re-affirmed what they have decided in XXXIX Allahabad. Now there may be another ground. If the Privy Council go wrong, if they affirm a proposition which is opposed to Hindu notions, no doubt the Legislature will intervene and ought to intervene. Now what are the propositions laid down in Sahu Ram's case? Two propositions are affirmed by the Privy Council as regards the definition of antecedent debt, that the debt in respect of which the liability is sought to be imposed on the son must be one incurred independently of the security offered by the joint family property. The second proposition laid down in Sahu Ram's case is that the pious obligation to pay the father's debt does not arise till the father's death. Can it be said that either of these propositions is inconsistent with ancient Hindu law, or Hindu law as understood by the people? If either view is opposed to the Hindu law, or prevailing Hindu notions as regards enforcement of the son's liability, I can understand legislation intervening and legislating in order to set right where the Privy Council have gone wrong. So it is not a case of setting at rest a doubt or conflict between decisions; what my Honourable friend wants to do is to set right the Privy Council . . . .

Mr. Harchandrai Vishindas: And create a new law.

Rao Bahadur T. Rangachariar: And create a new law. Now the question is, do the circumstances call for it? Is the decision so opposed to Hindu law that the Legislature should intervene? Now, Sir, what is the obligation? Why should the joint family property be taken away by an extravagant father? You know the liability of a son to pay the father's debt. Unless the debt is illegal or immoral, the son is liable to pay the debt according to Hindu law. Now in enforcement of that pious obligation oftentimes especially minor children are deprived of their property because the father happened to be extravagant, and the protection for the children is taken away by the enforcement of this liability. Therefore, as has been truly pointed out, my Honourable friend is now trying to favour unduly creditors.

Mr. Harchandrai Vishindas: Money-lenders.

Rao Bahadur T. Rangachariar: Money-lenders, and deprive poor people of their interest in ancestral property. Therefore, I say he wants to unsettle what the Privy Council have settled. Nowhere do the Privy Council in their decision say this is a new law; they say this is according to the Hindu texts. In the decision in XXXIX Allahabad the learned Judges took care to say: " We have examined the Hindu texts on the subject and we find the view we take is in accordance with the Hindu texts." And there when the Privy Council have taken the trouble, twice over, to settle what should be the law on the subject, unless we are satisfied that that law is unsound, that that law is opposed to Hindu notions, that that law is opposed by the Hindu community, why should the Legislature intervene? Where is the demand by the Hindu community for legislation of this sort? Where has Dr. Gour allowed time to elapse in order to enable the Hindu community to express dissatisfaction with the decision of the Privy Council in March, 1922? My Honourable friend was himself apparently unaware of that decision, for otherwise I could not justify his not referring to it in his opening remarks to-day. He still called on this House to legislate in order to set at rest conflicting decisions of the High Court which took

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place before the decision in March, 1922. Either he did not properly lead the House, either he was ignorant of the decision, or he purposely omitted to refer to it. Therefore, Sir, I take it in a case like this where you want to tinker with the existing law, a strong case has to be made out. Honourable Members will agree that when you want to legislate on a matter like this which has been settled by a long course of decisions from Indian appeals, when you want to unsettle it, you must make out a strong case. My Honourable friend has not made out any such case. That is so far as the son's liability is concerned. The Bill deals with another aspect, that is to define the Coparcener's liability. What is the difficulty which has been felt either in the case of a debt contracted by the managing member of a family either for necessity or for the family benefit? The manager can alienate property, he can borrow for either of those purposes, what is the necessity for stating the law? There is no conflict of decisions. No practitioner has felt any difficulty in applying the Hindu law in that respect. Sir, further this Bill is open to another objection. It combines substantive law with adjective law. Sections 2 to 4 of the Bill deal with substantive Hindu law. Sections 5 to 9 deal with questions of evidence and procedure. Even so, Sir, if Honourable Members will take the pains to look at the Bill—I think very few have taken the pains to do that—Honourable Members will realize, for instance. the great difficulty which must exist in this matter of codification. I can sympathise with Dr. Gour. It is not easy to codify Hindu law. Look at the language of clause 9, sub-clause (3): "Where a decree directs sale of the rights, title and interest of the defendant in any property, the question whether the sale so made suffices to pass the entire estate of which the defendant was the manager or only his own interest, is one of construction and intention to be gathered from the proceedings and other circumstances of the case." Do you want a section for that? Is this the way to enact laws? And again take section 3—"Notwithstanding anything otherwise held to the contrary." What is the meaning of that? What does it mean? I do not think I can do any better, but I feel here really is the apprentice hand, and it is not right that we should allow a law like this in a matter already settled by judicial decisions. There are other things. For instance we have family property. My Honourable friend uses three terms to connote the same thing. For instance in clauses 3 and 4 he uses the expressions "family property," "estate" and "coparcenary estate." He uses three terms in the Bill to denote the same thing. Of course these are matters which can be set right in the Select Committee; but I only wish to show what difficulties there are in the way of codifying a matter like this. And has he at least tried to codify completely any particular department of Hindu Law? Now, in Hindu Law, Joint Family is perhaps the longest and largest chapter; it comprises so many things. You have to deal with alienation, alienation of moveables and immoveables, debts, joint family, self-acquisition, partition, survivorship and so many other heads under which you would have to codify the law. if any attempt is made at all for codifying Hindu law. This is an unnecessary measure, an uncalled for measure, and it is open to serious objection; the language is very loose and it does not correctly describe the law, and it attempts to unsettle a decision of the Privy Council without any ground for the same. Therefore, Sir, I oppose this measure.

Dr. H. S. Gour: Sir, it has been very refreshing . . . .

Mr. President: Is the Honourable Member going to reply to the whole debate now?

Dr. H. S. Gour: Yes, Sir.

Mr. President: I presume he will take some time.

Dr. H. S. Gour: Yes, Sir.

Mr. President: In that case I think we had better adjourn till Half Past Two.

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

The Assembly re-assembled after Lunch at Half Past Two of the Clock. Mr. Abul Kasem was in the Chair.

Dr. H. S. Gour: Sir, I shall very briefly now reply to the various arguments advanced against the committal of my Bill to the Select Committee. Before doing so, I shall certainly be failing in my duty, Sir, if I did not point out that some of the Honourable Members who have criticised my Bill have not paid me the compliment of even reading it, while others like Mr. Harchandrai Vishindas, who got up and made an emphatic statement that not a single person was in favour of the Bill, unfortunately could not have turned the pages of the compilation of opinions which the Government supplies free and gratis to the Honourable Members of the Legislative Assembly. For if he has only casually glanced at that compilation, he would have found that it was not a case where not a single person supported the Bill: but on the other hand a large body of opinion of persons who count in the Provinces affected by my Bill were not only in favour of my Bill but unequivocally and whole-heartedly supported it. I am astounded to hear the statement repeated by Member after Member that this is a Bill which need not even go to the Select Committee; and Mr. Harchandrai Vishindas, whose interest in the Bill is evidenced by his conspicuous absence from his place, was even not prepared to give me the leave which I wanted in response to a suggestion made by my Honourable friend, Mr. Tonkinson, for a further postponement in order to complete the opinions particularly of the Allahabad High Court and of His Excellency the Governor of the United Provinces.

Now, Sir, I will very briefly refer to a volume of opinion of the persons and Judges who are in favour of my Bill. I am under the painful necessity of having to do so, because my friends, Mr. Rangachariar and Mr. Subrahmanayam, seem to have suddenly developed some short-sightedness, for while they quoted from the opinions of Puisne Judges of the High Court of their own Province they forgot the opinion of the Chief Justice.

Rao Bahadur T. Rangachariar: May I say, Sir, I never relied on any opinion. I relied upon my own opinion.

Dr. H. S. Gour: They forgot the opinion of the Chief Justice of Madras who says:

"I have no objection to the object of the Bill or the principle embodied in it."

Mr. H. Tonkinson: Sir, I do not think that is an opinion of the Honourable the Chief Justice of Madras.

Dr. H. S. Gour: I am sorry, Sir. It ought to be Mr. Justice Oldfield. Now, Sir, I shall deal with the most important Provinces affected by this Bill. As I have said, the Provinces primarily interested in this Bill are the orthodox Mitakshara Provinces, Bihar and Orissa, the United Provinces, the Central Provinces, and partially Madras. Now, Sir, look at the Bihar and Orissa Province:

"The Governor in Council considers that the principle underlying the Bill is a question that should be left to be decided by non-official opinion in the central Legislature. I am to add that in the opinion of the Local Government a decision of this much discussed question by means of legislation would be beneficial to the Hindu community by reducing long and expensive litigation. The creditors of the Mitakshara joint family and the debtor family itself would be in a position to know where they stand and the time of the Courts would be saved."

That is an emphatic opinion from the Province of Bihar and Orissa, which is directly affected by my Bill, in its favour.

I turn now to the Central Provinces and Berar, another orthodox Mitakshara country. His Excellency the Governor, writing through the Legal Secretary to the Government, says:

"Though the law, however, is clear, there is a great majority amongst those consulted by the Governor in Council in favour of altering it on the lines of Dr. Gour's Bill, and the Governor in Council agrees with the majority on the ground that the Privy Council decisions are contrary to the current of previous decisions in India, a tendency unduly to restrict the powers of a Hindu father who is manager of a Mitakshara joint family. The Governor in Council therefore approves of the first four clauses. He thinks it advisable that it should be made explicit in the Bill that the change in the law which it is proposed to make will only have prospective effect."

