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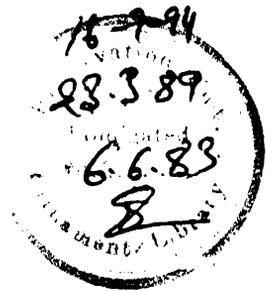
**THE
LEGISLATIVE ASSEMBLY DEBATES**

(Official Report)

Volume IV

(2nd September to 17th September, 1929)

**FIFTH SESSION
OF THE
THIRD LEGISLATIVE ASSEMBLY
1929**



**SIMLA
GOVERNMENT OF INDIA PRESS
1930**

Legislative Assembly.

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THE HONOURABLE MR. V. J. PATEL.

Deputy President :

MAULVI MUHAMMAD YAKUB, M.L.A.

Panel of Chairmen :

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MR. DHIRENDRA KANTA LAHIRI CHAUDHURY, M.L.A.

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LEGISLATIVE ASSEMBLY.

Tuesday, 10th September, 1929.

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

QUESTIONS AND ANSWERS.

PROHIBITION OF THE ADVOCATES OF INDIAN HIGH COURTS FROM PRACTISING IN SUBORDINATE COURTS IN BURMA.

259. *Mr. K. C. Neogy : (a) Are Government aware of the fact that the Bar Council of Burma framed a rule prohibiting the Advocates of other Indian High Courts from practising in the subordinate courts of Burma without obtaining the express permission of the presiding Judge in every case ?

(b) Are Government aware that the Bar Councils have no power to make rules with regard to subordinate courts ? If so, was the attention of the Burma Bar Council drawn to the rule being *ultra vires* of its powers and the necessity for cancelling the same ?

(c) Has the attention of Government been drawn to a statement made by Earl Winterton in the House of Commons, promising an inquiry regarding the said rule made by the Burma Bar Council ?

(d) Has the Government of Burma been addressed on this point ? If so, will Government place on the table any reply that may have been received ?

The Honourable Sir James Orerar : (a) Yes.

(b) The validity of the rule has been questioned, and I understand that it is likely to be brought before the Courts. I am consequently not prepared to express an opinion.

(c) Yes.

(d) Yes. I do not think it would be proper to lay on the table correspondence which deals with issues which are likely, as above stated, to be shortly *sub judice*.

NAMES AND LOCATION OF DULY CONSTITUTED TRADE UNIONS IN INDIA.

260. *Mr. A. H. Ghuznavi : Will Government be pleased to state if there exist any duly constituted trade unions in India ; and if so, will Government be pleased to give their names and also the names of the respective provinces in which they have been established ?

The Honourable Sir Bhupendra Nath Mitra : A list of trade unions duly registered under the Indian Trade Unions Act, 1926, in the various provinces will be sent to the Honourable Member and a copy placed in the Library of the House.

NAMES OF LABOUR LEADERS RECOGNISED BY GOVERNMENT IN DIFFERENT PROVINCES.

261. ***Mr. A. H. Ghuznavi** : Will Government be pleased to give the names of the labour leaders, as recognised by Government in the different provinces ?

The Honourable Sir Bhupendra Nath Mitra : I take it that the Honourable Member has in mind some form of formal recognition as is accorded by Government to approved Associations of Government servants. The Government of India have not made any attempt to distinguish in a similar manner certain labour leaders from others.

REMOVAL OF DISABILITIES OF WOMEN AS REGARDS FRANCHISE FOR AND MEMBERSHIP OF INDIAN LEGISLATURES AND LOCAL ADMINISTRATIVE BODIES.

262. ***Mr. E. L. Price** : Will Government be pleased to state :

- (1) The disabilities of women as regards franchise for and membership of, (a) local administrative bodies, (b) Provincial Councils, (c) the Indian Legislative Assembly, and (d) the Council of State ;
- (2) What steps can be taken in India, without reference to the India Office, to remove those disabilities ; and
- (3) In what cases, if any, have such steps been taken ?

The Honourable Sir James Crerar : (1) The question of disabilities of women as regards franchise for and membership of local administrative bodies is not primarily the concern of the Governor General in Council. As regards the Council of State, the Legislative Assembly and the Provincial Legislative Councils, the Honourable Member is referred to rules 5 (b), 7 (b) and 22 (b) of the Electoral rules of both the Chambers of the Central Legislature and to the rules of the various Provincial Legislative Councils.

(2) and (3). Women have been enfranchised in all provinces having Legislative Councils, without reference to the India Office. They are eligible for election or nomination to the Legislative Councils in Madras, Bombay, United Provinces, Punjab, Burma, Bihar and Orissa, Central Provinces and Coorg and to the Legislative Assembly from these provinces if they are otherwise qualified. As regards the Delhi and Ajmer-Merwara constituencies of the Legislative Assembly, the sex disqualification for election and nomination has been removed, but women have not been enfranchised in these provinces and therefore cannot stand for election to the Assembly, though they can be nominated.

ALLEGED RACIAL DISCRIMINATION IN THE APPELLATIONS USED ON PASSES ISSUED TO EMPLOYEES ON THE NORTH WESTERN RAILWAY.

263. ***Mr. M. S. Aney** : (a) Will Government be pleased to state whether it is a fact that the Agent of the North Western Railway, while issuing railway passes has lately discontinued the practice of using the words " Mr. ", " Lala ", " Mian ", and " Sirdar " before the names of employees who are Hindus, Muhammadans or Sikhs, and retained the use of the word " Mr. " in the case of employees who are Christians, Anglo-Indians or Europeans ?

(b) If the reply to part (a) be in the affirmative, will Government be pleased to state the reasons for this racial discrimination ?

(c) Do Government propose immediately to take steps to remove the same ?

Mr. P. E. Rau : (a) Yes.

(b) & (c). I understand this was due to the inability of the North Western Railway Administration to determine what was the proper prefix to be used, as certain objections were raised to previous practice, but I am glad to say the question has been settled by the decision to use the innocuous term " Mr. " in all cases.

Mr. K. Ahmed : I understand, Sir, that Indians generally like to be styled as " Mr. ", and they would prefer that to " Lala ", " Sirdar ",— what is the other name " Mian ", and so on, isn't that so ?

Mr. P. E. Rau : No further complaints have been received.

RETENTION TILL THE AGE OF 60 OF CAPABLE MEN IN CERTAIN OFFICES IN BOMBAY.

264. ***Mr. Jamnadas M. Mehta :** (a) Will Government be pleased to state how many persons from the higher grades (Superintendents, etc.) were due to retire in the year 1928-29 for having completed the age of 55 or above in the (i) Accountant General's Office, Bombay, (ii) Income-tax Office, Bombay, and (iii) Currency Office, Bombay, and how many of them were granted extensions from each office ?

(b) Will Government be pleased to state whether it is a fact that extension in services up to the age of 60 to capable men can be granted by the head of the Department ? If so, why in most cases was it refused in the Accounts and Income-tax Offices, Bombay ?

(c) Will Government be pleased to state whether the persons from the Accountant General's and Income-tax Offices, who had attained the age of 55, were all held to be incapable of doing any further service, or whether they were required to go only to make room for others ?

(d) Will Government be pleased to state whether the grant of extensions up to the age of 60 to those who are in graded appointments and who have not reached the maximum and are allowed to remain in that grade for three years, enables them to get the full benefit of that grade when they retire ? If so, why are no chances given in the above two offices only to the persons who are capable of serving up to 60 years of age ?

The Honourable Sir George Schuster : (a) The facts for the year 1928-29 in the three offices mentioned by the Honourable Member are as follows :

(i) In the Accountant General's office seven Superintendents and Divisional Accountants attained the age of 55 or over. Of these, three retired without asking for an extension of service, three were granted extensions, and one, who had been granted previous extensions aggregating 2½ years, was refused a further extension.

(ii) In the Income-tax office no person in the higher clerical grades, attained the age of 55 or over.

(iii) In the Currency Office the only persons in the higher clerical grades who attained an age of 55 or over were a Deputy Treasurer and an Assistant Treasurer. They were both granted extensions.

(b) Fundamental Rule 56 (b) lays down that a ministerial servant may be required to retire at the age of 55 years, but should ordinarily be retained in service, if he continues efficient, up to the age of 60 years. The figures I have just given show that an extension was refused in one case only, and that that was a case in which the officer had reached the age of 57½.

(c) On the facts as already stated this part of the question contains a misleading implication. In the single case in which an extension was refused, the fact that eligible juniors were awaiting promotion was undoubtedly taken into consideration.

(d) The amount of a ministerial servant's pension depends upon his pay during the last three years of his service, and there is consequently advantage in reaching the maximum of a time-scale three years before retirement. It is obvious therefore that if a Government servant reaches the maximum rate less than three years before he attains the age of 55, it would be to his advantage to continue until he has completed the three years, *i.e.*, beyond his age of 55 but not necessarily up to the age of 60.

RETURN OF SHROFFS OF THE BOMBAY CURRENCY OFFICE OF ADDITIONAL SECURITY TAKEN FROM THEM.

265. *Mr. Jamnadas M. Mehta : With reference to the reply to starred question No. 700 (c), put by Mr. Aney in the last Delhi Session, that shroffs are not required in Bombay or elsewhere to deposit additional security, do Government propose to issue orders to return the additional security taken from the shroffs in the Bombay Currency Office as early as possible ?

The Honourable Sir George Schuster : With your permission, Sir, I will deal with questions Nos. 265 and 266 together.

Inquiry is being made and a reply will be sent to the Honourable Member in due course.

PAY OF TEMPORARY SHROFFS IN THE BOMBAY CURRENCY OFFICE.

†266. *Mr. Jamnadas M. Mehta : (a) Will Government be pleased to state the difference between the rate of pay of temporary shroffs and temporary hamals engaged on a daily wage basis in the Bombay Currency Office before 1929 ?

(b) Do Government treat them both equally ? If so, why ? What steps do Government propose to take to increase the rate of pay of the temporary shroffs ?

PROHIBITION OF THE ADVOCATES OF INDIAN HIGH COURTS FROM PRACTISING IN SUBORDINATE COURTS IN BURMA.

267. *Mr. Jamnadas M. Mehta : (a) Are Government aware of the fact that the Bar Council of Burma framed a rule prohibiting the

†For answer to this question, see answer to question No. 265.

advocates of other Indian High Courts from practising in the subordinate courts of Burma without obtaining the express permission of the presiding Judge in every case ?

(b) Is it not a fact that the Bar Councils have no power to make rules with regard to subordinate courts ? If so, was the attention of the Burma Bar Council drawn to the rule being *ultra vires* of its powers and the necessity for cancelling the same ?

(c) Has the attention of Government been drawn to the inquiry promised by Earl Winterton in the House of Commons regarding the rule made by the Burma Bar Council, prohibiting the advocates of other Indian High Courts from practising even in the subordinate courts of that province ?

(d) Have the Government of Burma been addressed on this point ? If so, will Government be pleased to place on the table the reply received ?

The Honourable Sir James Orerar : The Honourable Member is referred to the reply which I have just given.

IRREGULARITY IN THE TRAINING OF STUDENTS FOR CERTAIN EXAMINATIONS IN THE NORMAL SCHOOL, AJMER.

268. ***Manvi Muhammad Yakub :** (a) Is it a fact that the students of the Normal School, Ajmer, who were declared successful in the P. T. C. examination in 1929, were admitted to the school after the summer vacation on the 6th July 1929 as students of the V. T. C. class in contravention of paragraph 227 of the Education Code ? If so, what action do Government propose to take against the officer or officers responsible for the violation of the rule ?

(b) Is it a fact that the students mentioned in part (a) were discharged from the school without even one day's notice after a few days' attendance in the second week of July 1929 ? If so, do Government propose to take adequate disciplinary measures against the officer or officers responsible for it and for the circumstances necessitating it ?

(c) If what has been stated in parts (a) and (b) be facts, were the stipends from the completion of the P. T. C. course till the disbanding of the V. T. C. class in July 1929 given to the students concerned ? Is it a fact that these students were kept waiting for the V. T. C. and, were therefore, unemployed in the summer vacation, and actually attended the V. T. C. class for some days after the vacation ?

(d) If the answer to the first part of part (c) is in the negative, do Government propose to disburse the stipends to the students concerned ? If not, why not ?

Sir Frank Noyce : With your permission, Sir, I shall deal with questions Nos. 268 to 272, and 277 and 278 together. The information asked for in these questions, excepting question No. 272, is being collected and will be supplied to the Honourable Member in due course.

As regards question No. 272, if the Honourable Member will be good enough to name the institution to which he refers, inquiries will be made.

IRREGULARITY IN THE ADMISSION OF CANDIDATES TO CERTAIN CLASSES IN THE NORMAL SCHOOL AT AJMER.

†269. *Maulvi Muhammad Yakub : (a) Will Government be pleased to state if it is a fact :

- (i) that before the summer vacation of 1929 the Assistant Superintendent of Education, Ajmer-Merwara, informed the Headmaster, Normal School, Ajmer, that no admission to the P. T. C. class of that school would be made in the next session in July 1929 ;
- (ii) that after the reopening of the school the Assistant Superintendent of Education notified that admissions to the P. T. C. class would be made for the said session that had already begun ;
- (iii) that no dates were given for selection and admission in the said notice ;
- (iv) that the selection for admission was made in less than ten days after the issue of the notice, whereas in previous years selection was made after more than a month from the date of the issue of the notice ;
- (v) that the period intervening between the issue of the notice and the selection was too short for candidates from the remote parts of the district to appear for selection ;
- (vi) that candidates continued to come in for admission for a number of days after the board of admission had met for selection ; and
- (vii) that for a number of working days in July 1929 the Ajmer Normal School teachers had no students to teach, in consequence of the late selection and admission of candidates ?

(b) If what are stated at part (a) above are facts, do Government propose to take adequate disciplinary measures against the officer responsible for this state of things ?

GRANT OF COMPENSATION TO CERTAIN VERNACULAR TEACHERS IN AJMER-MERWARA REFUSED ADMISSION TO THE NORMAL SCHOOL, AJMER.

†270. *Maulvi Muhammad Yakub : Is it a fact that certain men appointed as vernacular teachers in Ajmer-Merwara sent for admission to the Normal School, Ajmer, in 1929 were neither admitted to the Normal School, nor allowed to return to the posts they held prior to their being sent up for admission to the Normal School ? If so, are Government prepared to grant compensation to the teachers concerned ?

REFUSAL OF TRAVELLING ALLOWANCE TO CERTAIN STUDENTS OF THE NORMAL SCHOOL AT AJMER.

†271. *Maulvi Muhammad Yakub : Is it a fact that the stipendiary students admitted to the Government Normal School, Ajmer, in 1929

†For answer to this question, see answer to question No. 268.

were not given travelling allowances on the occasion of their joining the school, in contravention of paragraph 231 of the Educational Code? If so, will Government please state the circumstances justifying the violation of the rule?

VIOLATION OF THE EDUCATION CODE IN REGARD TO VACATION AND HOLIDAYS BY AN ANGLO-VERNAacular SCHOOL AT AJMER.

272. *Maulvi Muhammad Yakub : (a) Is it a fact that an Anglo-vernacular institution at Ajmer aided and recognised by the Department of Education, Ajmer-Merwara, and inspected by the Assistant Superintendent of Education, Ajmer-Merwara, has not observed the provisions of the Education Code in regard to vacation and holidays ever since its recognition? If so, will Government be pleased to state what action was taken against the school; if not, why not?

(b) How many times has the Assistant Superintendent of Education, Ajmer-Merwara, visited the school since its recognition?

(c) Did the Assistant Superintendent of Education object to the violation of the said provisions of the Education Code in any of his inspection reports of the said school? If so, when? If not, why not?

VIOLATION OF THE PROVISIONS OF THE EDUCATION CODE REGARDING RELIGIOUS INSTRUCTION BY A HIGH SCHOOL AT AJMER

273. *Maulvi Muhammad Yakub : (a) Is it a fact that a High School in Ajmer, aided and recognised by the Department of Education, Ajmer-Merwara, and inspected by the Assistant Superintendent of Education, Ajmer-Merwara, has been violating the provisions of paragraph 90 (a) of the Education Code in regard to religious instruction ever since its recognition? If so, will Government please state what steps were taken against the institution? If not, why not?

(b) How many times has the Assistant Superintendent of Education inspected the D. A. A. V. High School since 1925?

(c) Did the Assistant Superintendent of Education object to the violation of paragraph 90 (a) of the Education Code in any of his inspection reports of the said D. A. A. V. High School? If so, when?

*Sir Frank Noyce : (a) If the Honourable Member will be good enough to give the name of the institution to which he refers to me or to the Educational Commissioner, inquiries will be made.

(b) Three.

(c) Yes, in 1929.

PURCHASE BY THE STUDENTS OF THE NORMAL SCHOOL, AJMER, OF CERTAIN TEXT BOOKS WRITTEN BY THE HEADMASTER OF THAT SCHOOL.

274. *Maulvi Muhammad Yakub : (a) Is it a fact that certain books written by Mr. S. C. Chatterji, then in charge of the Normal School, Ajmer, which were not prescribed, recommended or suggested for the C. T. course, had to be purchased by each and every student admitted

†For answer to this question, see answer to question No. 268.

to the C. T. class of the said school in 1929 ? If so, will Government inquire if the books had to be purchased by order of the Headmaster ?

(b) Were the books referred to in part (a) used for regular class-work ? If so, was permission to introduce them in the regular course obtained from the Superintending officers or from the authorities prescribing the C. T. Course ?

Sir Frank Noyce : (a) & (b). The answer to the first part of each of these questions is in the negative. The second part does not arise.

RESULTS OF EXAMINATIONS OF SCHOOLS AND COLLEGES IN AJMER IN 1928 AND 1929.

275. *Maulvi Muhammad Yakub : Will Government please put on the table of the House a statement comparing the external examination results of the Government College, Ajmer, the Government High School, Ajmer, the Moinia Islamia High School, Ajmer, and the Government Normal School, Ajmer, in 1929, with those in 1928, and showing the number of students sent for each examination by each of the said institutions, the number of students successful, and the percentage of successful students ?

Sir Frank Noyce : A statement is placed on the table.

Comparative statement of results for 1927-28 and 1928-29 in the Government Educational Institution in Ajmer-Merwara.

Name of institution.	Sent up.		Passed.		Percentage.	
	1927-28.	1928-29.	1927-28.	1928-29.	1927-28.	1928-29.
Government College, Ajmer—						
B. A.	11	26	8	11	72.7	42
B. Sc.	13	11	8	5	61.5	45.4
I. A.	22	19	13	10	59.1	52.4
I. Sc.	28	33	18	14	64.3	42.4
Government High School, Ajmer.	60	50	50	34	83.3	68
Moinia Islamia High School, Ajmer.	12	21	9	8	75	38
Normal School, Ajmer—						
V. T. C. and P. T. C. ..	20	31	9	19	45	61.3
C. T.	18	29	15	25	83.3	86.2

POOR RESULTS AND INCREASED COST OF GOVERNMENT EDUCATIONAL INSTITUTIONS IN AJMER IN 1929.

276. *Maulvi Muhammad Yakub : (a) Are Government aware that, except in the case of the Government Normal School, Ajmer, the external examination results of all the Government institutions in the town of Ajmer in 1929 are worse than in 1928 ?

(b) What are the reasons for the fall in the percentage of success in the examination results ?

(c) Is it a fact that the expenditure incurred by Government on the maintenance of each of the said institutions was greater in 1928-29 than in 1927-28 ?

(d) What steps do Government propose to take in the interests of education and the proper use of public money ?

Sir Frank Noyce : (a) & (c). Yes.

(b) & (d). The matter is under inquiry.

APPOINTMENT OF AN UNTRAINED TEACHER AS HEAD TEACHER OF THE VERNACULAR SECONDARY SCHOOL, BHIM.

†277. ***Maulvi Muhammad Yakub :** (a) Is it a fact that an untrained teacher has been confirmed as Head Teacher of the Vernacular Secondary School, Bhim, with effect from the 1st August, 1927 ?

(b) Is it a fact that the said confirmation was made on the recommendation of the Assistant Superintendent of Education, Ajmer-Merwara ?

(c) Is it a fact that there were orders on record previous to the confirmation of the said teacher, to the effect that he could not be confirmed till he was trained, and that the said order was not mentioned or referred to by the Assistant Superintendent of Education in recommending the confirmation of the teacher ?

(d) Is it a fact that the confirmation of the said teacher was subsequently cancelled by the Superintendent of Education, Delhi and Ajmer-Merwara ? If so, who was responsible for the wrong confirmation and what action was taken against the officer responsible ?

(e) Is it a fact that the said teacher had been drawing for more than a year the higher pay of a post in the Government Normal School, Ajmer, when actually working as Head Teacher of the Secondary School, Bhim ; while another teacher actually worked in the said post of the Government Normal School, Ajmer, at the lower pay of a secondary school head teacher ? If so, will Government be pleased to state the rules under which the department concerned was justified in making this arrangement ?

NAMES OF RELATIVES OF MR. P. B. JOSHI, ASSISTANT SUPERINTENDENT OF EDUCATION, AJMER-MERWARA, EMPLOYED IN THE AJMER-MERWARA EDUCATION DEPARTMENT.

†278. ***Maulvi Muhammad Yakub :** Will Government be pleased to put on the table a statement showing the names of the relatives of Mr. P. B. Joshi, the Assistant Superintendent of Education, Ajmer-Merwara, in the service of the Ajmer-Merwara Education Department, stating which of them were appointed in the said Department after Mr. P. B. Joshi's appointment as Assistant Superintendent of Education, Ajmer-Merwara ?

†For answer to this question, see answer to question No. 268.

APPOINTMENT BY MR. P. B. JOSHI, ASSISTANT SUPERINTENDENT OF EDUCATION, AJMER-MERWARA, OF A RELATIVE OF HIS AS SECOND MASTER OF THE NORMAL SCHOOL, AJMER.

279. ***Maulvi Muhammad Yakub** : (a) Is it a fact that in 1926 Mr. P. B. Joshi, the Assistant Superintendent of Education, Ajmer-Merwara, recommended to the Superintendent of Education only two teachers, Mr. Nand Kishore Joshi and Mr. Durgapal Joshi for the second-mastership of the Government Normal School, Ajmer ?

(b) Is it a fact that the said Mr. Nand Kishore Joshi is the brother of Mr. P. B. Joshi ?

(c) Is it a fact that the said Mr. Durgapal Joshi is a relative of Mr. P. B. Joshi ? If so, what is the relationship ?

(d) Will Government be pleased to put on the table a list of all the trained graduate assistant masters in the employ of the Ajmer-Merwara Education Department, stating their names, qualifications and grades, when the recommendation mentioned in part (a) was made ?

(e) Will Government be pleased to state the ground on which the Assistant Superintendent of Education was justified in recommending only Mr. Nand Kishore Joshi and Mr. Durgapal Joshi for the post mentioned in part (a) and excluding all other trained graduate teachers from the recommendation ?

(f) Did the Assistant Superintendent of Education consult the Headmasters of the two Government High Schools in Ajmer before making the recommendation mentioned in part (a) ? If not, why not ?

(g) Did the Assistant Superintendent of Education consult the Headmaster, Normal School, Ajmer, before making the recommendation in part (a), under whom the teacher to be appointed was to work ? If not, why not ?

(h) Is it a fact that Mr. Nand Kishore was appointed to the vacancy mentioned in part (a) ?

Sir Frank Noyce : (a) & (e). Recommendations from an officer of Government to his superior officer on questions of personnel are confidential.

(b) Mr. Nand Kishore Joshi, brother of Mr. P. B. Joshi, was in 1926 appointed a master in the Government Normal School, Ajmer.

(c) Government know of no one of the name of Durgapal Joshi.

(d) A list of the trained graduate assistant masters in the employ of the Ajmer-Merwara Educational Department in 1926, with their names, qualifications and grades is placed on the table.

(f) & (g). Government understand that the Assistant Superintendent of Education consulted the headmasters named before submitting his recommendations in 1926, for filling a post which was then vacant.

(h) Yes.

Statement showing the number of trained graduate teachers in Government Schools in Ajmer-Merwara in 1926-27, along with their pay and qualifications.

Government High School, Ajmer—		Rr.
Mr. Babu Lal	B. A., L. T.	120—5—145
Mr. Nand Kishore Joshi	B. A., L. T.	120—5—145
Mr. Pushkar Datt	B. A., L. T.	105—5—130
Mr. Gauri Datt Durgapal	B.Sc., L.T.	105—5—130
Moinia Islamia High School, Ajmer—		
Mr. Abdul Rashid Khan	B. A., L. T.	140—10—190
Mr. Mohammad Ishaque Quresbi	M. A., L. T.	90—5—115
Mr. Musaffar Hussain	B. A., C. T.	65—3—80

LACK OF QUALIFICATION OF MR. TARLEKAR FOR THE HEADMASTERSHIP OF THE MOINIA ISLAMIA HIGH SCHOOL.

280. *Maulvi Muhammad Yakub : (a) Is it a fact that the teacher appointed to officiate as Headmaster of the Moinia Islamia High School, Ajmer, in April 1928, did not possess even the minimum qualifications for the Headmastership of a High School prescribed by the Board of High School and Intermediate Education with which the Moinia Islamia High School was then affiliated ?

(b) Is it a fact that the said teacher did not possess the qualifications for service laid down in paragraphs 150 (a) and 222 (c) of the Education Code ?

(c) Is it a fact that the High School examination result of the Moinia Islamia High School for the academic year 1928-29, in which the school was under Mr. Tarlekar's Headmastership, was 8 out of 21, against 8 out of 13 in the preceding year ?

(d) Is it a fact that the majority of students from the Moinia Islamia High School, Ajmer, who were unsuccessful in the High School Examination in 1929, failed in the subjects personally taught by Mr. Tarlekar ?

Sir Frank Noyce : (a) & (b). Yes. But he has educational experience as head and assistant master of schools for a period extending over thirty years. He is a graduate in arts and was in the Educational Service long before the rules quoted by the Honourable Member were brought into force.

(c) & (d). Yes.

APPOINTMENT OF MUSLIMS TO THE UPPER DIVISION IN THE DEPARTMENT OF EDUCATION, HEALTH AND LANDS.

281. *Maulvi Muhammad Yakub : (a) Will Government be pleased to state the total number of ministerial officers in the Upper Division in the Department of Education, Health and Lands, and the number of the Muslims holding (i) temporary and (ii) permanent appointments in the Upper Division in the Department (1) at the time of the amalgamation of the Education Department with the Revenue Department and (2) at present ?

(b) How many vacancies occurred in the Upper Division in the Department of Education, Health and Lands during the last three years and how many of them were filled by Mussulmans ?

Sir Frank Noyce : A statement containing the required information is laid on the table.

Statement showing the number of ministerial officers and the number of Muslims in the Upper Division in the Department of Education, Health and Lands in 1923 and 1929 respectively.

Number of Assistant in the Upper Division of the Department of Education, Health and Lands at the time of amalgamation in 1923.	Number of Muslims holding Upper Division posts in the Department of Education, Health and Lands at the time of amalgamation in 1923.		Number of Assistants in the Upper Division of the Department of Education, Health and Lands at present.	Number of Muslims holding Upper Division posts in the Department of Education, Health and Lands at present.		Number of vacancies which occurred in the Upper Division during the 3 years ending August 1929.	Number of vacancies in column 7 filled by Muslims.	Remarks.
	Temporary posts. (2)	Permanent posts. (3)		Temporary posts. (5)	Permanent posts. (6)			
(1) 29	..	6	(4) 32	..	7	(7) 6*	(8) 1 *	(9) These vacancies were filled by departmental promotion which is regulated by seniority and merit.

