THE

COUNCIL OF STATE DEBATES

VOLUME VIII

(17th August 1926 to 31st August 1926)

SECOND SESSION

OF THE

SECOND COUNCIL OF STATE, 1926

THE

COUNCIL OF STATE DEBATES

(Official Report)

VOLUME VIII

SECOND SESSION

OF THE

SECOND COUNCIL OF STATE, 1926

SIMLA
GOVERNMENT OF INDIA PRESS
1926

CONTENTS.

COUNCIL OF STATE.

Tuesday, the 24th August, 1926.

The Council met in the Council Chamber at Eleven of the Clock, the Honourable the President in the Chair.

QUESTION AND ANSWER.

NUMBER OF MEETINGS OF THE STANDING ADVISORY COMMITTEE OF THE DEPARTMENT OF COMMERCE HELD SO FAR IN 1926.

86. THE HONOURABLE MR. MANMOHANDAS RAMJI: (*i*) Will Government be pleased to say how many meetings of the Standing Advisory Committee of the Department of Commerce have been held so far this year ?

(*ii*) With reference to the reply given by the Honourable Sir Alexander Muddiman to Sardar V. N. Mutalik on 2nd September 1925, will Government be pleased to say why not a single meeting of this Committee was called during 1925 ?

(*iii*) Did no important questions come before the Department of Commerce in 1925 that would have been helped to a solution by consultation with this Committee ?

THE HONOURABLE MR. G. L. CORBETT: (*i*) None. The Standing Committee for the Department of Commerce for the current year has not yet been constituted, as all the gentlemen nominated to be members of the said Committee have not yet intimated their willingness to serve on it. They were addressed on the 24th March 1926.

(*ii*) and (*iii*) There was only one case ripe for submission to the Standing Advisory Committee of 1925, but by the time this case was ready the Council of State had been dissolved and the Committee ceased to exist. The facts of the case were, however, placed before the members of the Committee who were also Members of the Assembly.

BILLS PASSED BY THE LEGISLATIVE ASSEMBLY LAID ON THE TABLE.

SECRETARY OF THE COUNCIL: Sir, in accordance with rule 25 of the Indian Legislative Rules, I lay on the table copies of a Bill to amend the Usurious Loans Act, 1918, for certain purposes, a Bill further to amend the Workmen's Compensation Act, 1923, and a Bill further to amend the Negotiable Instruments Act, 1881, and the Code of Civil Procedure, 1908, for certain purposes, which Bills were passed by the Legislative Assembly at its meeting held on the 23rd August, 1926.

THE HONOURABLE MR. P. C. DESIKA CHARI (Burma : General): Sir, I very much regret my absence at the time when the Resolution which stood

[Mr. P. C. Desika Chari.]

in my name was called yesterday. It was purely a miscalculation on my part that the previous Resolution which was being discussed was likely to take some time. My Honourable friend Sir Phiroze Sethna was dealing with some new points, and I thought that the Government might take that opportunity of making a statement on those points and that in the meanwhile I could go down and refresh myself a little; and when I returned I found the Council adjourned. I did not mean any disrespect or discourtesy to the Council in absenting myself; it was wholly due to a mistake or miscalculation on my part in thinking that the previous Resolution would take some time. I hope under these circumstances the Council will accept my explanation for my absence yesterday and will acquit me of any act of discourtesy in being absent at the time my Resolution was called on.

THE HONOURABLE THE PRESIDENT: I am sure the Honourable Member intended no discourtesy to the Council, which will sympathise with him in the accident which prevented him from moving his important Resolution this session.

INDIAN DELEGATION TO THE LEAGUE OF NATIONS.

THE HONOURABLE MR. S. R. DAS (Law Member): Sir, in reply to the Resolution moved in this Council on the 17th February last by the Honourable Sir Phiroze Sethna, on the subject of the leadership of the Indian delegation to the Assembly of the League of Nations, I gave an undertaking to make an announcement as to how far Government have been able to give effect to the proposal underlying the Resolution. I am now in a position to announce that the following delegates and substitute delegates have been appointed for the forthcoming session of the Assembly of the League of Nations:

Delegates.

1. Sir William Vincent, K.C.S.I.
2. His Highness the Maharaja of Kapurthala.
3. Khan Bahadur Sheikh Abdul Qadir, Bar.-at-Law.

Substitute Delegates.

1. Sir E. Chamier, K.C.I.E.
2. Sir Ramaswami Ayyar, K.C.I.E., Member, Executive Council, Madras.
3. Sir B. K. Mullick, Kt., Judge, High Court, Patna.

It has throughout been the aim of the Secretary of State and the Government of India to secure the strong representation of Indian sentiment in the Indian delegation to the League of Nations, and for this reason two Indians have been selected each year to serve among the three delegates. With regard to the leadership of the delegation, somewhat different considerations arise. The discussions at the meeting of the Assembly invariably include in their scope difficult questions of foreign policy and international relations. For these in the case of India under the present constitutional arrangements, the Secretary of State for India is responsible, and as a Member of the British Cabinet he is

of necessity fully acquainted with the trend of the policy of His Majesty's Government in regard to these matters. It has accordingly been customary to appoint persons to lead the delegation who, in addition to possessing personal knowledge of India and Indian conditions, have been in a position to appreciate the guiding principles of His Majesty's Government's foreign policy and are thereby specially qualified to carry out the responsibilities devolving on the Secretary of State in this regard. This system has worked satisfactorily in the past, and in present circumstances it is thought unnecessary to depart from it.

The Secretary of State, in consultation with the Government of India, has decided to increase the number of substitute delegates for this year's session from one to three, thus in comparison with last year enlarging the personnel of the Indian delegation from four to six, and the number of Indians on the delegation from two to four.

The advantage of appointing substitute delegates was brought to notice by the delegates of India after the last two meetings of the Assembly of the League. The question of continuing this practice in future and of the number of substitutes ordinarily required will be examined after experience of conditions at meetings this year.

THE HONOURABLE SAIYID RAZA ALI : Do I understand the Honourable Member to say that the delegation will be headed by the Secretary of State for India ?

THE HONOURABLE MR. S. R. DAS : No, Sir. I have already stated in my announcement that it will be headed by Sir William Vincent, K.C.S.I..

INDIAN EVIDENCE (AMENDMENT) BILL.

THE HONOURABLE MR. S. R. DAS (Law Member) : Sir, I beg to move that the Bill further to amend the Indian Evidence Act, 1872, for a certain purpose, be taken into consideration.