Then, Sir, we have the North-West Frontier Province, Burma, and Delhi supporting my Bill. Last but not least the Marwari Association of Calcutta,—a very important body of orthodox money-lenders as my friend says,—merchants represented here by my friend there, strongly support my Bill, not in the interests of any particular class or community or interest but in the interests of the general administration of justice. My friend, Mr. Pyari Lal, has already read out to the House the opinion of this important body, the Marwari Association of Calcutta. Let me quote one sentence from their communication. "My association is of opinion that in view of the doubts and difficulties at present existing as to that state of law on the subject and considering all the circumstances it is expedient that the Legislature should intervene and lay down clear provisions."

In the face of this phalanx of opinion collected and presented to the Honourable Members of this House I am surprised that a remark should have escaped my friend, who has just now strolled into the House, that nobody was in favour of this Bill and that leave should not be granted to collect further opinions from persons vitally affected and directly interested in it. Sir, I now turn to the individual criticisms hurled against me and my Bill by Honourable Members of this House. First and foremost there is my friend, Mr. Subrahmanayam, who says "What do you want this law for?" In a curiously cynical way he says "The law is quite clear; the Judges do not want any alteration of the law" and then finding that the principle was too strong for him he descended into the details and tore me to pieces clause by clause. Well, Sir, my dismembered remains still remain to reply to him; and I feel that even in my mangled condition I

shall be able to give a good account of myself to my friend's destructive criticisms. I have always understood that detailed criticism of the drafting of a Bill was not the subject of proper discussion at this stage when what we are concerned with here is the central principle, the basic principle. If this House is of opinion that that principle should be accepted, the details are relegated to the Select Committee. My friend gave the go-by to the main principle and attacked the details, the wording of the several clauses in my Bill. I do not think I shall waste the time of this House by defending myself, for the simple reason that if I had any idea that the draft of my Bill was above criticism I should not have come here to ask for leave to refer it to the Select Committee; I should have asked this House then to pass it without amendment and without further consideration. Therefore, I submit that the very fact that I ask this House to allow me to take my Bill to Select Committee shows that I am perfectly prepared that the whole draft should be examined clause by clause and improved upon in the light of the opinions of Members of that Committee and that the official draftsman should improve upon my draft in the way acceptable to him.'

Then, Sir, we have the opinion of my friend, Mr. Rangachariar. I have always a very great respect for Mr. Rangachariar when he is not infused by religious enthusiasm, but when a question comes up in which a statement of Hindu law is concerned, Mr. Rangachariar deteriorates into language and thoughts which do not admit of any serious criticism. He asks me, Sir, if I have heard of Chet Ram's case, and if I have done so why did I not inform the House about it? Now, Mr. Rangachariar, if he had turned to the very first page of the opinions given by the Madras Government, would have found reference to Chet Ram's case given in clear black print, which could not have escaped the Argus eye of my learned friend opposite. They have pointed out what Chet Ram's case and what Sahu Ram's case decide. Therefore I submit the observations which my Honourable friend made that Chet Ram's case overruled the Madras High Court Full Bench case and has reiterated and re-affirmed the previous decision in Sahu Ram's case are entirely wide of the mark. If Chet Ram's case has done so, if it has overruled the Madras Full Bench case, then it is all the more reason why this Bill should come before the Select Committee and we should decide once for all whether the Madras Full Bench case was right or wrong or whether Chet Ram's case was right or wrong, because there is a conflict between the Full Bench decision of the Madras High Court and the view of their Lordships of the Privy Council. I submit, therefore, it behoves this House to settle this long thorny question of Hindu Law by either deciding in the manner decided by the Madras High Court or by their Lordships of the Privy Council. Instead of being an argument for making short shrift of my Bill it is an argument for its committal to Select Committee. Then, Sir, finding my position invulnerable on the main ground upon which I have asked this House to give me leave to take my Bill to Select Committee, my friend followed the example of his colleague, Mr. Subrahmanayam, by descending into the petty details of the Bill. He said that these details of the Bill have not been well drafted and that they are very amateurish. Whoever in this House, Sir, ever accused me of being anything more than an amateur draftsman? And I cannot understand why my friend should have wasted his words by criticising the draft of a measure of which the principle, and the principle alone, should have been the subject of discussion. But, Sir, the cat was let out of the bag not by Mr. Rangachariar, but by my friend Mr. Mukherjee. He, at any rate, was

[Dr. H. S. Gour.]

more frank and candid in his confessions than my friend, Mr. Rangachariar. He used no language masked in legal jargon. He said 'I do not like this Bill, because I do not like any encroachment upon Hindu law', and that is perfectly intelligible. I can quite understand and respect my friend Mr. Mukherjee when he meets me face to face and says that being an orthodox Brahmin he does not want any interference with his ancient laws, but I cannot understand my friend Mr. Rangachariar, who masquerades in the guise of the critic and gives his reasons, suppressing and obliterating his real undying prejudice to any reform in Hindu law or Hindu religion. That, I submit, Sir, is a position which is not intelligible to me and it does not do him any credit. Why does he not come straightforwardly and say 'I don't want any reforms. I revolt against all innovations, and I shall not have any reforms of our laws'? That, I submit, is a position which is perfectly intelligible to me and would be intelligible to the House.

Now, Sir, I have shown that this is a measure which has met with a large body of support from the provinces which I have quoted, and they are provinces which count. I have shown, Sir, that the criticisms directed against my Bills do not and should not affect the judgment of this House at this stage. I therefore, Sir, feel confident that the House will give me permission to take this Bill to the Select Committee.

The Assembly divided:

AYES—27.

Asad Ali, Mir.	Latthe, Mr. A. B.
Ayyar, Mr. T. V. Seshagiri.	Man Singh, Bhai.
Bagde, Mr. K. G.	Nabi Hadi, Mr. S. M.
Barua, Mr. D. C.	Neogy, Mr. K. C.
Bijlikhan, Sardar G.	Pyarilal, Mr.
Cabell, Mr. W. H. L.	Rajan Baksh Shah, Mukhdum S.
Gidney, Lieut.-Col. H. A. J.	Reddi, Mr. M. K.
Ginwala, Mr. P. P.	Sarfaraz Hussain Khan, Mr.
Gour, Dr. H. S.	Shahab-ud-Din, Chaudhri.
Gulab Singh, Sardar.	Sinha, Babu L. P.
Holme, Mr. H. E.	Sohan Lal, Mr. Bakshi.
Ibrahim Ali Khan, Col. Nawab Mohd.	Ujagar Singh, Baba Bedi.
Ikramullah Khan, Raja Mohd.	Venkatapatiraju, Mr. B.
Jatkar, Mr. B. H. R.	

NOES—34.

Abdul Rahim, Khan, Mr.	Moncrieff Smith, Sir Henry.
Agnihotri, Mr. K. B. L.	Muhammad Hussain, Mr. T.
Aiyar, Mr. A. V. V.	Mukherjee, Mr. J. N.
Bajpai, Mr. S. P.	Nag, Mr. G. C.
Bhargava, Pandit J. L.	Nayar, Mr. K. M.
Bray, Mr. Denys.	Percival, Mr. P. E.
Clark, Mr. G. S.	Ramayya Pantulu, Mr. J.
Crookshank, Sir Sydney.	Rangachariar, Mr. T.
Faridoonji, Mr. R.	Rhodes, Sir Campbell.
Gajjan Singh, Sardar Bahadur.	Samarth, Mr. N. M.
Girdhardas, Mr. N.	Sams, Mr. H. A.
Haigh, Mr. P. B.	Sarvadhikary, Sir Deva Prasad.
Hindley, Mr. C. D. M.	Singh, Babu B. P.
Hullah, Mr. J.	Singh, Mr. S. N.
Jamnadas Dwarkadas, Mr.	Subrahmanayam, Mr. C. S.
Kamat, Mr. B. S.	Tulshan, Mr. Sheopershad.
Mitter, Mr. K. N.	Vishindas, Mr. H.

The motion was negatived.

THE LEGAL PRACTITIONERS (AMENDMENT) BILL.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I beg to move:

"That the Bill further to amend the Legal Practitioners Act, 1879, be referred to a Select Committee consisting of the Honourable the Home Member, Mr. Jamnadas Dwarkadas, Mr. P. P. Ginwala, Munshi Iswar Saran, Sir Montagu Webb, Rao Bahadur P. V. Srinivasa Rao, Mr. T. V. Seshagiri Ayyar (*in place of Sir Jamsetjee Jejeebhoy, who is not here*), Sir Campbell Rhodes, Mr. Pyari Lal and the Mover."