SAFEGUARDING THE INTERESTS OF MUSSALMANS FOR APPOINTMENTS IN THE UPPER DIVISION AND SUPERINTENDENTS' GRADE OF DEPARTMENTS OF THE GOVERNMENT OF INDIA.

282. *Maulvi Muhammad Yakub : (a) What is the total number of (i) Upper Division, (ii) Selection Grade, and (iii) Superintendents' appointments in the several Departments of the Government of India Secretariat ; and how many of these appointments in each Department are held temporarily and permanently by Mussulmans ?

(b) In the event of the share of Mussalms in these appointments being disproportionately poor, do Government propose to consider, in consultation with non-official Muslim Members of this House, effective means for safeguarding the interests of Mussalms in the services mentioned above ?

The Honourable Sir James Orerar : (a) The information is being collected and will be supplied to the Honourable Member on receipt.

(b) The number of Muslims in the clerical staff of the Departments of the Government of India has risen from 8.7 per cent. in 1911 to 15.6 per cent. in 1927, and Government have no reason to think that their orders on the subject have failed to promote their object. I shall, however, be glad to receive any suggestions the Honourable Member may desire to offer.

CONSTRUCTION OF THE KASHIPUR KALAGARH RAILWAY.

283. *Maulvi Muhammad Yakub : Will Government be pleased to state :

(a) Whether the sanction of the Government of India has been obtained for the construction of the Kashipur-Kolagarh Railway ?

(b) Has the work of the survey of the line been taken up ?

(c) When the work of construction of the line is likely to be taken in hand, and

(d) When the line is likely to be opened for traffic ?

Mr. P. E. Rau : (a) & (b). The survey report of the Kashipur-Kalagarh Railway has been received and considered, and it has been decided to construct the railway when funds can be allotted for the work.

(c) The programme for 1930-31 has not yet been considered and whether this line can be taken up or not during that year depends partly on the total amount of funds available for capital expenditure.

(d) The line will be ready for opening in about 2 years after commencement of construction.

ALLEGED RACIAL DISCRIMINATION SHOWN IN THE APPOINTMENT OF MR. J. B. W. GARDNER AS ASSISTANT SECRETARY, ARMY DEPARTMENT.

284. *Lieut.-Colonel H. A. J. Gidney : (a) Is it a fact that Mr. J. B. W. Gardner, an officer supervisor in the Royal Air Force Headquarters was appointed as Assistant Secretary in the Army Department Secretariat because he was an European and was for that reason considered

more suitable for the appointment than the officer in charge, Medal Distribution, who is an Anglo-Indian, or the Senior Superintendent of the Army Department Secretariat who is an Indian ?

(b) Is it a fact that Mr. Gardner's duties as Assistant Secretary, Army Department, are mainly concerned with work that comes to the Secretariat from the General Staff Branch of Army Headquarters ?

(c) Is it a fact that Mr. Gardner has never been employed in the General Staff Branch of the Army Headquarters ?

(d) If the answer to part (a) is in the negative, will Government please state the reasons for which the officer in charge, Medal Distribution, or the Senior Superintendent, Army Secretariat, was not appointed to be Assistant Secretary, Army Department, and what, if any, are the general or special qualifications possessed by Mr. Gardner and not possessed by the other two for the appointment ?

(e) Do Government propose, on the return of the permanent incumbent of the appointment of Secretary, Army Department, Mr. G. Mackworth Young, in the chain of whose vacancy the officiating appointment of Assistant Secretary held by Mr. Gardner occurred, to continue Mr. Gardner's incumbency of the appointment of Assistant Secretary, or do they propose to appoint to the post one of the men in the Army Department Secretariat ?

Mr. G. E. F. Tottenham : (a) No, Sir.

(b) No, Sir, more than half Mr. Gardner's work comes from other Branches.

(c) Yes.

(d) Because, in the opinion of the authority whose business it was to make the appointment, the abilities of both the officers mentioned by the Honourable Member were definitely inferior.

(e) On the return of Mr. Mackworth Young the vacancy in which Mr. Gardner is now officiating will cease to exist.

Lieut.-Colonel H. A. J. Gidney : Admitting that Mr. Gardner is a man of superior abilities, will the Honourable Member please inform this House whether he, Mr. Gardner, as an outsider in the Department, has any claim or a better claim than a man in the Department who, by his continuous service, is obviously fit for promotion ?

Mr. G. E. F. Tottenham : Nobody, Sir, has any claim to a post of this kind, which is a selection post.

Lieut.-Colonel H. A. J. Gidney : Will the Honourable Member inform this House whether Mr. Gardner has ever served under him and, if not, who made this appointment, and what superior qualifications he has for this particular appointment ?

Mr. G. E. F. Tottenham : Mr. Gardner has never served under me before. I did not make the appointment ; the appointment was made by the Army Secretary, Mr. Mackworth Young, with the approval of His Excellency the Army Member. His qualifications for this appointment are his superior ability.

Lieut.-Colonel H. A. J. Gidney : In the event of a similar vacancy arising in the Department on the return of Mr. Mackworth Young, will

the Honourable Member be prepared to promote an efficient member of the Department who has an inherent claim to the post, or is it his intention to re-employ Mr. Gardner ?

Mr. President : It is a hypothetical question.

Lieut.-Colonel H. A. J. Gidney : Is the Honourable Member aware that great unrest exists in the Department and in the Secretariat over this unusual appointment and procedure of bringing in an outsider into an office in which he had no previous experience whatever ?

Mr. G. E. F. Tottenham : No. I am not aware of it.

Lieut.-Colonel H. A. J. Gidney : Will the Honourable Member ascertain whether there is such unrest ?

Mr. G. E. F. Tottenham : I do not think any public purpose would be served by doing so.

Lieut.-Colonel H. A. J. Gidney : That is a matter of opinion.

ADMISSION, FREE OF CHARGE, TO MILITARY HOSPITALS OF THE WIVES AND CHILDREN OF WARRANT AND OTHER OFFICERS OF THE INDIAN MEDICAL DEPARTMENT.

285. ***Lieut.-Colonel H. A. J. Gidney :** (a) Will Government please state if it is a fact that, under paragraph 382 of Part II, Pay and Allowance Regulations for the Army in India, the wives and children of Warrant Officers and Non-Commissioned Officers of the India Unattached List are entitled to admission into British military hospitals free of any charge ?

(b) Are the wives and children of Warrant and other officers of the Indian Medical Department entitled to admission into the British military hospitals free of any charge ? If not, why not ?

Mr. G. E. F. Tottenham : (a) Yes.

(b) Yes, except the wives and children of Senior Assistant Surgeons holding the King's Commission who, like all other King's Commissioned Officers are required to pay hospital stoppages when they or their families are admitted into hospital. The last part of the question does not arise.

GRANT OF RAILWAY CONCESSION TICKETS TO WARRANT AND OTHER OFFICERS OF THE INDIAN MEDICAL DEPARTMENT.

286. ***Lieut.-Colonel H. A. J. Gidney :** Is it a fact that, in the revised rules regulating the concessions allowed to officers and men of the British and Indian Armies,—C. S. No. 17 of 1st December, 1928—railway concession tickets are restricted to Warrant Officers and Non-Commissioned Officers of the India Unattached List, etc., without any such particular mention of Warrant Officers of the Indian Medical Department who also belong to the British personnel ? If so, why ?

Mr. G. E. F. Tottenham : Yes, Sir. The omission of the Indian Medical Department was unintentional and I am seeing that the Indian Railway Conference Association is approached with a view to their inclusion.

PROMOTION OF OFFICERS OF THE INDIAN MEDICAL DEPARTMENT *pari passu* WITH THOSE OF THE INDIAN MISCELLANEOUS LIST AND INDIAN ARMY ORDNANCE CORPS.

287. ***Lient.-Colonel H. A. J. Gidney** : (a) Is it a fact that the members of the Indian Miscellaneous List receive commissioned rank after 18 years' departmental service ?

(b) Is it a fact that a member of the Indian Miscellaneous List as well as the Indian Army Ordnance Corps at Army Headquarters, when appointed an Officer Supervisor (of only a Branch), receives promotion to the rank of Major, irrespective of whether he is only a Warrant or junior Commissioned Officer ?

(c) Is it not a fact that men of the Indian Medical Department, both in Civil and Military, holding posts of much greater responsibility and higher status than those referred to in part (b), *e.g.*, Civil Surgeoncies of Districts, Sub-Medical Charge of 1st Class British Military Hospitals and Managers of Medical Store Depots—do not receive any such promotion ?

(d) Will Government please state what steps they intend to take to rectify this inequity ?

Mr. G. B. F. Tottenham : (a) Yes, if recommended and considered suitable for a commission.

(b) Yes.

(c) The tenure of one of the posts mentioned by the Honourable Member does not necessarily entail the grant of the rank of Major.

(d) Government do not admit that there is any inequity. Military Officer Supervisors must be given the rank of Major to avoid the anomaly of having men of higher rank serving under them. The rank does not affect their pay. There is no similar necessity in the case of the medical appointments referred to.

NUMBERS OF HINDU AND MUSLIM MEMBERS OF THE PESHAWAR MUNICIPALITY.

288. ***Mr. Abdul Haya** : (a) What is the total strength of the Peshawar Municipality ? Will Government please state the number of elected and nominated members separately ?

(b) Does a system of communal representation by means of separate electorates obtain in Peshawar Municipality ? If so, when was this system introduced, and what number of seats have been allotted to Hindus and Muslims separately ?

(c) On what principle has this allotment been made ?

(d) Will Government please state the figures of the Hindu and Muslim population of Peshawar City according to the last census ?

(e) If a system of communal representation has been introduced in Peshawar Municipality, was it in accordance with the wishes of the Hindus, or was it introduced in spite of their opposition ? Were various communities consulted before the introduction of this system ?

(f) Do Government propose, in the near future, to allow this Municipality to elect its own non-official chairman ?

Sir Frank Noyce : (a) The Municipal Committee of Peshawar consists of 20 members, all of whom are nominated.

(b) The answer to the first part is in the negative. The second part does not arise.

(c) Does not arise.

(d) Muslims 63,202 ; Hindus 12,220.

(e) Does not arise.

(f) The question has not been considered. Government will, however, invite the opinion of the Chief Commissioner, North West Frontier Province, on the suggestion.

Nawab Sir Sahibzada Abdul Qaiyum : Is it a fact that certain memberships, by election, were added to the nomination and, if so, how many ?

Sir Frank Noyce : I am referring to the present state of affairs. I understand that changes are in contemplation, but the facts as stated in the reply are those which now exist.

Mr. Gaya Prasad Singh : What is the percentage between the Hindu and Mussalman rate payers in the Peshawar Municipality ?

(No answer was given.)

PROGRESS OF LOCAL SELF-GOVERNMENT IN THE NORTH WEST FRONTIER PROVINCE DURING THE LAST THREE YEARS.

289. ***Mr. Abdul Hays :** (a) Will Government please make a statement regarding the progress that has been made during the last three years in the matter of local self-Government in the North West Frontier Province ?

(b) Are there any boards or municipalities in this Province that at present elect their own non-official chairman ?

Sir Frank Noyce : (a) There has been no change either in the constitution or the administration of local bodies during the last three years. These bodies continue to make progress in their internal administration as far as funds permit.

(b) No.

GRANT OF PERMISSION TO THE DELHI MUNICIPALITY TO ELECT ITS OWN NON-OFFICIAL PRESIDENT.

290. ***Mr. Abdul Hays :** Have Government ever considered the desirability of permitting the Delhi Municipality to elect its own non-official President ? If so, when and with what result ?

Sir Frank Noyce : There was some correspondence between the local Administration and the Municipal Committee between 1919 and 1921, which resulted in the Municipal Committee recommending that there should be a non-official elected President, with an Executive Officer.

At that time, the Punjab Municipal Act, which is applicable to Delhi, contained no provision for the appointment of an Executive Officer, but it was hoped that the Act would shortly be amended, and

pending the necessary amendment, the question was dropped. No amendment has, however, been made and nothing further has been done in regard to the matter in Delhi.

The Revd. J. C. Chatterjee : Is it a fact that the Delhi Municipality have not yet asked the Government for a non-official President ?

Sir Frank Noyce : I think it is.

DIFFERENCE IN PAY OF INDIAN, EUROPEAN AND ANGLO-INDIAN MECHANICS IN THE LILLOOAH WORKSHOPS, EAST INDIAN RAILWAY.

291. ***Mr. S. C. Mitra :** (a) Are Government aware that in matters of appointment racial distinction is still observed in the East Indian Railway, especially in the Lillooah Workshop ?

(b) If the answer to part (a) be in the negative, will Government state whether there is any difference in the starting salaries of Indian, Anglo-Indian and European mechanics ; that is, do Indian mechanics get Rs. 60, whereas Anglo-Indian and European mechanics get Rs. 160 ? If so, why ?

(c) Is it a fact that Indian mechanics are kept on probation for years whereas Anglo-Indian and the European mechanics are confirmed within six months ? If so, why ?

(d) If the answer to part (c) be in the negative, will Government state whether the following mechanics are still on probation on Rs. 60, and if so, why :

Indians.	Date of completion of Apprenticeship.	Date of appointment.	Date of confirmation.
Mr. D. N. Mukherjee ..	30th June 1926 ..	1st Dec. 1927 ..	Still on probation.
„ D. D. Roy Chowdhary	1st April 1926 ..	1st Dec. 1927 ..	Ditto.
„ H. K. Chakervarty	2nd Feb. 1926 ..	1st Dec. 1927 ..	Ditto.
„ M. N. Paul ..	6th Feb. 1926 ..	1st Dec. 1927 ..	Ditto.
„ K. L. Mallick ..	31st Jan. 1926 ..	1st Jan. 1928 ..	Ditto.
„ P. C. Das ..	31st Jan. 1926 ..	1st March 1928 ..	Ditto.
„ N. L. Sett ..	21st Feb. 1928 ..	22nd Feb. 1928 ..	Ditto.
„ R. R. Bose ..	12th Feb. 1928 ..	15th Feb. 1929 ..	Ditto.
„ P. B. Banerjee ..	31st Jan. 1927 ..	15th Feb. 1929 ..	Ditto.
„ A. Beg ..	18th Feb. 1929 ..	19th Feb. 1929 ..	Ditto.

Also whether the following Anglo-Indians are drawing Rs. 160 :

Mr. J. T. D'Cruz ..	10th April 1926 ..	20th Feb. 1928 ..	A year after.
„ T. E. De Roze ..	5th March 1928 ..	6th March 1928 ..	Within 6 months.
„ F. MacDonald ..	24th Feb. 1929 ..	25th Feb. 1929 ..	On probation.
„ D. Culpeper ..	18th Feb. 1929 ..	19th Feb. 1929 ..	Ditto.
„ E. Sylvester ..	10th Feb. 1929 ..	11th Feb. 1929 ..	Within 6 months.
„ D. Whaley ..	4th Feb. 1929 ..	5th Feb. 1929 ..	Within 3 months.
„ E. G. Duke ..	3rd April 1929 ..	4th April 1929 ..	Ditto.

Mr. P. E. Rau : With your permission Sir, I propose to answer questions Nos. 291, 292, 293, 294, 295, 296, 297 and 298 together.* I am making inquiries from the Agent, East Indian Railway, and will communicate with the Honourable Member in due course.

Pandit Hirday Nath Kunzru : Which part of the question are the Government going to make inquiries about ?

Mr. P. E. Rau : All the questions from 291 to 298.

Pandit Hirday Nath Kunzru : I am asking this question with reference to question 291. There are four parts in it, (a), (b), (c) and (d). With regard to which part of this question do Government propose to make inquiries ?

Mr. P. E. Rau : Government have asked for a report on all the questions, Nos. 291 to 298.

Pandit Hirday Nath Kunzru : Are Government really unaware of the difference in the starting salaries of Indian, Anglo-Indian and European mechanics ?

Mr. P. E. Rau : Yes.

Pandit Hirday Nath Kunzru : Has not the position in the East Indian Railway Workshop been brought previously to their notice ?

(No answer was given.)

Pandit Hirday Nath Kunzru : May I ask whether the Honourable Member ever reads the proceedings of this House ?

APPOINTMENT IN THE LILLOOAH WORKSHOPS OF OUTSIDERS IN SUPERSESSION OF THE CLAIMS OF MECHANICS AND APPRENTICES ALREADY ON PROBATION.

†292. ***Mr. S. C. Mitra :** (a) Are Government aware that in the Lillooah Workshops, outsiders are recruited ignoring the claims of mechanics and first grade bound apprentices ? If the answer be in the negative, will Government please state whether the following outsiders were appointed directly, and if so, why ?—

Mr. Alderson	..	..	Assistant Foreman	..	Carriage Building Shop.
.. Low	..	..	Mechanic	..	Carriage Building Shop.
.. [A. E. Watson	..	..	Assistant Foreman	..	Mill Wright Shop.
.. Moslem	..	..	Assistant Speed & Feedman.	..	Production Department.
.. Tucker	..	..	Mechanic	..	Paint Shop.
.. Everson	..	..	Mechanic	..	Wagon Repairing Shop.

(b) Is it also a fact that, since the appointment of the Establishment Officer, illiterate mistries are promoted to mechanics' grade and confirmed, ignoring the claims of mechanics, who are already on probation, and also of matriculated technically trained first grade bound apprentices ?

PROVISION OF APPOINTMENTS FOR APPRENTICES OF THE LILLOOAH WORKSHOPS.

†293. ***Mr. S. C. Mitra :** (a) Is it a fact that all the first grade bound apprentices, who complete their apprenticeship at Lillooah Workshop, are not provided with posts at the end ?

*For answer to this question, see answer to question No. 291.

(b) Do Government propose to provide the surplus first grade bound apprentices at Lucknow and Tatanagore Workshops, or similar workshops in the State Railways? If not, why not?

(c) If the answer to part (b) be in the affirmative, then why are the apprentices who have already completed their course not provided as yet?

LIST OF INDIAN MECHANICS PROMOTED AS FOREMEN AND ASSISTANT FOREMEN ON THE EAST INDIAN RAILWAY SINCE IT BECAME A STATE RAILWAY.

†294. *Mr. S. C. Mitra : Will Government please lay on the table the lists of Indian mechanics promoted to the Foreman's and Assistant Foreman's grade since the taking over of the East Indian Railway by the State?

ALLEGED PARTIALITY SHOWN IN APPOINTMENT OF APPRENTICES TO POSTS IN THE JAMALPORE WORKSHOP.

†295. *Mr. S. C. Mitra : Is it a fact that first grade bound apprentices, who stood very high in the final examination of the Technical School, Jamalpore, have not secured any appointment in the Workshop, whereas Messrs. T. E. De Roze and E. G. Duke, who failed, and Messrs. F. MacDonald and D. Whaley, who barely passed, have been provided in the Workshop as mechanics on Rs. 160?

FAILURE TO APPOINT FIRST GRADE BOUND APPRENTICES AS CHARGEMEN AT THE LILLOOAH WORKSHOPS.

†296. *Mr. S. C. Mitra : (a) Will Government please state whether at Jamalpore first grade bound apprentices are appointed as Chargemen in technically trained grade, whereas at Lillooah, Indian first grade bound apprentices of the same qualification are appointed as mechanics on much lower pay? If so, why?

(b) Is it a fact that there is a circular from the Agent that first grade bound apprentices, after completion of their training, should be appointed, provided their services are required, as Chargemen in technically trained grade, the grade being from Rs. 110|115—20—250?

(c) Why are those who are qualified for Chargemen in technically trained grade not kept on probation in that grade in the Lillooah Workshop?

(d) Why is the Agent's Circular not observed at the Lillooah Workshop?

LIMITATION OF THE NUMBER OF FIRST GRADE BOUND APPRENTICES ADMITTED TO THE LILLOOAH WORKSHOP TO THE PROBABLE NUMBER OF POSTS LIKELY TO OCCUR.

†297. *Mr. S. C. Mitra : (a) Will Government please state what percentage of qualified first grade bound apprentices, who passed out of the Lillooah Workshop in the last two years, have been provided with posts?

(b) Is it a fact that a much larger number of first grade bound apprentices are taken every year though there is no chance of providing for these men when they complete their course? If so, why?

(c) Do Government propose to limit the number of first grade bound apprentices to be taken each year to the probable vacancies that are likely to occur?

PAYMENT OF THE SUBORDINATE SUPERVISING STAFF FOR WORK ON GAZETTED HOLIDAYS.

†298. *Mr. S. C. Mitra : (a) Are Government aware that the Lillooah Workshop is not closed on some of the gazetted holidays?

(b) Will Government please state whether the supervising subordinate staff are paid overtime when they are required to work on gazetted holidays? If not, why not?

(c) Do Government propose to order payment being made to the supervising subordinate staff who have to work on holidays that are gazetted holidays?

NATURE OF ACTION TAKEN UNDER THE PUBLIC SAFETY ORDINANCE.

299. *Mr. S. C. Mitra : (a) Will Government be pleased to state what action has been taken under the Public Safety Ordinance re—

(i) arrest of any persons for deportation ;

(ii) confiscation of any property ;

(iii) deportation of any persons ?

(b) Has any other action been taken under the said ordinance ?

The Honourable Sir James Orerar : I would refer the Honourable Member to my answer to Mr. Gaya Prasad Singh's question No. 4 in this House on the 2nd September, 1929.

Mr. S. C. Mitra : That was about the arrest of persons. There are other questions about confiscation of property, etc.

The Honourable Sir James Orerar : I think my reply covered all action.

PREVENTION OF FLOODS.

300. *Maulvi Muhammad Yakub : (a) Has the attention of Government been drawn to the article which appeared in the *Pioneer* of the 15th August, 1929 (page 4, column 3), under the heading 'Floods and their prevention'? If so, will Government be pleased to state whether any investigation has been made by the Flood Committee as a result of unstarred question No. 202 answered on the 4th September, 1928?

(b) If reply to the second part of (a) above be in the affirmative, will Government be pleased to furnish the House with a copy of the Flood Committee's report on the subject?

(c) If reply to the second part of (a) above be in the negative, will Government be pleased to state the reasons in detail?

†For answer to this question, see answer to question No. 291.

(d) Will Government be pleased to state whether any provision has been made for prevention of floods in the area referred to in question No. 202 referred to in part (a) above ; (i) if so, what amount ; (ii) if not, do Government propose to make necessary provision for the same in the next Budget, and if not, why not ?

The Honourable Sir Bhupendra Nath Mitra : '(a) The reply to the first part is in the affirmative. As regards the second part, so far as the Government of India are aware, no flood committee has made any investigation in the area referred to in the unstarred question which has been cited by the Honourable Member.

(b) Does not arise.

(c) The Government of India have no information, as such committees are appointed by the Local Governments.

(d) Any provision thought necessary will be made in the budget of the Local Government.

Mr. B. Das : Is it not a fact that the Government of India lent the services of their Consulting Engineer to assist in the inquiry of the Orissa Flood Inquiry Committee ? The Honourable Member just now says that Government had no knowledge of what the Local Governments have done.

The Honourable Sir Bhupendra Nath Mitra : The Honourable Member has apparently not studied the question. My Honourable friend Maulvi Muhammad Yakub is not referring to Orissa, the land which is so dear to my Honourable friend Mr. Das, but to some part of Bihar.

Mr. B. Das : In view of the reply of the Honourable Member that the Government of India have never appointed a Committee to inquire into the causes of floods, what prevents the Honourable Member from appointing such a Committee to go into such matters ?

(Mr. President called for the next question.)

PROHIBITION OF THE ADVOCATES OF INDIAN HIGH COURTS FROM PRACTISING IN THE SUBORDINATE COURTS IN BURMA.

301. ***Mr. M. S. Seaha Ayyangar :** (a) Are Government aware of the fact that the Bar Council of Burma framed a rule prohibiting the advocates of other Indian High Courts from practising in the subordinate courts of Burma without obtaining express permission in every case ?

(b) Are Government aware that the Bar Council has no power to make rules with regard to subordinate courts ? If so, was the attention of the Burma Bar Council drawn to the rule being *ultra vires* of its powers and the necessity for cancelling the same ?

(c) Has the attention of the Government been drawn to the inquiry promised by Earl Winterton in the House of Commons regarding the rule made by the Burma Bar Council prohibiting the advocates of other Indian High Courts from practising even in the subordinate courts of that province ?

(d) Have the Government of Burma been addressed on this point ? If so, will the Government place on the table the reply received ?

The Honourable Sir James Orerar : The Honourable Member is referred to the answer just given by me to a similar question asked by Mr. Neogy.

AMOUNT OF SPECIAL SECURITY REQUIRED FROM THE TREASURER, CHITTAGONG HEAD POST OFFICE.

302. ***Mr. Anwar-ul-Azim :** Has the Treasurer, Chittagong Head Post Office, been required to furnish any special security ? If so, what amount ? What is the daily average of cash and stamps handled by him ? Has he been given any special pay for the monetary responsibility for which he had to furnish the special security ?

Mr. P. G. Rogers : The matter is being inquired into and the result will be communicated to the Honourable Member in due course.

NEWSPAPERS SUBSCRIBED FOR BY THE DEPARTMENTS OF THE GOVERNMENT OF INDIA.

303. ***Mr. Gaya Prasad Singh :** (a) Will Government be pleased to state how many copies of the following papers are subscribed for by the Home Department of the Government of India ?

- (1) *Statesman* (Calcutta).
- (2) *Englishman* (Calcutta).
- (3) *Amrita Bazar Patrika* (Calcutta).
- (4) *Pioneer* (Allahabad).
- (5) *Leader* (Allahabad).
- (6) *Hindustan Times* (Delhi).
- (7) *Daily Chronicle* (Delhi).
- (8) *Civil and Military Gazette* (Lahore).
- (9) *Tribune* (Lahore).
- (10) *Times of India* (Bombay).
- (11) *Bombay Chronicle* (Bombay).
- (12) *Hindu* (Madras).
- (13) *Madras Mail* (Madras).

(b) How many copies of the above papers are subscribed for by the different Departments of the Government of India ?

The Honourable Sir James Orerar : (a) and (b). I have laid a statement on the table containing the information asked for.

Number of copies of certain specified newspapers subscribed for by the different Departments of the Government of India.

Name of Newspapers.	Home.	Finance.	E. H. & L.	I. & L.	Legis- lative.	Com- merce.	Rail- way.	Army.	F. & P.	F. A. M. F.	Legis- lative Assem- bly.	Total.	Remarks.
1. Statesman	6	2	1	3	2	3	2	1	N/L.	N/L.	1	21	This statement does not include the newspapers subscribed for by the offices subordinate to the Departments of the Government of India.
2. Englishman	1	N/L.	N/L.	1	1	1	1	N/L.	N/L.	N/L.	N/L.	5	
3. Amrita Bazar Patrika	1	N/L.	N/L.	N/L.	N/L.	N/L.	N/L.	N/L.	N/L.	N/L.	N/L.	1	
4. Pioneer	4	2	3	3	1	2	N/L.	1	4	1	1	22	
5. Leader	2	2	3	1	1	2	1	N/L.	N/L.	N/L.	N/L.	12	
6. Hindustan Times	1	1	N/L.	1	2	N/L.	N/L.	1	1	N/L.	1	8	
7. Daily Chronicle	4	N/L.	1	N/L.	2	1	N/L.	1	1	N/L.	N/L.	10	
8. Civil and Military Gazette	2	N/L.	N/L.	1	N/L.	N/L.	N/L.	1	2	N/L.	N/L.	6	
9. Tribune	1	N/L.	1	1	1	N/L.	N/L.	N/L.	N/L.	N/L.	1	5	
10. Times of India	3	2	2	2	2	3	1	1	1	N/L.	N/L.	17	
11. Bombay Chronicle	N/L.	N/L.	1	1	N/L.	1	N/L.	N/L.	N/L.	N/L.	N/L.	3	
12. Hindu	N/L.	N/L.	1	1	1	1	N/L.	N/L.	N/L.	N/L.	N/L.	4	
13. Madras Mail	1	N/L.	2	N/L.	N/L.	1	N/L.	N/L.	N/L.	N/L.	N/L.	4	

DELAY IN CENSURING A PRESS TELEGRAM REPORTING AN OUTBREAK OF CHOLERA IN THE MEERUT JAIL.