This Bill intends to amend section 68 of the Indian Evidence Act under which, if a document is attested, in order to prove that document one attesting witness has to be called if he is alive and capable of being called. In accordance with the suggestion of the Civil Justice Committee the present Bill intends to get rid of any necessity to call an attesting witness if the document is a registered document unless execution is expressly denied. It is thought that registration itself is a *prima facie* proof that the document has been properly executed and that it is unnecessary to take up the time of Courts in calling attesting witnesses unless execution has been specifically denied.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces: Nominated Non-official) : Sir, I support this Bill. It is a piece of belated legislation. This legislation ought to have been placed on the Statute-book over ten years ago. It will have a very salutary effect in saving litigants a considerable amount of time and expenditure. It will expedite the dispensation of justice and the execution of judicial functions. But the Bill as it is framed does not, I fear, meet to its fullest extent the object or the purpose

[Sir Maneckji Dadabhoy.]

for which it is intended. I quite see the advisability and the necessity of dispensing with the proof of the execution of the document in case of major defendants. But, as my learned friend, Mr. Das, from his long experience at the Bar must know, difficulty would arise in the case of minor defendants, where a person is made a defendant and he dies before the stage of pleadings is reached or when the original executant of the document dies and his minor heirs succeed to the property and the case is defended by them through their guardian *ad litem* or the next friend. The difficulty would arise because the guardian *ad litem* or the next friend would not be in a position to deny specifically the execution of the document, and I think in such cases of minor defendants, it is absolutely necessary that the execution of the document should be proved, to avoid further trouble and future litigation. I therefore think it is advisable that, after the word "that" the following words be inserted, namely, "except in the case of minor defendants", and I beg to move that amendment.

THE HONOURABLE THE PRESIDENT: Does the Honourable the Law Member desire to take objection to the amendment on the ground of want of notice?

THE HONOURABLE MR. S. R. DAS: I was going to suggest to the Honourable Member that he should not press this amendment now. He has brought the matter to my notice and I intend to consider it. If we think it is necessary, we shall introduce the amendment in another place, but I should like time to consider this amendment and I would ask my Honourable friend not to press it now.

THE HONOURABLE SIR MANECKJI DADABHOY: In the circumstances explained by my Honourable friend I am willing to agree to his suggestion and will not press my amendment; but I hope he will take this matter into his consideration when this Bill is taken to the other House, because it is a very important defect and will otherwise cause a great deal of inconvenience and trouble.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill further to amend the Indian Evidence Act, 1872, for a certain purpose, be taken into consideration.

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. S. R. DAS: Sir, I move that the Bill be passed.

The motion was adopted.

ADMINISTRATOR GENERAL'S (AMENDMENT) BILL.

THE HONOURABLE MR. S. R. DAS (Law Member): Sir, I move that the Bill further to amend the Administrator General's Act, 1913, be taken into consideration.

Under the present Administrator General's Act, the Administrator General can grant a certificate to the claimant of the assets of a deceased person entitl-

ing him to receive those assets if the assets do not exceed Rs. 1,000. The Civil Justice Committee recommended that that limit should be increased to Rs. 3,000. The Government, after taking the opinion of the Local Governments and other authorities, decided to increase that limit to Rs. 2,000 instead of Rs. 3,000, in the first place, because it would affect the revenue to a certain extent if the limit is extended to Rs. 3,000, and also because the grant of a certificate by the Administrator General has not those safeguards which the grant of letters of administration or a succession certificate involves. The Bill therefore is to extend the limit to Rs. 2,000. There are consequential amendments in the Act which are also proposed by this Bill.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : Nominated Non-official) : Sir, I would like to make one or two observations in connection with this Bill. The recommendation of the Civil Justice Committee was made after careful consideration, and after taking some evidence they decided and recommended a limit of Rs. 3,000. The Government of India have reduced that limit from Rs. 3,000 to Rs. 2,000 on two grounds, firstly, because of the loss of revenue to the State, and, secondly, because the Government of India are of opinion that as letters of administration provide a number of safeguards which do not attach to the certificates given by the Administrator General, they think it unnecessary to keep the limit at Rs. 3,000. Now, in my humble opinion, both these arguments are unsupportable. In the first instance, the loss of revenue to the State will not be very considerable, and that is a question for the Provincial Governments to decide, and I understand they have accepted not only the principle of the Bill—at least I speak subject to correction—but that many of the Provincial Governments have not objected to the limit being fixed at Rs. 3,000. I know from personal experience that in the case of very small estates—that of poor clerks and other people—a great deal of inconvenience is caused to their wives and children, and for small and insignificant estates they have to put the machinery of the Administrator General in motion, apply for letters of administration, spend a lot of time and money in litigation which they can ill-afford. I feel that the relief which was recommended by the Civil Justice Committee in this matter was very proper, just and equitable and that the Government of India, in my humble opinion, have not acted with much prudence in reducing that limit. As regards the second point, namely, the number of safeguards which are attached to letters of administration and not to a certificate which is given by the Administrator General, I think the matter is of very very small consequence. If the parties prefer to take the risk of taking a certificate instead of letters of administration, it is their lookout and business. I am decidedly of opinion that the limit should not be reduced and that the limit recommended by the Civil Justice Committee should be promptly restored as it will give a measure of necessary relief to a large class of poor and indigent people who cannot possibly afford to undergo the expenses of obtaining letters of administration. I therefore beg to move the amendment that for the figures " 2,000," the figures " 3,000 " be inserted.

THE HONOURABLE SAIYID RAZA ALI (United Provinces East : Muhammadan) : On a point of order, Sir. Should this discussion take place now or

[Saiyid Raza Ali.]

when clause 2 is reached in due course, when considering the clauses one by one.

THE HONOURABLE THE PRESIDENT: If the Honourable Member desires to move the amendment, he should move it when clause 2 is put to the House for consideration.

The motion before the House is:—

"That the Bill as a whole be taken into consideration."

THE HONOURABLE SIR MANECKJI DADABHOY: Subject to the above remarks, Sir, I resume my seat.

THE HONOURABLE MR. S. R. DAS: Perhaps I may say something with regard to the Honourable Member's suggestion now, before the amendment is moved, though perhaps it would be more regular to do so when he moves the amendment. But I might point out to this House that my Honourable friend is not accurate in stating that the Local Governments supported the proposal for Rs. 3,000. Some Local Governments did but other Local Governments opposed the suggestion. But I should like to point out that, although one of the reasons why the Government did not accept the extension of the limit to Rs. 3,000 was its effect on the revenue, the real reason and the main reason which guided them was that the grant of a certificate by the Administrator General did not have those safeguards which the grant of letters of administration had, and that is a very important point because it is not a question of the persons who apply for the certificate to the Administrator General taking any risk. The risk is of those who are really entitled to it and who may not have approached the Administrator General or may not even have noticed that an application had been made to the Administrator General to grant a certificate. Moreover, if you take letters of administration, you have got to give security for due administration of the estate, whereas in the case of grant of a certificate by the Administrator General, no security need be given. I will ask my Honourable friend to bear this in mind that to a family or to a person who leaves assets of the value of Rs. 3,000, it is a very large sum. It may not be to my Honourable friend or to the Members of this House, but to a family, a member of which leaves Rs. 3,000 as the whole of his assets, it is a very large sum and it is not safe that a claimant should be allowed to receive that sum, say, from the insurance company upon a certificate from the Administrator General without giving any security that after he has received it he will duly administer it. It is these considerations, coupled with some of the objections taken by the Local Governments, that induced the Government to reduce the limit to Rs. 2,000 from Rs. 3,000.