3 P.M. Sir, while introducing this Bill, I briefly stated its genesis. This Bill is intended to legalise the enrolment of women duly qualified to practise at the Bar. Honourable Members will find that in a recent full Bench judgment given by the Patna High Court, a lady graduate, who was otherwise qualified to practise at the Bar, was refused permission on the ground of her sex, though I am informed that permission has been given to a lady law graduate by the Allahabad High Court. The decision of the Patna High Court proceeded mainly upon the interpretation of the word "person." Their Lordships' view was that, when the Legal Practitioners' Act was enacted, the word "person" meant a person of the male sex and that, therefore, it could not mean and include a person of the female sex. My short Bill is intended to make this clear, what I deferentially submit, was already clear in view of the provisions of the General Clauses Act which lays down that the word "person" means a person of either sex. But in order to remove the difficulty created by the decision of the Patna High Court, I crave leave of this House to take this Bill to the Select Committee. I think, Sir, that there could be no two opinions about the propriety of my Bill. In England, by the removal of the Sex Disqualifications Act, the disqualification which previously attached to members of the female sex has been swept away, and I submit that the disqualification which has been held to exist in this country should also be removed by an Act of the Legislature. I do not apprehend that there will be any opposition on the part of the Government. It might, however, be said that the Legal Practitioners Act does not at present extend to the Presidency of Bombay and that, therefore, it would be better to frame an independent Bill on the lines of the English Statute. But, Sir, persons who are qualified to practise at the Bar are daily growing in numbers. Only the other day, we received a message from England that about 10 ladies were called to the Bar and there are a few Indian lady graduates in law. And I, therefore, submit that the amendment I ask this House to make would sufficiently meet our immediate requirements; and, if hereafter the Government think of passing an independent Act removing generally the disqualifications attaching to the female sex, they would be at liberty to do so. And, if in the Select Committee they convince that body that an independent Act would be preferable to an Act *ad hoc* such as my Bill is, I should be quite prepared to allow them to substitute their Bill for mine. I ask, Sir, that the principle of this Bill should be decided here and now and in favour of the female sex.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, my Honourable friend by the Bill before the House proposes to insert a definition in section 3 of the Legal Practitioners' Act to the effect that a person includes a woman. Now, Sir, what will be the effect of this definition? And in this connection I must refer to the details not of the Bill but of the Legal Practitioners' Act. Let us refer to section 4. Section 4, Sir, lays down that a person entered as an advocate or a vakil on

[Mr. H. Tonkinson.]

the roll of any High Court shall be entitled to practise in all Courts subordinate to the Court and so on. Now, Sir, if the word "person," the second word in that section, includes a woman, that will not mean that a woman, because of this Bill will be able to be enrolled as an advocate or a vakil. Advocates or vakils are enrolled, Sir, under the rules made by the High Court under the Letters Patent. And in order to make sure that a woman who fulfils other requirements shall be enrolled as an advocate or a vakil, it would be necessary to amend the Letters Patent . (*Cries of* "No, no.") I think, Sir, that there is little doubt that that is correct. We go on to section 6. Section 6 deals with pleaders and mukhtears. Here I agree that the question is different. The insertion of the definition proposed by my Honourable friend in the Legal Practitioners' Act will secure that for the area to which the Legal Practitioners' Act extends that women may be enrolled as pleaders and mukhtears. But it will only secure this for the areas to which the Legal Practitioners' Act extends. There are several areas in India to which the Legal Practitioners' Act does not extend, and I will merely cite the case of the Presidency of Bombay as being the most important. I presume, Sir, that the purpose of my Honourable friend is to secure that women shall be as eligible as men for enrolment in all the various grades of legal practitioners. This is not done by this Bill, and I submit, Sir, that the Select Committee appointed on the motion before the House could scarcely amend the Bill so as to secure the object which my Honourable friend has in view. It could not, I think, be amended, in particular. because of the fact that an amendment of the Bombay Act will require the sanction of His Excellency the Governor General under the Government of India Act, and that sanction has not been obtained. Honourable Members will remember the discussion on the Resolution moved, I think by Mr. Joshi, if I remember aright, when Dr. Gour moved as an amendment to the Resolution about the disqualification of women from being electors to the Indian Legislative Assembly to the effect that the sex disqualification as regards legal practitioners should be removed. Sir, we consulted Local Governments upon that question and the opinions have been placed in the Library. I hope that they have been seen by Honourable Members. If I may summarise those opinions, the general opinion is that whilst there is no substantial objection to making women as eligible as men to enter upon a career as a legal practitioner, the question is one which in the present condition of India should be decided by Indian opinion and Government should not attempt to guide that opinion. We referred the question to the Standing Committee attached to the Home Department and they advised that when the next stage of the Bill is reached, Government should point out the defects of the Bill and endeavour to obtain the view of the House as set out above. They advised that Government Members should not vote on this question, but if the House does accept the principle, Government should undertake to bring in a Bill which will secure that the principle is accepted. The Government of India, Sir, have accepted the advice of the Standing Committee. They would like, therefore, to obtain the opinion of this Assembly on the general question. on the general principle. If this Assembly accepts the principle that women should be as eligible as men for enrolment in all grades of legal practitioners, then Government is prepared to draft a Bill, which will really give effect to this Bill. Sir, I suggest that, if my Honourable friend will agree. such an opinion could be obtained upon the motion now before the House. If it is decided on this

motion to refer this Bill to a Select Committee, that Select Committee need not meet, and the acceptance of the motion now before the House could be regarded merely as an acceptance of the principle to which I have referred. Government would then draft a Bill and would introduce it in the Legislature as early as possible. Of course, the fact that Government is neutral means, I need hardly say, that Members of Council will not vote, but that all other official Members may vote as they please.

Dr. H. S. Gour: May I, Sir, interpose at this stage of the debate to explain my position with reference to what has fallen from the Honourable Mr. Tonkinson? The motion before this House is for reference of my Bill to a Select Committee, and under the ruling of you, Sir, this House, if it adopts my motion, will only commit itself to the principle of the Bill, namely, that women should be eligible to practise at the Bar as men. The Bill will then go to the Select Committee. If acting upon that principle, the Government introduce a measure giving effect to the principle accepted by this House, I shall not convene a meeting of the Select Committee, and in that case the Government measure will replace my measure. That was my intention, and it is with that object in view that I made it clear in my opening speech that if the Government feel that the object my Bill has in view can be better served by a larger measure introduced by the Government, I shall not make further progress with the Bill. With these reservations, Sir, I move that my motion that the Billl should go to the Select Committee should be voted on by the House.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, I desire to give the principles of this Bill my hearty support. It has been long overdue. We have had Indian lady doctors—and very capable Indian lady doctors for the matter of that—for many years. Before any other University thought about it, my University—it is nearly 40 years now—admitted a lady graduate and she graduated in Medicine later. Women law practitioners are not rare in this country. In solicitors' offices and elsewhere they are doing good work, and the latest report from England really takes away all the conservative objections that were so long held in England, which has been behind hand of Calcutta in admitting ladies as graduates. The particular lady Bachelor of Law, to whom reference has been made by Dr. Gour, is one of the most distinguished graduates that the Calcutta University has turned out. There was another before her whom the Calcutta High Court did not see its way of admitting. We are changing opinions faster in these matters than in the West and I think this Assembly should give its sanction and blessings to the principles of this Bill, and I think also that what Mr. Tonkinson has indicated would be the best way of proceeding, because that would be a comprehensive all-India measure.

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

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): Sir, I did not mean to speak on this simple question, but as a Behari Muhammadan friend of mine has spoken in this House, I am compelled to rise to say that the view he has taken cannot be the view of any cultured Muhammadan or of any sensible man, from our part of the country. The view he has expressed is opposed to common sense,

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

[Khan Bahadur Sarfaraz Hussain Khan.]

humanity, civilization, and everything sensible. Simply because a woman appears before the Court is it possible and reasonable to suppose that the judge would pass an opinion in her favour? That is silly. I need only say this much that a Muhammadan cannot possibly tolerate such an expression of opinion in the House openly as has been put forward by my Honourable colleague and I oppose it, and support Dr. Gour.

Khan Bahadur Abdur Rahim Khan (North-West Frontier Province: Nominated Non-Official): Sir, I have much pleasure in supporting Dr. Gour. My Honourable friend who has just spoken in Urdu, was prompted to oppose this Bill from a chivalrous spirit because he does not desire that our fair sex should have the duty of appearing before the Court. He did not mean it in another sense. I have much pleasure in supporting this Bill on the following grounds. We know that a good many ladies, especially *purdah nashin* ladies are very badly handicapped. When they want legal advice, on account of the *purdah* system, they cannot consult any barrister or pleader, so if we have lady barristers or pleaders, or even Mukhtars, I think we will be doing justice to the fair sex. Moreover, Sir, India is now advancing. The old days are gone and our women must come into the field, and even those women who are married. I think they will be a great help by working at the Bar. Though I come from a very backward Province, I must say in regard to the remarks which have fallen from the lips of my Honourable friend to the effect that the courts will be prejudiced, that there is some truth in that, but still I think it will be a great trial for our judges to exercise their impartiality. Another thing which has not been brought to the notice of this Honourable House is that the presence of ladies as barristers in court will make the judges and the barristers behave themselves.

Rai Bahadur S. N. Singh (Bihar and Orissa: Nominated Official): I rise to say a few words in regard to this question as there has been considerable stir about it in Bihar and Orissa. In that Province of Bihar and Orissa, a lady qualified herself for the legal profession after passing the necessary examinations, but when she applied for permission to practise at the Bar, she was told that, as the law stands, she could not obtain that permission. The Patna High Court also took the same view. Now, Sir, we all know that there are ladies in other parts of the world who have qualified themselves for the legal profession, and have been practising at the Bar, and there is no reason why the same treatment should not be accorded to our ladies in India. There is, Sir, a keen feeling in regard to this matter, especially as there is no restriction on ladies qualifying themselves for the legal profession, but it is strange that as soon as they qualify themselves for the legal profession, they should be told that they cannot practise at the Bar. As we all know, there are hundreds and thousands of female litigants in all parts of India, and as things stand at present, they can communicate with their male lawyers only through some men, some of whom are illiterate, and the result is that in so many cases, the cause of justice suffers. For these reasons, Sir, I think the principle of the Bill should be accepted.

(*An Honourable Member*: "The question may now be put.")

Colonel Sir Henry Stanyon (United Provinces: European): Sir as a Member of the European Bar in this country I give my support to the

principle contained in this Bill. I agree with what the Honourable Mr. Tonkinson has pointed out that the Bill itself, which proposes that the word " person " in the Legal Practitioners' Act should include a woman, will not carry out the purpose which is desired and may lead to embarrassment. I do not at all indorse the apprehensions which were advanced by my Honourable friend who spoke in Urdu. Our Judges and Magistrates are to be subjected to a good deal of trial by legislation which is going to alter the law; and many things have been said about them; but I do not for a moment apprehend that susceptibility to female charms will take them away from justice. My friend was alarmed lest a young female advocate should carry away by her charms the judge, the witness, and even the pleader on the other side. I do not apprehend that. He said that the remedy which the public would find for that state of affairs would be to have ladies on both sides, and that would take away practice from the male practitioners. I do not know what would be the result of having ladies on both sides; I would rather not attempt to speculate; but I think the time has gone by when we can claim disqualification on the ground of sex. Women have proved themselves qualified in every department, particularly in the medical department, as pointed out by my friend Sir Deva Prasad Sarvadhikary; and there is no doubt whatever that in this country women lawyers of ability, experience and trustworthiness will be a great help in dealing with clients who are unable to emerge from the *pardah* to consult male advisers.