304. *Mr. Gaya Prasad Singh : (a) Is it a fact that a Free Press message regarding the outbreak of cholera in the Meerut Jail was booked on the 1st May, 1929 at 6 P.M. at the Meerut Telegraph Office ; and it was sent to the District Magistrate of Meerut at 7-20 on the morning of the 2nd May, for censorship ? If so, why was the message not sent up at once if it was held to be objectionable ?

(b) Is it a fact that the District Magistrate of Meerut called the Free Press representative, and wanted some words in the message to be deleted, which was done ?

(c) Will Government please give the text of the message, and also the words objected to ?

The Honourable Sir James Orerar : (a) Yes. The delay was due to the fact that the telegram was challenged as objectionable on receipt by the Lahore Telegraph Office who referred it to the Meerut Telegraph Office for instructions. The Meerut Telegraph Office thereupon referred the matter for the orders of the District Magistrate, Meerut, who dealt promptly with the reference.

(b) Yes. The District Magistrate interviewed the Free Press representative and advised him in his own interests to delete a sentence which was untrue and in his opinion libellous. The Free Press representative asked for the message to be returned to him for redrafting and this was done.

(c) I have communicated the text of the message and the passage objected to to the Honourable Member.

Mr. Gaya Prasad Singh : May I take it that the text of the message communicated to me is to be treated as confidential ? I am asking merely for information ?

The Honourable Sir James Orerar : No. If the Honourable Member desires to treat it in any other way, I have no objection whatever.

Mr. Gaya Prasad Singh : May I know if the passage objected to in the message is this " Signs of cholera were visible among the prisoners for the last two or three days, but the jail authorities took no precautions." May I know what is the objection to this passage ?

The Honourable Sir James Orerar : The objection was to the assertion that the jail authorities took no precautions. Obviously on the facts stated it would have been a grave dereliction of duty on their part.

Mr. Gaya Prasad Singh : Did they take any precautions, Sir ?

The Honourable Sir James Orerar : I have no doubt that they did take precautions.

Mr. Gaya Prasad Singh : What was the nature of the precautions ?

The Honourable Sir James Orerar : I am unable to say precisely what precautions were taken, but I have no doubt that the authorities

concerned took the precautions necessary when an outbreak of an infectious disease was apprehended.

Mr. Gaya Prasad Singh : What is the authority for the Honourable Member's statement that precautions were taken when he does not know the precise nature of the precautions taken.

The Honourable Sir James Crerar : I think the Honourable Member will gather that from the context of my reply.

INELIGIBILITY OF INDIANS TO HOLD LAND IN THE UNITED STATES OF AMERICA.

305. ***Mr. Gaya Prasad Singh :** (a) Is it a fact that, under the decision of the United States Supreme Court in 1923, British Indians in that country are ineligible for citizenship, and incapable of holding lands in their possession ?

(b) If so, has any time been given for the Indian landowners in the United States to dispose of their properties ? If so, what time ?

(c) Is there any similar law in India, by which Americans are made ineligible for holding landed properties in this country ?

Sir Denys Bray : I have traversed most of the ground covered by the question in previous answers, but as the subject has stirred much public interest and misapprehension still exists about it, I propose, with your permission, Sir, to state the general position anew.

In 1923 the Supreme Court of the United States ruled that Indians are and always have been ineligible for American citizenship, seeing that it is restricted under revised Statute 2169 to persons of Caucasian and African race. The rigid application of this ruling would have involved the denaturalisation of several hundreds of naturalised Indians, and in States like California where the holding of lands by aliens even on lease is prohibited, summary eviction from the landed property they had *bona fide* acquired. From the outset their unhappy predicament engaged the close and continuous attention of the Government of India and His Majesty's Government. The difficulties of the case seemed almost insuperable, for the ruling that an Indian is ineligible for citizenship under the American constitution is the final ruling of the Supreme Court. At first it looked as if the full rigour of the American law would be exercised, and some 30 unfortunate Indians were made to suffer the disabilities of denaturalisation. But concurrently with various alleviations that were from time to time secured, the position became gradually established that a certificate of naturalization could not be withdrawn without a process of the Courts in each separate case—a procedure which acted in the natural course of things as a salutary brake. And now I am glad to say we seem to have reached the stage when we can safely anticipate that, in the absence of any outside stimulus,—the Honourable Member will forgive me if I here refer pointedly to the unwisdom of the tentative suggestion in his last question—no further proceedings will be taken against Indians who acquired or were thought at the time to have acquired American citizenship prior to the decision of the Supreme Court. Hard as is the case of the 30 Indians who have suffered denaturalisation, it is gratifying that immunity has thus been secured for several hundreds of their more fortunate fellows.

Diwan Chaman Lall : May I ask the Honourable Member whether the position now is that no Indian can own any property in the United States of America ?

Sir Denys Bray : That, Sir, is not the case except in those States in which the holding of land by aliens is prohibited.

Diwan Chaman Lall : Is it a fact that in most States the holding of land by aliens is prohibited, and particularly Indians ?

Sir Denys Bray : It is not " particularly Indians " in any case. If I understood the Honourable Member's question aright, he was asking whether the prohibition obtained in the majority of States. The answer, as far as I know, is in the negative.

CONSTRUCTION OF A RAILWAY FROM RUTLAM TO GALIAKOT IN PREFERENCE OF ONE FROM DOHAD TO GALIAKOT.

306. ***Mr. Gaya Prasad Singh :** (a) Is it a fact that a traffic survey has been undertaken by the Bombay, Baroda and Central India Railway from Dohad to Galiakot, via Jhalod ? If so, when is the result likely to be available ?

(b) Have Government considered the question of constructing a line from Rutlam, which is a very important junction station, to Galiakot, as likely to be more remunerative, and more conducive to public convenience than one from Dohad ?

Mr. P. R. Rau : (a) and (b). Traffic surveys are being undertaken both from Dohad and from Rutlam, to see which route will be best for the proposed railway. The results are not likely to be available till after April next.

PROVISION OF CONVENIENCES FOR PILGRIMS AT RAMNAGAR STATION.

307. ***Mr. Gaya Prasad Singh :** (a) Has the attention of the Government been drawn to a letter published in the *Pioneer*, dated the 1st July, 1929, (page 11), under the heading " Badrinath Pilgrims and the Railway " ?

(b) Are Government aware that thousands of pilgrims returning from Badrinath gather annually at Ramnagar Railway Station (Rohilkhand-Kumaun Railway) to go to different parts of the country, between April and September every year ?

(c) Are Government aware that the passenger shed at Ramnagar Station is quite insufficient, and situated on a low level, which makes it extremely inconvenient, especially during the rains ?

(d) Are Government aware that the sanitary arrangements there are extremely bad, and the drinking water for the pilgrims, in the words of the Medical Health Officer of Naini Tal, " is far from satisfactory. The channel carrying water from the canals to the reservoir requires cleaning " ?

(e) Has the attention of Government been drawn to the following remarks made by Rai Saheb Dr. A. N. Das, District Medical Officer of Health, Naini Tal :—“ There is only one train running to and from Ramnagar. The outgoing train leaves early in the morning. There were two trains running till May 31st, 1929.....The water supply at Ramnagar is very very bad. I noticed goods wagons being used on the 6th and

7th June, 1929, for herding in the passengers. This only shows the extent of the congestion at Ramnagar " ?

(f) Are Government aware that booking facilities at Ramnagar are extremely meagre ; and that there is only one booking clerk to cope with the huge rush of traffic ?

(g) What steps have been taken, or are proposed to be taken, to improve the state of affairs there ?

Mr. P. R. Rau : (a) Yes.

(b) to (g). The Agent of the Rohilkund and Kumaon Railway has been asked for a report, on receipt of which I shall be in a position to reply to the Honourable Member's question.

OBJECT OF THE RECENT VISIT OF THE RIGHT HONOURABLE SRINIVASA SASTRI TO EAST AFRICA.

308. ***Mr. Gaya Prasad Singh :** Will Government be pleased to make a statement regarding the object of the recent visit of the Rt. Hon. Srinivasa Sastri to East Africa ; and its result ?

Sir Frank Noyce : At the invitation of His Majesty's Secretary of State for the Colonies, the Government of India deputed the Right Honourable V. S. Srinivasa Sastri as their representative to help the local Indian communities in East Africa to state their views to Sir Samuel Wilson, the Permanent Under Secretary of State at the Colonial Office, on matters arising out of the Hilton Young Commission's Report, and to be at the disposal of Sir Samuel Wilson if he wished to make use of him in dealing with the Indian deputations. It is premature to talk of the results of the visit, but the Right Honourable Srinivasa Sastri has promised to furnish a report shortly.

Mr. A. Rangaswami Iyengar : May I know whether, prior to the Right Honourable Srinivasa Sastri's visit, the Government of India was informed that on the two most important questions upon which the Hilton Young Committee made recommendations, including the joint electorate, the Government of Great Britain had come to the conclusion that a change was not to be made, and that they communicated the same to the Government of India.

Sir Frank Noyce : I do not think that arises out of the question.

Mr. A. Rangaswami Iyengar : It is not for the Honourable Member to say that it does not arise. It is for the Chair to rule it.

Sir Frank Noyce : My appeal was to the Chair.

PROVISION OF A DEPUTY SECRETARY FOR THE INDIAN CENTRAL COMMITTEE OF THE SIMON COMMISSION.

309. ***Mr. Gaya Prasad Singh :** (a) Is it a fact that the Government of India received any request from certain members of the Indian Central Committee of the Simon Commission, before their departure for England, to provide them with the services of a Deputy Secretary, or any other official, of their own community, to help them to write a separate dissenting minute, if need be ; but the request was not granted ?

(b) Have the services of Mr. Coatman been requisitioned in England for this purpose ?

The Honourable Sir James Crerar : (a) No such request was made to the Government of India.

(b) No.

Mr. Gaya Prasad Singh : Has Mr. Coatman resigned ?

The Honourable Sir James Crerar : No.

Mr. Gaya Prasad Singh : Is he coming back ?

The Honourable Sir James Crerar : I hope, so, Sir.

Mr. Gaya Prasad Singh : I am glad.

REMODELLING OF CAWNPORE RAILWAY STATION.

310. ***Mr. Gaya Prasad Singh :** (a) Will Government please state if the work of remodelling the Cawnpore Railway Station (East Indian Railway) has been taken in hand, and when it is likely to be completed ?

(b) What is the total estimated cost of it ?

Mr. P. B. Rau : The work is about half completed, and is expected to be finished in March 1931. The cost is Rs. 77 lakhs.

APPOINTMENT OF MESSRS. GRIFFITH JONES AND L. MILLER TO THE COAL DEPARTMENT OF THE BENGAL NAGPUR RAILWAY.

311. ***Mr. Gaya Prasad Singh :** (a) Will Government please state if it is a fact that Messrs. Griffith Jones and L. Miller have been appointed in the Coal or any other Department of the Bengal Nagpur Railway without any advertisement or public notice, and that thereby other colliery managers, and qualified persons have been debarred from competing for these appointments ? If so, why ?

(b) If the posts have been advertised, will Government please give the names of newspapers, and the dates on which the notice appeared ?

(c) Have Government received a representation, dated 1st August, 1929, from the Indian Mines Managers' Association on the subject ?

(d) What are the antecedents, and qualifications of the two persons appointed ?

Mr. P. B. Rau : (a), (b) and (d). Selection for appointments on the Bengal Nagpur Railway is entirely at the discretion of the Administration.

(c) Yes.

Mr. Gaya Prasad Singh : Do Government exercise any sort of control over Company-managed railways in the matter of superior appointments ?

Mr. P. B. Rau : Government do not interfere with the discretion of Railway Companies in the matter of choosing their staff.

Mr. Gaya Prasad Singh : Have they got the power ? That was my point.

Mr. P. B. Rau : Not ordinarily.

BROADCASTING OF THE ACTIVITIES OF THE EMPIRE MARKETING BOARD IN INDIA.

312. *Mr. Gaya Prasad Singh : (a) Will Government be pleased to state what steps they have taken to broadcast the activities of the Empire Marketing Board in this country ; and with what result ?

(b) Is it a fact that the Empire Marketing Board is directly or indirectly connected with Imperial preference in matters of industry, trade and commerce ?

The Honourable Sir George Rainy : (a) The Imperial Council of Agricultural Research has been requested to circulate to Local Governments and other bodies in India a memorandum explaining the constitution and functions of the Empire Marketing Board, the conditions on which grants are authorised from the Empire Marketing Board's Fund, and the procedure to be followed in submitting applications for grants.

(b) The answer to the second question is in the negative. Grants from the Empire Marketing Fund are made independently of any considerations of the fiscal policies adopted by Empire Governments and of the question whether such policies include or exclude Imperial preference in any form.

CHANGE OF POLICY IN THE APPOINTMENT OF COMMISSIONERS OF INCOME-TAX.

313. *Mr. Gaya Prasad Singh : (a) With reference to the reply to my starred question No. 832 of the 27th February, 1929, admitting that, according to the sanction of the Secretary of State, Commissioners of Income-tax were to be recruited entirely from the Income-tax Departmental Officers, but that Indian Civil Service Officers are going to be taken permanently as Commissioners of Income-tax now, will Government be pleased to state the reasons for this change of policy ?

(b) Is the officer who scrutinises the report of the work of Assistant Commissioners of Income-tax with a view to ascertain their fitness for the post of Commissioner, himself an Indian Civil Service officer ?

(c) Is it a fact that, in making appointments of Assistant Commissioners of Income-tax, the Public Service Commission have to be consulted ; but in making appointments of Commissioners of Income-tax, no reference to the Public Service Commission is made ? If so, what is the reason for this discrimination ?

(d) Is the post of Member of the Central Board of Revenue reserved for the Indian Civil Service ? If so, why ?

The Honourable Sir George Schuster : (a) I think the Honourable Member is under some misapprehension. What was said, in reply to his question of the 27th February, 1929, was that it had been recognised that, for some years, at all events, it would be necessary for members of the Indian Civil Service to be Commissioners of Income-tax, but that it was expected that eventually officers of the Department would be found fit for promotion to these posts, and that actually two substantive posts and one acting post, that is to say, three posts out of a total of eight Commissioners, were then filled by promoted departmental officers. There has been no change of policy.

(b) The officer who scrutinises the work of the Assistant Commissioner is, in the first place, the Commissioner, who may or may not be an Indian Civil Service Officer. As already stated, at present 3 out of 8 Commissioners are not I. C. S. Officers. The recommendations of the Commissioner are then considered by the members of the Central Board of Revenue and finally by the Finance Member, whose approval to all appointments of this kind is necessary.

(c) When appointments are made to a Central Service Class I (to which posts of Assistant Commissioners may be said to belong) by promotion from a provincial or a subordinate service the Public Service Commission is called upon to advise on the qualifications of the candidates recommended by the Local Government or the head of the Department. Such advice is, not, however, considered to be necessary when appointment to that service is made by selection from another Central Service class I or an all-India Service (whether I. C. S. or not) which has at least the same status. Nor is their advice considered necessary when departmental promotion is made from the rank of Assistant Commissioner to that of Commissioner.

(d) No.

Mr. Gaya Prasad Singh : May I take it, Sir, that the order of the Secretary of State in this connection is confidential ?

The Honourable Sir George Schuster : I am not aware, Sir, of any particular order of the Secretary of State. I have informed the Honourable Member of the practice on which we are acting now and the position which that practice has produced.

AMENDMENT OF THE INCOME-TAX LAW AND REMOVAL OF THE HEADQUARTERS OF THE INCOME-TAX DEPARTMENT IN BIHAR AND ORISSA TO PATNA.

314. ***Mr. Gaya Prasad Singh :** (a) Is it a fact that the President, and Secretary of the Bihar and Orissa Chamber of Commerce and certain other gentlemen met Mr. Gaskell, Member, Central Board of Revenue, in Patna in July last ; and, among other matters, represented to him (i) the desirability of removing the headquarters of the Income-tax Department from Ranchi to Patna ; (ii) the difficulties in obtaining copies of orders passed ; and (iii) disposal of revision petitions, which are some of the points I raised in my speech in this House on the 28th March last, and in my question on the 31st August, 1927 ?

(b) Are Government aware that there is dissatisfaction in the Province of Bihar and Orissa with regard to the above points ; and the administration of Income-tax law in many matters ? And do Government propose to effect necessary improvements by amending the law, and taking such other steps as may be desirable ?

The Honourable Sir George Schuster : (a) The reply is in the affirmative.

(b) The Government of India are not aware that there is general dissatisfaction at the manner in which the Income-tax law is administered in Bihar and Orissa, or regarding the three points specially mentioned by the Honourable Member in the first part of his question. I propose, however, to deal with each of these points in detail.

As to the first point, as explained to the Honourable Member last year, the Commissioner's headquarters were located at Ranchi because, if they had been located at Patna, it would have been necessary to build an office and a residence for the Commissioner. As the Government do not believe that any appreciable inconvenience is caused to the public, they do not feel that they would be justified in incurring the expenditure involved in the change.

As to the second point, the question of securing the more expeditious grant of copies of orders passed is at present engaging the attention of the Commissioner and the necessary steps will be taken to this end. Moreover, it has been proposed, in clause 13 of the Bill which was introduced in this House on 2nd September, 1929, to amend the Income-tax Act so that the time taken in obtaining copies shall be excluded in calculating certain periods of limitation.

As regards the third point, although, as stated in the reply to the Honourable Member last year, an assessee who has presented an application in revision has no legal right to be heard in person or by pleader, the Commissioner has arranged to give a hearing in as many cases as possible.

Mr. Gaya Prasad Singh : Sir, have Government taken legal opinion on the point that the assessee has got no legal right to be heard in person or by pleader ?

The Honourable Sir George Schuster : I am not aware of any particular reference on that point for legal opinion. Government have taken that view of the interpretation of the law.

INTERCEPTION OF MONEY AND LETTERS SENT TO MR. BRADLEY AND OTHERS ACCUSED IN THE MEERUT CONSPIRACY CASE.

315. ***Mr. Gaya Prasad Singh :** (a) Is it a fact that about £80 or so were sent from England to Mr. Bradley, an accused in the Meerut Conspiracy trial, and that this money has been withheld from the accused by the Government of India ?

(b) Is it a fact that letters or other articles intended for some of the accused are being intercepted under orders of Government ? If so, why is a handicap being placed in the way of their defence ?

The Honourable Sir James Orerar : (a) Under the orders of the Government of India two telegraphic money orders, each for Rs. 527-8-0, addressed to Mr. Bradley from England and received in India some days before the arrests in the Meerut case were made, were detained by the Government of Bombay under section 26 of the Post Office Act. On a representation by Mr. Bradley that the money was required for purposes of his defence the Government of India directed that, subject to the orders of the special Magistrate, Meerut, the money should be paid to him. Under the orders of the Magistrate payment has been made to Mr. Bradley.

(b) Communications received and sent by the accused are subject to examination by the Superintendent of the Jail, in accordance with the rules prescribed in the United Provinces Jail Manual. The Government of India issued instructions some time ago that no correspondence

relating to the defence should be detained unless it contained objectionable matter, in which case the accused should be informed.

Mr. Gaya Prasad Singh : Sir, are Government aware that so late as on the 30th August, Mr. Bradley complained in the Court that he had not received books sent to him from London for being used in his defence, and that those books were found in the prosecution office ?

The Honourable Sir James Crerar : If the Honourable Member will put down a question, I shall ascertain the facts.

Diwan Chaman Lall : May I ask the Honourable Member as to the time that elapsed between the receipt of these telegraphic money orders and the handing over of the money to Mr. Bradley ?

The Honourable Sir James Crerar : I have no precise information on that point, but if the Honourable Member desires me to inquire into the matter, I would ask him to put down the question and I shall be glad to inquire.

Diwan Chaman Lall : Will the Honourable Member see to it that no restrictions are placed on the receipt of books, documents, etc., required by the accused in their defence ?

The Honourable Sir James Crerar : I am perfectly prepared to assure the Honourable Member that every proper facility will be given to the defence.

†316—323.

METHOD OF RECRUITMENT OF THE BENGAL PILOT SERVICE.

324. ***Lieut.-Colonel H. A. J. Gidney :** (a) Will Government be pleased to state whether the Government of Bengal advertise in the Press for candidates for entrance into the Bengal Pilot Service ?

(b) (1) Is it a fact that about six men have been appointed to the Bengal Pilot Service since July, 1928 ?

(2) If the answer to part (b) (1) is in the affirmative, how many of them were recruited in India ?

(3) Did the Government of Bengal advertise for these appointments before making these selections ?

The Honourable Sir George Rainy : (a) The answer is in the affirmative.

(b) (1) Yes. Seven were actually appointed.

(2) One.

(3) It was originally intended to recruit three leadsmen apprentices during the year 1928-29, and advertisements for these vacancies were issued by the Government of Bengal. Only one vacancy could, however, be filled locally. After the issue of the advertisement, it was found that, in order to keep the cadre of the Bengal Pilot Service up to strength, four more appointments

†These questions were withdrawn by the questioner.

would have to be made during 1928-29. As only one vacancy out of the three advertised for a few months before this decision was reached could be filled locally, it was not considered necessary to advertise again in India for the additional appointments. The High Commissioner for India was therefore requested to fill the appointments by recruitment in England.

APPOINTMENT OF MR. T. R. E. BOILEAU TO THE BENGAL PILOT SERVICE.

325. *Lieut.-Colonel H. A. J. Gidney : With reference to the reply communicated to me by the Secretary, Commerce Department, to my question No. 1353, dated 2nd April, 1929, will Government be pleased to state if they have come to a final decision with regard to the selection and appointment of Mr. T. R. E. Boileau to the Bengal Pilot Service ? If not, why not ?

The Honourable Sir George Rainy : As the Honourable Member has already been informed, Mr. T. R. E. Boileau could not be admitted to the Bengal Pilot Service as he has a defect in vision which is likely to increase with age.

NAMES OF MEN APPOINTED TO THE GOVERNMENT OF INDIA SECRETARIATS WITHOUT EXAMINATION BY THE STAFF SELECTION BOARD AND THE PUBLIC SERVICE COMMISSION.

326. *Mr. S. C. Mitra : (a) Will Government be pleased to state the number of unpassed candidates that have been provided in the Government of India Secretariats and their attached offices in permanent vacancies since 1920 ?

(b) Will they be pleased to state the names of such unpassed candidates and the reasons in each case for which they were exempted from the examination of the late Staff Selection Board or the present Public Service Commission ?

(c) Is it a fact that men are recruited directly sometimes for technical reasons ? Will Government be pleased to state whether they advertise such posts in the newspapers and ask for applications from those having that particular technical knowledge ?

(d) If the answer to part (c) is in the negative, will Government be pleased to state the reasons for not advertising such posts ?

(e) Is it a fact that relations of Superintendents, Assistant Secretaries and the like are generally provided in the Government of India Departments by this back door ?

(f) Are there any such cases in the Commerce Department, Foreign and Political Department, Legislative Department, Army Department and Army Headquarters ?

The Honourable Sir James Orerar : (a) and (b). The collection of this information will entail an amount of labour which would be totally disproportionate to the results and Government do not propose to undertake it. I may state for the Honourable Member's information that definite orders were issued in December last in regard to recruitment to the

Secretariat and its attached offices which require that, subject to exceptions in special cases, which will require the concurrence of the Public Service Commission, all recruitment to permanent posts except by promotion shall be effected as the result of examinations to be conducted by the Public Service Commission.

(c) and (d). The information is being collected and will be supplied to the Honourable Member in due course.

(e) and (f). I have no information, but from the reply given to (a) and (b) it will be clear that relations of officials employed in the Departments can now only enter the offices under the Government of India by qualifying at an examination conducted by the Public Service Commission.

INCONVENIENT TIMINGS OF TRAINS BETWEEN HISSAR AND BHIWANI.

327. *Mr. Abdul Haya : (a) Is it a fact that recently there have been complaints that the train timings between Hissar and Bhiwani are very inconvenient ?

(b) Is it a fact that no train leaves for Bhiwani from Hissar between 10 and 22 hours ?

(c) Is it a fact that the Bhiwani Municipality and the Bhiwani Bar have made representations to the Railway Department regarding the inconvenience felt by the public ?

(d) Will Government please state why no action has been taken on these representations to remove a public grievance ?

Mr. P. R. Rau : (a) No such complaints have reached Government.

(b) Yes.

(c) I have not been able to trace any such complaints having been received in the Railway Department.

(d) Does not arise.

DELAY IN DELIVERY OF LETTERS AT BAGRASI.

328. *Mr. Abdul Haya : (a) Has the attention of Government been drawn to the complaint published in the *Hindustan Times*, dated 21st August, 1929 (page 17) under the heading "Postal Delay" ?

(b) Is it a fact that letters from Delhi and Aligarh take three days to reach Bagrasi (a town in the Bulandshahr District) ? If so, will Government please state why letters are not delivered promptly and within a reasonable time at Bagrasi ?

The Honourable Sir Bhupendra Nath Mitra : The Postmaster General concerned has been asked to supply the necessary information, which will be communicated on receipt to the Honourable Member.

GRANT TO RAILWAY GUARDS OF THE POWER OF CERTIFICATION.

329. *Mr. Abdul Haya : (a) Has the attention of Government been drawn to the letter published in the *Hindustan Times* of the 21st August, 1929 (page 17) under the heading "A Passenger's Grievance" ?

(b) Will Government please state when this power of certification was taken away from the railway guards ?

(c) In view of the hardship and inconvenience felt by the public do Government propose to confer these powers again on railway guards ?

Mr. P. R. Rau : I would invite the Honourable Member's attention to the reply given by Mr. Parsons to question No. 133 asked by Khan Bahadur Haji Wajihuddin on the 19th of August, 1926, on this same subject.

TEST EMPLOYED BY THE NORTH WESTERN RAILWAY SELECTION BOARD FOR THE APPOINTMENT OF SUB-ASSISTANT SURGEONS ON THAT RAILWAY.

330. ***Mr. Lalchand Navalrai :** (a) Are Government aware that the North Western Railway Selection Board assembled at Lahore in June last to select candidates for the posts of sub-assistant surgeons to be employed on the Railway ?

(b) Will Government be pleased to state who were the members of that Selection Board ?

(c) Will Government be pleased to state if the method of selection employed by the Board was merely to put formal questions as to the whereabouts of the candidates, their relationship, if any, with any railway employee, and such like questions ?

(d) If the answer to part (c) be in the negative, will Government be pleased to state what was the test employed and the considerations that weighed in selecting the candidates ?

(e) Will Government be pleased to place on the table the papers in connection with that selection, together, with the questions put and the answers given by the respective candidates ?

(f) Will Government be pleased to state if they propose to have a non-official element associated with the official members of the Railway Selection Boards ?

Mr. P. R. Rau : (a) Yes.

(b) Dr. Cairns, Chief Medical and Health Officer.

Dr. Chatterji, Deputy Chief Medical and Health Officer, and Mr. Muirhead, Deputy Agent.

(c) No.

(d) The candidates' general qualifications, education and practical experience were considered by the Selection Board.

(e) Government regret they are unable to comply with the request.