THE HONOURABLE THE PRESIDENT: The question is:—

"That the Bill further to amend the Administrator General's Act, 1913, be taken into consideration."

The motion was adopted.

THE HONOURABLE THE PRESIDENT: The question is:—

"That clause 2 do stand part of the Bill".

THE HONOURABLE SIR MANECKJI DADABHOY: Sir, I now formally move my amendment:

"That for the words 'two thousand' the words 'three thousand' be substituted."

I have heard with much interest the reply of the Honourable the Law Member in this connection. I am glad to find that I have been corrected on one specific point that some of the Local Governments did not agree to the figure of Rs. 3,000 but the others have agreed. My learned friend has also candidly stated that the question of revenue was not a very important one, but the fact which principally induced the Government to reduce the figure from Rs. 3,000 to Rs. 2,000 was that the grant of letters of administration was accompanied by a number of safeguards which did not attach to the grant of an ordinary certificate by an Administrator General. My friend also substantiated his argument by stating that the applicant will have to give security when applying for letters of administration, which is not necessary in the case of a certificate. I submit, Sir, that contention strengthens my argument rather than weakens it. The very fact that it will be necessary for the children of a deceased to apply for letters of administration and to find out a security in addition for the purpose of successfully obtaining them will always be a very difficult task; from my personal experience as a lawyer for many years I can say it is very difficult for poor people to obtain reliable men to stand security in this connection. This proves that it is necessary that this relief which I claim should be given. Further, as I have already pointed out, you cannot attach much importance to the fact of the letters of administration giving additional safeguards, which is a matter solely for the heirs of the deceased to consider. If they think that in ordinary circumstances a certificate will be quite sufficient and that they will be able, on obtaining the certificate, to manage the estate of the deceased, the matter entirely rests there. It is the business of the party concerned. I do not think there is a great deal of sanctity attached to the grant of letters of administration. I therefore press this objection of mine in the interest of a large class of destitute people who, I know, cannot afford the expenditure of a cumbrous litigation and for whom every rupee saved means a great thing.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN (Punjab: Nominated Non-Official): Sir, I strongly support the amendment. Considering the matter from the point of view of the general public, they would rather like even the limit of Rs. 3,000 to be raised to Rs. 5,000. The public ought to be very thankful to Sir Maneckji Dadabhoy for bringing forward this amendment, which I think the House ought to accept.

THE HONOURABLE SAIYID RAZA ALI (United Provinces East: Muhammadan): Sir, it appears from the Statement of Objects and Reasons that the Government of India consulted Local Governments on a number of points raised in the Civil Justice Committee's Report, and particularly on the point incorporated in this clause of the Bill which is now before the Council. Unfortunately, the Honourable the Law Member did not give a clear indication in his opening speech, if I followed him correctly, as to whether the preponderance of opinions submitted by the Local Governments on this point was in favour of reducing the amount from Rs. 3,000 to Rs. 2,000. It appears that there is a conflict of opinion between the Local Governments, but had

[Saiyid Raza Ali.]

the Honourable Member given us a summary of those opinions, I believe that would have been very helpful to this Council.

THE HONOURABLE SIR MANECKJI DADABHOY: The Honourable Member has said that the question of revenue is not an important question.

THE HONOURABLE SAIYID RAZA ALI: Sir, I never raised the question of revenue. I am not discussing the question of revenue at this stage. I am just referring to the opinions of the Local Governments. In the next place, the Honourable the Law Member did not mention whether the High Courts were consulted on this question at all, and, if so, what was the weight of the opinions of the High Courts. I hope the Honourable the Law Member will say a few words so as to make it quite clear what view most of the Local Governments and the High Courts who were consulted took.

Now, coming to the merits of the case, I believe the question of revenue is not one that should be given a go-by by the Government on a consideration of this question. No doubt, when letters of administration are applied for, the chief object of the State is not to replenish its coffers but to see that the interests of the parties concerned are properly safeguarded. The question of revenue, however, remembering that the keeping up of a costly system of courts of law means expenditure of money, is not one that should be totally ignored. But I am quite sure that the Honourable the Law Member is on very firm ground when he says that the real difference between the cases for grant of letters of administration and of a certificate lies in the fact that, if you apply for letters of administration, you have to give security to meet the claims of those who may hereafter challenge the claim of the person who has obtained such letters of administration. I believe, looking to this very great safeguard that is given by the Administration and Probate Act, it would certainly be a course not free from risk to raise the amount from Rs. 2,000, as mentioned in the Bill, to Rs. 3,000, as proposed in the amendment of the Honourable Sir Maneckji Dadabhoy.

The claims of all parties have to be considered. That is one of the most vital functions of our law Courts. I therefore think that the clause of the Bill as it stands is quite a reasonable one and that if we raise this amount from Rs. 2,000 to Rs. 3,000, we will certainly be placing in jeopardy the claims of any party that may really be entitled to challenge the grant of a certificate. I therefore support clause 2 of the Bill.

THE HONOURABLE SIR DINSHAW WACHA (Bombay: Nominated Non-Official): From my long experience of companies, I do confirm what my Honourable friend Sir Maneckji Dadabhoy has said. There is not the slightest doubt that it is a hardship. Very many cases have come before me in connection with the companies I have the honour to represent. I remember very well most of the complaints came from poor shareholders in this matter. In cases under my consideration complainants referred to amounts under existing rules requiring them to take out letters of administration which entail considerable expense. Most of the Joint Stock Companies in Bombay in such cases accept Indemnity Bonds in lieu of letters of administration. I think it will be a great relief to poor people if Sir Maneckji's amendment is carried. That is my view.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab: Non-Muhammadan): I rise to endorse fully what my friends the Honourable Sir Maneckji Dadabhoy and the Honourable Sir Dinshaw Wacha have said in this connection. In the interests of the poor classes, it is essential that the House should accept the amendment.

THE HONOURABLE SIR ARTHUR FROOM: (Bombay Chamber of Commerce): There is one point I should like to raise and that is the question of revenue. If I understood the Law Member aright he said that the question of revenue is unimportant.

THE HONOURABLE MR. S. R. DAS: I said the question of revenue is important, but that is not the main reason or the real reason for reducing the figure to Rs. 2,000. It is an important question, but the really important point which affected our decision is the want of safeguards.

THE HONOURABLE SIR ARTHUR FROOM I am much obliged to the Honourable the Law Member. The question of revenue is important. Many Members of this House are not lawyers and if we could have some idea of the loss of revenue owing to the raising of the figure to Rs. 3,000 we would be in a better position to form some opinion on this point. If the amount is raised to Rs. 3,000, Government might lose some revenue, but the heir to the small estate would benefit. Supposing the claim amounts to Rs. 2,500, the claimant could get a certificate from the Administrator General and he would not have to pay for the court-fee stamp for the letters of administration and, therefore, to that extent Sir Maneckji Dadabhoy's amendment appears to be in favour of the heir to small estates.