For all these reasons, I support the principle of the Bill.

The motion was adopted.

THE CASTE DISABILITIES REMOVAL (AMENDMENT) BILL.

Mr. K. Muppil Nayar (West Coast and Nilgiris: Non-Muhammadan Rural): Mr. President, in asking leave of the House to introduce my Bill to amend the Caste Disabilities Removal Act of 1850, I wish to express my regret for my inability to bring up this matter earlier because of certain personal disabilities and because of the trouble in Malabar—I have very little to add to what is stated in the Statement of Objects and Reasons and I wish only to explain a few points so that Honourable Members may clearly understand the difficulties which it is sought to redress. Act XXI of 1850 provides that any law or usage which inflicts on any person forfeiture of rights or property by reason of his renouncing his religion or being deprived of caste shall cease to be enforced as law. Let me mention at the very outset that the present Bill is necessitated by the peculiarities of the law which govern certain communities that exist in certain portions of two districts on the Malabar Coast. The Marumakathayam and Aliyasantana Laws are peculiar to the West Coast and I think nothing like them exist anywhere else in the world. The Aliyasantana Law agrees in the main with the Malabar Marumakathayam Law. Under Marumakathayam Law all rights of male members to the tharawad or joint family and the property dies with them, their wives and children having no share as each of them belongs to the tharawad from which the wife comes. The tharawad or family is perpetuated through the female members such as all the sisters and nieces and their daughters and so on. One basic principle on which the law stands is that no partition is allowed except with the consent of every member of the family, and in practice, generally partition is an exception. To take a concrete example a tharawad is composed of X, Y, Z, three sisters and A, and B, two brothers and all the

[Mr. K. Muppil Nayar.]

children of X, Y, Z, and all the children of the daughters of X, Y, Z and so on, with the eldest member as Karanavan or head man who manages the family property. From this we see that membership of a tharawad runs up even to hundreds. It is therefore not difficult to discern the troubles that will arise when one of the members of such a large family becomes a convert or is deprived of caste, but still insists on his or her civil rights. To say that such a convert is entitled to joint residence, joint mess, participation in the performance of religious ceremonies and in the guardianship over the minor members of the family, etc., is simply outrageous. That a person who becomes a convert or has lost caste can occupy the office of Karanavan and discharge secular and religious duties appertaining to that office is inconceivable. I submit that in my opinion the right to be a Karanavan with powers of management cannot be a right to property which is saved by Act XXI of 1850. I further submit that I consider a right to joint mess or living, and participation in the family ceremonies cannot be such rights. A convert therefore forfeits these and similar rights by his change of religion under the general law and usage, and the Act XXI of 1850 ought not in my opinion to operate to prevent the forfeiture of these rights. But, on the other hand, suppose it is contended that Karanavastanam is a right protected by the Act. This is not merely a hypothetical case, for, before the rebellion—though as a consequence of which I know of no case—I say, before the rebellion, there was a suit pending in a District Munsiff's Court where a Nayar convert was claiming his right to be the Karanavan of the tharawad. Even if it be contended that Karanavastanam is a right protected by the Act, the interests of the family I think require that a convert Karanavan must not be allowed to exercise his sway against the will of the rest of the family. A Karanavan, representing the family, interests himself and participates in several functions all or most of which have their foundation in religion. By change of religion, he is effectually prevented from representing the family in those concerns. He becomes incompetent to participate in the family ceremonies and he cannot organise or supervise them. He cannot enter the family house without polluting. He cannot direct the family discipline. He cannot join the family mess. He is disallowed from being the guardian of the minor members. He becomes disqualified in several other ways. His continuing to deal with the family property, unconnected with the matters noted above, as a manager by birth-right which he cannot fully discharge owing to his change of religion, would result in the curious spectacle of the family having two representatives, one to officiate at functions which the convert cannot attend to, and the other to exercise the residuary powers of management. Such a state of affairs would lead to confusion and complete dislocation of the family management. One example of the absurdity of the existing law, if literally interpreted, may be that it may not be possible to sue to forbid an apostate Hindu from entering the holy precincts of the family temple. The tharawad has no need for a convert who is for all intents and purposes nothing more than a dead branch of it. I may here mention that in some castes all the formalities and ceremonies on death are performed when a member becomes a convert or loses his caste. I am sure the Legislature when it passed Act XXI of 1850 had not considered the peculiarities of the Malabar Law which has not the safety valve of partition. It could hardly have been the intention of the Legislature to cause disruption or to offend the religious feelings and susceptibilities of the other members of the family by continuing in a convert rights, such as already mentioned, which from the

very nature of things could only be exercised by one who continued to be a member of the corporate body.

The Madras High Court has found a difficulty in harmonising the principles of Act XXI of 1850 with the essential characteristics of the law on the West Coast. The recent Full Bench decision of the Madras High Court (Pathumma *versus* Raman Nambiar reported in I. L. R. 44 Madras at page 891) makes extremely desirable that a convert member's rights in a Hindu Marumakathayam or Aliyasantana family ought to be made clear. It was decided by a Division Bench of the Madras High Court in a case (Kunhichekku *versus* Sydia Aruncaden reported in 1912 Madras Weekly Notes, page 286) which went up from Malabar that conversion of a member effected a dissolution of the joint tenancy and created a tenancy-in-common as amongst the coparceners of the family.

This decision enlarged the rights of a convert by giving him a right to partition, though it, at the same time, prevented the anomaly of a convert Karanavan managing the Hindu Marumakathayam family or of a convert member insisting on his right of joint residence, etc. This interpretation of the rights of a convert was not, however, accepted as correct by the Full Bench referred to above who held that change of religion of a member did not work any change in the impartible nature of the coparcenary. Giving the convert a right to partition will adversely affect the interests of the family. I would put a premium on conversion—a result which would be undesirable from the Hindu point of view. It would enlarge the rights of the convert—a result not intended by the Statute. There would be still another danger. The proper method of partition having been held by the Madras High Court to be *per stirpes* (and not *per capita*), a convert member could get a pretty large slice of the family property by his conversion. For example, in a family of one brother, one sister and her half a dozen children, the brother becoming a convert might claim half the family property. In ordinary cases, this kind of thing is rendered impossible as partition can take place only with the consent of all the members, who can therefore arrange their respective shares as they choose. It may also be noted that one of the Judges who constituted the Full Bench, Kumaraswami Sastri, J. observes: "I am of opinion that all that the convert is entitled to is to continue to reside in the house and be maintained as before if the other members are willing or to get separate residence and maintenance allotted to him if the other members refuse". This is however only an *obiter dictum*. The Full Bench further reserves its opinion whether a Karanavan after change of religion could continue to be the Karanavan. Chief Justice Wallis observes in this connection: "The question of the plaintiff's right to succeed to the office of Karanavan is not before us and I express no opinion about it as it may involve other considerations". It is not, however, difficult to foresee the troubles and complications which may arise from a bad precedent due to mis-construction of existing provisions and, therefore, I claim the Legislature must now intervene and make the law clear and unambiguous. I do not wish to go into the law in Indian States, but if we are to judge in a matter of this sort from what exists in Cochin and Travancore, where Marumakathayam prevails, then also an amendment in the present Act here to make it at least clear is necessary. I may add I have made provision for the convert's enjoyment of the individual rights capable of separate enjoyment. What is aimed at is to prevent injury to the family without at the same time jeopardising the rights of the convert. The Courts have very often held that the most important right of the member of a Marumakathayam

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or Aliyasantana family consists in the right of being maintained out of the family property. By the present amendment the convert's interests regarding this would be preserved, while at the same time the family would be saved from any danger of disruption and of interference from the convert. It is hardly necessary to add that where a member is readmitted into caste no question at all arises, or where the convert is the sole surviving member his right to the whole property remains uncontested, or that nothing in my Bill prevents any private arrangement that may be arrived at with the consent of all the members of the family. The Legislature owes an amendment of the present Act to the invariably large number of other members of the family who will all become social outcastes if, due to the existing law, they are forced to mix up with the convert. I therefore consider an amendment, in the form suggested in my Bill, is both necessary and expedient. In spite of the discouraging remarks from my Honourable friend Mr. Subrahmanayam, against attempts at legislation, I now beg to move for leave to introduce the Bill.

The motion was adopted.

Mr. K. Muppil Nayar: Sir, I introduce the Bill.

THE MONEY LENDERS BILL.

Mr. Muhammad Yamin Khan (Meerut Division: Muhammadan Rural): Sir, I beg leave of this Honourable House to introduce the Bill which is standing in my name, called a Bill to license and regulate money-lending transactions and to limit the interest charged on loans of various kinds in British India.

I may say, Sir, at the very beginning that some section of my Bill may not be liked by some of my Honourable friends here, and they may be supposed to be impracticable. But that question can be dealt with later on. I would not mind even expunging those sections which might be repugnant or which might not be practicable from any point of view later on. That matter will be considered when I come to the next motion of this Bill, but so long as two main points which I really aim at from the point of view of the constituency which I have the honour to represent—that is, the zamindars and tenants class are provided for, I would not mind if all the sections of my Bill are taken away. But I will try to show, Sir, that each section which I have put down in this Bill has got a certain bearing on the uplift of eighty per cent. of the population of this country.