(f) Government see no advantage in changing the present system.

Mr. Lalchand Navalrai : Will the Government be pleased to say why they refuse to place those papers on the table ? Is it a fact that, as is stated in the question, only formal questions have been put to the candidates ?

Mr. P. E. Rau : I do not think that it is the practice of any Selection Board to keep a record of the questions put and the answers given by the candidates.

Mr. Lalchand Navalrai : Is the Honourable Member aware that recently the Selection Boards issued advertisements that hundreds of candidates appeared for the examination, but the net result was that only those candidates were selected who were the sons of the employees in the railways, or who were the sons of retired railway servants ?

Mr. President : Mr. Lalchand Navalrai.

Mr. Lalchand Navalrai : Is the Honourable Member aware that in the Secretariat of the Government of India the ministerial officers or clerks are appointed by competitive examination ?

(Mr. President called on Mr. Lalchand Navalrai to put the next question.)

WAITING LISTS FOR APPOINTMENTS MAINTAINED BY THE NORTH WESTERN RAILWAY AND THE DIVISIONAL SUPERINTENDENTS OF KARACHI AND QUETTA.

331. *Mr. Lalchand Navalrai : (a) Are Government aware that the Office of the Agent, North Western Railway, and the Divisional Offices maintain waiting lists for filling appointments occurring in the interval between the sittings of the Selection Boards ?

(b) If so, are appointments made strictly in order of merit from these waiting lists ?

(c) Will Government be pleased to place on the table the waiting lists for the years 1928 and 1929 maintained in the office of the Agent, North Western Railway and the Divisional Superintendents of Karachi and Quetta ?

Mr. P. E. Rau : (a) and (b). The information has been already supplied to the Honourable Member in Railway Department letter No. 7645-E., dated the 12th February, 1929, a copy of which is in the Library of the House.

(c) Government regret they can see no advantage in doing so.

Mr. Lalchand Navalrai : Will the Honourable Member advise the Railway Board to be more careful about the procedure and acts of the Selection Boards in view of the fact that these Selection Boards are not overboard ?

(No answer was given.)

COST INCURRED IN ADVERTISING INDIAN RAILWAYS IN FOREIGN COUNTRIES AND NUMBER OF INDIANS EMPLOYED IN THE WORK.

332. *Mr. Mukhtar Singh : (a) Will Government be pleased to state since when the system of advertising the Indian Railways was started ?

(b) Will Government be pleased to state the cost incurred over advertisement in foreign countries from the time the work has been started (the expenditure incurred for each year should be given separately) ?

(c) Will Government be pleased to state (i) the countries in which the advertisements are published and (ii) the number of passengers, on an average, coming to this country from those countries ?

(d) Are there any foreign countries which follow such a propoganda for their railways in India ? If so, what are the names of those countries ?

(e) How many men are employed upon this work of advertising in foreign countries ? How many of them are Indians ? What is the maximum salary given to these employees ?

Mr. P. R. Rau : (a) Several of the principal Indian Railways have been advertising for many years in foreign countries to which, I presume, the Honourable Member's question refers. The year in which this practice originated is not readily traceable.

(b) Since an advertising campaign was organised by the Indian Railways' Publicity Bureau in 1927-28, the cost incurred has been :—

	Rs.
1927-28	24,000
1928-29	29,000

(c) (i) and (d). Railways in England, France, Germany, Italy, Switzerland, Norway, Holland, Canada, U. S. A., Australia, New Zealand, South Africa and Iraq exhibit posters at railway stations in India, and in return exhibit without charge an equivalent number of Indian Railway posters in their own countries. Some of these countries also spend large sums of money in advertising in newspapers in this country.

(ii) No information is available on this point.

(e) At present this work is concentrated in the publicity bureaux at London and New York. The superior employees there are three, of whom none is an Indian. The two posts in London carry a salary of £800 and £500 per annum respectively and the post in New York 6,000 dollars per annum.

AMOUNT OF EXPENDITURE INCURRED ANNUALLY ON TIME-TABLES, PAMPHLETS, ETC., PUBLISHED IN THE VERNACULARS OF THE DIFFERENT PROVINCES.

333. *Mr. Mukhtar Singh : (a) What is the amount of expenditure incurred every year on the time tables, pamphlets, handbills, etc., published by the several railways in the vernaculars of the province in which the different railways are run ?

(b) What arrangements are made for the convenience of the passengers who do not know English to know the exact timings of the railways ?

(c) Are the railway time-tables available in Urdu and Hindi, the well-recognised scripts of the country, and are they sold at the Railway book-stalls ?

Mr. P. R. Rau : (a) The information asked for is not readily available and I doubt whether the labour involved in the compilation thereof would yield an adequate return.

(b) All railways exhibit vernacular time-tables at their stations and most railways publish vernacular time-tables for their own systems which can be bought at the principal stations.

(c) Vernacular railway time-tables can not, for obvious reasons, all be issued in Urdu and Hindi. The vernacular languages in which they are printed must vary on different railways. For instance the Great Indian Peninsula Railway issue them in Hindi and Mahratti and the Eastern Bengal Railway in Bengali. I understand that vernacular time-tables issued by railways are ordinarily sold at the railway bookstalls of the railways who issue them.

RULES FOR THE EXPORT AT SPECIAL RATES OF GRAIN TO STATIONS IN FAMINE STRICKEN AREAS.

334. *Mr. Mukhtar Singh : (a) Do the railways give special rates for the transport of grain from different centres to the famine-stricken areas ? If so, will Government be pleased to lay on the table a copy of those rules ?

(b) Are the same special rates available for grain merchants exporting grain to famine-stricken areas as are available to the export trade to the different sea ports in the country ?

(c) Will Government be pleased to state the names of the railway stations which were declared to be famine-stricken localities and to which such special rates for the transport of fodder were available ?

Mr. P. B. Rau : (a) No special rates are quoted by railways for transport of grain to famine-stricken areas.

(b) Certain low rates are quoted for certain commodities, including grain, to various Indian ports for reasons explained in the reply given by Mr. Parsons on the 25th August 1927 to the Honourable Member's question No. 336. These rates are ordinarily lower than the rates available for internal movement of grain.

(c) When special rates for the transport of fodder are allowed, it is at the instance of Local Governments who arrange with the Railway Administrations concerned to pay the difference between the railway freight and the rate the Local Government desires the consignee to pay. It is not ordinarily necessary for the Government of India to be approached in the matter. They have therefore no detailed information regarding the cases in which special rates have been quoted in the past.

APPOINTMENT PERMANENTLY OF ASSISTANT STATION MASTERS ENGAGED BY THE NORTH WESTERN RAILWAY IN 1926.

335. *Mr. Mukhtar Singh : (a) Is it a fact that the North Western Railway advertised for assistant station masters in 1926 ? If so, was it also announced that these men would be temporarily appointed ?

(b) Is it a fact that a number of persons who joined, in pursuance of the advertisement, came from other railways ?

(c) Is it a fact that all these men were assured that they would be made permanent very soon, and in the case of a few of them, the officers entered into an agreement that they would be made permanent within a period of three months to one year ?

(d) How many persons were then employed as assistant station masters, and how many of them still remain temporary ?

(e) How long are they to continue their services as temporary men ?

(f) Has any representation been received from these men ? If so, what action has been taken upon it ?

(g) Do Government propose discharging these temporary hands when local men are available ? If not, what is the difficulty in making these men permanent ?

Mr. P. B. Rau : I am obtaining the information which the Honourable Member asks for and will communicate with him on receipt.

PROTECTION OF THE INTERESTS OF MINORITY COMMUNITIES IN CONNECTION WITH EXAMINATIONS TO BE HELD FOR MINISTERIAL OFFICERS BY THE PUBLIC SERVICE COMMISSION.

336. ***Maulvi Muhammad Yakub :** (a) Is it a fact that the Public Service Commission is going to hold a qualifying examination for ministerial selection in the near future ?

(b) If so, are they going to make provision for the protection of the interest of minority communities ?

The Honourable Sir James Crerar : (a) The Public Service Commission are going to hold a qualifying examination shortly for departmental candidates, the object being to give these candidates an opportunity of qualifying for promotion.

(b) There will be no new recruitment as a result of the examination, and the question of communal recruitment does not therefore arise.

Lieut.-Colonel H. A. J. Gidney : Will the Honourable Member please state whether the Public Service Commission examinations for ministerial appointments are held in Delhi only ?

The Honourable Sir James Crerar : I must ask for notice of that question.

OBSTACLES TO OBTAINING EMPLOYMENT PLACED IN THE WAY OF MUSLIM CLERKS IN THE INDIAN STORES DEPARTMENT.

337. ***Maulvi Muhammad Yakub :** (a) Is it a fact that non-Muslim clerks employed in the Indian Stores Department, who get offers of appointment in other Departments, are relieved on the same day, while every obstacle is placed in the way of Muslim clerks who by chance get offers of appointment from elsewhere ?

(b) How many unpassed clerks are working in the Indian Stores Department, and what is the number of unpassed Muslims ?

The Honourable Sir Bhupendra Nath Mitra : (a) No.

(b) The total number of persons employed in the clerical establishment of the Office of the Chief Controller of Stores, Indian Stores Department, who have not passed the examination of either the late Staff Selection Board or the Public Service Commission, is 59, of whom 12 are Muslims.

If the Honourable Member is referring to the men appointed as a purely temporary measure in vacancies for which the Public Service Commission have been unable to nominate passed candidates, the figures are *eleven and three*.

PAY OF CERTAIN CLERKS IN THE OFFICE OF THE DIRECTOR GENERAL OF POSTS AND TELEGRAPHS.

338. *Maulvi Muhammad Yakub : (a) Will Government please state whether the Simla Allowance was consolidated in the scales of pay of the clerical establishment of the Government of India Secretariat and other attached offices where it was admissible ?

(b) Why was it not consolidated in the pay in respect of such clerks of the Office of the Director General of Posts and Telegraphs who have been denied the "concessions" sanctioned for the permanent location of that office in Delhi ?

The Honourable Sir Bhupendra Nath Mitra : (a) The Simla allowances were taken into consideration in fixing the new scales of pay of the clerical establishment of the offices referred to.

(b) The Honourable Member is referred to the reply given in this House on the 26th February, 1929, by Mr. H. A. Sams to the latter portion of part (b) of Mr. S. C. Mitra's starred question No. 826.

CONDITIONS FOR THE GRANT OF CERTAIN CONCESSIONS TO CLERKS IN THE OFFICE OF THE DIRECTOR GENERAL OF POSTS AND TELEGRAPHS AT DELHI.

339. *Maulvi Muhammad Yakub : (a) Will Government please state the reasons for attaching such conditions to the sanctioning of the "concessions" on the permanent location of the Office of the Director General of Posts and Telegraphs at Delhi as debarred only a negligible percentage of clerks in that office from drawing these "concessions" ?

(b) Were such conditions prescribed in the case of any other Government Office ?

(c) Are Government aware—

- (1) that men who were serving in the Director General's Simla Office for a decade, but not recruited in Simla, drew these "concessions" ;
- (2) that some men who were recruited in Simla, but subsequently transferred to the Calcutta Office, drew these "concessions" ;
- (3) that clerks who were transferred to the Director General's Office at Delhi at their own request drew these "concessions" ;
- (4) that a clerk who was not even permanent in the Director General's Office and has since been transferred to some other Department of the Government got these "concessions" ; and
- (5) that some clerks of the Wireless Branch, who have never even worked in Delhi Office, are in receipt of these "concessions" as well as Simla Allowances ?

The Honourable Sir Bhupendra Nath Mitra : (a) The "concessions" referred to were intended to compensate the staff concerned for the hardships and extra expense imposed upon them as a direct result of the transfer of the Director General's office headquarters from Calcutta to Delhi. The conditions attached to the grant of the concessions in the orders sanctioning the same were designed to prevent, as far as possible, the grant of those concessions to officials who were unaffected by the transfer.

(b) Yes.

(c) The answer to item No. (3) is in the negative, and the answer to the rest of the items is in the affirmative. The concessions were given in all cases in which they were permissible under the conditions laid down by Government.

LOSS OF PAPERS DEALING WITH THE GRANT OF CONCESSIONS TO CERTAIN CLERKS IN THE OFFICE OF THE DIRECTOR GENERAL OF POSTS AND TELEGRAPHS.

340. *Maulvi Muhammad Yakub : Is it a fact that the papers dealing with the grant of "concessions" to the 19 clerks of the Office of the Director General of Posts and Telegraphs have been lost for the third time? If so, have any steps been taken against the subordinates responsible?

The Honourable Sir Bhupendra Nath Mitra : The answer to the first part of the question is in the negative. The latter part of the question does not arise.

GRANT OF SPECIAL RATES OF PAY AND ALLOWANCE TO A LADY CLERK IN THE OFFICE OF THE DIRECTOR GENERAL OF POSTS AND TELEGRAPHS.

341. *Maulvi Muhammad Yakub : (a) Is it a fact that one lady typist was employed in the Director General of Posts and Telegraphs' Office some time in April 1923 on Rs. 50 per mensem in the grade of Rs. 50—140, plus Rs. 50 per mensem Simla Allowance; that is, total Rs. 100 per mensem?

(b) Is it a fact that her pay has since been increased and she is now in receipt of a pay of Rs. 150 plus allowance at family rate, Rs. 65, that is, total Rs. 215 per mensem, whereas the male clerks, who are four to five years senior to her, are not in receipt of even Rs. 150 per mensem in all?

(c) If the replies to parts (a) and (b) are in the affirmative, will Government be pleased to state reasons justifying the admissibility of Simla Allowance to the lady typist, in addition to her higher rate of pay, and to furnish the House with a copy of the Government order under which lady typists are allowed to draw Simla Allowance?

The Honourable Sir Bhupendra Nath Mitra : (a) Yes.

(b) The answer to the first part is in the affirmative and to the second part in the negative.

(c) Lady clerks are entitled to the Simla allowances under the same conditions as male clerks, and Government orders sanctioning such allowances are contained in the Simla Allowances Code, a copy of which is in the Library of the House.

**SELECTION OF A CANDIDATE FOR THE POST OF SECOND CHEMICAL ASSISTANT
IN THE CENTRAL STATIONERY OFFICE, CALCUTTA.**

342. *Mr. A. H. Ghuenavi : (a) Will Government be pleased to state whether the post of a Second Chemical Assistant in the grade of Rs. 150—300 has lately been sanctioned in the Central Stationery Office, Calcutta, under the Controller of Printing and Stationery, India, and if so, whether advertisements were given in the local newspapers inviting applicants for the post ?

(b) Are Government aware that a second class M.Sc. has been provisionally appointed to this post in preference to many candidates holding first class M.Sc. degrees ?

(c) Are Government aware that the present nominee is the Assistant Secretary of the Sir Gurudas Institute at Narculdanga, of which the present Store Examiner of the Calcutta Central Stationery Office is the Secretary ?

(d) Is it a fact that the said appointment has been provisionally made, and if so, do Government propose to make an inquiry and appoint the best qualified candidate on expiry of the provisional period ?

The Honourable Sir Bhupendra Nath Mitra : (a) to (d). The post of Second Chemical Assistant is a non-gazetted one, and the selection of individuals for the post rests with the Controller of Printing and Stationery. Government see no reason to interfere with the discretion vested in the Controller or to call for details of the points raised in the Honourable Member's question.

**ADMISSION OF INDIANS AS ASSISTANT SURGEONS IN THE INDIAN MEDICAL
DEPARTMENT AND TO CERTAIN COLLEGES IN CALCUTTA AND MADRAS.**

343. *Sardar Kartar Singh : (a) Is it a fact that there are two Medical Colleges at Calcutta and Madras to train assistant surgeons for the Indian Medical Department—financed by the Government of India—to which only Europeans and members of the Domiciled Community alone are admitted ?

(b) Is it a fact that Anglo-Indians are qualified for all Indian services on the ground that they are Indians ?

(c) Is it a fact that the assistant surgeon branch of the Indian Medical Department is reserved for Europeans and Anglo-Indians ?

(d) Do Government propose to abolish the distinction and permit Indians to join the said Colleges and services ?

Mr. G. R. F. Tottenham : (a) Pupils are trained for the Indian Medical Department at Government expense in the Colleges mentioned.

(b) and (c). Yes, Sir.

(d) There is nothing to prevent Indians from joining the College, but Government do not propose to alter the composition of the service.

Sardar Kartar Singh : Has the attention of Government been drawn to the prospectus for the assistant surgeon's branch of the Indian Medical Department issued by the Office of the Director General, Indian Medical Service, and does not rule 2 provide that candidates must be Europeans or members of the Domiciled Community, and that they should be between

the ages of 17 and 20 at the time of admission ? Are Indians not debarred from joining this College ?

Mr. G. E. F. Tottenham : I am afraid I could not catch the Honourable Member's question.

Sardar Kartar Singh : I would refer the Honourable Member to the prospectus issued by the Office of the Director General of the Indian Medical Service, 1929 Edition, Rule 2. That rule provides that candidates must be Europeans or members of the Domiciled Community and that they should be between the ages of 17 and 20 at the time of admission.

Mr. G. E. F. Tottenham : I think the Honourable Member is under a misapprehension. The medical colleges in Madras and Calcutta take a very large number of Indians. There are however military sections in those colleges, which are a comparatively small part of the colleges and which are reserved for students studying for the Indian Medical Department. It is only these particular military sections of the colleges that are reserved for Europeans and members of the Domiciled Community.

Mr. Amar Nath Dutt : Is it not a fact that these medical students are the rowdiest lot, and that they have been creating a lot of disturbance in the hostel ?

Mr. K. C. Neogy : May I ask the Honourable Member to state the reason for such reservation ?

Mr. G. E. F. Tottenham : That question has often been asked before and the answer is this. It is because the duties of the assistant surgeons' branch of the Indian Medical Department are confined entirely to the medical care of the British troops.

Mr. Siddheswar Prasad Sinha : Cannot Indian assistant surgeons do that work ?

Mr. G. E. F. Tottenham : That is a matter of opinion.

Mr. K. Ahmed : What is the reason for allowing the Anglo-Indians and the Europeans alone to look after the health of the British troops ? Why not allow Indian medical officers also to look after the health of the British troops ?

(No answer was given.)

Mr. K. Ahmed : Does the Honourable Member realise that rule 2 of the prospectus quoted by my Honourable friend Sardar Kartar Singh provides only for admission of candidates belonging to the European or the Domiciled Community ?

Mr. G. E. F. Tottenham : I cannot follow the Honourable Member.

Mr. K. Ahmed : Should not the Honourable Member in charge of the military department in the Assembly show to an Honourable Member of the Assembly the courtesy of answering his questions ? I expect an answer from the Honourable Member.

Mr. President : The Honourable Member has not understood the question.

Mr. K. Ahmed : I will put the question again, Sir. Will the Honourable Member please say why Indians are not allowed admission into these classes of the medical colleges financed by the Government of India out

of the money paid by Indian tax-payers ? Why should Europeans and members of the Domiciled Community alone be allowed to get admission and not Indians ? Cannot Indians look after the health of the military as much as the European doctors ?

Mr. G. R. F. Tottenham : I have already explained that Indians are admitted into these colleges.

Mr. K. Ahmed : I am asking the reason why Indians are debarred while members of the European community and members of the Domiciled Community represented by my Honourable friend over there (Lieutenant-Colonel Gidney) are allowed to study medical science in those sections of the medical college only to look after the health of the military. Why should not Indians also be trained along with others and allowed to look after the health of the military ?

Mr. G. R. F. Tottenham : Indians are permitted to study in the medical colleges and they do look after the health of Indian troops.

Pandit Hirday Nath Kunzru : May I ask whether it is laid down in the rules and regulations that European troops should be looked after only by European medical officers ?

Mr. G. R. F. Tottenham : I am not aware of any such regulations.

Pandit Hirday Nath Kunzru : Why is the care of the British troops then confined to Europeans and Anglo-Indians ?

Mr. G. R. F. Tottenham : That, Sir, is the established policy that has been in force for many years.

Lieutenant-Colonel H. A. J. Gidney : Is it not a fact that the terms of the contract between the Indian Government and the War Office contain a provision that British troops in India will be provided with the same medical attention as they would receive in England ?

Mr. G. R. F. Tottenham : I should like notice of that question.

Mr. K. Ahmed : Surely this question can be answered without notice.

Pandit Hirday Nath Kunzru : May I know if the policy has been laid down by the Secretary of State or by the Government of India ?

Mr. G. R. F. Tottenham : I should like to have notice of that question also.

Sardar Kartar Singh : Is it not a fact that a candidate who seeks admission has to fill in a form and obtain a certificate from the Magistrate that one of his parents is a European ? Is it not contained in Appendix F of this prospectus issued by the Director General of Medical Service ? (Hear, hear.)

Mr. G. R. F. Tottenham : The Honourable Member must be aware of the conditions as well as myself seeing that he has the regulations in his hand.

Mr. Gaya Prasad Singh : Please answer the question.

Sardar Kartar Singh : The Honourable Member can see the prospectus now. It is contained in Appendix F.

APPOINTMENT OF MR. GREEN AS ASSISTANT SECRETARY OF THE ROYAL COMMISSION ON LABOUR.

344. *Mr. S. C. Mitra : (a) Is it a fact that Mr. Green of the Education Department has been appointed as the Assistant Secretary of the Royal Commission on Labour ?

(b) If so, will Government be pleased to state why the Assistant Secretaries or the Superintendents of the Industries Department were not appointed ?

(c) Is it a fact that Mr. Green was given preference only because he is an Anglo-Indian ?

(d) Is it a fact that he was appointed as Secretary of the Hartog Committee ? If so, is it a fact that he did not appoint a single Bengali on that Committee ? Were there any Bengali applicants for any of the posts in that Committee ?

(e) Is it a fact that he was appointed a few years back as Secretary of the Indian Mercantile Marine Committee ?

(f) Is it a fact that there were certain charges of maladjustment of accounts in that Committee ? If so, who was responsible ? Was the Secretary in any way responsible for that ? If so, how much responsibility was his ? Will Government be pleased to state why Mr. Green has again been appointed as Assistant Secretary of this Royal Commission ?

The Honourable Sir Bhupendra Nath Mitra : (a) Yes.

(b) Because it was thought desirable to appoint to the post an officer with previous experience of work on Committees.

(c) No.

(d) He was appointed as Assistant Secretary to the Hartog Committee. The clerical staff had already been appointed when he assumed charge of his duties. One Bengali reporter worked with the Committee.

(e) Yes, he was Secretary of the Indian Mercantile Marine Committee in 1923-24.

(f) The only case of irregularity brought to the notice of Government was that the members of the Committee, its Secretary and the clerical staff, drew daily allowance on the days of arrival at, and departure from, a place of halt. This allowance, though permissible under the Supplementary Rules, was not admissible to the Committee, as its allowances had been fixed *ad hoc*. The allowance was drawn by Mr. Green and also by the members of the Committee, in good faith and with the approval of the President, who did not understand that the Supplementary Rule in question did not apply to the Committee. In the case of Mr. Green, the excess amount drawn, *viz.*, Rs. 47-8-9, was recovered from him. This irregularity does not amount to a maladjustment of accounts and the latter parts of the question do not arise.

REPORTS OF THE TARIFF BOARD ON (i) CHEMICALS, AND (ii) MAGNESIUM CHLORIDE.

345. *Sir Purshotamdas Thakurdas : (a) Will Government be pleased to state if they have received the Reports of the Tariff Board on (i) chemicals, and (ii) magnesium chloride ?

(b) If the reply to part (a) be in the affirmative, will Government be pleased to state when they expect to publish these Reports with their decisions on the same ?

The Honourable Sir George Rainy : (a) Yes, Sir.

(b) The Government will publish these Reports and their decisions thereon as soon as possible, but they regret that they are unable at present to fix a definite date.

Sir Purshotamdas Thakurdas : How long is it since the Government received the Report ?

The Honourable Sir George Rainy : I think the Report reached the Government at the end of June.

Sir Purshotamdas Thakurdas : What is the usual period that the Government take to arrive at a decision on the Reports of the Tariff Board ?

The Honourable Sir George Rainy : I could not say that offhand. I quite admit that normally I should have hoped to publish the Report and the decision of the Government thereon before the Assembly entered on its Sessions. I think in ordinary cases it would have been possible.

SHORT NOTICE QUESTION AND ANSWER.

PUBLICATION OF SIR SAMUEL WILSON'S REPORT ON EAST AFRICA.

***Pandit Hirday Nath Kunru .** (a) Will Government be pleased to inquire when Sir Samuel Wilson's Report regarding his mission to East Africa will be published ? Do Government propose to represent to the higher authorities that the main features of the Report should be published simultaneously in London and India ?

12 NOON.

(b) Are Government prepared to urge on His Majesty's Government the necessity of publishing the Report sufficiently early to enable it to be discussed by the Legislative Assembly during this Session ?

Sir Frank Noyce : (a) Government have already done so.

(b) His Majesty's Government have already intimated to the Government of India that no decision upon the subject will be arrived at before the Government of India are consulted. A representation has been made to the Secretary of State to the effect that Sir Samuel Wilson's Report should be published at such a time as will enable the Government of India to consult the Standing Emigration Committee and permit of the Legislative Assembly discussing the whole matter of the Hilton Young Commission's Report and Sir Samuel Wilson's Report before the Government of India formulate their views upon the subject and submit them to the Secretary of State.

Pandit Hirday Nath Kunru : Does that mean that the Report will be published before the end of this Session ?

Sir Frank Noyce : I am not in a position to say.

Pandit Hirday Nath Kunru : Did the Government of India urge that the Report should be published in time to enable its discussion by the Assembly during this Session ?

Sir Frank Noyce : I am not in a position to give the Honourable Member any further information than that contained in the answer to his question.

Sir Purshotamdas Thakurdas : May I ask the Honourable Member what the Government of India propose to do if the Report is published after the Assembly is adjourned at Simla ?

Sir Frank Noyce : The Government of India propose to consult the Assembly on the first possible opportunity.

Sir Purshotamdas Thakurdas : Does that mean that no further action will be taken on the Report till after the Delhi Session starts ?

Sir Frank Noyce : That is the inference to be drawn from the reply I have already given.

Sir Purshotamdas Thakurdas : Have the Government of India ascertained whether His Majesty's Government are likely to wait for that period ?

Mr. A. Rangaswami Iyengar : Do the Government of India intend that the two points upon which His Majesty's Government have already arrived at a decision shall be open for discussion by this House ?

Sir Frank Noyce : I am not aware that His Majesty's Government have arrived at a final decision on any points.

Mr. A. Rangaswami Iyengar : May I know exactly what kind of decision it is, whether it is final, or intermediate or *ad interim* ?

Pandit Hirday Nath Kunzru : Is the Honourable Member aware that Sir Samuel Wilson communicated to the Indian deputation, on behalf of the late Secretary of State for the Colonies and His Majesty's Government, that the question could not be reopened ?

Sir Frank Noyce : I must ask for notice of that question.

Sir Purshotamdas Thakurdas : If the Report is published at the end of the current month and it be necessary for the Government of India to arrive at a decision before the Delhi Session begins, do the Government of India propose to consult the Standing Emigration Committee between the 1st October and the beginning of the Delhi Session ?

Sir Frank Noyce : I venture to think, Sir, that that is a hypothetical question. The Government of India cannot decide on their course of action until they know definitely when Sir Samuel Wilson's Report is going to be published.

Mr. A. Rangaswami Iyengar : I desire to know what is the present intention of the Government of India. Do the Government of India propose to let this House consider these two important questions, upon which it was stated that His Majesty's Government had already arrived at a decision ?