Another point on which I should like to hear from the Law Member is this. If the Administrator General has granted a certificate to a claimant for Rs. 2,500 and afterwards another claimant comes forward and the second claimant has the better claim, is the Administrator General responsible? He is not responsible. If the first claimant has got the Rs. 2,500 and spent the lot, where will the second and rightful claimant get his money from?

I think on the question of revenue everything is in favour of the limit being raised to Rs. 3,000; but, as the Honourable the Law Member has pointed out, the question of safeguard for small estates is an important one, and I think the Honourable Members of this House should carefully consider this question of safeguard.

THE HONOURABLE MR. S. R. DAS: Sir, I should like to make the position quite clear, as there seems to be some misunderstanding on the point. I did not intend to say that the question of revenue is not of any importance at all. It is of some importance because it affects Local Governments. The actual duty paid on Rs. 3,000 is not large, but there are quite a large number of estates where people leave assets of Rs. 3,000 and over, and in the total it does amount to something. What I want to point out is this. The main reason which influenced the Government of India was really the question of safeguards. Now, I should like to point out for Members of this House who are not lawyers that, before a grant can be made of letters of administration, notice of the application has to be given to the other relatives and has to be advertised and a guarantee has to be given for due administration, and finally he

[Mr. S. R. Das.]

has to file in Court an inventory of the assets realised and the accounts of his dealings therewith. That is in the case of a grant of letters of administration. Under a grant by the Administrator General, none of these conditions are requisite. That is to say, a man who gets a certificate from the Administrator General, before he gets it, has not got to give notice at all to the other relatives. No advertisement need appear in the papers that he is claiming the amount, and, finally, no guarantee has to be given by him that he will duly administer the assets. These are great safeguards. As I pointed out in my opening speech, the man who leaves Rs. 3,000 as his sole assets is a small man. The claimant comes along and claims the money. The Administrator General, after all, can only take certain precautions, but he cannot ask him to give notice. It is not necessary. He cannot ask him to give a guarantee that he will spend the money properly. If he is satisfied he grants a certificate, and if that man takes the money out from the Insurance Company and chooses to misuse it, there is no remedy. The real persons who are entitled to it can proceed against him, but he may be a man of no means at all. The Administrator General is perfectly safe. No action can be brought against him so long as he has taken all precautions. It is considerations of this nature that induced the Government, having regard to the views of some of the authorities consulted, to keep the limit at Rs. 2,000. I may mention that Local Governments, Judges of the High Court and the Administrators General were consulted, and I am bound to say that the preponderance of opinion was in favour of accepting the amount fixed by the Civil Justice Committee; but those who opposed it were rather vehement and pointed out that it may lead to a great deal of abuse if the limit were raised. In fact some of the authorities objected to raising the limit at all. In these circumstances, Government decided to keep the limit at Rs. 2,000 only. I have no doubt that, so far as the question of hardship is concerned, it would not only be better, so far as the poor people are concerned, to raise the limit to Rs. 3,000, but I think the Honourable Sir Umar Hayat Khan is somewhat more logical than my Honourable friend, Sir Maneckji Dadabhoy; because if you look at it from the point of view of hardship only, why limit it to Rs. 3,000 ? Why not Rs. 5,000 ? Why not Rs. 10,000 ? I quite agree with Sir Maneckji Dadabhoy that it is difficult sometimes to get the necessary security. But if that is going to be the consideration, I should think it is more difficult to get a surety where the estate left is a lakh of rupees than in a case where it is Rs. 2,000 or Rs. 3,000. If that is one of the reasons I should extend the limit to a lakh of rupees. It would undoubtedly give relief to a very large number of persons. After all you have got to consider this matter from all points of view, and although one may say there is not much difference between Rs. 2,000 and Rs. 3,000, there is a certain amount of difference. If we had said Rs. 3,000, my Honourable friend might have said " Raise it to Rs. 4,000." (*The Honourable Sir Maneckji Dadabhoy*: " No, no."). I said that if we had accepted the Civil Justice Committee's recommendation to raise the limit to Rs. 3,000, there would be nothing to prevent my Honourable friend suggesting that it should be raised to Rs. 4,000, (*The Honourable Sir Maneckji Dadabhoy*: " I would not have done it ") because after all there is very little difference between Rs. 3,000 and Rs. 4,000. We have got to take all these matters into consideration and we thought that,

having regard to the fact that a sum of Rs. 3,000 is a very large sum for a family one of whose members leaves assets to the value of Rs. 3,000 and no more, it should not be extended beyond Rs. 2,000. I therefore would ask the House to accept the clause as it has been drafted.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: What would be the loss in revenue if the amendment is adopted ?

THE HONOURABLE MR. S. R. DAS: It is impossible to say that because it would vary in different Local Governments. Bengal has different court fees from Madras and from that of Bombay. It would involve a very laborious calculation to discover the exact amount of loss.

THE HONOURABLE SIR MANECKJI DADABHOY: It would probably be very little proportionately.

THE HONOURABLE THE PRESIDENT: The original question was:

"That clause 2 stand part of the Bill"

since which an amendment has been moved—

"That in clause 2 for the words 'two thousand' the words 'three thousand' be substituted."

The question now before the House is that that amendment be made.

(As the names of Honourable Members were being called out, an Honourable Member gave his vote without rising in his place.)

THE HONOURABLE THE PRESIDENT: I think the Honourable Member is perfectly well aware of the rule of the House, a rule laid down by the first President of the Council, that when a division is taken and an Honourable Member's name is called, he should rise in his place and give his vote, and in future I shall have to enforce that rule. Any vote which is given by a Member sitting in his place will not be recorded.

The Council divided :

AYES—12.

Bell, The Honourable Mr. J. W. A.
Dadabhoy, The Honourable Sir Maneckji Byramji.
Desika Chari, The Honourable Mr. P. C.
Jaffer, The Honourable Sir Ebrahim Haroon.
Muhammad Hussain, The Honourable Mian Ali Baksh.
Mukherji, The Honourable Srijut Lokenath.
Oberoi, The Honourable Sardar Shivdev Singh.
Ram Saran Das, The Honourable Rai Bahadur Lala.
Roy Choudhuri, the Honourable Mr. K. S.
Singh, The Honourable Raja Sir Harnam.
Umar Hayat Khan, The Honourable Colonel Nawab, Sir.
Wacha, The Honourable Sir Dinshaw Edulji.

NOES—22.