Primarily, Sir, I deal with the question of granting receipts. What we see, Sir, here is that illiterate people, when they borrow some money from a money-lender and they go to make a payment towards the satisfaction of their old debt, the payment is written at the back of the bond, which is sometimes a registered bond. I think and I hope that those of my Honourable friends here who belong to the legal profession might have come across certain cases, as I have come across them, of hardship caused to these people. I found, Sir, in several cases (in one of them I was myself a little bit concerned) that the stipulation was, as it invariably is, that whatever money is paid towards the satisfaction of the bond, would be entered at the back of the bond. Without that, no excuse will be listened to. A man borrows Rs. 5,000 and goes and

makes a payment of Rs. 4,000, which is entered at the back of the bond. Later on the money-lender if he wants to be dishonest, what does he do? He makes a report at the police-station—" I have lost my bond; such and such a paper, and other valuables have been lost " . . . .

Mr. President: Order, order. I must point out to the Honourable Member that he is going into too great detail. This will be appropriate when we come to clauses 8 and 9, but at this stage I cannot allow him to go into the question in such elaborate detail.

Mr. Muhammad Yamin Khan: I was saying, Sir, that this was the principle underlying the Bill; I was not dealing with the clauses. As I was saying, Sir, he puts up an advertisement and offers a reward and then naturally he can prove that his bond is lost; then, later on, he applies for a copy from the Registry Office and he gets it and sues in the civil court for Rs. 5,000 *plus* interest although Rs. 4,000 has been paid up. The debtor may say that he has paid Rs. 4,000, but the court will not listen in the absence of a receipt . . . .

Mr. President: The Honourable Member is still discussing the details of the Bill. If he will consider what he has been doing he will see that his speech is an appropriate speech only to the motion that such and such a clause do stand part of the Bill. He is entitled to say now briefly that certain practices prevail and that this Bill is necessary in order to remedy grievances arising out of those practices; but I cannot allow him to use this stage to discuss the details of those grievances or of the remedies which he has embodied in his Bill.

Mr. Muhammad Yamin Khan: Very well, Sir, this is an argument which I have set down in the Statement of Objects and Reasons.

Mr. President: That justifies him even less in making remarks of this nature at this stage.

Mr. Muhammad Yamin Khan: I shall be very brief, Sir. Another practice prevalent is this, that these *bhai khatas* which are used by these money-lenders are not properly bound. I do not know what happens in other provinces, but in my province in the United Provinces generally this *bhai khata* is a heap of papers tied together with a string and any leaf can be taken out or inserted in at any time; and suits are filed on the basis of these *bhai khatas*. I want to remedy this defect by providing that when a suit is brought on the basis of such a *bhai khata* that *bhai khata* should have been produced before the income-tax officer, or that he can bring a suit on other properly kept account books, as provided in the Indian Evidence Act.

There is another object in my bringing this Bill forward. When a money-lender lends money, he takes all kinds of security. He gets either a registered bond or a simple bond that is witnessed by different people; but when he has received the money he does not grant a receipt, and an illiterate person has to depend upon the good faith of this money-lender. I wish to provide that it should be incumbent on the money-lender to grant a receipt in every case and that it should be made penal if he does not give a receipt. If a money-lender does not keep a proper account book, the only result will be that he cannot sue on the basis of that account book; nothing more than that.

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But these are secondary sections. The only two sections on which I want to lay stress upon and for the purpose of which I have brought this Bill forward are those relating to the granting of receipts, and providing that the interest should not accumulate to more than the principal sum. That is the old Hindu law, the Damdupat rule. Before 1855 the law as it stood in India was that Muhammadans did not recognise any kind of interest; the Hindus recognised it only to the extent that the interest could not accumulate to more than the principal sum lent. But in 1855 an Act was passed—Act XXVIII of 1855—which gave power to courts to grant a decree for the interest that has been agreed upon; and this has been misinterpreted by certain High Courts to mean that the old Hindu law of Damdupat had been superseded. But certain High Courts like Bombay, Madras and as I have heard from my Honourable friend, Sir Sarvadhikary, the Calcutta High Court also still hold that the Damdupat rule prevails in spite of the Act. In Bombay, I have heard that the Damdupat rule holds good only when both the parties are Hindus but that it is not recognised when the creditor is a Hindu and the debtor belongs to any other caste. My friend, Mr. Samarth, is not here; but my other friends from Bombay can bear testimony to what I say. What I want is that this Damdupat rule should prevail not only as between Hindus and Hindus, but as between Hindus and Muhammadans as well and between any class of the community. In some presidency towns, in the Allahabad High Court and other High Courts this Damdupat rule is not recognised and the court grants decrees for the sums agreed upon and to the extent it accumulates. A recent case that happened only three or four days ago bears testimony to what I say. The whole House will be shocked to hear such a kind of agreement as is reported in the *Pioneer* of the 15th February. A case was decided on the 13th of February and in that case for a principal of Rs. 400 a decree was granted by the Honourable the High Court of Allahabad for Rs. 66,98,731-2-0. Another case in Calcutta which was reported in the *Leader* of the 26th May 1922 was one in which a son-in-law sued his father-in-law for Rs. 7,16,800 while the sum which had been lent originally was Rs. 350 only. It is this kind of case that I want to remedy by providing that the interest shall not exceed the amount lent. That is the chief object. I represent the zemindar and tenant classes and it is a great hardship to them. We find every day in every civil court there is a huge list of properties which are sold by auction, simply because of the accumulation of interest. Several of my friends who belong to the United Provinces might be aware that a big family, a leading family, the premier family in fact in Moradabad was ruined in one day because of the accumulation of interest on an old bond which was originally for a very small sum. That went up accumulating and they were absolutely ruined. It is for the protection of this class of people that I have brought forward this Bill. It is of course in no way disadvantageous to the money-lender. What I am asking in this Bill is that the money-lender should come forward and claim his money as soon as his money is doubled, and he should not sit quiet to take away the property of the zemindar. He should come forward and take the assistance of the Court, as soon as it doubles. This will afford an opportunity to a zemindar to think twice as to whether he should part with his property now and not be under any false shame so as to lose the whole property ultimately. I want that a protection of this nature should be given to persons whom I have the honour to represent. If there is any clause in my Bill which does not affect people of the other provinces, they need not accept this Bill. That is why I have

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put down in my Bill " It shall apply to the whole of British India unless any part thereof is exempted by the operation of the Act by the Governor General in Council ". So if people from other provinces find that it is not suitable to their province, they can ask the Local Government not to make my Bill applicable to their province. But if the views of the Local Governments are invited, you will find, Sir, that they will admit that the remedy which I have suggested is really needed. I therefore ask this Honourable House to lend their support to my Bill and give me leave simply to introduce this Bill. Of course, at later stage if they find that it is unworkable or that it is not wanted by the country, they may throw it away or take away any of the sections from the Bill, and I won't mind it. But I can assure this House that it is very badly needed for my province. A Bill to remedy this evil was moved, I might inform this House, in the United Provinces Council and there it was rejected on the ground that it was beyond their jurisdiction to consider it. That is the reason why I have brought this Bill here. The whole matter was very ably dealt with by the late Khowajah Ghulam-us-Saqalain in the United Provinces Council, and as I have already pointed out, that Council considered that it was beyond their jurisdiction to consider such a Bill, and so this time several Members have written to me to push this Bill in this Assembly. My request to the Members from other provinces is that, if they do not like this Bill to be made applicable to their province, they should not deprive my province, where this is very badly needed of having such a useful measure. Therefore, I beg that this House may kindly grant me leave to simply introduce this Bill. I also request at the same time that the Government also may be good enough to take a magnanimous attitude towards this Bill, and that they should not oppose it.

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, I fear that, in spite of the pathetic appeal contained in the closing words of my Honourable friend, the Mover of this motion, I must nevertheless ask the House to refuse leave to introduce this Bill.

Before, Sir, I proceed to deal with the provisions of the Bill as it stands on the paper, I wish to make two preliminary remarks. The first is this. My Honourable friend has quite omitted to call the attention of the House to the fact that this question of usury and dishonest transactions on the part of money-lenders has formed the matter of consideration by the Government. The matter has been considered by the Government of India at great length, and as a result, they passed Act X of 1918, an Act to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind, and it is the contention of Government that the measures proposed in this Act provide a far more effective remedy than those that have been suggested by the Honourable Member. I think my Honourable friend might have referred to the existing previous legislation while making his motion.

The second point I desire to press upon the House is this. The Honourable Member on two or three occasions in the course of his speech expressed his willingness, even his eagerness, to throw away practically every clause in the Bill if it did not meet with the approval of the House. Now, Sir, I submit that this is not the first time that this thing has happened in the course of this Session. Only a few days ago another Honourable Member brought forward a Bill to provide a specific remedy for certain grievances, and in the course of his speech he suggested that that remedy should be cut out altogether and that the Select Committee should provide another. I submit, Sir, when an Honourable Member wants to bring

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forward a Bill, he ought to give due consideration to the provisions of it, and not invite the House to cut them out at their leisure provided only the Bill is introduced.

Now, Sir, I shall turn to the actual provisions of the Bill. I shall of course bear in mind your warning and I shall not deal with them in detail. The Bill contains three main provisions. First of all, the definition and of registration of money-lenders and the imposition of certain restrictions on their methods of keeping accounts. Secondly, a provision for the restriction of the amount of money that may be advanced to certain persons, and thirdly the clauses that refer to *Damdupat*.