Sir Frank Noyce : To the best of my knowledge they have received no definite information that any final decision on any point has yet been arrived at by His Majesty's Government. The Honourable Member, as far as I am aware, is basing his information on newspaper reports.

Mr. A. Rangaswami Iyengar : No, Sir. Are the Government of India aware, or are they not, that Sir Samuel Wilson did tell the Indian deputation, when they waited upon him in East Africa, that these two questions have already been decided ?

Sir Frank Noyce : The Government of India are aware of the newspaper reports, but what Sir Samuel Wilson told the East African deputation is not the same as official information to the Government of India. Sir Samuel Wilson was talking to the deputation and not to the Government of India.

Mr. A. Rangaswami Iyengar : Did Sir Samuel Wilson speak with the authority of His Majesty's Government in East Africa when he said that these two questions have been settled by His Majesty's Government ?

Sir Frank Noyce : That is not a question which it is for me to answer.

Mr. A. Rangaswami Iyengar : I want to know whether the Honourable Member is aware that he made that statement in East Africa ?

Sir Frank Noyce : Yes, Sir.

Mr. A. Rangaswami Iyengar : Are the Government of India in a position to state whether that statement is correct or not ?

Sir Frank Noyce : I must ask for notice of that question.

Pandit Hirday Nath Kunzru : May I know whether Mr. Sastri, who was sent to East Africa on behalf of the Government of India, made a report on that matter to the Government of India or not ?

Sir Frank Noyce : Mr. Sastri has submitted a report but I am not in a position to state what its contents are.

Pandit Hirday Nath Kunzru : Did the Government of India, after seeing the newspaper reports or receiving information from Indians in East Africa regarding the announcement made by Sir Samuel Wilson, communicate with His Majesty's Government on the subject ?

Sir Frank Noyce : I must ask for notice of that question.

Pandit Hirday Nath Kunzru : May I ask whether, before Mr. Sastri went to East Africa, the Government of India represented to the Secretary of State for the colonies not to decide against the reopening of the question of communal representation ?

Sir Frank Noyce : I must ask for notice of that question.

Mr. A. Rangaswami Iyengar : Am I to understand that Government have an absolutely blank mind as to what happened ?

Mr. M. B. Jayakar : Are the Government of India aware that Sir Samuel Wilson did make this statement at all ?

Sir Frank Noyce : I have already said, Sir, that they are aware of that.

Pandit Hirday Nath Kunzru : What have the Government of India then done to clear up the position since the statement made by Sir Samuel Wilson ?

Sir Frank Noyce : As I have said before, I must ask for notice.

Mr. Gaya Prasad Singh : Government ought to be able to answer these questions without any notice.

UNSTARRED QUESTIONS AND ANSWERS.

ATTENDANCE ON GAZETTED HOLIDAYS OF THE STAFF OF CERTAIN OFFICES IN CALCUTTA UNDER THE CONTROLLER OF PRINTING AND STATIONERY.

157. **Mr. S. C. Mitra :** (a) Will Government be pleased to state the number of local and gazetted holidays on which the following offices in Calcutta under the Controller of Printing and Stationery were (i) entirely closed, (ii) partially closed, and (iii) not at all closed, during 1926 to 1928 :

Government of India Press,

Central Stationery Office,

Central Forms Store, and

Central Publication Branch ?

(b) Is it a fact that the system of granting compensator leave for attendance on holidays is followed in some of the offices noted above ?

(c) If the reply to part (b) above be in the affirmative, do Government propose to pass orders that whenever the observance of any local or gazetted holidays would not be possible in any of the offices mentioned in part (a) above for urgency of work, (i) attendance of clerks should be on a roster and (ii) the clerks required to attend will get compensatory leave afterwards ?

The Honourable Sir Bhupendra Nath Mitra : An inquiry is being made and the result will be communicated to the Honourable Member in due course.

ATTENDANCE AND REMUNERATION OF SHED-FOREMEN AND WEIGH-CLERKS AT THE HOWRAH GOODS SHEDS ON SUNDAYS AND HOLIDAYS.

158. **Mr. S. C. Mitra :** (a) Will Government be pleased to state whether it is a fact that the services of the weigh-clerks at the Howrah goods sheds were requisitioned on Sundays and holidays on small extra remuneration ?

(b) Is it a fact that their attendance on Sundays and holidays is necessary as on these days they can supervise the proper loading of the goods weighed by them previous to these holidays ?

(c) Is it a fact that they have been relieved of such attendance on holidays ?

(d) If the replies to part (b) above be in the affirmative, will Government be pleased to state whether it is a fact that the shed-foremen and the assistant shed-foremen are continuing to attend on such holidays and are drawing heavy remuneration ? If so, why ?

(e) Is it a fact that these officers have no duties on such holidays unless the goods accumulated are weighed and loaded by the weigh-clerks ?

(f) If the reply to part (e) above be in the affirmative, will Government be pleased to inquire and to state—

- (i) under what circumstances the shed-foremen and the assistant shed-foremen are attending office on Sundays and holidays ;
- (ii) into the nature of duty performed by them on such holidays ; and
- (iii) whether the attendance of weigh-clerks is not necessary on such holidays to clear away the goods accumulated on the days previous to Sundays and holidays ?

Mr. P. B. Rau : Information has been called for from the Agent. On receipt of the reply, I shall communicate with the Honourable Member.

NUMBER AND RANK OF OFFICERS EMPLOYED IN THE FINANCE DEPARTMENT, GOVERNMENT OF INDIA, IN CERTAIN YEARS.

159. **Mr. K. C. Neogy :** Will Government be pleased to make a statement showing the number of officers, together with their ranks, employed in the Finance Department of the Government of India, in the following years, respectively :

1910-11, 1919-20, 1922-23 and 1928-29 ?

The Honourable Sir George Schuster : I place on the table a statement showing the information desired by the Honourable Member.

STATEMENT.
Number and Rank of Officers employed in the Finance Department in the financial years 1910-11, 1919-20, 1922-23 and 1928-29.

Rank.	1910-11.		1919-20.		1922-23.		1928-29.	
	No.	Remarks.	No.	Remarks.	No.	Remarks.	No.	Remarks.
Secretary ..	1		1		1		1	
Joint Secretary ..	NiL.		1	From January 1920	NiL.	•	NiL.	
Deputy Secretary ..	1		1		1		1	
Additional Deputy Secretary	NiL.		NiL.		1		1	
Budget Officer ..	NiL.		NiL.		NiL.		1	From November 1928.
Officers on Special Duty ..	3	1 from April to September 1910 only.	1	From April to June 1919.	1		2	
Assistants to Officers on Special Duty.	2	1 from September 1910.	NiL.		NiL.		NiL.	
Under Secretary ..	1		1		1		1	
Assistant Secretary ..	1	From May 1910.	2	1 from November 1919.	2	1 from October 1922.	3	
Registrar ..	1		1		1		NiL.	

AMOUNT OF WORK DONE IN BRANCH POST OFFICES AND AMOUNT OF ALLOWANCES PAID TO EXTRA DEPARTMENTAL AGENTS IN THE DISTRICT OF NOAKHALI.

160. **Mr. S. C. Mitra** : Will Government be pleased to lay on the table a statement showing the amount of the different kinds of work such as registration, savings bank, insurance, etc., done by the branch post offices in the district of Noakhali in any particular month—say January, 1929—and also the amount of work done by the extra-departmental branches of the same district in the same month, with a statement of the monthly allowances granted to the extra-departmental Agents of those post offices ?

Mr. P. G. Rogers : The information required is not available in my office. It will be collected and a statement will be sent to the Honourable Member in due course.

TYPES AND SOURCE OF SUPPLY OF LOCOMOTIVES USED ON RAILWAYS IN INDIA.

161. **Pandit Nilakantha Das** : (1) How many types of engines are used on Indian Railways :

(i) Broad gauge, (ii) metre gauge, (iii) narrow gauge on

(a) State and (b) Company-managed railways ?

(2) What are the advantages of different types ?

(3) How many specifications are there of engines, stating description, if necessary, for each specification ?

(4) If there is more than one type for one single specification, what is the justification for the difference in types ?

(5) Are there different types of engines for the same kinds of service, e.g., mail on broad gauge ? If so, is there any difference in make and price ? If so, please state the same with illustrations ?

(6) What are the lives of different types of engines, in actual run in miles ? And what is the average maintenance cost of the different types ?

(7) From what countries are the different types of engines purchased ? Please state the names of countries and the types ?

(8) Are any of the types of engines manufactured in India ? If so, where ?

The Honourable Sir George Rainy : (1) Government are not aware of the exact number of types of engines on the broad, metre and narrow gauges of the State-worked and Company-managed railways in India. It is probable they number well over 100.

(2) and (4). Varying types have been introduced to deal with different classes of traffic on the several gauges under varying conditions as regards strength of line and bridges, severity of curves and grades. At different periods new types have been introduced as the improvements in design made possible the use of more efficient machines.

(3) Generally speaking all engines are built to one general specification. This is, however, modified to suit the requirements of particular types.

(5) Yes. New types of engines differing from old types are used on the same kinds of service and sometimes heavy engines are used on hill sections to haul the same train that is hauled by light types on more level sections. The price of locomotives varies generally with the weight and the level of world prices when tenders are invited.

(6) The number of miles run by a locomotive before it is condemned varies within wide limits, and depends on the conditions under which it works, the class of service in which employed and the desirability of re-boiling when its original boiler requires replacement. The maintenance cost of the different types of locomotives is not available.

(7) Indian locomotives have been purchased from Great Britain, America and Switzerland. Government have no information as to the number of types obtained from each of the countries mentioned above.

(8) The Bombay, Baroda and Central India Railway manufacture a few locomotives at Ajmer.

TYPES AND SOURCE OF SUPPLY OF COACHING AND GOODS STOCK ON INDIAN RAILWAYS.

162. **Pandit Nilakantha Das** : 1. What are the types of coaching and goods stock in use in (a) Company and (b) State-managed railways on the (i) broad gauge, (ii) metre gauge and (iii) narrow gauge ?

2. What are the specifications of coaching and goods stocks or their parts ?

3. What are the sources of supply of the different parts of the coaching and goods stock ? Which of those parts are entirely manufactured and supplied from an indigenous source ?

4. Which are the parts imported ? What are their prices ? What is the country of their origin ?

5. Are tenders called for, and if so, from where ?

The Honourable Sir George Rainy : 1. There is a very large number of types of coaching and goods stock in use on the railways in India, and it would be impossible for me to describe them in detail in an answer to a question in this House. Broadly speaking, the types of goods stock most commonly used were formerly constructed to the Indian Railway Conference Association designs ; during the last few years what are known as the Indian Railway Standards designs have been evolved.

2. The specifications for coaching underframes and goods stock are technical documents obtainable on demand by interested manufacturers. There is, however, a general specification for carriage underframes and wagons which has been placed in the Library of the House for general information.

3. to 5. The sources of supply of the different parts of coaching and goods stock cannot be stated because there are several hundred components concerned, and owing to economic considerations the source of supply on one occasion may not be that on another occasion. However in all contracts entered into by the Railway Board it is laid down that the contractor shall not, without the consent of the buyer, import any but specified components, and before importing these he

shall first give Indian manufacturers an opportunity to tender. It is an essential condition of the contracts for coaching and goods stock that a substantial part of the process of manufacture shall be done in India. During the last few years tenders for the bulk of requirements have been invited in India only.

DESCRIPTION AND PRICES OF AXLES USED ON ROLLING STOCK ON INDIAN RAILWAYS.

163. **Pandit Nilakantha Das** : How many kinds of axles are used in the rolling stock on railways in India ? Please indicate their load capacity on broad, metre and narrow gauge railways with quantities of each kind and price in each case ?

The Honourable Sir George Rainy : I understand there are many kinds of axles used on the rolling stock on Indian railways ; but I have not been able to ascertain the exact number. Practically all are of steel. Their load capacity varies and is calculable on a basis of journal diameter, wheel spacing, and similar factors. It would therefore be impracticable to collect the information asked for by the Honourable Member regarding the quantities of each kind in use on the various railways and different gauges. As far as prices are concerned, these vary from time to time according to size of axle, world prices of steel and similar commercial considerations.

DESCRIPTION AND PRICES OF WHEELS USED ON ROLLING STOCK ON INDIAN RAILWAYS, AND RESULT OF ATTEMPTS TO MANUFACTURE THESE AND OTHER PARTS IN INDIA.

164. **Pandit Nilakantha Das** : (a) How many kinds of wheels are used in the rolling stock on broad, metre and narrow gauge railways in India ? Please indicate quantity and price in each case ?

(b) Are axles, wheels and tyres manufactured in this country ? If not, what attempts have been made to manufacture them in India and what are the effects of those attempts ?

The Honourable Sir George Rainy : (a) On a rough computation, the number of wheels and axles in use on Indian broad, metre and narrow gauge railways exceeds 330,000. These are of many different types and sizes and have been purchased during the last 40 years. I am sure my Honourable friend will realise that it is impossible for Government to answer this question.

(b) So far as Government are aware, axles, wheels and tyres are not manufactured by commercial firms in India.

Government have no information on the second part of the question.

LOSS OF LETTERS BY AIR MAIL POSTED AT KARACHI.

165. **Mr. E. L. Price** : (a) Will Government be pleased to state whether the attention of Government has been drawn to complaints of the non-delivery at destination of letters by air-mail posted at Karachi ?

(b) Are Government aware that the suspicion is that the missing letters were stolen for the sake of the stamps ?

(c) Has the attention of Government been drawn to the statement made by the Director of Posts and Telegraphs, Sind and Baluchistan Circle, published in the *Daily Gazette* of 21st August that *the loss of a few, though regrettable, can hardly be considered a very serious matter* ?

(d) What measures for re-establishing postal security are proposed ?

Mr. P. G. Rogers : (a) Government have seen some complaints in the Press.

(b) Yes, but Government are not satisfied that the suspicion is in all cases well-founded or that the thefts can be ascribed entirely to post office employees.

(c) Government do not concur unreservedly in the Director's statement.

(d) It would be inexpedient to disclose the precautionary measures which suggest themselves.

ALLEGED SPREADING OF CHOLERA BY STATE RAILWAYS.

166. **Mr. E. L. Price :** (a) Are Government aware that the present cholera epidemic started in the United Provinces and spread, chiefly along the railway routes, through the Punjab into Sind, thus ravaging three Provinces ?

(b) Are any measures for the prevention of the spread of such scourges by State Railways contemplated ?

Sir Frank Noyce : (a) Cholera extended from the endemic areas of Bihar and Orissa and Bengal to the United Provinces in March and April last. A further extension into the Punjab occurred in April and May, but cholera in this province did not assume a severe epidemic form. In July the disease extended into Sind, probably by extension from the above mentioned provinces, and it has now assumed a severe epidemic form in Larkana and Sukkur. The extension of cholera through the Punjab into Sind was probably along the railway routes.

(b) A scheme for the medical inspection of pilgrims returning from big fairs by railway with a view to check the spread of infectious diseases is at present under the consideration of Government.

ELECTION OF THE STANDING COMMITTEE ON ROADS.

Mr. President : I have to inform the Assembly that the following Members have been elected to serve on the Standing Committee on Roads :

1. Mr. E. F. Sykes.
2. Kumar Ganganand Sinha.
3. Mr. M. R. Jayakar.
4. Mr. Anwar-ul-Azim.
5. Mr. Muhammad Ismail Khan.
6. Diwan Chaman Lall.

ELECTION OF THE STANDING COMMITTEE FOR THE DEPARTMENT OF COMMERCE.

Mr. President : I have to inform the Assembly that originally thirteen nominations were received for the panel for the Standing Committee for the Department of Commerce, out of which four candidates namely, Sardar Bahadur Sardar Jawahar Singh, Mr. J. Y. Phillip, Mr. G. L. Winterbotham and Rai Sahib Harbilas Sarda have since withdrawn their candidature. As the number of remaining candidates is equal to the number required for the panel, no election is necessary. I therefore declare the following persons to be duly elected :

1. Mr. H. P. Mody.
2. Mr. Sarabhai Nemchand Haji.
3. Mr. Fazal Ibrahim Rahimtulla.
4. Mr. R. S. Sarma.
5. Sir Darcy Lindsay.
6. Mr. Mohammad Yamin Khan.
7. Mr. B. Das.
8. Lala Rang Behari Lal.
9. Mr. Muhammad Rafique.

THE TRANSFER OF PROPERTY (AMENDMENT) BILL.

The Honourable Sir Brojendra Mitter (Law Member) : Sir, I beg to move that the Bill further to amend the Transfer of Property Act, 1882, for certain purposes, as reported by the Select Committee, be taken into consideration.

The Select Committee on the Transfer of Property Bill generally approved of the Bill, but made certain alterations. Some of them are decided improvements upon the original Bill and some are of a drafting nature. There is one point on which the Select Committee did not come to any final decision, but left the matter for this House to decide, and that is, whether transfer of properties of the value of Rs. 100 and under should be compulsorily registrable or not. That is a matter of principle which has been left to this House to decide. Under the existing law, transfers of properties, of the value of Rs. 100 or under are not required to be effected by registered instruments. The proposal in the Bill was that all transfers, irrespective of the value, should be effected by registered instruments. That is a matter which is now before the House to decide.

There are two amendments, one dealing with sales and the other with mortgages on this point ; and speaking on behalf of Government, I am prepared to accept those amendments, that properties of the value of Rs. 100 and under should not be required to be transferred by registered instruments.

The principal changes which the Select Committee have reported are the following :

In the Bill it was provided that registration should be notice in all cases. A difficulty arises in certain cases. A property may be situate in one district, but the registration may take place in another district. It

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would happen in this way : supposing a transfer covers more than one property and these properties are situate in different districts ; but if the document be one, it would be registered in one district : that is, it would not be registered in the district in which one of the properties is situate. In such a case it would be difficult for a transferee, by a search in the registration office, to know of that particular transfer till the registration office in that particular district gets notice of this registration from the district in which it was registered. In order to meet that situation, the Select Committee has made suitable provision.

The second point is notice to an agent. The Bill provided that notice to an agent would be notice to the principal, and the Select Committee made it clear that the notice should be of a fact which is material to the course of business in which the agent is engaged, and the agent must not have fraudulently concealed the fact from his principal. That is the ordinary law, but the Select Committee felt that instead of leaving it to case law on the subject, for the guidance of the courts, it was much better that the law should be clearly laid down in the Act itself.

The next important change made by the Select Committee is with regard to transfers by and to corporations. The expression in the existing Transfer of Property Act, as well as in the Bill, is " a living person " — transfers by or to living persons. There have been cases in which the question has arisen whether living person should include a corporation. Although courts have held that the Transfer of Property Act does apply to corporations, still, the Select Committee thought it better to make the point clear that corporations should be governed by the provisions of the Transfer of Property Act.

The next point in which the Select Committee suggested a change is that a definition of mortgages by deposit of title-deeds should be inserted in the body of the Act and that has been done.

The Select Committee also considered the question whether a lease for a period of less than a year should be effected by a registered instrument. The existing law is that a lease for a period of a year or under need not be effected by a registered instrument. In the Bill the period was reduced to a month, but the Select Committee restored the provision which is in the existing Act.

An important change was made with regard to relief against forfeiture of a lease for causes other than non-payment of rent. In that case the Bill, provided that cases of forfeiture for causes other than non-payment of rent, if remediable, should be remedied within thirty days ; but the Select Committee thought that no hard and fast time limit should be prescribed, but that it should be left to the circumstances of each case ; and instead of thirty days they suggested that " reasonable time " should be substituted.

These are the principal changes which have been suggested by the Select Committee ; otherwise they generally approved of the other clauses in the Bill. Sir, I move.

Mr. M. S. Sesha Ayyangar (Madura and Ramnad *cum* Tinnevely : Non-Muhammadan Rural) : Sir, in the first place I owe an apology to

the House. I had been elected by this House to serve on the Select Committee ; but unfortunately during the sittings of the Select Committee in Simla I was practically disabled from attending.

This is an Act which is nearly fifty years old and it is a difficult Act. Only practitioners in active practice and judges who have to deal with this branch of law can appreciate the magnitude of the difficulty of this Act, and during the last half a century when this Act was in force, time after time defects have been noticed by the judges, and all those defects have been sought to be removed by the Select Committee ; and here and there there has been considerable room for diversity of opinion and different interpretations of several of the sections of this Act. Wherever sections gave room to conflicts of view, all the conflicts have been set at rest by this draft Bill, and by the Select Committee's Report on the Bill ; and in setting at rest those conflicts, the saner view has always been uniformly adopted. Also there have been doubts existing in the interpretation of some of the sections, and wherever these doubts existed, the Select Committee have uniformly striven to clarify the provisions of this Bill, and the aim that was operating in the mind of the Special Committee that sat to draft this Bill and also of the Select Committee was simplicity and certainty in the law and also the correct interpretation of the law as well as clarifying the existing state of the law. Sir, the aim is very laudable and it has been achieved more or less by a ruthless recasting of several of the sections of the existing Act ; and in cases where it was found necessary that some sections ought to be eliminated, they were also eliminated ; and certain other sections have been substituted in the new Bill for the old sections. In this way the attempt has been successfully made by the Select Committee to set at rest completely all the conflicting decisions and to present to this House now a Bill which is at once simple and reasonable and at the same time workable. The House is also aware that a special Committee of distinguished lawyers was asked to sit and scrutinize the existing Act and to draft this Bill. They have done their work ; and the Select Committee also did not fail, as I see from several of the provisions of the Bill, to exercise their own independent judgment thereon ; and though, as a matter of fact, the Special Committee sat and drafted this Bill, it did not disable the Select Committee from exercising their own judgment, and I see that in three notable instances the Select Committee have not accepted the recommendations of the Special Committee. In the first place, I am glad that the Select Committee was not prepared to accept the provisions contained in clause 54 of the Bill as originally introduced, which sought to provide that a lease of immoveable property for a term exceeding one month only must be made by a registered instrument. The Select Committee recognise the consensus of opinion upon this point, and they add :

“ The consensus of opinion is opposed to that proposal, and we ourselves consider that it would lead to inconvenience and hardship out of proportion to the benefit to be expected from it.”

That, Sir, is the first instance in which the Select Committee did not think it fit to adopt the recommendations of the Special Committee.

The next instance, Sir, is found in the present form of clause 12 of this Bill. Here also the Select Committee thought that the clause as drafted by the special Committee would unnecessarily restrict the operation of the principle of “ the estate feeding the title ”. They would not recognise that kind of operation of the principle, and therefore they recognised that a limitation of the right of a transferee to an interest which may

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accrue to his transferor up to the date of a decree in a suit instituted to enforce that right might work injustice, and they did not feel justified in adopting the decision reported in 18 Madras, 492 (I. L. R.).

Sir, the third instance which I find, broadly put, in which the Select Committee did not choose to accept the recommendations of the Special Committee is this. In the Supplementary (Amendment) Bill they say :

“ We are not convinced by the reasons given by the Special Committee for deciding not to insert a provision giving the Court power to extend the time for the payment of the amount due from a mortgagor after a preliminary decree for the sale of the mortgaged property has been passed. We think this is a power which the Court may well be trusted to exercise in proper cases and on proper terms ”.

They have, therefore, inserted a new sub-rule (2) in this rule on the lines of sub-clause (ii) of clause (c) in sub-rule (1) of rule 2. They say that the “ abuse of such a provision is prevented by providing that the extension of time cannot be granted after the final decree for sale has been actually passed ”.

Sir, it is refreshing to see, therefore, that the Select Committee have chosen to exercise their independent judgment and have adopted these changes in the provisions drafted by the Special Committee. Sir, every human endeavour is bound to be imperfect, and I do not for a moment submit to the House that the Bill as it has emerged from the Select Committee is perfect in itself. No doubt, there are bound to be some defects here and there ; but, generally, looking at the small number of amendments which have been tabled so far, it might be taken as positive proof that the Bill is acceptable to the House. I may also submit for the consideration of the House that, so far as certain salient features of the provisions of the Transfer of Property Act are concerned, they have been submitted to a close scrutiny by the Select Committee, and the form in which they have emerged from the Select Committee is very commendable. I may, for instance, refer to a few clauses of the Bill. In clause 3 the Select Committee want to delete the words “ Hindu ” or “ Buddhist ”. I am aware, Sir, that my friend Mr. Aney has tabled an amendment for the retention of the old clause. Sir, that amendment may have the merit in retaining this. . . .

Mr. President : The Honourable Member might deal with the amendment later.

Mr. M. S. Sesha Ayyangar : It is only by the way, Sir, that I mention this. The present clause of the Bill has the merit of establishing by law, certainty of title. No doubt, the opposite rule might also be commendable ; for, though it might be apparently superfluous, it only recognises the statutory principle to which the Government stand committed.

In the next place, Sir, the Honourable the Mover of this motion said that it has been enacted in this Bill that registration is notice, and he also mentioned that the rigidity of this rule is sought to be relaxed by Explanation I to clause 4. Though no doubt there is some relaxation in the rigidity of this rule, I, coming from Madras, must mention to the House that Madras has always been in direct opposition to the view that has been adopted in this Bill ; but I am not unconscious of the fact that the present provision of the Bill has the merit of being very simple. But, Sir, I must also mention this, not because it is the Madras view, but because the fact is that India is a continent of villages. We have got about seven lakhs of villages in India, and I would ask the House to consider how many registration offices there are operating in this country. There are numerous villages which have not

the benefit of registration offices working there, and if registration is going to be notice, it would certainly work as a very great hardship upon the vast masses of this country residing in the villages where there are no registration offices. If therefore registration is to be taken as notice, it would enhance, I submit to the House, the hardships which the masses of this country are already put to owing to the absence of registration offices in very many of the villages.

Then, Sir, I would refer to clause 10 of the Bill. Sir, it is very refreshing to find that the law of perpetuity, which gave room to considerable conflict of decisions in the various High Courts, has been set at rest; because three new sections in place of the old section, have been inserted, namely 16, 17 and 18. I am glad also to observe that the present provisions are made to rest on a very intelligent basis, and it is equally refreshing to refer to section 18. It enacts a wholesome proviso as regards transfer in perpetuity for the benefit of the public.

Sir, the third salient feature in this Bill is the provision relating to the proposal to give statutory recognition to the principle of part performance. Practitioners in active practice alone can appreciate the contentions that centered round the phraseology of "contentious proceeding" and "active prosecution" as obtained in the old Act. It has given room to a multitude of conflicts of rulings on the subject, due to the interpretation of these two words. Now, Sir, the rule has been very much simplified, and the adoption of the change suggested by the Select Committee would simplify matters in future.

Then, Sir, the next clause of the Bill which requires attention is clause 15 relating to section 53 of the Transfer of Property Act with regard to fraudulent transfers. Sir, there is one clause in the Bill which actually avoids multiplicity of proceedings, and it is this:

"A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor shall be instituted on behalf of, or for the benefit of, all the creditors."

That at one stroke avoids the multiplicity of proceedings which would otherwise have entailed in such cases.

Then, Sir, the most important feature in this Bill is the provision relating to part performance. For a long time past, the Courts have recognised the operation of part performance in contracts, and it is for the first time that we have got statutory recognition of the principle in this Bill; and it is a healthy move in the right direction.

Then, Sir, as regards clauses 17 and 21 taken together, they relate to transfers of property of a value less than Rs. 100. The Honourable the Mover has already signified the assent of the Government to the retention of the old law as it stands now, about which I have tabled two amendments, and it is for the House to consider whether that retention is healthy or not. I shall dilate upon that point when I speak on the amendments that I have given notice of. It is a very correct attitude that, though the Select Committee themselves stood for a compulsory registration of all transfers of property, yet they thought it necessary to leave it to the sense of the House. They have made special mention of that fact in the Report saying that they would abide by the decision of the House.