Commander-in-Chief, His Excellency the.	Misra, The Honourable Pandit Shyam Bihari.
Corbett, The Honourable Mr. G. L.	Morarji, The Honourable Mr. R. D.
Crerar, The Honourable Mr. J.	Raza Ali, The Honourable Saiyid.
Das, The Honourable Mr. S. R.	Sankaran Nair, The Honourable Sir Chettur.
Emerson, The Honourable Mr. T.	Sett, The Honourable Rai Bahadur Nalininath.
Froom, The Honourable Sir Arthur.	Smyth, The Honourable Mr. J. W.
Gray, The Honourable Mr. W. A.	Stow, The Honourable Mr. A. M.
Habibullah, The Honourable Sir Muhammad,	Suhrawardy, The Honourable Mr. M.
Langley, The Honourable Mr. A.	Symons, The Honourable Major-General T. H.
Ley, The Honourable Mr. A. H.	Tireman, The Honourable Mr. H.
Manmohandas Ramji, The Honourable Mr.	Weston, The Honourable Mr. D.

The motion was negatived.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. S. R. DAS: I move, Sir, that the Bill be passed.

The motion was adopted.

INDIAN COMPANIES (AMENDMENT) BILL.

THE HONOURABLE MR. G. L. CORBETT (Commerce Secretary): Sir, I beg to move that the Bill further to amend the Indian Companies Act, 1913, for a certain purpose, be taken into consideration.

This is a short and simple Bill but I am afraid I must go back to some rather ancient history to explain the need for it.

Section 26 of the Indian Companies Act, 1913, provides for the registration of associations formed "for promoting commerce, art, science, charity, or any other useful object," and not for profit. Sub-section (*1*) of that section runs as follows:—

"Where it is proved to the satisfaction of the Local Government that an association capable of being formed as a limited company has been or is about to be formed for promoting commerce, art, science, charity, or any other useful object, and applies or intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Local Government may, by license under the hand of one of its Secretaries, direct that the Association be registered as a company with limited liability, without the addition of the word 'Limited' to its name, and the association may be registered accordingly."

In the corresponding section 20 of the English Act which is otherwise in identical language, the word "religion" is inserted between "science" and "charity".

The object of the present Bill is to amend the Indian Act so as to bring it into line with the English Act.

First, I must explain how the word "religion" came to be omitted from the Indian Act, and for this I must go back to the proceedings of the old Indian Legislative Council in 1881, when the old Indian Companies Act of 1882 was before it. The Honourable Mr. Stokes, who introduced the Bill, referred to this section and said :

"This section did not, like the corresponding English clause, apply to religious societies, those bodies being, it was thought, sufficiently provided for by Act I of 1880."

Act I of 1880 is the Religious Societies Act. This Act, however, is very limited in scope. It is a short Act and is chiefly concerned with subsidiary matters such as the appointment of new trustees. It does not provide at all either for incorporation or for the administration of property. At the same time, however, it is clear that the omission of the word "religion" from the section of the Companies Act of 1882 was deliberate, and, in these circumstances, it is considered doubtful whether it would be held that religion is covered by the general phrase "any other useful object" in that section.

There is another Act under which associations of this character may also be registered, that is the Societies Registration Act of 1860. But this Act, again, provides for societies "established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, or for charitable purposes;" but this again does not specify religious purposes.

Actually, associations for religious purposes have been registered both under section 26 of the Indian Companies Act and under this Societies Registration Act, but it is doubtful whether this registration is really valid.

When the Companies Act, 1913, was under consideration this question was never referred to—I have been through the departmental examination and also through the discussion in the Council and it was never raised at all. The corresponding section of the old Act of 1882 was followed, and the word "religion" continued to be omitted. Recently, however, we have been asked to amend the Companies Act in the manner proposed, that is, by inserting the word "religion" between the words "science" and "charity" and so removing all doubt. In 1922, the Metropolitan Bishop of Calcutta raised the question, and again, in 1924, it was raised by the Bengal Chamber of Commerce. At that time, however, there seemed no great urgency to remedy a position which had not been questioned for more than 40 years. The amendment was marked for inclusion at the next opportunity when the Companies Act would be before the Legislature, and the matter was shelved. Now, however, it has become more pressing in connection with the Indian Church Measure, which has been under discussion for the last few years. At present the bulk of the property of the Church in India is held by the Bishop of the diocese as a corporation sole by virtue of the letters patent erecting the See. But if the Indian Church Measure becomes law, it is the desire of the Bishops and of the Provincial Council of the Church that it should be possible to vest such property in a body or bodies of trustees registered under section 26 of the Indian Companies Act. This Bill has accordingly been introduced in order to remove all doubt as to the validity of such registration. I now move that the Bill be taken into consideration.

THE HONOURABLE THE PRESIDENT : The question is :

"That the Bill further to amend the Indian Companies Act, 1913, for a certain purpose, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. G. L. CORBETT : I move that the Bill be passed.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : Sir, I just want to inquire at this stage from the Honourable Mr. Corbett whether the income of charitable and religious bodies which the Honourable Member wants to include in this Bill, which is exempt now, will be liable to income-tax.

THE HONOURABLE MR. G. L. CORBETT : I am afraid, Sir, that is a point I have not considered. I approached this matter entirely from the point of view of the Ecclesiastical Department in which I am Secretary, and not in my capacity as Commerce Secretary.

THE HONOURABLE THE PRESIDENT : The question is :

"That the Bill further to amend the Indian Companies Act, 1913, for a certain purpose, be passed."

The motion was adopted.

SIND COURTS (SUPPLEMENTARY) BILL.

THE HONOURABLE MR. J. CRERAR (Home Secretary) : Sir, I move that the Bill to supplement the Sind Courts Act, 1926, be taken into consideration.

I have very little to add to the very brief statement I made when asking for leave to introduce this Bill. It is a purely formal measure and involves no question of substance. If this motion is passed, I shall have two further minor drafting amendments to make at that stage. I move that the Bill be taken into consideration.

The motion was adopted.

Clause 2 was added to the Bill.

THE HONOURABLE MR. J. CRERAR : Sir, I move that after clause 2 the following clause be added, namely :—

"3. Part I of the First Schedule and Part I of the Second Schedule to the Sind Courts Act, 1926, are hereby repealed." Repeals.

The motion was adopted.

12 NOON. The Schedule was added to the Bill.

THE HONOURABLE THE PRESIDENT : The question is :

"That clause 1 do stand part of the Bill."

THE HONOURABLE MR. J. CRERAR: Sir, I move:

"That in sub-clause (2) of clause 1 for the words 'on such date as the Governor General in Council may, by notification in the Gazette of India, appoint' the words 'on the commencement of the Sind Courts Act, 1926' be substituted."

It is obviously desirable that the date of the commencement of both the Acts should be identical and this amendment will have that effect.

The motion was adopted.

Clause 1, as amended, was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. J. CRERAR: Sir, I move that the Bill be passed.

THE HONOURABLE THE PRESIDENT: I presume the Honourable Member means the Bill, as amended.

THE HONOURABLE MR. J. CRERAR: Yes, Sir, I move that the Bill, as amended, be passed.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill to supplement the Sind Courts Act, 1926, as amended, be passed."

The motion was adopted.

CANTONMENTS (AMENDMENT) BILL.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF: Sir, I beg to move that the Bill further to amend the Cantonments Act, 1924, for certain purposes, be taken into consideration.