Now, Sir, as regards the first question, the definition of registration of money-lenders. I have no doubt that all Honourable Members have studied the proposed definition in the Bill. I confess, Sir, that it seems to me that we are no nearer the definition than before this Bill was introduced. The question of registration of money-lenders was one of the questions specifically considered by the Government of India prior to the legislation that attended the Bill of 1918. All Local Governments were then consulted on the matter, and with your permission, Sir, I shall read the replies of some of the Local Governments on this subject. They were all unanimous that the definitions of the terms ' money-lender ' and the registration of money-lenders were practically unworkable. The Government of Madras reported:

" The registration of money-lenders would be a formidable and almost impossible undertaking and would be so far from complete as to be useless. Nor does the Governor in Council consider that any useful results would be produced by compelling money-lenders to keep accounts or give receipts from counterfoil receipts books."

The Government of Bombay said:

" The problem of dealing with money-lenders in England is totally different from that of dealing with them in this Presidency, and arguments from the success of the Money-lenders Act in England are in the view of the Governor in Council full of danger. In England a small and fairly well defined class of professional lenders catering for a comparatively small class of borrowers has been taken under control without difficulty and without interfering with or unsettling the whole of the credit system of the country. In India practically every one with a little money in hand lends it out, and the agriculturist who has saved a few rupees is often quite as rapacious as any savkar. Registration of money-lenders would represent enormous difficulties in India and in fact may be said at once to be impracticable. Even to arrive at a satisfactory definition of ' money-lender ' would be a hopeless task."

The Burma Government,—but I will not read, Sir, any more of the opinions in detail,—was of the same opinion. The Central Provinces Government was of the same opinion. The Lieutenant-Governor of the United Provinces thought that " all ideas of registering money-lenders insisting on their keeping books and the like are quite out of the question."

Well, Sir, with this consensus of opinion I would ask the Assembly whether it is possible for the Government of India to take any other course than to ask the House to reject this Bill. It is impossible for us to suggest that legislation should be carried through which all the Local Governments find practically unworkable.

But, leaving that aside for the moment, suppose that these money-lenders were registered. What would be the immediate effect? It would mean immediately the imposition of great restrictions on the number of persons who could lend money. Two results would follow. First of all, the rate of interest would immediately be raised by those who could lend

money, and secondly all sorts of subterfuges would be adopted by those who are prevented from lending money in order to do it clandestinely. Moreover, the Bill provides, as will be seen, for the punishment of those who lend money without registration. Now, imagine the amount of corruption . . . .

Mr. Muhammad Yamin Khan: The Bill provides punishment for not giving receipts, not for not registering.

Mr. P. B. Haigh: I beg the Honourable Member's pardon. The Bill provides penalties for those money-lenders who, having registered themselves, fail to comply with the numerous restrictions which are imposed upon them by this Bill. Now, I ask the House to consider the amount of oppression and extortion that sort of thing might lead to. The whole result would be to interfere to a very great extent with the money-lending system of the country, and I would ask Honourable Members to remember, as no doubt they will remember, that, whatever hard things may be said against money-lenders as a class or individuals in particular, the fact remains that the money-lender is one of the most useful members of society in this country. The Honourable Member says: "Question"! But how is a vast agricultural country, especially in those tracts where the ryotwari system is prevalent, how is it to be carried on at all if money is not available for agriculturists? Agriculture cannot be carried on without borrowed capital. The Honourable Member says: "Co-operative Societies"! How many co-operative societies are there as yet in this country? Does he not realise that co-operative money-lending, in spite of the great strides that it has made, is still in its infancy, and that, if we were to strike a blow at the common system of lending money in this country, the result would be disastrous? Then, Sir, there is another startling section in the Bill as it stands, No. 12. I do not know if this is one of the sections that the Honourable Member proposes to throw out.

"No Court shall take notice of, or pass a decree on a pronote or a simple bond which purports to have been executed by an illiterate person for a sum of more than fifty rupees . . . . ."

Well, now imagine what that means. It would strike a blow immediately at the credit of millions of rayats.

Mr. Muhammad Yamin Khan: May I, Sir, rise to a point of order? My friend is reading section by section, while I was not allowed to deal with the Bill in that way. I would have explained the section.

Mr. President: I must ask the Honourable Member to refrain from these interruptions and to resume his seat.

Mr. P. B. Haigh: Sir, perhaps I may be permitted to point out that I am endeavouring if possible to deal with the principles of the Bill and I pointed out that it contained three main provisions and this is one of the provisions. That is as near as we can get to any principles in the Bill. However, we may take it that that section, which I submit condemns itself, is one of those which the Honourable Member is willing to jettison. And, so, finally, we come to No. 13.

"No person shall be entitled to claim as interest an amount exceeding in the aggregate the principal sum originally lent."

In other words, he wishes to introduce universally the rule which is known as Damdupat. Well, now, Sir, last January, I think, the House

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considered a separate Bill brought forward by an Honourable Member, whose name stands on the paper also to-day, dealing simply and solely with this question of Damdupat. He moved a Bill to amend the Interest Act of 1839, and the House on that occasion refused permission for the Bill to be introduced. A speech was made . . . .

Mr. Muhammad Yamin Khan: May I, Sir, point out that that was the amendment of . . . .

Mr. President: The Honourable Member was given great latitude in dealing with this subject and it is impertinence on his part to interrupt in this way.

Mr. Muhammad Yamin Khan: On a point of order, Sir. My Honourable friend is referring to a totally different Act which was rejected on different grounds, Sir.

Mr. President: Order, order. If the Honourable Member who is replying (Mr. Haigh) is out of order, the Chair will deal with him. The Honourable Member was given great latitude, and I advise him to remain in his seat.

Mr. P. B. Haigh: Sir, my Honourable friend is quite right in saying that I am referring to a different Bill but the provisions in that Bill amounted to exactly the same thing as that laid down in section 13 of the Bill which we are now considering. It dealt with the question of Damdupat. Now, I have no doubt that most of the Honourable Members present heard the speech of the Honourable the then Home Member on that occasion, and I do not propose, in the very brief time at my disposal, to go through all the arguments at length. The point I wish to make is that Damdupat, though in itself a very well meant rule, is really a very primitive expedient. It lays down no period within which interest may be allowed to accumulate up to an amount equal to the capital. For instance, the rule is this, that the amount of interest claimed at any one time must not exceed an amount equal to the capital. It takes no count of previous payments of interest and if a suit is brought at the end of three years, there is nothing to prevent, as far as the rule goes, the person bringing the suit from recovering interest which amounts to 33 per cent. per annum. On the other hand, if a suit is brought at the end of fifty or 30 years, the rate of interest is enormously reduced. It is in fact a clumsy way of regulating the rate of interest. The question of regulating rates of interest has been gone into frequently. It was investigated by a Parliamentary Committee in England and I think it has been universally condemned by all those experts who are competent to deal with it. Moreover there are several positive dangers about this rule of Damdupat. The first is this. If you have a rule of that sort in force, all payments which are made are immediately credited as interest, never anything against the principal. Secondly, it is a direct temptation to the money-lender at the time when the bond is first made, to cause the debtor to agree to have a much larger sum entered as principal than that actually given to him, in order to enable the creditor to recover a larger sum when he goes into Court. Thirdly, it leads to the practice of nominally winding up a transaction and beginning a new one so that the initial amount shown in the new bond is very much greater than that originally lent. Fourthly, it compels the money-lender to bring his suit at the earliest possible moment, which, with all due respect to my Honourable friend's opinion, is not an

unmixed blessing—even to the debtor. I do not wish to keep the House further on this question of Damdupat, as the matter has already been gone into and as we shall possibly have to go into it at greater length a few minutes later. But I submit, in view of the willingness of my Honourable friend to throw away the greater part of the Bill, and as he lays stress upon the question of Damdupat which has been definitely rejected by the House only a year ago, that leave to introduce this Bill should be refused.

Mr. President: The question is:

"That leave be given to introduce a Bill to license and regulate money-lending transactions, and to limit the interest charged on loans of various kinds in British India."

(A Division was challenged but it appeared to Mr. President that the call of the "Ayes" did not justify it.)

Mr. President: I think I must ask those in favour of the Bill to rise in their places.

Nine Members rose in their places, and accordingly Mr. President ordered the bells to be rung and the division proceeded:

AYES—16.

Abdul Rahim Khan, Mr.	Muhammad Hussain, Mr. T.
Abul Kasem, Maulvi.	Nabi Hadi, Mr. S. M.
Akram Hussain, Prince A. M. M.	Neogy, Mr. K. C.
Asad Ali, Mir.	Rajan Baksh Shah, Mukhdum S.
Asjad-ul-lah, Maulvi Miyan.	Reddi, Mr. M. K.
Bagde, Mr. K. G.	Venkatapatiraju, Mr. B.
Bijlikhan, Sardar G.	Wajihuddin, Haji.
Jatkar, Mr. B. H. R.	Yamin Khan, Mr. M.

NOES—55.

Aiyar, Mr. A. V. V.	Kamat, Mr. B. S.
Allen, Mr. B. C.	Ley, Mr. A. H.
Ayyar, Mr. T. V. Seshagiri.	Man Singh, Bhai.
Bajpai, Mr. S. P.	Misra, Mr. B. N.
Barua, Mr. D. C.	Mitter, Mr. K. N.
Basu, Mr. J. N.	Moir, Mr. T. E.
Bhargava, Pandit J. L.	Moncrieff Smith, Sir Henry.
Blackett, Sir Basil.	Mukherjee, Mr. J. N.
Bradley-Birt, Mr. F. B.	Mukherjee, Mr. T. P.
Bray, Mr. Denys.	Nag, Mr. G. C.
Burdon, Mr. E.	Percival, Mr. P. E.
Cabell, Mr. W. H. L.	Pyari Lal, Mr.
Chatterjee, Mr. A. C.	Rangachariar, Mr. T.
Chaudhuri, Mr. J.	Rhodes, Sir Campbell.
Clark, Mr. G. S.	Samarth, Mr. N. M.
Cotelingam, Mr. J. P.	Sams, Mr. H. A.
Crookshank, Sir Sydney.	Sarfaraz Hussain Khan, Mr.
Faridoonji, Mr. R.	Sassoon, Capt. E. V.
Gidney, Lieut.-Col. H. A. J.	Singh, Babu B. P.
Ginwala, Mr. P. P.	Sinha, Babu L. P.
Girdhardas, Mr. N.	Sohan Lal, Mr. Bakshi.
Gulab Singh, Sardar.	Stanyon, Col. Sir Henry.
Haigh, Mr. P. B.	Subrahmanayam, Mr. C. S.
Hailey, the Honourable Sir Malcolm.	Tonkinson, Mr. H.
Holme, Mr. H. E.	Tulshan, Mr. Sheopershad.
Hullah, Mr. J.	Ujagar Singh, Baba Bedi.
Innes, the Honourable Mr. C. A.	Vishindas, Mr. H.
Jamnadas Dwarkadas, Mr.	