So far as the law of mortgage is concerned, which practically occupies the bulk of this Bill, that has been completely overhauled so to say; there

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have been enacted new sections and there has been substitution of new sections for old sections also. One salient feature regarding the change in the mortgage law is this, that the rights of the mortgagor, though they were somewhat tardily recognised in the existing Act, have been cleared and amplified by certain special provisions of this Bill. I refer especially to clauses 24, 26, 31, 36 and 38 of the Bill. These provisions of the Bill, I submit, have totally amplified the rights of the mortgagor. This is a healthy move and a move in the right direction. In conclusion I would say that the Act has been very much simplified and the Bill as it is presented to the House today is full of sensible suggestions, and I would therefore support the motion that this Bill be taken into consideration.

Mr. President : The question is :

“ That the Bill further to amend the Transfer of Property Act, 1882, for certain purposes, as reported by the Select Committee, be taken into consideration ”.

The motion was adopted.

Clause 2 was added to the Bill.

Mr. President : The question is that clause 3 stand part of the Bill.

Mr. M. S. Aney (Berar Representative) : I rise to move the amendment which stands in my name, that clause 3 be omitted and consequential amendments be made. Before making a few observations in support of this amendment, I should like to express my appreciation of the work done by the Special Committee which was entrusted with the task of revising the statute. That has been done with an ability and thoroughness which is bound to elicit the admiration of Honourable Members of this House, and if I am now moving an amendment, it is not because I do not realise the force of the arguments which have been advanced by the members of the Special Committee and the members of the Select Committee, but because I feel that there are certain other weighty arguments which should be considered by this House before coming to a definite decision on this question.

This change which the present Bill seeks to make by the omission of the words “ Hindu ” and “ Buddhist ” from the saving clause amounts to a repudiation of the policy to which the Government of India have stood pledged from the time they assumed administration of this country. The ground on which it is defended is this, that Chapter II contains no provisions whatsoever which are in any way in conflict with the well-known rules of Hindu law. That being the case, they say that the retention of the words “ Hindu ” and “ Buddhist ” is unnecessary, that those words are superfluous, and that as the statute is now under revision, those superfluous words should be taken out. That is the simple ground on which this change has been supported, and it has now been carried out in the Bill which is before the House.

As regards this point, I should like to urge that it is not a sufficiently strong ground for the removal of those words. If the retention of those words has caused any kind of inconvenience in the administration of the Act or in the administration of those provisions which clause 2 of the Act sought to control, I can understand the propriety of the proposed change ; but no such inconvenience is being felt or is even alleged to have been caused ; and I wish to add that even the progressive development of that law is not in any way hampered by the retention of the saving clause. I

therefore submit to the House that it should not lightly strike out certain words which undoubtedly embody an enunciation and reaffirmation of the principles to which the Government of India stand pledged. That is my first ground for urging that clause 3 of the Bill should be deleted.

This saving clause which was inserted in the Act of 1862 was inserted with the full knowledge, as my Honourable friend the Law Member will admit, that the provisions of Chapter II of the Transfer of Property Act did not in any way conflict with the rules of Hindu law. If so, then we have to see what was the reason for inserting that clause. When this Act was passed in 1882 by the old Imperial Legislative Council, it was known to those who made this law that the provisions of Chapter II of the Transfer of Property Act were not in any way in conflict or inconsistent with the well-known rules of Hindu law, and yet, in spite of that, they inserted that clause. It is therefore evident that there was something more in their minds in having that saving clause put on the Statute-book. The question is therefore reduced to this. Whether the necessity which they felt in those days for retaining that clause in spite of this knowledge still exists today or not is the simple question which this House has to decide today. I will now refer to the debate which took place on this subject and to the speech which the Honourable Mr. Stokes, who apparently was in charge of the Bill, made on this point :

“ The Honourable Mr. Stokes also moved that the further and final Reports of the Select Committee on the Bill to define and amend the law relating to the Transfer of Property be taken into consideration. He said that only six of the amendments described in those Reports were of sufficient importance to require mention in this Council. The Committee had declared that nothing in Chapter II should be deemed to affect any rule of Hindu, Muhammadan or Buddhist law. It did not, in his opinion, affect any such rule, otherwise than by putting Natives as regards their power to make settlements on unborn persons, on the same footing as Europeans. But it laid down, in accordance with the decisions of the Courts, a rule against perpetuities, and two of the Native Members who much disliked this rule, and who thought that judge-made law was more likely to be altered than statutory law, press the Committee to exempt their personal law from this chapter. They had also saved the rules of Hindu and Buddhist law from the provisions of the chapter on gifts save only that which required, in the case of a gift of land, writing, registration and attestation. The rule that a Hindu father might, in case of necessity, resume gifts made to his son would thus remain unaffected.”

My object in reading this extract is this, that those who were responsible for bringing this law on the Statute-book were fully aware of the fact that, in incorporating certain provisions in Chapter II, they were not doing anything inconsistent with the rule of Hindu law, and still they wanted this saving clause to be retained and the reason was this. In the matter of the rights of the citizens in disposing of their property, they wanted to assure the people that Government did not intend to do anything that would conflict with the fundamental principles of the personal law by which the people were to be governed. The question is whether that assurance needs to be reaffirmed by the Members of this House today. That is the sole point. If they feel that no such assurance is needed and that they would want to have “ their affairs between parties and parties ” to use the language of the British Statute, settled in all affairs only by the statute law made by this House, then there is certainly no necessity for a reaffirmation of that principle. I quite appreciate that position. The House has to make up its mind. I am sorry I could not agree to this position in the Select Committee or even now. The matter is one which affects the question of pledges given to the people of this country, and it is for

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the representatives of the people assembled in this House in their representative capacity to say whether they stand in need of their personal law. If they want their affairs to be settled by statute law made in this House, they have every right to say so. My Honourable friend Mr. Jayakar said the other day that this House has got that right. I thought the proper place to come to a decision of this question was this House and that is the reason why I wrote a note of dissent to the Report which was otherwise unanimous. By striking this discordant note, I thought an opportunity would be afforded to this House to have a full dress debate on this question, which is a fundamental question in that it not only affects the Transfer of Property Act but may affect the future policy of the Government of India in dealing with many other spheres of our social and religious life. I feel that the question should be decided once for all. It is for that reason that I have brought this particular amendment. In spite of a friendly suggestion from my friend the Law Member a few minutes ago, I had to tell him, with some reluctance, that I am keen on bringing this question to a decision, and if necessary even pressing it to a division.

There is another thing. If we look to the opinions that have been received, I find that two important Local Governments have expressed themselves against the omission of the words "Hindu and Buddhist law". I do not want to take up the time of the House by reading them. The Government of Bombay have expressed themselves against it, so also the Government of the Central Provinces. Out of the important Bar Associations, the Western India Pleaders' Association, about which my Honourable friends Mr. Jayakar and Mr. Jinnah might have a better knowledge than I can lay claim to, has clearly expressed the view that the omission of the words "Hindu and Buddhist law" should not be made. So also certain Bar Associations in the Central Provinces, particularly the Akola Bar Association, has expressed itself unreservedly against it. Besides I find that some Bar Associations such as that at Lucknow have said that, if you are going to omit Hindu and Buddhist law, then it will be better to omit the word "Muhammadan" also. I do not want the word "Muhammadan" to be omitted. That is not my point. The House ought to grasp the precise significance of the retention of the word "Muhammadan", and I thought that it would be able to grasp it better if it would thoroughly discuss the point and then come to a decision on this important question. If we pass this clause as it is, it will be for the first time that the law of the land is going to be made applicable differently to different communities. We will be sanctioning a differential or discriminative application of an important Act like the Transfer of Property Act. Once that differential application is recognised by this House, we have to see what is likely to come out of it. A uniform law applicable to all the communities in this country should be the sole aim and object of this House, and for the sake of that uniformity we must be ready even to put up with some small inconveniences. I have shown, that during the last 40 years that this Act has been in force, the existence of this saving clause has not in any way fettered the discretion of the courts in properly and equitably interpreting the sections of Chapter II. No difficulty in the administration of those provisions has been found. On the other hand, if we allow this thing to be passed today, we virtually lay down a precedent to this effect that in the case of Muhammadans they will be governed by their personal law, but in the case of Hindus, they will not be governed by their personal law so far

as the provisions of the Transfer of Property Act are concerned. That is a new situation which is being created ; and I therefore urge that even the Government Benches should seriously consider whether they should be a party to the inauguration of a policy like that for the first time now.

Then, there is another thing which is of importance in my opinion. When this Bill was under consideration in the Select Committee, at that very time, I tried to consult the opinions of two very representative bodies of Hindus, because I felt that, when you are going to deal with the personal law of a community as a whole, the opinions of the representative bodies of that community ought to be known and duly considered before you come to any decision. That being my feeling, I tried to ascertain the opinions of two very representative bodies of the Hindu community. One was the Hindu Mahasabha, of which my Honourable friend, Dr. Moonje, is the President, and the other the Hindu Law Research and Reform Association. As regards the former, I do not know whether that Sabha has, at any meeting convened by them, considered that question, but there was a telegram from the Secretary of that Mahasabha which I duly communicated to my Honourable friend, the Law Member. It has been stated there that the omission of the words " Hindu " and " or Buddhist " and retention of the word " Muhammadan " will make this Bill look as if it was a sort of discriminative legislation. As regards the opinion of the other body which I consulted and of which some of the most enlightened lawyers and students dealing with Hindu law in the country are members, that body also has submitted its opinion, of which I believe the Honourable the Law Member has already got a copy. That body held its conference in Poona last May, and there they discussed this question, and there they appointed a committee consisting of Mr. Justice Madgaonkar, Mr. Gharpure and Mr. Kane. The latter two gentlemen are well-known research students of Hindu law, and Mr. Justice Madgaonkar is a Judge of great experience. That committee has considered this question carefully for a long time, and ultimately, having gone through all the connected papers, it had given its deliberate opinion that no case for the omission of the words " Hindu " and " or Buddhist " from section 2 had been made out. That opinion they have given. So, so far as I can gather, the opinion of the Hindus through their representative bodies has not been in favour of the omission of these words from section 2. Now it is stated, " Well, if you do not lose anything, what is the harm in omitting those words ? " Here I have also got some doubt on that point and that is what I want to place before this House and for the consideration also of other Members whose opinions on points of law I very much value. I find, Sir, it is stated in section 2 of the Act that :

" Nothing in the second chapter of this Act shall be deemed to affect any rule of Hindu, Muhammadan, or Buddhist law ".

It is laid down in the Act that nothing inconsistent with Hindu law should be in that law. Once you take away that safeguard, there is no guarantee, in these days when ideas on property and laws relating to the same are developing so rapidly, and it is impossible for any one to say that amendments inconsistent with rules of our personal law will not be introduced into this Act even within a few years and that ideas and principles unknown to Hindu culture may not gradually creep in. So up to this time there is nothing inconsistent with rules of Hindu law, is not, in my opinion, a sufficiently strong ground for now removing that one safeguard which has

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probably kept the law consistent with Hindu law during the last 40 years. Secondly, Sir, if we remove these words, some new difficulties in interpreting certain rules and certain provisions of Chapter II are likely to arise. For example, I may mention one illustration, and I believe my Honourable friends who have got to deal with the profession of the law will carefully listen to that illustration. Suppose a man makes a transfer to a person who has got generally limited interests in the property according to Hindu law, and there is no express mention in the deed as to what interests, absolute or limited, that man wants to transfer to that person. At present the presumption is that, if that transfer is in favour of a person who has got a limited interest under Hindu law, and there is no express mention in the deed of the nature of interests that man wants to transfer to that person, the presumption is that limited interest is presumed to be transferred in favour of that person. And why? Section 8 of the Act lays down the rule for the operation of transfer :

“ 8. Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.”

At present the position as gathered from the case law is that absolute interest passes to a person who has ordinarily limited interest under Hindu law only when there is an intention of transfer of such interest clearly expressed or necessarily implied in the document. Otherwise the presumption is in favour of a transfer of limited interest in such a case in spite of section 8 of the Act. Why has that sort of presumption arisen? It is because of the fact that section 8 is modified to some extent, in my opinion, by the saving clause, by the wording of section 2, *viz.* :

“ Nothing in the second chapter of this Act shall be deemed to affect any rule of Hindu, Muhammadan, or Buddhist law ”.

Suppose that safeguard is taken away, what will be the effect? If there is no qualification as regards the interest which one man passes in favour of another, it is very likely that the presumption will be that absolute interest passes. What I urge is this, that there is scope for an ambiguity of this nature which up to this time did not exist on account of the safeguards there. I also do not know what will be the position as regards other clauses if this safeguard is taken away. The above illustration casually struck me yesterday as I was reading the Bill with the Act. It cannot, then, be said, as I urge, that there is nothing inconsistent with Hindu law in the Act. I still want that those provisions of Chapter II should not be interpreted in a spirit inconsistent with the rules of Hindu law; and what I fear is that probably the rules of construction which ordinarily we apply at present might undergo considerable modification later on at the hands of Judges who will no longer feel bound by the principle of Hindu law but by the letter of the law itself. They will say, “ Here is the law as laid down by the Legislature ”, and they may not look into the principles of Hindu law as modifying the sense or the spirit of the provisions. That is a situation which is likely to arise, and what will be the effect? The most acute lawyer will feel difficulty and he will not be in a position to say exactly that no difficulty will ever arise with regard to any provisions in Chapter II. So my argument is that, up to this time, the existence of this safeguard has not disclosed any inconvenience in the administration of the provisions of Chapter II. If you accept the amendment of the clause at present, it notoriously absolves Government from an obligation to which

they stand pledged from the time they have assumed administration of this law. Then it is not quite true also that there will be no difficulty in interpreting the provisions of Chapter II if this safeguard is taken out.

With these three facts clearly made out, I believe a stouter case ought to be made out for the deletion of the words

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“ Hindu and Buddhist ”. Otherwise the House will be justified in asking the Government to retain section 2 as it is and not delete the words “ Hindu or Buddhist ”. After having said all this, I do not like to read out the extracts from the Report, as they only reproduce what I have been saying. The Buddhist law, of course, is a thing which exists in Burma ; so far as I know it is not to be found in any part of India. And the Honourable the Law Member and the Select Committee have all mainly relied as regards their information, if I mistake not, upon the opinions received from the Local Government of Burma and the High Court of Rangoon. In this connection I would also like to enlighten the House of the fact that the Transfer of Property Act is not extended to that province. I am open to correction on this point. In fact, that is what I have gathered from the note of the Special Committee itself, because one of the points to be considered by the Committee was whether this Act should be extended to that province.

Mr. M. A. Jinnah (Bombay City : Muhammadan Urban) : There are Buddhists in India also.

Mr. M. S. Anay : So far as the Select Committee or the Special Committee are concerned, they have relied upon these two authorities. Now, if this Transfer of Property Act is not extended to Burma, it is difficult for them to see what will be the effect of the provisions of this law upon their customary law by which they work. It is difficult to give an opinion upon a technical law like this. Besides, no Buddhists in India have been ever consulted. Some of the Hindus were consulted, but no Buddhists in India have been consulted. That is my information. If I am wrong, I can be corrected. The only two bodies that have been consulted were the Local Government of Burma and the High Court of Rangoon. I do not know the personnel of the High Court of Rangoon at present, but I know the personnel of the Local Government, at least the head of the Local Government. He is not expected to know the Buddhist law. My point is this, that in a matter of this kind when you are interfering with the policy that you have so scrupulously observed for so many years, is it just that you should try, on such flimsy evidence, to do away with a salutary safeguard which was placed on the Statute-book after full consideration of the circumstances ? I have therefore clearly shown that, as regards the Buddhist law, I take it for granted that the Government do not possess sufficient evidence, and I would not regard the opinion of the Provincial Government or that of the High Court which has not had the opportunity of administering this law at any time, as a sufficient criterion for taking a jump in the dark. It will be nothing short of a leap in the dark for we do not know how rudely we may interfere with their customary law and what rude shock we might give to their customary rights. I therefore warn the House not to be a party at least to a step of this nature, unless they know perfectly well that they can take the verdict of the Government of Burma and the High Court of Burma as the most reliable word on the subject. Sir, these are the grounds on which I think that the omission of the words “ Hindu and Buddhist ” from section 2 is not desirable.

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I do not wish to recapitulate those reasons which I have already given. Unless the House is prepared to absolve the Government of India hereafter of all obligations arising out of the solemn pledges to respect the personal law, it will not be justified to alter section 2. Nothing will be lost if you retain section 2 as it is and not unnecessarily amend it in the manner in which the Law Member wants you to do. With these words, Sir, I move my amendment and commend it for the acceptance of the House.

Mr. M. S. Sesa Ayyangar : Sir, at the outset I would admit that much can be said both for retaining the original provision and for the omission of the original section ; but I am constrained to observe, that if there was a sufficient ground for the introduction of the words "Hindu and Buddhist" in the law as it at present stands, then it is for the Honourable the Law Member to make out a clear case for its omission at present. From the literature on the subject that I have been privileged to study as a member of the Select Committee, I am constrained to say that really no case has been made out, and if it is admitted that the retention.....

Several Honourable Members : Speak up please ; we cannot hear this side.

Mr. M. S. Sesa Ayyangar : From the literature on the subject that was made available to me as a member of the Select Committee, I am constrained to observe that no case has been made out by the Government for the omission of the words "Hindu and Buddhist" in clause 3. On the other hand, if it is conceded for a moment that it does not affect the Hindu personal law or the Buddhist personal law for the matter of that, I really cannot follow the reasoning that might be adopted for the omission of these two words from the present Act. The only outstanding merit of the omission is this, that the law ensures certainty of title. But the House has to consider whether, as against this outstanding merit of the law being rendered certain by the omission of these words, we should not also take into consideration the fact that the existence of these two words in the present Act, unless a clear case has been made out for their omission, is necessary, and that the House ought not lightly to interfere and say that these words should be omitted.

The second objection to his clause 3 is this. Rightly or wrongly, if the word "Muhammadan" is retained there, it would unnecessarily give room for an apprehension of an invidious distinction being made in that direction. I do believe that there was nothing like that at the back of the Government Member's mind or at the back of the minds of the members of the Select Committee, but unfortunately to the outside public it is open to that grave objection. Unless, therefore, the Honourable Mover of this Bill clears these two doubts and makes out a strong case, I, for one, am for the retention of the old section.

The Honourable Sir Brojendra Mitter : Sir, I oppose this amendment and I shall show to the House that an overwhelming case has been made out in favour of deletion of the words "Hindu or Buddhist". Sir, it is one of the elementary canons of drafting that you should avoid words which are superfluous or unnecessary. If I can satisfy the House that these words are superfluous, I hope the House will vote in favour of the omission. And the next point which we had in view in omitting these

words is a very important one, and that is the certainty of title. Sir, in matters dealing with property, certainty is of much greater importance than even the substance of the law. Here I make two points. First, that these words are not necessary and, in the second place, in the interests of certainty of title and removal of ambiguity, it is necessary that these words should be omitted. My Honourable friend Mr. Aney made three points. The first is that the retention of these words in the Act has caused no inconvenience since 1882 when these words were inserted deliberately. These words were deliberately inserted in 1882, because at that time it was necessary to insert them. At that time the Disposition of Property Act had not been passed and one of the most important rules of Hindu law was still in full force, that is, that no gift could be made to an unborn. Several sections in Chapter II of the Transfer of Property Act deal with transfers generally, including transfers to unborns. That being so, in view of the well recognised rule of Hindu law that no gift could be made to an unborn, a saving clause was necessary and hence the provision in section 2 that no rule of Hindu law should be affected by anything in Chapter II. That was absolutely necessary. Therefore, the argument that since 1882 no inconvenience has been felt is not a valid argument because it is no question of convenience or inconvenience. The insertion of the words was necessary in order to save the rule of Hindu law that no gift could be made to an unborn.

The second point which my Honourable friend made was that the deletion would make for differential application of the Act to different communities. The Transfer of Property Act, 1882, does make that differential application because the existing section says that no rule of Hindu or Muhammadan or Buddhist law would be affected by anything contained in Chapter II. That means this, that in the case of Hindus, the rules of Hindu law would prevail, in the case of Muhammadans, the rules of Muhammadan law would prevail, and in the case of Buddhists, the rules of Buddhist law would prevail. There is this differential application, already. We are not introducing any new principle of differentiation. The differentiation is there already. What we are seeking to do is this, that by omitting the words "Hindus and Buddhists", which are no longer necessary, we are only saving the personal law of the Muhammadans because the Muhammadan law of gift, for instance, is totally different from the rules embodied in the Transfer of Property Act. It is necessary that those rules of Muhammadan law should be saved and, therefore, the retention of "Muhammadan" is necessary. It is not for the purpose of making any differentiation, it is for the purpose of saving rules which need protection. Where no protection is needed, there is no necessity for the retention of a saving clause. Sir, the only rules of Hindu law in 1882 which needed protection were the rule against gifts to unborns, the rule in regard to gifts to classes and the rule against perpetuities. These are the three rules. Now, as regards gifts to classes among Hindus, the Privy Council has held in a number of cases that *Leake versus Robinson* is not applicable, that the whole gift will not fail, but that the gift will be good in respect of those who are capable of taking, but that it would fail in respect of unborns. That is the principle which has been laid down under the existing law by the Privy Council. That being so, and having regard to the fact that the Hindu Dispositions of Property Act has been passed, these two objections, on the ground of rule against

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gifts to unborns and on the ground of the rule as regards gifts to classes, are no longer valid.

Now remains the question about perpetuities. Certainly for the last sixty or seventy years, the rule against perpetuities has been recognised among the Hindus. Thus, in Chapter II, there is no single rule which militates against any rule of Hindu law at the present moment. If that is the state of the law, and my Honourable friend admitted that there is nothing in Chapter II which militates against any rule of Hindu law, then, why retain the word "Hindu"? Is there any necessity? If there is no necessity, then the ordinary elementary canon of legislative drafting requires that anything unnecessary or superfluous should be rigidly avoided.

The last point which my Honourable friend made was that it was still necessary in view of section 8 of the Transfer of Property Act. If I understood him correctly, he said this. Suppose there is a gift by a Hindu to one who can only have a limited estate. By virtue of section 8, the construction of that document would be made in accordance with the rule of Hindu law, but if the saving clause from section 2 is taken away, the construction would be made irrespective of any rule of Hindu law. I understood that was his argument. I submit that that argument is not well founded, because all that section 8 says is this, that "Unless a different intention is expressed or necessarily implied the transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof". Therefore the point of the whole section is this: the Court has to gather the intention of the donor—whether that intention is expressed or can be necessarily implied from the words used. In construing a document, the intention is to be gathered from the language used. No rule of Hindu law comes in there. From the language used in the document, the Court may come to the conclusion that the donor intended to give the whole interest. From the language used, the Court may come to the conclusion that the intention was only that a limited interest should pass. It would sometimes depend not merely upon the language of the document but the relation of the donor to the donee and the prevailing ideas in the community to which they belong, not to any rule of law.

Thus, a gift of land by a Hindu husband to his wife is presumed to carry a limited estate.

Mr. M. S. Aney: What is the reason for that presumption?

The Honourable Sir Brojendra Mitter: The prevailing ideas of Hindus what I am submitting is this, that in construing a document, no rule of Hindu law comes into operation. The Court has got to gather the intention of the donor from the document itself. That is all that is necessary under section 8. Section 8 is in no way controlled by section 2. I do not know of any case in which section 2 has been invoked in construing a document. Rules of Hindu law would apply when these rules have to be applied *ad hoc*. For instance, a gift is made to an unborn by a document. So long as that rule obtained amongst the Hindus, the Court would say the gift is bad because of the rule of Hindu law, not upon any construction of the document under section 8.

Now, Sir, my Honourable friend Mr. Sessa Ayyangar said that no case had been made out for the deletion. In the first place, as I have submitted, it is admitted on all hands that there is no necessity for the retention. If there is no necessity for retention, what justification is there, what argument is there for retention? In a legislative enactment, you are not allowed, in proper drafting, to retain anything superfluous.

Then, the second point I wish to make is this. Certainty of title is a matter of great importance to all concerned. The transferee and the transferor ought to know where they stand. Instead of that if you keep something nebulous, or mysterious, that some rule of Hindu law may affect the whole transfer, that would reduce the value of property. It would always keep a cloud over the title of the transferee, and that is a contingency which should be avoided if possible.

Mr. M. S. Sessa Ayyangar : Does the retention necessarily make it uncertain?

The Honourable Sir Brojendra Mitter : It does. Take the case of a person taking a transfer from a Hindu woman. If the Bill be passed as it is, the transferee would have no hesitation, if otherwise the title is good, in taking the transfer. But if you expressly say that no rule of Hindu law is affected by Chapter II, then the transferee will hesitate. There may be some unexplored rule of Hindu law, some unknown manuscript may come into existence, and then, the whole title may be disturbed because the transfer is taking from a person who in some circumstances is a limited owner. If you retain this you retain a perpetual cloud upon the title; and, therefore, I say that when we are overhauling the whole of the Transfer of Property Act, when we are trying to secure title, when we are giving certainty in place of ambiguity, when we are removing all doubts and conflicts, when we are making such an attempt, let us not spoil the whole thing by retaining something vague and unknown which will keep a cloud hanging over title for all time. Sir, I oppose.

Mr. D. V. Belvi (Bombay Southern Division : Non-Muhammadian Rural) : Sir, I have listened with very great attention to the views of the Honourable the Law Member, but I confess that I am not convinced. I submit that his argument as regards section 8 of the Transfer of Property Act is not quite convincing. I may illustrate what I mean by taking two instances. Suppose a Hindu who has got some self-acquired property makes two gifts. He gives one field to his son and another to his wife or widow. Both the documents are in exactly similar language. The presumption which the Court will draw under the existing law will be that the gift to the widow was a gift of a limited interest, namely, that, on the death of the widow, the property must pass to the heirs of the husband and not to the personal heirs of the wife. If the word "Hindu" is deleted from the Transfer of Property Act, the Judge will surely say that these two documents have been written in exactly similar language and phraseology and why should a distinction be made in favour of the son and why should not the same distinction be made in favour of the widow? The Honourable Law Member himself said that, when this word "Hindu" is deleted, the title of the donee will be free from a cloud. That means that the widow to whom the gift was made by the husband will be free to alienate the property to any one and the alienee will have a good right to say that he purchased it from a widow who had full title to the property, because

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there is nothing in the law which says that the Hindu widow has only a limited interest in the property. That is just the reason why it is necessary to retain the word "Hindu". That a Hindu widow or a Hindu woman generally takes a limited interest in immoveable property in some cases is a proposition of law which is well-known under the Hindu law, and therefore I submit that it is necessary to retain the word "Hindu".

On general grounds also I submit that it is absolutely necessary to retain the phraseology as it now stands. It is for those who wish to introduce changes to satisfy us that such a change is necessary. There should be no unnecessary legislation, just as there should be no unnecessary medicine or unnecessary physic. We are very often told that the effect of unnecessary physic is always deleterious; similarly it is not the law as it stands now which creates a cloud in the case of any title, but it is the abrogation of the law in the way suggested by the Honourable the Law Member which will surely give rise to litigation. On these grounds I submit that it is necessary to retain the words "Hindu" and "Buddhist" as they have been on the Statute-book for a long period of time.