As I mentioned when introducing this Bill, the objects of these amendments are not of very great importance and they are fully set out in the Statement of Objects and Reasons. It may be asked why it is necessary to bring in amendments to an Act of 1924. We asked for certain amendments last year and again we are asking for some amendments this year. The reason for this is that, though the enactment is so new, namely, that of 1924, it set up an entirely new organisation in the administration of our cantonments and, in the light of the experience gained, we brought forward certain amendments last year and are again bringing forward some amendments this year.

THE HONOURABLE SIR EBRAHIM HAROON JAFFER (Bombay Presidency: Muhammadan): Sir, I rise not to oppose the motion before the House. I am sorry to observe that the Government of India are introducing an amending Bill every year. May I ask whether it will not be desirable if the whole matter is taken up once for all? It is well known, specially amongst non-official Members, that there are several defects in the original Act. Will it not be a very satisfactory way of doing things if the whole Act is taken up at a stretch? This can easily be done by appointing a small committee of the selected Executive Officers and non-official Vice-Presidents of the Boards to go through the Act and suggest remedies. The present piecemeal amendment of the Act is very unsatisfactory and likely to cause confusion. I am quite conscious of the sympathy which His Excellency the Commander-in-

[Sir Ebrahim Haroon Jaffer.]

Chief has for the cantonment civil population, and I am sure my suggestion will receive due consideration.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI (Punjab: Sikh): Sir, I want to make a few observations about the Bill proposed by His Excellency the Commander-in-Chief. It deals with some of the amendments to the existing Cantonments Act of 1924, and some of the clauses provided in this measure are really praiseworthy because they give power to the Cantonment Authority to spend some portion of their funds for the education of the children of the population who reside in the cantonment jurisdiction but where the institution is outside the cantonment limit. I regard this clause to improve the educational condition of the children of the cantonment residents and of that portion of the population who reside within the cantonment limit as a very good one.

The other clauses of the Bill deal with certain changes. It is proposed by this measure to substitute " Officer Commanding-in-Chief, the Command " for " Officer Commanding the District " in section 277. This is also quite a necessary change, and I do not think the House has any objection to this change, because His Excellency the Commander-in-Chief has thought fit to put in a higher officer instead of the Officer Commanding the District.

There is only one clause of this Bill which appears to me to snatch away a certain right from the servants of the Cantonment Authorities of appeal in case they are ordered by the Cantonment Authority to be dismissed. In this clause, of course, I do not see eye to eye with His Excellency, because this is a right which was given by the Act of 1924 to the servants of Cantonment Authorities of making a second appeal to a higher authority than the Officer Commanding the Station. I think this right should not be snatched away from the servants of the Cantonment Authorities. Of course I would put in an amendment to delete this clause at the time when the consideration of this clause comes up. But I make an observation on this at this time. I find that the Honourable the proposer of the Bill has stated in the Statement of Objects and Reasons on the subject that—

" the provision for a second appeal in this section is inconsistent with rules 11 and 12 of the Cantonment Fund Servants Rules."

I tried to find these Rules but I am sorry that I have not been able to find them. So I cannot see what inconsistency there is between these Rules and the language of the Act. If His Excellency enlightens me on this point that there is an inconsistency and also on the other point that the Cantonment Fund Servants Rules, which are to be amended shortly, will include a right of second appeal to the higher authorities on the part of the servants who are dismissed by the first authority, I would not have to put in this amendment. As it stands, I take objection to it, and I shall propose an amendment for the deletion of this clause when the time comes.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF: I think, Sir, that my Honourable colleague is not quite aware of what we really are proposing. When a cantonment servant is punished by the executive officer he has an appeal first of all to the Cantonment Authorities. After that, he has still another appeal to the General Officer Commanding-in-Chief. This, I think, ought

quite to satisfy the Honourable Member on that point. My Honourable colleague (the Honourable the Leader of the House) informs me that that is the principle which applies to all Government servants. The General Officer Commanding-in-Chief takes the position of the Local Government in that respect. The servant of a Local Government has first of all the right of appeal to the Cantonment Committee itself and later on to the General Officer Commanding-in-Chief.

I understand that my Honourable friend Sir Ebrahim Haroon Jaffer wishes to make no amendment whatever.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill further to amend the Cantonments Act, 1924, for certain purposes, be taken into consideration."

The motion was adopted.

Clauses 2, 3, 4, 5, 6, 7 and 8 were added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 9. Does the Honourable Sardar Sahib wish to speak?

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI: I have not been able to follow what His Excellency the Commander-in-Chief said about the right of appeal. I want to know if a servant of the cantonment is dismissed by the local Cantonment Authority and he appeals to the Officer Commanding the District and does not get satisfaction, has he got a further right of appeal?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF: The right of appeal does not lie with the District Commander as it is considered that he is fully occupied with his military duties; the right of appeal will therefore lie to the Officer Commanding-in-Chief of the Command. For example, in Sialkot, the servant of the cantonment has got the right of appeal first to the Cantonment Committee and then to the General Officer Commanding-in-Chief of the Northern Army.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI: Beyond that there is no right of appeal.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF: No.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI: Then I submit that this clause should be deleted.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF: I think the Honourable Member is making a mistake. There is a second appeal. The first appeal is to the Cantonment Authorities and, if the man does not get satisfaction from them, there is a right of appeal to the General Officer Commanding-in-Chief of the Command.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI: That meets my point.

THE HONOURABLE THE PRESIDENT: The question is:

"That clause 9 do stand part of the Bill."

The motion was adopted.

[The President.]

Clause 9 was added to the Bill.

Clauses 10 and 11 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF: I move that the Bill be passed.

The motion was adopted.

INDIAN LIMITATION (AMENDMENT) BILL.

THE HONOURABLE MR. S. R. DAS: (Law Member): I move that the Bill further to amend the Indian Limitation Act, 1908, for certain purposes, be taken into consideration.

This Bill is intended to give effect to certain recommendations of the Civil Justice Committee to amend the Limitation Act. I will explain to the House what these amendments are. Under the present Limitation Act, a part payment of a debt has to be in the handwriting of the person making the part payment, but there is no such provision with regard to the payment of interest, and the Civil Justice Committee recommended that the payment of interest should also be in the handwriting of the person who pays the interest. The first amendment is with a view to give effect to that recommendation. Then the Civil Justice Committee also recommended, as there had been certain doubts as to whether limited owners under the Hindu law could acknowledge a debt on behalf of the estate or whether a *karta* or manager of the joint Hindu family could make acknowledgments or part payments, that the law should be made clear. They also made a suggestion with regard to Article 132. Under Article 132 of the Limitation Act, 12 years' limitation is allowed for enforcing payment of money charged on land and immoveable property. But a question arose, and different High Courts gave different decisions, as to whether when it was not money which was specifically charged on land but something which could be valued as money, Article 132 applied or not. For instance where payment was to be in paddy or grain, which was charged on the land, the question arose whether a suit for enforcing payment of that could come under Article 132 or not, a distinction having been attempted to be made between money and the produce of land. The Civil Justice Committee recommended that the point should be made clear and this Bill attempts to make it quite clear that any payment in produce of land which is charged on land ought to come under Article 132. They also suggested an amendment of Article 166 of the Limitation Act and I will read to you their recommendations on that Article: They said:

"There is a difference of opinion as to whether this Article which deals with the petition to set aside a sale in execution of a decree applies when the petition is by the judgment debtor under section 47 of the Civil Procedure Code. It is sometimes contended that that Article applies only to a petition under Order 21, Rule 90. It will be better if the matter is made clear by adding words 'including a petition under section 47 of the Civil Procedure Code' in the first column."