The motion was negatived.

Mr. K. C. Neogy (Dacca Division: Non-Muhammadan Rural): Sir, I beg to move for leave to introduce a Bill to repeal the Workman's Breach of Contract Act, 1859, and the Workman's Breach of Contract (Amendment) Act, 1920.

Sir, at this late hour in the afternoon, I do not propose to inflict a lengthy speech on the House, but I will briefly mention the points that ought to weigh with this House in considering this motion. Sir, Act XIII of 1859 was undertaken at the instance of the Calcutta Trades Association on the ground that they were put to some pecuniary losses by reason of the fact that artisans employed by the members of that body sometimes wilfully refrained from carrying out contracts for which they had received advances. In the first instance, it was confined to the presidency towns, but later on the Act came to apply to the whole country, and I think I am right in saying that it is most extensively in operation in the province of Assam. Sir, in 1890, we find the Chief Commissioner of Assam expressing the opinion that this Act was serving the purpose of a transitional stage from a strict penal contract to one enforceable only in the Civil Courts, a result which, in his opinion, all were anxious to reach. In this Bill, I seek to bring about that result which was contemplated by the Chief Commissioner of Assam as early as 1890. About the same time we find that the Secretary of State advised the Government of India to watch the working of this Act carefully, because he considered that its continued retention was not without prospective dangers. In 1920, this Act was amended by Government, and as it appears from the Statement of Objects and Reasons of the Amending Bill, Government had come to the conclusion that this Act had resulted in hardships in certain cases and that it was not suited to modern conditions in many respects. When that amending Bill was under consideration in the Imperial Council in 1920, general dissatisfaction was expressed by the Indian non-official Members that the Bill had not been repealed altogether, and among the non-official Members who suggested the total repeal of the Act on that occasion, was the Honourable Mr. Sarma. It is unfortunate that though he was here a few minutes ago, he is not in this House just now. He tabled an amendment seeking to repeal this Act with effect from the 1st of April 1923. Unfortunately that amendment was ruled out of order. It will be seen that I have adopted this date in my Bill as the date from which the repeal should take effect. Of course, if this Bill is allowed to be introduced, and if it goes to a Select Committee or if it is taken into consideration all at once at the second reading, I will be perfectly willing to consider any amendment so as to give the employers reasonable time to adjust themselves to the altered conditions. Now, Sir, in September 1920, Mr. Joshi brought forward a Resolution in Simla in this very House urging the repeal of this Bill, along with a few sections of the Indian Penal Code, and on that occasion Sir William Vincent admitted that there was a great deal of sympathy with the principle of complete repeal, and that such an idea was in accordance with modern feeling. He further went on to say that it was in accordance with the practice of European countries. He said: "Indeed I may say that I am personally aware that many Members of Government feel very strongly on this point." That is what Sir William Vincent said on that occasion. Government promised to consider the question of the repeal of this Act on that occasion and finally said that "Government are prepared to adopt the view that the repeal of this law is desirable on general grounds of principle, and if after consulting

Local Governments and public opinion, it is found that there is a fairly general consensus of opinion in favour of repeal, they will introduce a Bill to give effect to the principle in this Assembly."

Sir William Vincent said that in about 18 months an amending Bill might be brought forward if it was thought advisable. Now 18 months have since then elapsed, and I present this Bill to Government and this House as an opportunity for them to deal with the question just as they like. Sir, an important event has happened between September 1921 and to-day, and that is the inquiry which was undertaken by a Committee appointed at the instance of the Government of Assam, which reported in 1922 on this among other questions. I will not take up the time of the House by giving any detailed references from this report. Honourable Members will find that one whole chapter of this Report is devoted to this question, and I would particularly recommend this Report to the attention of my Honourable friend Mr. Kamat because I find he was one of the staunchest opponents when that Resolution was debated in this House. This is how the Government of Assam, while agreeing to the proposition that the Act should not continue to be applicable to Assam, summarises the conclusions of the Inquiry Committee. This is from the Government Resolution:

"It has been found that at least in some districts contracts continue to be executed for a longer period than the amended Act permits, and it is startling to learn that one influential company pays a commission on contracts executed. The advance given, which is an essential element of a contract under Act XIII, is sometimes inadequate, and some Magistrates have failed to realise that such contracts should not be enforced as a matter of course. Cases of minors being placed under contract have also come to light."

I may mention incidentally that children under 8 have been found to be actually bound by contracts under Act XIII in some gardens in Assam. Now the Resolution goes on to say:

"Lastly there can be no doubt that the practice of unlawful arrest has not disappeared. For some of these abuses of the Act the Governor in Council holds that Magistrates must share the blame with the employers."

Later on the Government recommend that the Act should not apply to the tea gardens of Assam. Now, Sir, any one who goes through this Report will find that some startling disclosures have been made about the abuse of this Act in Assam. A point was made, I find, both by Sir William Vincent in the old Imperial Council in 1920, and I believe by my friend, Mr. Kamat, in 1921, in this House, that this Act only penalised fraudulent breaches of contract. Now, Sir, I want to disabuse this House of that impression. When the Act was considered in 1859, Sir John Peter Grant said this:

"When a workman took an advance for doing certain work and then without good cause refused to do it, there was a tinge of fraud in the transaction to justify its being criminally dealt with."

So it is quite clear that no independent proof of fraud was thought at all necessary in these cases; and I have it on the authority of my Honourable friend, Mr. Nag, who has had considerable experience in the practical administration of this Act, that, as matter of fact, no independent proof of fraud is necessary in any case under this Act.

There is another point to which I should like to draw the attention of this House. In connection with the question of emigration of Indian Labour to the colonies, we have been pressing for the abolition of all penal provisions in the labour laws of the different countries. Only very recently we

[Mr. K. C. Neogy.]

had to consider the question of emigration to Ceylon and the Federated Malay States, and Honourable Members who were supplied with some papers on that question, must have found that the Government of India insisted on the Governments of Ceylon, and the Malay States, to abolish all the penal provisions in their labour laws as a condition of allowing emigration of Indian labour to those places, and upon those representations the penal clauses of the labour laws have, as a matter of fact, been abrogated in Ceylon, the Malay States, Mauritius, and in Fiji. I have it on the authority of my Honourable friend, Mr. Venkatapatiraju, who was a member of the Commission sent by the Government of India to Fiji, that when he was there he was actually twitted by the authorities of Fiji on this Act being on the Statute Book of India, when he had a discussion with them about the penal provisions of the labour laws in that Island. Sir, for all these reasons, I consider this Act to be an anachronism and an anomaly, and if we are not to be charged with inconsistency, I think we must repeal this Act, and that without delay.

The Honourable Mr. A. C. Chatterjee (Education Member): Sir, this Act has been on the Statute Book of India for 64 years and my Honourable friend, Mr. Neogy, wishes it to be repealed with effect from the 1st April, 1923, that is to say in less than six weeks from to-day . . . .

Mr. K. C. Neogy: Extend it if you like.

The Honourable Mr. A. C. Chatterjee: Well, Sir, that is the main provision of his Bill, and I feel bound, on behalf of Government, to oppose the introduction of the Bill. My Honourable friend has given the previous history of the discussions relating to this Act, and I do not wish to traverse the same ground. He has mentioned that my Honourable friend behind (Mr. N. M. Joshi) had moved a Resolution in this House in September 1921 (and not 1920 as he said) on which occasion the then Honourable Home Member had given an undertaking on behalf of Government to sound public opinion in the country on the question of the repeal of this measure. That promise, Sir, has been fully implemented. The Government of India addressed all Local Governments to find out what the present views of the Governments as well as of the people interested in this measure are with regard to the question of repeal or modification of the present law. We have received replies from the Local Governments, but the last reply came only about six weeks ago, and it has not therefore been possible for Government to take any action in this matter as yet. But my Honourable friend, Mr. Neogy, has already asked for the introduction of this Bill which provides for the repeal of the present Act in less than six weeks from to-day, as I have already said. Mr. Neogy stated that Sir William Vincent promised to bring in a Bill in 18 months' time. There was no such definite promise. (*Mr. K. C. Neogy*: "If so advised; it was not a definite promise.") What he said was that, if there was a consensus of opinion in the country for repeal, Government would probably, within 18 months from the time that he spoke, undertake legislation for repeal. I may remind the Honourable Member that 18 months have not yet expired.