Mr. N. C. Chunder (Calcutta : Non-Muhammadan Urban) : Sir, there is some amount of misunderstanding as to the scope of section 8 of the Transfer of Property Act. As a matter of fact when a gift to a widow has been held to convey only a widow's estate, or a limited estate, it has been held so not on the ground that section 8 or section 2 of the Transfer of Property Act applied, but on the ground that the intention of the Hindu making the gift to the widow is necessarily to give her a limited estate, unless it was expressly stated that the widow was to take some higher interest. When there has been a gift to a daughter, the Privy Council has equally held invariably that the intention must be assumed, without any words of qualification, to be to convey to the daughter an absolute estate. So that it is really a question of construction of a particular document, and whether we have the words "Hindu" and "Buddhist" in the Bill, or whether we take them out of the Bill, it does not make any difference whatever. That being so, it is necessary that we should not have in the Bill any word which is superfluous, because that would really be making it absurd. The provisions of the section would look absurd when as a matter of fact no rule of Hindu law is affected by this Bill as it now stands, I mean, the Transfer of Property Act as it will stand after this Bill is enacted into law. There will really be no difference between the principles of Hindu law and the principles embodied in the Transfer of Property Act and to have a section referring to rules of Hindu law and things of that kind will really make the whole thing absurd and an absurdity has always to be avoided in legislation.

Pandit Thakur Das Bhargava (Ambala Division : Non-Muhammadan) : Sir, we have been given to understand that one of the canons of amending laws is that superfluity is to be avoided; but so far as the amendment of this law is concerned I understand that the principles were given in the Report of the Special Committee on page 3, paragraph 10, from which I will read out :

"In the Bills submitted to us the policy which appears to have been followed was that no amendment should be attempted which would merely effect an improvement in wording, but that new principles of importance which had been judicially recognised since the passing of the Act should be incorporated. In our opinion it is a sound

course to follow, particularly in an Act which has been in force for forty-five years and to whose phraseology the general public and the legal profession have become accustomed. Again, it is not safe to alter any wording which has received judicial interpretation, when the interpretation has not led to any inconvenience in practice or miscarriage of justice."

I understand that any person who wants to amend the law must show a clear case for such amendment. If I take an illustration which has just been given by the Honourable the Law Member, it appears that, if these words "Hindu" or "Buddhist" remain in that section, then the interpretation of section 8 would be different from the interpretation which has been put to the words of that section.

The Honourable Sir Brojendra Mitter : No, I never said that. I said it is immaterial.

Pandit Thakur Das Bhargava : I understood you to say that, if these words are there the interpretation would be uncertain.

The Honourable Sir Brojendra Mitter : What I said was that the construction of section 8 is never controlled by section 2. It is immaterial whether section 2 is there or not. That was my contention.

Pandit Thakur Das Bhargava : If there is a cloud on account of these words remaining, then it means that the construction can possibly be different.

Now, the following words occur in section 8 of the Act :

"Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof."

And my humble submission is, that to find out what are the legal incidents of property inhering in a particular person, you have to look to the personal law of that man. In the ruling reported as 27 Punjab Record, 1898, when property purported to be conveyed to a widow, the construction placed was that, unless a contrary intention appeared from the particular words used in the document, the legal incidents of property were those which appertained to a widow's property. So, unless these words are there, the interpretation to be put on certain expression in deeds also would be different. Therefore I submit that on this ground also these words "Hindu or Buddhist" should be retained in section 2.

As regards the Buddhist law, I will refer the House to Dr. Gour's book (Transfer of Property Act), in paragraph 50, where he says :

"The Act has not been yet extended to the whole of British Burma. Ceylon is out of British India, and as such outside the operation of the Act. Buddhist law is contained in the Dhammathats of Manu Kyay, Manoo Wouunau which, while recognising the authority of Manu, differs from the great Hindu lawgiver on many points. Of the Buddhist law-books Manu Kyay is considered in Burma to be a book of paramount authority. Thus a purchaser of a debt sold in execution was held not to be affected by section 185 of the Act before its amendment." (15 Mad. 383.)

Mr. M. B. Jayakar (Bombay City : Non-Muhammadan Urban) : Has the Honourable Member verified that authority ? (Laughter.)

Pandit Thakur Das Bhargava : This is the authority given in Dr. Gour's book. Unfortunately the burden of proof is not upon me. I am only submitting that, unless a clear case is made out for amending the law on this point, we should not agree to this amendment. In these circumstances, I would submit that the argument of the Law Member that some uncertainty would be removed, has got absolutely no force ; for he

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now admits that if the law is retained as it is, then the interpretation of any other section would not be different. I would therefore submit that these words should be retained.

Mr. D. F. Mulla (Bombay : Nominated Non-official) : Sir, I rise to oppose the amendment. In the first place I want to remove a misimpression that the Transfer of Property Act does not apply in Burma. The whole Act was extended with effect from December 1924 to the whole of Burma with the exception of certain specified areas.

Mr. President : What about Dr. Gour's book ?

Mr. D. F. Mulla : Perhaps, Sir, my Honourable friend has an old edition of Gour in his hands. It was said that a solemn pledge was given by the Government of India years and years ago since they first took up the reins of administration in their hands. I take it that the reference is to the Charters of the Supreme Courts that were established in India where it is stated that the Hindu law was in certain matters to be applied to Hindus and the Muhammadan law to Muhammadans. You find the same provision in the Government of India Act of 1915 : and not only there ; but in almost every Civil Courts Act you will find a section to say that, so far as the law of marriage, succession, adoption, etc., is concerned, the courts ought to be guided by the rules of Hindu law. All that is a reference entirely to personal law as distinct from property law ; it has got nothing to do with property law at all. So far as the property law applicable to Hindus and Muhammadans is concerned, their law has been entirely superseded by the provisions of the Transfer of Property Act commencing with Chapter III, which deals with sales of immovable property. Where is the Hindu law of sale now ? Where is the Hindu law of mortgage ? Where is the Hindu law of gift except in certain matters ? Where is the Hindu law of exchange ? And for the matter of that, where is the Muhammadan law of sale or the Muhammadan law of exchange or of mortgage ? Therefore, that pledge related entirely to the personal law of Hindus and Muhammadans. As regards the personal law of Hindus, that has been unaltered. The law of succession, the law of marriage, the law of adoption, the law of maintenance, the law of guardianship—the Government of India has not touched it, except so far as the Guardians and Wards Act is concerned as to certain matters of procedure. But the personal law remains intact, and we are not at present concerned with the personal law at all. We are concerned entirely with the law of property, and the only reason why, when passing the Act of 1882, the words " Hindu " and " Buddhist " were introduced was because there were certain sections of the Act which did not apply to Hindus at all ; and those were sections 13, 14, 15 and 16, because it was held that you cannot make a gift to an unborn person, and that was the reason why these sections did not apply. That rendered it absolutely necessary to say that, so far as this chapter was concerned, nothing contained in the chapter was to be affected by the Hindu law, and that is in fact what was stated by Dr. Whitley Stokes when he presented the Report of the Select Committee. It was read out by my Honourable friend, Mr. Aney :

" The Committee had declared that nothing in Chapter II should be deemed to affect any rule of Hindu, Muhammadan or Buddhist law. It did not, in his opinion,

affect any such rule, otherwise than by putting Natives as regards their power to make settlements on unborn persons, on the same footing as Europeans."

And if you cannot make a gift to an unborn person at all, there is no room for the operation of the rule against perpetuities, which is referred to in the speech of Dr. Whitley Stokes.

Now, so far as the Muhammadans are concerned, the rule now is entirely the same as it was in 1882. A Muhammadan cannot make a gift to an unborn person; but as regards Hindus, the law was changed, first in 1914 so far as the Madras Presidency (excluding the City of Madras) was concerned. Then came the Hindu Disposition of Property Act, 1916, which extended to the whole of British India except where the Madras Act of 1914 applied. Then came the Madras Act of 1921, which applied to the town of Madras. So, the position is that, so far as the Hindus are concerned, Hindus now can make a gift to an unborn person, subject to the conditions which are mentioned in section 14 of the Transfer of Property Act. But so far as Muhammadans are concerned, their case stands on a different footing. What then is the use of saying "if you drop the word 'Hindu', drop also the word 'Muhammadan'?" What is the use of saying that? The two systems of law as they are to-day are entirely different. Therefore the sentimental argument that, by dropping the word "Hindu" you will be creating communal legislation is, I submit.....

Mr. D. V. Belvi : That was not the argument.

Mr. D. F. Mulla : Out of respect to those gentlemen who said so, I used the word "argument". I submit therefore that that contention cannot stand.

Then again as regards Muhammadans, there are other considerations why the word "Muhammadan" should stand. Gifts *in futuro* are not recognised by Muhammadan law; contingent gifts are not recognised by Muhammadan law; conditional gifts are not recognised by Muhammadan law. Are then the two systems of law so akin, that if you omit the word "Hindu" or the word "Buddhist", you must also omit the word "Muhammadan"? With respect, I submit, not.

This Bill, Sir, was first considered by an expert committee and that committee consisted of three Hindus and one Parsee who himself is half a Hindu. Then it was referred to a Select Committee consisting of three Hindus and three Muhammadans. There was not a word of dissent, not so far as the expert Committee was concerned, not a note of dissent so far as the Select Committee was concerned.....

Mr. M. A. Jinnah : There were four Hindus on the Select Committee.

Mr. D. F. Mulla : Yes, there were four Hindus on the Select Committee. Thank you for the information. Then, 35 opinions were received, out of which 25 are in favour of omitting the word "Hindu". Out of the remaining seven, four are halting, and out of the remaining three, they seem to proceed upon an entire misconception of the meaning of section 2, clause (d). Section 2, clause (d), does not say that the Chapter is not to apply at all to Hindus and Muhammadans. All that it says is that it is not to affect any rule of Hindu or Muhammadan law. So that, the preponderance of opinion is in favour of dropping the word "Hindu". Sir, I listened with close attention to what was stated by

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my Honourable and learned friend, Mr. Aney, that a committee had been appointed consisting of three gentlemen, namely Mr. Justice Madgaonkar, Mr. Kane and Mr. Gharpure, and that they were against the omission of the word "Hindu". But, Sir, no reason is given. And how, Sir, as a man of reason, can I accept anything which is not based upon reason ?

Mr. M. S. Aney : No case has been made out. That is the reason.

Mr. D. F. Mulla : I take it, Sir, that following the advice of my learned friend the Committee must have said to themselves, "The burden lies on Government to prove their case, and therefore let us sit and resolve that no case is made out".

Then there was a point made by one of my friends, that if a Hindu makes a gift to a widow and by the same document makes a gift to a son, so far as the gift to the widow is concerned, it will pass a limited estate, and so far as the gift to the son is concerned, it will pass an absolute estate. As regards that, all I say is that there is a conflict of opinion upon the point and the law is not at all clear.

The question then is whether the word "Hindu" should be retained or not. I do not very much rely upon the ground that it is superfluous. I rely particularly on the ground that in law it is highly desirable that there should be certainty. So far as the Hindu law is concerned, it was given to the Hindus by their great Law Givers some centuries ago, and so far as I am concerned, I am proud to say that the system is such as could be adapted to the requirements of modern life. So far as my Hindu friends are concerned, do they not want certainty so far as the power of disposition of property is concerned ? Do they want their titles to be clouded in a fog ? I say, Sir, that if you keep the word "Hindu", there is only one class of persons who will benefit by it, and I will tell you who it is, What is that which has hitherto been going on ? A suit brought by one Hindu against another, and the question is raised whether a particular section of Chapter II of the Transfer of Property Act, does or does not apply to Hindus, and reliance is placed on section 2 (d). This involves an enormous waste of money. That has been going on for the last several years in almost every case, and I can say with certainty that in every case in which the point was raised, it was held that the particular section applied. That being the case, if you omit the word "Hindu", there will be certainty of title and certainty of law. No doubt, if you retain the word "Hindu" it will leave the door wide open for litigation ; it will leave the door open for the exercise of the ingenuity of a class of persons who go by the name of lawyers. (Laughter.) For these reasons, Sir, I oppose the amendment.

Mr. M. A. Jinnah : Sir, I have only one justification for intervening in this debate on this amendment.....

Mr. President : Would the Honourable Member like to continue after lunch ?

Mr. M. A. Jinnah : I shall not take more than five minutes, Sir. I promise you it will be five minutes and no more. I do not wish to enter into the justification for this amendment, because a complete answer has been given, based on reasons and arguments by the Honourable the Law

Member and my friend Mr. Mulla whom, I must congratulate for making such a powerful and lucid explanation. (Applause.) Sir, I have no respect for my friend Mr. Aney when he says that people will understand that you are favouring the Mussalmans and ill-treating the Hindus if you omit the words "Hindus" and "Buddhists". My friend also, in excitement, said, that if you drop "Hindus", you should drop "Muhammadans" also. I never expected that my friend Mr. Aney would advance such an argument. We were not concerned with the Hindu-Moslem question at all, and there was no idea of showing any disrespect or partiality to anybody. As a matter of fact, so far as I was concerned, I entirely left it to the Hindu Members to decide, and I said that personally I was convinced that the arguments were very powerful and that it was in the interests of the community itself, as Mr. Mulla pointed out, to secure certainty of title. As I said, I was not going to press the point even if I thought it was good for my Hindu friends if they had stoutly resisted it or opposed it. That is my position in this House to-day.

Pandit Motilal Nehru (Cities of the United Provinces: Non-Muhammedan Urban) : Sir, I want to.....

Mr. President : Does the Honourable Member wish to speak ?

Pandit Motilal Nehru : Yes, Sir.

Mr. President : The House stands adjourned till Five Minutes to Three.

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

The Assembly re-assembled after Lunch at Five Minutes to Three of the Clock, Mr. President in the Chair.

Pandit Motilal Nehru : Sir, I rise to support the amendment of my Honourable friend Mr. Aney, and in doing so, I must make myself perfectly clear as to why I am doing it. I do not subscribe to the argument based on the sentimental ground that by removing the word "Hindu" we shall incur the displeasure of the Hindus and that retaining the word "Mussalman" will show that there was some favour done to the Mussalmans by the Indian Legislature. I am supporting that amendment purely as a lawyer and not as a Hindu, and I say that the provision in the Bill is not a safe provision for any Legislature to pass.

It is said that the object of the amendment is to avoid superfluity—that is No. 1—and that the amendment secures certainty—that is No. 2. Both very laudable objects no doubt and recognised as very valid reasons for the amendment. But are we quite sure that these words are so superfluous as they have been made out ? Now, Sir, I have very carefully followed the speeches of the Honourable the Law Member, or I may say, the Honourable the Law Members, past and present, and I have been looking in those speeches for something which would show that such an exhaustive examination of the provisions of Hindu law has been made by the various expert Committees which have considered this Bill or by the Select Committee as to entitle them to say :

"We know the whole Hindu law on the subject and on the basis of that knowledge we can say that there is nothing in Chapter II of the Transfer of Property Act which infringes any rule of Hindu law."

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Unless they are in a position to say so, they cannot claim that these words are superfluous.

In the course of the speeches of my Honourable friends, reference has been made to the rule of Hindu law that a gift in favour of an unborn person is not valid under that law, and it has been said that since the Hindu law on that point has been modified by statute, nothing remains which will bring the Hindu law into conflict with the statute law as contained in Chapter II of the Transfer of Property Act. It will be convenient briefly to deal with the history of that question. There are two rules of Hindu law which have been recognised time after time, beginning from the well-known Tagore case down to very recent times, even after the passing of the Hindu Disposition of Property Act. One of those rules is that a gift in favour of an unborn person is not known to the Hindu law and is invalid, and the other is that you cannot postpone the vesting of property under the Hindu law beyond the close of a life in being—I am repeating the very words of the Privy Council—and that rule has been followed ever since the case reported in 6 Moore's Indian Appeals, Surajmani Dasi's case and in a long string of cases up till last year. That being so, when it was felt by certain Hindus that it was an unnecessary limitation of the right of making a gift or transfer not to make it in favour of an unborn person—and in certain instances it certainly appeared to be very unnatural that a man should not make a gift in favour of the son or grandson of a relation who was not born then but was likely to be born at some future time—they came up to the Legislature to ask for a modification of the Hindu law on that point. Now, if you get the Legislature to say that in future the Hindu rule of law that no gift shall be valid if it is made in favour of an unborn person is to be abrogated, you must conform to some rule of the law of property which imposes a similar restriction on grounds of public policy. Well, that rule is the English rule against perpetuities, and to those who wanted the Hindu law to be modified in that respect, namely, that the gift might be made to an unborn person, it was said and properly said that you are now going out of the pale of Hindu law and must conform to some other law governing gifts. It was for this reason that, when the Legislature recognised the right of the Hindu to make a gift in favour of an unborn person, it imposed the restrictions contained in sections 13, 14 and other sections of the Transfer of Property Act and the corresponding sections of the Indian Succession Act. That is to say, the Hindu law of perpetuities being quite different to the English law of perpetuities, which has been incorporated in the Transfer of Property Act and the Indian Succession Act, if you want to escape the Hindu law, the only other alternative is that you must conform to the other rule of law of general application, because you cannot be allowed to make a transfer which is unknown to every system of law under the sun. It must come under some law, and therefore in the Hindu Disposition of Property Act it was laid down :

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“ Subject to the limitations and provisions specified in this Act, no disposition of property by a Hindu, whether by transfer *inter vivos* or by will, shall be invalid by reason only that any person for whose benefit it may have been made was not in existence at the date of such disposition.

The limitations and provisions referred to in section 2 shall be the following namely :—

(a) in respect of dispositions by transfer *inter vivos*, those contained in sections 13, 14 and 20 of the Transfer of Property Act, 1882,.....

which enacts into a statute law the English law of perpetuities. Therefore since the passing of that Act, the Hindus who make either gifts or bequests in favour of unborn persons are subject either to section 14 of the Transfer of Property Act, or the corresponding section 101 of the Indian Succession Act, and they must not go beyond the limits imposed by the rule against perpetuities. But there is no case law, there is no statute law which has in any way modified the original Hindu law rule that no vesting of the estate shall be valid if it is delayed beyond the close of a life in being. Remember that the English rule of law goes further. The two rules are entirely different. Therefore I say that the rule of Hindu law has not been entirely abrogated by the Hindu Disposition of Property Act, and that is the only Act which has interfered with the original Hindu rule of law on the subject. That is one thing, but when you come to say that nothing contained in Chapter II of the Transfer of Property Act, a chapter which consists of something like 40 or 45 sections, affects any rule of Hindu law, you undertake to say that you have examined all the corresponding rules of Hindu law, and you are convinced that there is nothing in those rules which conflicts with the rules laid down in the sections of the Transfer of Property Act. Now, that is a claim which I submit no lawyer in his senses would ever make. It is impossible for anybody to anticipate the rules of Hindu law which may or may not be applicable to the vast variety of transfers of property. It was said by the Honourable Mr. Mulla that personal law is one thing and the law of property is another. Now, it is well known that personal law affects property. What is the Hindu law of gifts and wills if it is not the personal law of the Hindu? Are not the laws of gifts and the laws relating to wills laws of property as well? My Honourable friend is quite right in saying that, so far as the Hindu law of gifts to unborn persons is concerned, that part of the personal law of the Hindus has been substituted by statute law in India. But to say more than this is to make a claim which cannot be substantiated because you have to examine every provision of the Hindu law of gifts and wills and study other ways in which property may pass from one hand to another before you can make such a claim. As the law stands now, it does not work any hardship. I do not see where is the reason for this big claim being put forward and this House consisting perhaps of half a dozen lawyers passing this Bill which will have the effect of abrogating all conceivable rules of the Hindu law on the subject of gifts and wills. Now, it has been held by the Privy Council, and it is established law, that the law of gifts and the law of wills under the Hindu law are co-extensive. Can anybody say that no case will ever arise in future where some other rule of Hindu law, other than the rule against perpetuities and other than the rule against unborn persons, will be called in aid by one of the litigants either to support or defeat transfer? I submit that it cannot be said that these words are superfluous. What is the harm if section 2 of the Transfer of Property Act is allowed to remain as it stands. What is the trouble? That section simply says that nothing in the second chapter shall be deemed to affect any rule of Hindu, Muhammadan or Buddhist law. Now, it was said by the

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Honourable Mr. Mulla that the practice has become so frequent for people to come and say, "Oh, well, the Transfer of Property Act does not apply to the Hindus". If people say that, they do not know what the law is and they ought to be told that that is wrong. All that the law says is that if there is a rule of Hindu or Muhammadan law or Buddhist law which is established to be contrary to the provisions of Chapter II, this Chapter will not affect it. The burden of establishing that there is a rule of Hindu law which is not the same as the rules contained in Chapter II of the Transfer of Property Act is upon the man who says that that chapter does not apply. It is not enough to say that Chapter II does not apply. It only says that, if there is a rule of Hindu law which is in conflict with any of the sections of Chapter II, that rule will not be affected by anything that is said in Chapter II. If you leave it at that, you leave the person who in future comes after the passing of the Hindu Disposition of Property Act, to say, "Well, I am not governed by section 14 or any of the other sections mentioned there". You will say to him "Where is the rule of Hindu law, produce it" and if he produces only these two rules you can confront him with the Hindu Disposition of Property Act and say that they are no longer applicable to Hindus. Why do you close the mouth of a litigant for all time to come--to rely upon some rule of Hindu law which may be thoroughly inconsistent, for aught we know, with the rules contained in Chapter II? Why should there be such a bar before the case actually arises? Now, we have heard from the Honourable the Law Member the two canons which are to guide legislation in these matters, namely, avoidance of superfluous words and the making of the law a certainty. We know that centuries have rolled by and no one has yet succeeded in making the law certain, and nobody will ever succeed in making it certain. Of course the aim is a very laudable one and we must keep it in view. It seems to me that the only certainty about it is the certainty about our ignorance of all the provisions of the Hindu law. For the rest, everything remains as it was.

It is on these grounds that I submit that it will be very unsafe for this House to pass a law which may have far-reaching effects which no Honourable Member can pretend to anticipate at this moment. All practical purposes are served when you say that nothing contained in the Act in Chapter II shall affect any rule of Hindu law which has not already been affected by such law. To me it appears that instead of trying to delete the words "Hindu" and "Buddhist" from that section, the proper course would have been to incorporate the Hindu Disposition of Property Act into the Transfer of Property Act as applying of course only to Hindus. However, that is not my business, and I am not here to improve the drafting or to include things that have been left out. Let me point out that when the Hindu Disposition of Property Act was passed, no such exaggerated claim was made by this Legislature. They confined themselves to the point. The disposition in favour of an unborn person was made legal. What did this House say? This House said, "If you are taking it out of the Hindu Law, sections 13, 14 and 20 will be applicable". It did not take it upon itself to say that all the rules of the Transfer of Property Act would apply, or that the whole of Chapter II would apply; and yet all that is said now as justifying the

omission of the word "Hindu" is that now, after the passing of that Act, gifts to unborn persons can be made, and the rule of perpetuity has also been changed. If this is a valid reason, then the proper thing for this House at the time of passing the Hindu Disposition of Property Act would have been to say that, from this moment, gifts in favour of an unborn person shall be valid, and Chapter II of the Transfer of Property Act shall apply. But what they said was that these three sections would apply and no more, and they left everything else to Hindu law as it was and for the Court to determine what it was and how far it came in conflict with any of these rules. Therefore I say that it would be very unwise to make such a sweeping change as is involved in the deletion of the words "Hindu" and "or Buddhist" from this section. You must leave it as it is. The cases we have so far concerned ourselves with, the cases that come to our knowledge, are cases which are governed by the Hindu Disposition of Property Act.

These are my grounds, Sir, upon which I ask this House to be very careful and abstain from taking a leap in the dark. It should confine itself to the actual purpose and that actual purpose is served by the section as it stands in the existing Act. Then as to the voting, I submit that this is not a matter on which there need be any party voting or any mandate or a matter which the Hindus should make a Hindu question or the Muhammadans should make a Muhammadan question; in fact the Muhammadans have got nothing to do with it, as it does not affect them at all. The whole point is whether this is an amendment which has been so clearly made out to be necessary that you must go against the feelings and the opinions of the Honourable Members who have already spoken against the amendment. I submit that no such strong case has been made out. Of course I do not associate myself with any such sentiment as has been expressed by certain Honourable Members about the Hindus taking it ill or with their interpretation of section 8. I quite agree with the Honourable the Law Member and Mr. Mulla in their interpretation of section 8, but I take my stand on the ground, which has also been urged by previous speakers, that no necessity has been made out for the removal of these words as is claimed, and I submit that that claim is wholly without foundation and cannot be justified.

Mr. M. B. Jayakar : Sir, I rise to oppose the amendment of my Honourable friend, Mr. Aney, and to support what has been put before us by the Honourable the Law Member. I very much regret, Sir, that I have got to oppose the amendment, firstly, because it proceeds from an esteemed friend from whom I very rarely differ; secondly, because it has been supported, in a powerful speech, by another esteemed friend, the last speaker with whom it is always a pleasure to agree at least on non-political questions. (Laughter.) I beg the Honourable House to view this question from the cold and dispassionate point of view of the lawyer. I am very sorry, Sir, that a red herring was drawn across our path by Mr. Aney by giving a turn to the question as if the Muhammadan was retaining certain privileges and the Hindu was dropping them. I claim to be as staunch a Hindu as Mr. Aney, and speaking from that point of view, I beg of my Honourable friends that they will not look at this question as if it was a matter of rivalry between the Hindu and the Muhammadan. The only question is—and I may be permitted to state it even at the risk of repetition—whether the retention of the words

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“Hindu” and “or Buddhist” is desirable; and secondly, as some Honourable Members have said, whether it is likely to cause any harm if they are allowed to remain. My answer categorically to both these questions is that it is undesirable, and that it will cause most positive harm, and that it is desirable in the year of grace 1929 to do away with these words occurring in the Act of 1882. The technical aspect of the case has been put before the House by both my learned friends, the present and the past Law Member, and the simple question is, as the Honourable Pandit Motilal Nehru put it, whether, in dropping these words, we are incurring any risk at all from the point of view of the future development of the Hindu law. I claim to know that law a little, and my answer is in the negative. My Honourable friend, Pandit Motilal Nehru, put it very strongly when he said that no lawyer in his senses can say so. He observed :

“No lawyer in his senses can ever say that the rules of Hindu law are so well known in 1929 that we could say with accuracy and safety, there is no harm in deleting these words.”

I am a lawyer in my senses and claim to say that the rules of Hindu law being no different from the rules contained in Chapter II, these words may be safely deleted. I hold that position, Sir, and I am prepared to sit down with any Member of this House and examine section after section of that chapter and convince him, as my Honourable friend Mr. Mulla has said, that the rules of English law being after all the rules of commonsense happen to be practically the same as the rules of Hindu law. This is a matter of great congratulation for Hindus that the Hindu sages of ancient times promulgated centuries ago rules relating to the holding of property which are practically identical with the rules of English law evolved much later. So far from being humiliated or frightened as a Hindu lawyer I am rather proud that whereas other communal systems of law in India contain archaic rules which cannot possibly find a place in present day civilized systems of law the rules of Hindu law happen to be identical with the rules of English law and equity which are contained in Chapter II. I think that is a commendable feature of Hindu law and nothing derogatory to it. Therefore, Sir, the point that Honourable Members have to consider is whether in dropping these words we are doing anything derogatory to Hindu law or harmful to its future development.