This Bill seeks to give effect to that recommendation. These are all the sections which are attempted to be embodied in the present Bill.

The motion was adopted

Clauses 2, 3 and 4 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. S. R. DAS: I move that the Bill be passed.

The motion was adopted.

HINDU FAMILY TRANSACTIONS BILL.

THE HONOURABLE MR. S. R. DAS: (Law Member): Sir, I move that the Bill to provide that partitions and separations of interest among the members of Hindu undivided families and other transactions among persons governed by Hindu law shall, in certain cases, be effected by written and registered instruments, be circulated for the purpose of eliciting opinions thereon.

The Civil Justice Committee in their Report pointed out that a good deal of conflict of evidence and thereby delay in the administration of justice takes place by reason of separations of interest and partition in Hindu joint families being permissible without any registered document or even a written instrument, and they suggested that a registered instrument should always be required in the case of separation of interest and that no partition of the whole or any part of the immoveable property belonging to such family should be valid unless the sale could be made by registered instrument. They pointed out of course that registered instruments should not be necessary where a decree for partition has been passed or any instrument of partition has been made by a Revenue Officer, because there the conflict of evidence is not likely to be very great.

The Bill attempts to give effect to that recommendation. They also pointed out that there is always a good deal of conflict of oral evidence in the case of surrenders by a widow or release of his interest by a coparcener and in the case of family settlements and grants for maintenance, all of which can be effected even without a written document. They suggest that in those cases it should be effected only by registered instruments if immoveable property of the value of more than Rs. 100 is affected thereby. The Bill attempts to give effect to those recommendations, and, as this may raise questions on which there may be difference of opinion, all that I am moving now is that this Bill be circulated for the purpose of eliciting opinions thereon.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras: Non-Muhammadan): Sir, while I have no objection to the Bill being circulated, I wish to say that I cannot congratulate the Honourable the Law Member upon bringing forward this Bill. It seems to me to be a very retrograde measure. The anxiety to save the time of Courts in determining questions of fact cannot justify a measure of this sort. Many of my Honourable friends here are aware that the undue rigours of the joint Hindu family law as it is

[Mr. V. Ramadas Pantulu.]

administered in Madras and other Presidencies have been sought to be relaxed by judicial decisions for the last quarter of a century. A member of an undivided Hindu family who has got only daughters and no sons knows what it is to die without a partition. Many eminent judges like the late Sir V. Bashiam Iyengar, Sir Subramania Iyer and my Honourable colleague, Sir Sankaran Nair, who has had a distinguished career on the Madras Bench, and Sir T. Sadasiva Aiyar have all pointed out that the original Hindu law as promulgated by Manu was nothing so severe as judicial pronouncements sought to make it; and the country hailed the decision of the Judicial Committee of the Privy Council with regard to this question of separation of status in a joint family with great joy. The Judicial Committee said that a unilateral expression of intention to separate was quite sufficient to make members of a family divided; and a mere notice by a coparcener that he wished to become divided was enough to make him separate. Now, what this Bill seeks to enact is this; unless a partition in writing by all the members of the family is actually executed and registered there can be no separation even in status. One of the clauses says so. It is difficult to get other members of a family to agree to a partition, especially when one member with only daughters and no sons is about to die, because the surviving members will get the whole of the property and they will not naturally agree to a partition being executed or registered. We also know that no coparcener of a Hindu family can execute a valid will and that no coparcener can execute a deed of gift either unless the transaction is entered into for consideration; and therefore as the law stands there is absolutely no way by which a dying coparcener can make provision for his unfortunate female children; and the rigidity of the law as interpreted by Courts in earlier years has been considerably relaxed by the beneficent efforts of eminent judges both in India and in England. This Bill seeks to do away with one stroke of the pen with what has been thus achieved in a quarter of a century. I am very sorry to say that this Bill really tries to put back the clock of progress by a quarter of a century and all this for the simple reason that the Civil Justice Committee is anxious to see that the time of the Civil Courts is saved in determining questions of fact. No Civil Court can really escape determining questions of fact, because ultimately almost every question of law is based upon a finding of fact; and our anxiety to save the time of Courts ought not to carry us to such ridiculous lengths as to make us go back on judicial decisions in Hindu law in the direction of progress. As regards other clauses of the Bill, like those dealing with registration of maintenance deeds in favour of unfortunate widows, who cannot really enforce their rights against refractory members of their family, they work considerable hardship, and it will not save the time of Courts if difficulties are placed in the way of easy settlement of maintenance to widows. The Honourable Member was refreshingly vague when he said he had *considerable* support for this Bill. Considerable is a delightfully vague term, and I wish I had been told something of the extent of the support. Members of Hindu joint families certainly will not welcome it. At any rate the Honourable Member only proposes to circulate it now and fortunately he does not ask the Council to take it into consideration. There is no objection to the motion as it stands, but I wish to enter my emphatic protest against both the principle and the details of this proposed legislation.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI (Punjab: Sikh): Sir, the time for considering the merits and demerits of the Bill has not yet come; so I would like to make no observations about them now. But one or two points struck me which I would like the Honourable Member in charge of the Bill to kindly explain and enlighten the House. This Bill as it stands concerns only that part of the Hindu population which is governed by Hindu law. I understand there is another law called customary law by which a portion of the Hindu community is also governed; and I also know as a fact—and probably every Honourable member knows this—that there is another portion of the population which is not governed by Hindu law and there are properties owned by this portion of the population; there are divisions which take place among this section and there are transactions which are made amongst the members of families in this section as regards the management of the property. I would like the Honourable Member to throw light kindly upon these points as to why the Bill has been made to affect that portion of the Hindu population which is governed by the Hindu law.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab: Non-Muhammadan): Sir, I rise to support my friend, the Honourable Mr. Ramadas Pantulu, and to endorse fully what he has said as regards this proposal.