Well, Sir, the general tenour of the replies is against repeal. It is true that the Government of Bengal have suggested that repeal will do no great harm and the Government of Madras have not objected to repeal, but practically every other Local Government have advised the Government of India against repeal. At the same time, the Government of India

have been greatly impressed by the consideration that the Act is in force only in a very small part of Bengal and is not in force in any part of the important industrial province of Bihar and Orissa. (*Mr. K. B. L. Agnihotri*: "It is in force in the Central Provinces.") I was only speaking about the provinces where it is not in force. Moreover, the recent inquiry into labour conditions in Assam, to which my Honourable friend has referred, has made some change in the situation. Mr. Neogy has quoted some passages from the Resolution of the Government of Assam; but, on the other hand, he has omitted to quote one or two rather important passages. The Government of Assam have clearly stated that they accepted the inference of the Committee that was appointed by them that, on the whole, the Act had been worked considerately and had not borne heavily on the labourer. I think in fairness both to the magistracy and the planting community in Assam it is important that this statement of the Government of Assam should be given as wide publicity as the statements which my Honourable friend has quoted. I have said, Sir, that the report of this Committee and the Resolution of the Assam Government have made a change in the situation and, I have said that the Government of India are very much impressed by the fact that the Act is not in operation in Bihar and is found to be of use only in a very small portion of Bengal, and, even there, the Government of Bengal are willing to repeal it. At the same time it is clear from the replies that we have received that some provisions of this nature are absolutely needed in areas—they may be isolated or local areas—where large works are in progress and labourers have to be imported from long distances and such labour is absolutely impossible to obtain without the grant of large advances. For instance, the Government of Bombay have instanced the case of the Sukkur Barrage scheme. I believe a large number of the Members of this House are interested in that scheme. The Government of Bombay have stated that it would be impossible to carry out the work there without some provisions of the nature incorporated in the present law. In such cases civil remedy is practically useless because the labourers come from long distances, and, if they disappear, it would be impossible to obtain the advances back from them or to get the work done by local labour. In view of these facts, Sir, Government have come to the conclusion that, although the present Act may not be necessary as an all-India measure, still Local Governments must be at liberty to place before their own Legislature some measure to give protection to employers in cases like those that I have mentioned. Similarly, time must be given to employers and industrialists to adjust themselves to the changed conditions, should the repeal of the Act take place. Contracts have been entered into and those contracts probably subsist for some considerable time, while it is impossible for Government to contemplate that employers as well as employees, who have entered into such contracts, should be left absolutely in the air by the repeal of the Act six weeks hence. It is, therefore, Sir, the view of Government that it would be better that a considered Bill should be introduced by them after full consideration of all the circumstances, and they would undertake to repeal the present measure with effect from say, about 1926. This is really what the Honourable gentleman himself stated that one of my Honourable colleagues had proposed three years ago. He had then wanted to give three years' time to the employers as well as to the industries to adjust themselves to altered conditions. Government cannot agree to the motion now before the House. I hope my Honourable friend will, in view of the assurance that I have given, withdraw his present motion; otherwise, it will be the unpleasant duty of the Government Members to oppose his motion.

Mr. K. C. Neogy: Do I understand the Honourable Member to give us an assurance that a Bill will be brought before the House before its life is over? It might take effect from 1926.

The Honourable Mr. A. C. Chatterjee: It is impossible for me, Sir, to give any such assurance. Even if a Bill were brought before the House before the present Assembly is dissolved, it would be impossible to pass any such Bill.

The motion was negatived.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

(On Mr. President calling upon Munshi Iswar Saran to move the motion standing in his name for leave to introduce a Bill further to amend the Code of Civil Procedure, 1908, Mr. T. V. Seshagiri Ayyar rose and said he wished to move the motion standing in the name of Munshi Iswar Saran.)

Mr. President: I have already ruled, in the case of a previous Bill, that the Standing Orders do not provide for the moving of a Bill by any one but its introducer.

THE INTER-CASTE HINDU MARRIAGE BILL.

Mr. A. B. Latthe (Bombay Southern Division: Non-Muhammadan Rural): Sir, I move for leave to introduce a Bill to amend and codify the law relating to inter-caste marriages among Hindus.

Honourable Members will remember that already there is one Bill connected with this subject introduced by my Honourable friend, Dr. Gour; but I wish to point out that this Bill differs entirely from the Bill introduced by Dr. Gour. That Bill refers only to marriages registered under the Special Marriage Act, which generally Hindu marriages are not, and it is absolutely necessary, if permission is to be given for inter-caste marriages amongst Hindus, that a measure like the one I have to move to-day should be passed by the Legislature.

Honourable Members who have studied the opinions received on Dr. Gour's Bill will remember that the chief objection raised against that Bill is that it reduces marriage among Hindus to a contract while as a matter of fact it is considered to be a sacrament. That is at least one of the principal arguments and objections against the Bill; but the Bill which I am moving is not subject to that objection in any way, because it leaves marriages amongst Hindus as they are at present, so that there need be no objection on the part of orthodox Hindus.

There is one important thing with regard to this Bill, namely, that a very similar Bill had been considered by the late Indian Legislative Council, and it was referred to a Select Committee which reported to the Council; and it was only on account of the consideration that this Legislature was coming into existence shortly and as the members of the Select Committee thought that it could be better considered by a more representative body like this, that the consideration of the Select Committee's report was deferred at that time. The Bill which I am wishing to introduce to the House is based upon the suggestions made by the Select Committee in consideration of the opinions they had received on the Honourable Mr. Patel's Bill.

I want to make only one further observation, at this stage, and it is this. The present condition of Hindu law on the subject of inter-caste marriages makes it impossible for any two castes amongst Hindus, even if

olic opinion in those castes, is quite favourable to the inter-caste marriages, introduce any change. That was not the condition of things before Hindu law began to be administered by British Courts. If any two castes, if the majority of people in any two castes thought that a new custom should be brought in between those castes, they were at perfect liberty to do so; but under the present law as administered by British Courts, that is an impossibility unless a custom already exists, which means that no progress in the direction of inter-caste marriages is now possible unless the Legislature intervenes. It is unnecessary to say that the Bill is only of a permissive nature, and it does not force upon any section of the Hindu community any reform. The Bill only intends that such castes amongst the Hindus as desire inter-caste marriages should be allowed to establish new customs; and that being the simple purpose of this Bill, I submit that the House may grant the leave that I am asking for. The remaining sections of the Bill are based upon the recommendations made by the Select Committee of the late Imperial Legislative Council, and I think at this stage I need not refer to them. I move that leave may be given, as asked.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, I wish to indicate the Government attitude towards this Bill, and, in doing so, to oppose this motion of my Honourable friend. Not that I am opposing the Bill on its merits. I do not propose to go into the merits of the Bill at all. But I am suggesting to the House that it would be a waste of its time and the public time if leave were given for the introduction of this Bill.

Mr. Latthe has referred to Dr. Gour's Bill and has suggested that it is a Bill on entirely different lines. Well, Sir, the Bills are not exactly parallel. Mr. Latthe's Bill is a Bill of much more restricted scope than that of Dr. Gour. But all the same I would suggest to the House that if Dr. Gour's Bill is passed, then Mr. Latthe's Bill will fall to the ground. In any case, whether Dr. Gour's Bill is passed or not, the discussions on that Bill will show on what lines Mr. Latthe's Bill should be elaborated.

This Bill, Sir, like many others that we have been considering to-day, was laid by the Government before the Standing Committee of the Legislature attached to the Home Department. Now the view of that Committee was that elaboration of the provisions of Mr. Latthe's Bill would certainly be desirable, and they confirmed the view of Government that until a decision had been arrived at on Dr. Gour's Bill leave should not be given by the Assembly for the introduction of this measure. I hope, Sir, this House will endorse the view of the Standing Committee and of the Government, that to give leave for the introduction of this Bill, while we have another Bill on the same subject pending before the House, would be a clear waste of public time.

The Assembly divided:

AYES—19.

Akram Hussain, Prince A. M. M.	Joshi, Mr. N. M.
Ayyar, Mr. T. V. Seshagiri.	Latthe, Mr. A. B.
Bagde, Mr. K. G.	Man Singh, Bhai.
Basu, Mr. J. N.	Nag, Mr. G. C.
Chaudhuri, Mr. J.	Rangachariar, Mr. T.
Cotelingam, Mr. J. P.	Reddi, Mr. M. K.
Ginwala, Mr. P. P.	Sassoon, Capt. E. V.
Gulab Singh, Sardar.	Venkatapatiraju, Mr. B.
Ikramullah Khan, Raja Mohd.	Yamin Khan, Mr. M.
Jamnadas Dwarkadas, Mr.	

NOES—38.

Agnihotri, Mr. K. B. L.	Mitter, Mr. K. N.
Aiyar, Mr. A. V. V.	Moir, Mr. T. E.
Bajpai, Mr. S. P.	Moncrieff Smith, Sir Henry.
Barua, Mr D. C.	Mukherjee, Mr. J. N.
Bhargava, Pandit J. L.	Mukherjee, Mr. T. P.
Blackett, Sir Basil.	Neogy, Mr. K. C.
Bradley-Birt, Mr. F. B.	Percival, Mr. P. E.
Chatterjee, Mr. A. C.	Pyari Lal, Mr.
Clark, Mr. G. S.	Ramayya Pantulu, Mr. J.
Crookshank, Sir Sydney.	Samarth, Mr. N. M.
Faridoonji, Mr. R.	Sams, Mr. H. A.
Girdhardas, Mr. N.	Sarfaraz Hussain Khan, Mr.
Haigh, Mr. P. B.	Satyadhikary, Sir Deva Prasad.
Hailey, the Honourable Sir Malcolm.	Singh, Babu B. P.
Holme, Mr. H. E.	Sinha, Babu L. P.
Hullah, Mr. J.	Stanyon, Col. Sir Henry.
Jatkar, Mr. B. H. R.	Subrahmanayam, Mr. C. S.
Ley, Mr. A. H.	Tonkinson, Mr. H.
Misra, Mr. B. N.	Tulshan, Mr. Sheopershad.

The motion was negatived.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 21st February, 1923.