THE HONOURABLE MR. P. C. DESIKA CHARI (Burma: General): Sir, the Bill is certainly a very retrograde measure, a measure which is designed to take away the benefits which by the course of decisions the Hindu population of this country have secured bit by bit. We thought that the Judicial Committee of the Privy Council after a good deal of doubts expressed in various quarters had set the law at rest as regards the status of people concerning the conditions necessary to effect a partition in a Hindu Joint family, and as regards the conditions necessary for a person to keep himself clear of all the trammels which the Hindu joint family law, as it is now administered, imposes upon the individual. I cannot understand why for securing this doubtful benefit, namely, saving the time of Courts, the Course of decisions which has conferred a benefit upon a large section of the people is sought to be taken away at one stroke by a Bill of this sort. No doubt this was recommended by a body of people who were entrusted with the duty of finding out how to save the time of Courts. Very likely the gentlemen who are responsible for making recommendations of this kind, which are sought to be embodied in a Statute by this Bill, gave undue prominence in their anxiety to shorten the course of trials to that aspect of the question rather than to the benefits which are likely to accrue or the hardships which are likely to result if these proposals are passed into law.

I find that all the provisions of this Bill would not meet the exigencies of the case, because they are not after all likely to minimise the work of the Courts or help considerably the Courts in coming to a decision as to whether the status of a person is divided or undivided with reference to a joint family. After all, there are various other considerations which will have to be taken into account before arriving at a finding whether a person is a member of a joint Hindu family or not, and in almost every case the Courts will be confronted with these questions as regards the divided or undivided status of a person is to be gone into by the Courts. After all the Bill is not likely to confer a

[Mr. P. C. Desika Chari.]

benefit and if it does confer a benefit the benefit is secured by a good deal of hardship which will accrue by the provisions of the Act being applied to members of Hindu families. I find the Bill is not coming up for consideration, it is only a motion for circulation, and I believe by the time the Bill comes up before the House after circulation, it will be found that there is a good deal of opposition to the provisions which are sought to be introduced by this Bill.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces: Nominated Non-official): Sir, this is not the time to speak at any considerable length on the merits of the provisions involved in this Bill. But I must confess my difficulty in following the arguments of two of my Honourable colleagues, the Honourable Mr. Pantulu and Mr. Chari. It was urged by my friend opposite that this Bill proposes to trespass on the principles of Hindu law laid down by some of the most eminent judges of the Madras High Court, that it affects in some measure the general principles and the status of the people, and the benefits that will accrue on the passing of such a measure will be at the most of a very doubtful kind. I do not know on what authority these statements are made. So far as I understand the Bill, it affects no principle whatsoever of Hindu law. It does not affect any cardinal principle as far as I am aware. I acknowledge my knowledge of Hindu law is probably not so extensive as that of my eminent Hindu friends, but I say this much with confidence that, as far as I am aware, there is no dictum laid down by ancient Hindu law-givers that the partition of all coparcenery property should be only orally made and that no document of any kind is necessary to enforce such a partition. On the other hand, the practice which has been prevailing among the educated members of the Hindu community for many years, I mean when they desire to break up the coparcenery family property, is to resort to unregistered documents. My friend, Mr. Ramadas Pantulu, ought to be particularly aware of the number of cases of oral partitions that often come up before the Civil Courts for adjudication, of the flagrant subornation of evidence that takes place and the absolute difficulty of arriving at a right decision. Some partitions date back to 30 or 40 years before disputes are raised and the matters come before the Civil Courts. These Courts have to decide in many cases on perjured and wilfully suborned evidence and also oftentimes on evidence of a very weak and flimsy character. My friend is also aware that where documents have been executed and partitions effected by written documents but not registered, a wide door is thrown open for the perpetration of forgery. In many cases documents absolutely fabricated and forged have been produced in proof of partition of coparcenery estates. These are facts which my Honourable friend cannot be said not to be aware of. Now, by the adoption of a legislation of this character making registration compulsory in cases where immoveable property exceeds Rs. 1,000, I am unable to understand how it will affect the interests of the Hindu community in any way. In one way it will afford ample protection and security against forged documents being set up. On the other hand, it will make the work of the judges called upon to decide these cases much more simple and easy, and in many cases it will save Hindu litigants a considerable amount of expenditure in money as well as in time. I quite see that there is one serious objection to the registration of these documents

and that is that it will affect the purse of the joint Hindu family. These documents when registered will have to bear a stamp duty, and in many cases the stamp duty will be of a very heavy character. I can quite understand that type of objection. But after all, the security which the parties will obtain will amply compensate for the expenditure involved in the payment of the stamp duty. I do not see any reason why the ordinary common law should not make it obligatory for such documents to be registered. If you execute a sale deed, if you execute any deed of transfer, it must be executed by a registered document. I do not differentiate the case of a division of property and the transfer of one set of property by one coparcener to the other as being distinguishable from other transfers in which registration has been enforced. I do not see any inequity in the enforcement of the registration. My friend, the Honourable Mr. Chari, spoke of the doubtful nature of the benefit. I must say I cannot agree with him. The benefit will not be of a doubtful nature but of a sure and certain character. Where a document is registered, the benefit will be of an absolutely real nature and character, and I think the Hindu community as a whole ought to be glad that the Government, by a beneficent legislation of this character propose to place their estates after their demise on a sound footing so as to prevent the perpetration of fraud and to ensure them a full measure of safety and security of possession.

THE HONOURABLE MR. S. R. DAS: Sir, I do not propose to take up the time of the House in replying to the observations which have fallen from Honourable Members with reference to this Bill. It was because the Government felt that this was a Bill on which there may be considerable difference of opinion that they decided to move for the circulation of this Bill for the purpose of eliciting opinions. When the Bill is finally considered, the opinions which have been expressed to-day will of course receive every proper weight. But I am bound to say that I do not think my friend the Honourable Mr. Ramadas Pantulu is really right in taking up such violent opposition to the Bill. I think that if he reconsiders the matter and reads the Bill over again he will find that it does not affect any of the rights which are conferred on Hindus under the Hindu Law, unless my friend goes to the length of saying that it does affect his right, because he is entitled at present to have an oral partition, while the Bill requires that partition should be by written and registered instruments. Beyond that, I do not think that if he reads this Bill he will find that it really intends to cut or take away any of the present rights under the Hindu law. However, as I have said, it is not worth while taking up the time of the House now by entering into a lengthy disquisition on the points which my Honourable friend has put forward. All we are asking for now is that the Bill be circulated for the purpose of eliciting opinions thereon.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI: What about my question, Sir?

THE HONOURABLE MR. S. R. DAS: I am sorry I did not quite appreciate the question which has been put by my Honourable friend. The Bill intends to deal only with persons who are governed by the Hindu law. It is not intended to deal with persons who are covered either by the Muhammadan law or by customary law or by any other law, because it is obvious that it

[Mr. S. R. Das.]

will be a most complicated and confusing affair if one Bill were to attempt to deal with all classes of people. It is intended to be confined to persons who are governed by the Hindu law.

THE HONOURABLE THE PRESIDENT: The question is:—

"That the Bill to provide that partitions and separations of interest among the members of Hindu undivided families and other transactions among persons governed by Hindu Law shall, in certain cases, be effected by written and registered instruments, be circulated for the purpose of eliciting opinions thereon."

The motion was adopted.

The Council then adjourned till Eleven of the Clock on Wednesday, the 25th August 1926.