I am entirely at one with my Honourable friend, Pandit Motilal Nehru, when he says that this House should do nothing in a hurry which will have the effect of arresting the further progress and development of the Hindu law. I am very keen about it, and if I could see like my Honourable friend the slightest harm not only to the exalted position of Hindu law but to its possible development in the right direction, I would be the first man to oppose the motion the Honourable the Law Member has put before us. But I am convinced, and I wish to convey to the House my conviction, that there is no such fear. On the contrary I feel that to allow these words to remain will not lead to any benefit to Hindu law, but, on the contrary,—and that is the point which laymen will bear in mind—it will cause an amount of unnecessary litigation. As a practising counsel I often claim a share of the expenses of such litigation; and, if I were looking only at my own interest, or that of my fraternity, I would certainly say, “Let these words remain. They will swell the

coffers of lawyers." As an instance I may mention that five days ago before I left for Simla this time, if the House will allow a personal reference, I advised an eminent solicitor in Bombay, that, on a certain section in Chapter 2, a possible litigation might arise on the ground that the rule of Hindu law was different from the rule embodied in that section. I however added a note that I personally saw no chance of success except for the uncertainty of the law and of the judicial mind. It is this feature which we have to consider here as legislators, and not as practising lawyers,—whether we are now allowing words to remain which will cause unnecessary litigation? If one scans, as I have done very often, the daily cause list of the Bombay High Court, one will find, and I am pretty accurate in my figures, that about 50 to 60 per cent. of the litigation is due to the complexities and uncertainties of the Hindu law. Nobody can gainsay that.

One of the features which every Legislative House has to bear in mind as an ideal is that the law of property should be made as clear and universal as possible. I am one of those who believe that a day will soon come when there will be one clear and simple law of property for all communities. Unfortunately, the law of the Muhammadan community happens to be different, and we cannot alter it until Moslems themselves desire that their law should be altered by legislation. I am sure that some day our successors here will do that. But until that is done their law will continue to be different on the three or four important points which were so clearly put before this House by my Honourable friend Mr. Mulla. Therefore, chapter second of the Act in question cannot apply to Muhammadans. But the Hindu law is not different. That is a very good feature. My Honourable friend Pandit Motilal Nehru said that the Hindu law of perpetuities is different from the English law of perpetuities. With great respect, I beg to differ. There is only one law of perpetuities and that is the English law. I know a little of Hindu law, and I can assure my Honourable friends that the Hindu law recognises no doctrine of perpetuities at all. The doctrine of perpetuities, stated in brief, is this that it does not allow property to be hung up or prevent it from coming into the market beyond a certain period of time. That is the principle of the English law of perpetuities. It had its origin in a country like England where the land is limited. If I were free to legislate today, I would say that in a country like India, where there are hundreds and hundreds of acres of land awaiting cultivation, and where it is in consequence necessary that land should be allowed to remain in the hands of one man or family from generation to generation, in order that they cultivate it thoroughly, we should have exactly the contrary law from the rule against perpetuities which is applicable to England where land is limited, and where it is in consequence necessary to bring it as often in the market as possible. Exactly, the contrary rule ought to prevail in India. But that is not the point now, rightly or wrongly that rule of English law has been made applicable to Hindus, as my Honourable friend opposite remarked, for the last 60 years. Even under modern legislation it has been made applicable to Hindus by a statute, namely, by the Setalvad Act of 1915. The material points on which the Hindu law was different in 1882 the date of the Transfer of Property Act were, speaking briefly, three.

One rule of Hindu law, which was contrary to English law, was that gifts could not be made to unborn persons. There, again, my own

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opinion is that the rule as stated is not a proper deduction from the texts of the Hindu law, but that principle was laid down years ago in a celebrated case by the Privy Council. A Hindu therefore could not give any property to a person who was not born at the time of his death. Another rule of Hindu law was that when property is given to a class of persons, even if certain members of that class cannot take, those who can take will take. This rule of the Hindu law was contrary to the English doctrine. And the third point was whether the English rule of perpetuities should be made applicable to Hindus. These are the three salient points on which the Hindu law differed in the year 1882, and therefore the legislators of those days enacted the wise provision that special rules of Hindu Law, if any, were saved from the operation of Chapter II.

Now, as my Honourable friend Sir Brojendra Mitter pointed out, all these three points on which the Hindu law differed from rules in Chapter II in the Transfer of Property Act have been met and provided for, some in a separate statute, *e.g.*, the statute which was passed at the instance of Sir Chimanlal Setalvad a few years ago under which gifts to unborn persons are now allowed, provided they do not offend against the rule against perpetuities, and another section of the Transfer of Property Act and the Indian Succession Act, not material for our present purposes. The rule about some members of a class taking their interest, the rule has now been altered so as to suit Hindu sentiment. Therefore the only question now is, "Is there any important rule of Hindu law which, we think, should be saved from the operation of Chapter II in the interest of the further development of the Hindu law?" My answer is clearly in the negative. What is important in this connexion to note is that judicial decisions and rulings during the last 45 years in British courts in India and in the Privy Council have not disclosed any more difference between the Hindu law and law contained in Chapter II of the Transfer of Property Act. Surely, 46 years is long enough for the purpose of discovering these differences. As my Honourable friends are aware, judicial activity has been very great during these 46 years.

Texts have been looked into. The whole field of Hindu law has been examined, through texts and translations, and it is a sure and practically safe position for this House to take that, if during these 46 years in British India and the Privy Council no rule of Hindu law has been found which is contrary to the principles contained in Chapter II, I say it is fairly safe for us to say that there is no such rule of Hindu law which being contrary to the provisions of Chapter II requires to be saved. But it was suggested by Pandit Motilal :

"Who knows there may be a rule of Hindu law lying secreted somewhere in texts which are not yet translated, buried somewhere in Smritis which have not yet been found."

That is a possible argument. As against this, one has to consider very carefully the question whether, by the retention of the words in question, we will not leave behind a prolific source of litigation. I can assure this House that if we leave these words as they are in the old Act, we will be adding to the uncertainty of Hindu titles. I am one of those who hold that the titles of Hindu men and women cause a considerable amount of vexatious litigation. Those who are in legal practice will agree that I

am right. Even under existing law in cases in which *e.g.*, a Hindu woman is concerned, counsel cannot very seldom give definite opinion because the rules are so complex and uncertain, on which the titles depend. There may be *e.g.*, some distant reversioner in the seventh or the eighth degree lying in the depths of distant and unknown places, and he may come forward and say, "I am the nearest reversioner, and none other." Therefore, I say that Hindu titles are more especially uncertain than others and cause litigation. Although a practising lawyer, I hold strongly the view that Hindu money should not be unnecessarily wasted in litigation. I am convinced and I am sure those who, like me, are daily witnesses to the enormous volume of Hindu litigation are convinced that this Legislature should take all steps to stop this enormous waste of money which goes on in litigation because of the uncertainty of the Hindu law.

Pandit Motilal Nehru : I do not want to interrupt the Honourable Member. May I ask him to point out how the new amendment which is now proposed will affect the rights of a reversionary heir ? (Laughter.)

Mr. M. B. Jayakar : There is no occasion for laughter. I did not say that the amendment would affect the rights of a reversioner. I was mentioning that titles in Hindu Law are already uncertain, and we will be adding to the uncertainty of Hindu titles if we do not clear this particular point now under discussion. My Honourable friend will fail to trip me by the jugglery of his interruption. I know the Hindu law quite as well as he does. What I was mentioning, possibly the point escaped the attention of my Honourable friend in his anxiety to trip me, was that the uncertainty of the Hindu law was already very great and I mentioned the reversioner's right as one instance which causes that uncertainty. The point is that we shall be adding to that uncertainty considerably more by leaving a loophole. My Honourable friend says "who knows there may be a contrary rule of Hindu law." That is the argument of my Honourable friend. "Who knows." "There may be a rule of Hindu law somewhere in some text which may be affected by Chapter II." I take his words and say that it is exactly this feeling that will cause the uncertainty and consequent litigation. The solicitor will say to his client the purchaser, in the words of my Honourable friend, "who knows there may be a contrary rule of Hindu law in texts lying somewhere laying down a contrary rule. So beware." Therefore, I am on safe ground even as a layman in asking this House to remove this uncertainty and oppose the amendment. It is the duty of this House to see that money is not unnecessarily wasted on litigation by their failing to remove what is sure to be a fruitful source of unnecessary, harassing and extravagant litigation.

Mr. President : The question is :

"That clause 3 of the Bill be omitted and consequential amendments be made".

The Assembly divided :

AYES—26.

Aney, Mr. M. S.
Ayyangar, Mr. M. S. Sooba.
Belvi, Mr. D. V.
Bhargava, Pandit Thakur Das.
Das, Pandit Nilakantha.
Iyengar, Mr. A. Rangaswami.

Kelkar, Mr. N. C.
Kunzru, Pandit Hriday Nath.
Lahiri, Chaudhury, Mr. D. K.
Lakhand Navalrai, Mr.
Mehta, Mr. Jambadas M.
Misra, Mr. Dwarka Prasad.

AYES—26—contd.

Mitra, Mr. S. C.
Moonje, Dr. B. S.
Mukhtar Singh, Mr.
Naidu, Mr. B. P.
Nehru, Pandit Motilal.
Neogy, Mr. K. C.
Rao, Mr. G. Sarvotham.

Singh, Mr. Gaya Prasad.
Singh, Mr. Narayan Prasad.
Singh, Mr. Ram Narayan.
Sinha, Kumar Ganganand.
Sinha, Mr. Rajivaranjan Prasad.
Sinha, Mr. Siddheswar Prasad.
Yakub, Maulvi Muhammad.

NOES—65.

Abdul Aziz, Khan Bahadur Mian.
Abdul Haye, Mr.
Abdul Matin Chaudhury, Maulvi.
Abdul Qaiyum, Nawab Sir Sahibzada.
Ayangar, Mr. V. K. Aravamudha.
Badi-uz-Zuman, Maulvi.
Bajpai, Mr. R. S.
Birla, Mr. Ghanshyam Das.
Bower, Mr. E. H. M.
Bray, Sir Denys.
Chalmers, Mr. T. A.
Chatterjee, The Revd. J. C.
Chunder, Mr. N. C.
Cosgrave, Mr. W. A.
Covernton, Mr. S. H.
Crerar, The Honourable Sir James.
M. P. Ghulam Kadir Khan.
Dakhan, Khan Bahadur W.
Farookhi, Mr. Abdul Latif Saheb.
Ferrers, Mr. V. M.
French, Mr. J. C.
Ghazanfar Ali Khan, Mr.
Ghuznavi, Mr. A. H.
Gidney, Lieut.-Colonel H. A. J.
Hans Raj, Lala.
Hira Singh, Brar, Sardar Bahadur,
Honorary Captain.
Jawahar Singh, Sardar Bahadur Sardar.
Jayakar, Mr. M. R.
Jinnah, Mr. M. A.
Jogiah, Mr. V. V.
Kartar Singh, Sardar.
Keane, Mr. M.
Lindsay, Sir Darcy.

Mitra, The Honourable Sir Bhupendra
Nath.
Mitter, The Honourable Sir Brojendra.
Mody, Mr. H. P.
Mukharji, Rai Bahadur A. K.
Mukherjee, Bai Bahadur S. C.
Mulla, Mr. D. F.
Munshi, Mr. Jhangir K.
Noyce, Sir Frank.
Pai, Mr. A. Upendra.
Philip, Mr. J. Y.
Porter, Lieut.-Colonel L. L.
Price, Mr. E. L.
Purshotamdas Thakurdas, Sir.
Rainy, The Honourable Sir George.
Rau, Mr. P. R.
Roy, Mr. K. C.
Roy, Mr. S. N.
Sarda, Rai Sahib Harbilas.
Sarma, Mr. R. S.
Schuster, The Honourable Sir George.
Shah Nawaz, Mian Mohammad.
Shervani, Mr. T. A. K.
Siddiqi, Mr. Abdul Qadir.
Singh, Rai Bahadur S. N.
Stevenson, Mr. H. L.
Stewart-Smith, Mr. D. C.
Sykes, Mr. E. F.
Tin, Tut, Mr.
Tirloki Nath, Lala.
Tottenham, Mr. G. R. F.
Winterbotham, Mr. G. L.
Yamin Khan, Mr. Muhammad.

The motion was negatived.

Mr. President : The question is :

“ That clause 3 stand part of the Bill.”

The motion was adopted.

Mr. President : The question is :

“ That clause 4 stand part of the Bill.”

Mr. M. R. Jayakar : Sir, I have an amendment.

Mr. Lalchand Navalrai (Sind : Non-Muhammadan Rural) : Sir, I oppose the whole clause. I object to this clause being made part of this Bill. This clause refers to the last paragraph of section 3 of the Transfer of Property Act, and as it stands at present it reads thus :

“ A person is said to have notice of a fact when he actually knows that fact or when, but for wilful abstention from inquiry or search which he ought to have made, or

gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, 1872, section 29”.

Now, Sir, the proposed amendment to this paragraph is this :

“ In section 3 of the said Act, for the last paragraph containing the definition of ‘ notice ’ the following shall be substituted, namely :—

‘ A person is said to have notice of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it ’.”

Then, Sir, an explanation has been added to this clause which runs thus :

“ Where any transaction relating to immoveable property has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration ”.

Now, it will be observed that the first difference between the old part and the new one is that the words “ when information of a fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, 1872, section two hundred and twenty-nine ” are deleted. I have no objection to that at all, but then I submit that, to make registration a notice at all events and always is what I object to. Those who are conversant with the environments and conditions in the mofussil—in villages and rural parts of the country—are aware that to make mere registration notice will operate very hardly upon people. Apart from the many difficulties that prevail in many rural areas, there is no facility I submit, in the registration offices for knowing whether a particular document has been registered or not. There is no facility in many of the registration offices in the mofussil to get a ready reference to a particular document having been registered. The practice in most parts of the country is this : when you go to a sub-registrar and say that you want to know whether a particular document has been registered, the reply always is that it is not easy to give an answer ; that he has no index or indices to which a reference could be made readily, and that without expense and delay, the information could not be got. The practice is that they ask one rupee for a search for each year. You can imagine what happens when one goes to find out whether a particular document has been registered before or not the reply is given “ We have to wade through water and dive deep into the ocean of registers to find out whether it has been registered or not.” Take it for the sake of argument that there is a very old document, about 60 or 70 years old, no one knows whether it is registered at all, and when you go and ask for the information you are asked to deposit Rs. 60 in order to find out whether it has been registered ; and even then it is not easy to find it out. Other difficulties also arise. Even the sub-registrar himself is not able to find it out so soon and the difficulty with him is this. It is a well known fact that in villages and in many towns there is no city survey or town or village survey. Therefore the houses are not numbered at all, and when you register a document, which is not marked with a number, it is not easy to find out whether a particular house has been sold or disposed of before or not. Therefore it is difficult for the sub-registrar to find out from the boundaries only whether a particular document really applies to a particular property. In other words, it is very difficult to identify the property from the property that has been already disposed of. These difficulties arise not only with regard to illiterate persons,

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but also literate. It will be very hard to make mere registration notice with regard to illiterate people because they do not know what registration is or what will be the effect of a particular document having been registered beforehand. Even with literate people these are the difficulties that I have pointed out ; and until India makes all registration offices possess indices of such a nature that you can find out at a glance what document has been registered, until that time, it will be premature to pass this clause.

As regards arable land also the same difficulties arise. Arable land is no doubt surveyed during settlement operations and the lands are numbered ; but there again there are lands at places where there is no settlement at all—unsettled lands—and there they do not give any number and the same difficulty arises as in the case of houses. Therefore as regards arable land also there is the same difficulty.

4 P.M.

Now, the reason given for this attempt to amend the law is contained in Appendix B—Notes on Clauses ; and there it is said that notice, as defined in section 3, includes both actual and constructive notice, and as there is a conflict of decisions whether the registration of a document under the Indian Registration Act is of itself constructive notice of a transaction entered into by that document it has become necessary to make this amendment. The High Courts of Bombay and Allahabad hold that it is ; the Madras High Court held that registration does not amount to notice in any case. It was observed that, if the Legislature desired to regard registration as notice, it would have said so in express words. In some cases the Calcutta High Court took the same view as the Madras High Court.

Now, Sir, the reason given for this enactment is that there is a difference of opinion between the High Courts. I say that that is a point in favour of my contention. The High Courts differ not only in law but on facts with respect to this, and I submit that this is not a question of law on which we are removing diversity of opinion, but a question of fact ; and I say it is a question of fact on this ground : that these High Courts have held the effect of registration differently at different places as a matter of fact depending upon the circumstances of each case and the facilities that are available in different parts of the country with regard to finding out the old documents from the registration offices. Therefore the very fact that there is a divergence of opinion on this even among the High Courts shows that it should be left to be decided by each High Court in every case that comes before it as a question of fact. I would rely for my contention upon the ruling of a very eminent lawyer and judge—Sir Lawrence Jenkins who was a well-known Judge of the Bombay High Court and who also had the experience of the Calcutta High Court. What he has said is this :

“ Apart from authority, I should have thought that with regard to statutes applicable to this country, the proposition involved is not one of law but of fact, and that as each case arises it should be determined whether, in that individual case, the omission to search the register taken together with other facts, amounts to such gross negligence as to attract the consequence which results from notice, and it may well be said that this test will serve to reconcile the apparent conflict of views that at first sight the cases suggest.”

It is only a conflict at first sight, Sir, and I submit that it is a question of fact and should be left to the courts to decide. Sir, this is not the only ruling. This view is continued to be taken in the Calcutta High Court and is followed in 48 Cal. 1. We find, Sir, in the placitum to the ruling, the Court in *Manindra Chandra Nand v. Troyluckho Nath Burat* held,—

“ That having regard to the statutes applicable in this country the proposition involved is not one of law but of fact,—

the same thing that Sir Lawrence Jenkins said.

Then, Sir, I submit, that those who belong to the presidency towns may not be able to appreciate the difficulty that is felt by people in the villages where there are no registration facilities, because in presidency towns there are registration offices and there may be facilities to find out certain documents at a moment's notice. But I appeal to the House, and to those Honourable Members who belong to presidency towns in particular, to consider the condition of the rural population in India in regard to this matter.

Then, Sir, it was urged that the view of the Bombay High Court was that registration was notice. But there also the same distinction has been made in 45, Bombay, at page 173, by Justice Heaton. This is what he says :

“ There seems to be a good deal of misapprehension about registration and its effect as notice. Registration does not necessarily give notice to anybody of anything. But if a registered document is so indexed that an inquirer anxious to ascertain whether there are documents relating to a property which he proposes, for instance, to buy, can find from the index documents relating to that property, then it will be held that he has notice of those documents ; because if he made the inquiry, which as prudent man he ought to make, then they would come to his notice.”

I submit, therefore, Sir, that the conflict in the law would not necessitate a drastic measure like this to be applied generally to the whole of India. I do not wish to take much time of the House, but I submit that the Select Committee have realised one difficulty at least. I do not know whether this point was pressed on them or whether they considered the point that there are not adequate registration facilities in a large number of villages where there are no registration offices, but they have realised at least one difficulty, and that is in regard to cases where documents are not registered in a district other than the one in which the property is situate. That is an additional circumstance, Sir, which supports my case about the difficulty not only of finding out certain relevant documents but also of going to other places to find out the same, because when one goes to the office of the registrar, he has not only to look through the records of the office where the property is situate, but he has also to search the records of another registration office if a memorandum has been recorded under section 66 of the Registration Act. Now, the Select Committee say :

“ It has been pointed out that the provision that the registration of a document amounts to notice from the date on which it is registered, will cause difficulty in a case in which the document has not been registered at the place where the property is situate. This objection has some force ”.

It will be observed, Sir, that the Select Committee have not considered the point that I have placed before the House, but they have merely

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considered from what date it should have effect. Then, further on, the Select Committee say :

“ We have, therefore, added at the end of Explanation I the following words :— or if the instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908, from the earliest date on which a memorandum thereof has been filed by any Sub-Registrar under section 66 of that Act.”

Therefore, Sir, I submit that the addition of another paragraph suggested by the Select Committee does not remove the objection that I have brought forward, and I therefore appeal to the House not to accept this amendment without serious consideration.

Mr. M. S. Sessa Ayyangar : Sir, the whole of this clause is unexceptionable, excepting Explanation I to which I take objection. Coming as I do from Madras, the Madras and the Calcutta views have always been that registration by itself is not sufficient notice. Now, the High Courts in these provinces take up the English view ; even in England it is found that the system of public registry is still imperfect, and there the law is that registration is not by itself sufficient notice. The American practice is, however, quite different. There they hold that registration is by itself notice. Bombay and Allahabad stick to this view. I do not know why the Select Committee were enamoured of the American practice in preference to the English practice, and I am in entire agreement with my friend Mr. Navalrai when he said that registration is not, after all, a question of law but of fact. He was, while on this point, referring to a decision of the Privy Council, but unfortunately omitted to read the relevant portion therein. I am referring to the Privy Council decision in *Tilakdhari v. Khedan Lal*, I. L. R. 48 Calcutta, page 1, where it has been held that registration by itself will not operate as constructive notice to the world at large, though in certain cases, having regard to the peculiar circumstances thereof, it may be tantamount to notice. This is what their Lordships say in their decision :

“ Whether registration is or is not notice in itself, depends upon the facts and circumstances of each case, upon the degree of care and caution which an ordinarily prudent man would necessarily take for the protection of his own interest by search into the common registry. It is a question not of law but of fact.”

Sir, I would hesitate to give my assent to Explanation I unless the Honourable the Mover gives the House cogent reasons why he should deviate from the very healthy principle enunciated by their Lordships of the Privy Council. Sir, in this connection I am not unconscious of the relaxation, as I said already, of the rigidity of this rule by providing in the italicised portion of this Explanation that,

“ if the instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908, from the earliest date on which a memorandum thereof has been filed by any Sub-Registrar under section 66 of that Act ”.

No doubt, there is some relaxation of the rigidity in the rule, but the relaxation of the rigidity of the rule would not certainly enable any one to accept the principle of the rule itself. Sir, I can also emphasise the fact that in this country registration is very imperfect, and there are not sufficient registration offices to provide easy facilities for all people resident in the villages to register their documents. Sir, this is a continent of villages, and as there are not enough registration offices, it will be very difficult, it will be a great hardship upon the litigant public of the villages

to enunciate and follow the provision that registration by itself is sufficient notice. Therefore, Sir, for these reasons I oppose the Explanation 1 to clause 4.

Mr. N. C. Chunder : Sir, on the question of registration being notice, I frankly confess that I still keep an open mind. It is a very difficult problem. So far as Calcutta is concerned, it really makes no difference whether registration is made notice or not, because it is notice already. If anybody buys property in Calcutta and omits to search the registers which are very well kept, ordinarily, he will at once be affected with negligence, and therefore with notice. But so far as the mofussil is concerned, for the first time I was surprised to hear from my friend Mr. Navalrai—and that was confirmed by my friend Mr. Belvi,—that there is no maximum amount fixed in Bombay for searching the indexes for a particular property. In Bengal the maximum amount is Rs. 20 for any particular name or any particular property. In any case, Sir, this Explanation is not being given retrospective effect, and that is a good thing. There has been a glaring omission, and I understand that my learned friend Mr. Jayakar is going to get that amended, but whether even with that amendment the Explanation, as it will then stand, will work hardship on the people in the mofussil or not, I have no means of knowing. But I can describe to you the practice in the registration offices in Bengal. There they keep two sets of books for indexes. Mr. Navalrai said that it is very difficult to gather information from the indexes. It may be because one does not know how many indexes are kept. Each document is indexed not merely according to the number or description of properties, but also according to the names of the persons who either execute that document or who claim any benefit under that document. If proper indexes are kept, these can be searched, and a maximum fee is fixed in Bengal. Therefore, if this Explanation becomes a part of the law, it will not cause great hardship in Bengal in any case, and as it is not going to have any retrospective effect, I hope Government will take steps to see that the searching facilities are very much improved. One thing which can be said against giving the doctrine of notice so far as registration is concerned a sort of statutory rigidity is that in cases of small properties where people are buying properties worth Rs. 20 or Rs. 50 or Rs. 100, for them to spend Rs. 20, the maximum which is fixed in Bengal, even that may be a large enough item, while, on the other hand, the law as it has now been settled by the Privy Council in Tilakdhari Lal's case, 47 Indian Appeals, stands thus : whether registration will or will not be notice is a question of fact, and it depends on whether there has been any negligence on the part of the purchaser or not. In other words, whether the purchaser has made proper inquiries, which include in the circumstances of the case supposed whether the purchaser was bound to make any inquiries. No Court, even though Courts do sometimes give foolish decisions, will ever give a decision like this, that while you are buying property worth Rs. 100 or Rs. 80, you must spend Rs. 20 on searching for encumbrances in the registration offices. So, whether the law should be left in its present condition of elasticity, or whether it should be given a statutory rigidity, that will be for the House to decide, but in deciding that, we have to take into consideration the fact that, in the mofussil, especially if the facts are as they have been stated by Mr. Belvi and by Mr. Navalrai, it would be simply ruinous to poor purchasers or to holders of land in the mofussil if they could not sell their

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lands unless the purchaser satisfied himself by searching the registration offices. It might cost the purchaser Rs. 60, or 80 or even more, because there may be joint offices, and in each case you would have to pay Rs. 60. In that view of the case the poor vendors will get few buyers, because, after all, when a man buys a property, he takes into account all the costs that he will have to incur in buying that property. The incidence of all these expenses that are incurred naturally falls upon the vendor, and if the facts are as they have been stated and if we do not get any contradiction of those facts, then I submit that the House will be well advised just for the present to omit Explanation 1 altogether.

The Honourable Sir Brojendra Mitter : It is the very Privy Council decision in Tilakdhari Lal's case which is the occasion for the change proposed. The law, as has now been settled by the Privy Council, is this, that whether registration is or is not notice depends upon the facts and circumstances of each case, upon the degree of care and caution which an ordinary prudent man will necessarily take for the protection of his own interest by searching the registers kept under the Registration Act. The result of that has been that in every case when the issue of notice or no notice is raised long litigation follows, and in view of that, the late Dr. Rash Behari Ghosh says :

“ The test laid down by the Privy Council inevitably leads to much perjury and litigation.”

Before the Privy Council decision there was a considerable conflict of opinions in the different High Courts. While that conflict has been set at rest by the Privy Council decision, the effect of that decision is much perjury and litigation. In order to avoid that, the Bill provides that registration should be notice in all cases.

One objection raised is that there is difficulty of search, and other objection is, in case of small properties, that the cost of search is disproportionate to the value of the property. As regards the difficulty of search, that is a matter which can be easily remedied by amending the rules under the Registration Act ; that has got nothing to do with the Transfer of Property Act. If this clause is passed by the Legislature here, then, having regard to the change, it will be incumbent upon the Provincial Governments to revise their registration rules in order to make searches easy of accomplishment.

Mr. N. C. Chunder : Will they make them ? Registration is a transferred subject.

The Honourable Sir Brojendra Mitter : It is a transferred subject. If the present Bill is passed, then it will be incumbent on all Provincial Governments to revise their registration rules—rules as regards search, rules as regards fee, and all the other rules relating to searches.

Mr. Gaya Prasad Singh (Muzaffarpur *cum* Champaran : Non-Muhammadian) : That might take years.

The Honourable Sir Brojendra Mitter : That is no reason. Because the Provincial Governments might take a long time in revising their registration rules, is that any reason why a salutary rule which is expected to have the effect of avoiding ruinous litigation and perjury—is that a sufficient

reason why such a provision should be postponed? Is it suggested that the rules regarding search should be revised first and then the law should be amended here in the Transfer of Property Act? I do not think that any Honourable Member will make that suggestion.

As regards the point which was made by Mr. Sesha Ayyangar or by Mr. Navalrai—I forget which—that there may be irregularities or mistakes in registers, and if a transferee is affected with notice of anything contained in such registers he may be seriously prejudiced. Mr. Jayakar has tabled an amendment and I am going to accept that amendment making provision for irregularities and mistakes.

Mr. M. A. Jinnah : What is that amendment?

The Honourable Sir Brojendra Mitter : The amendment which has been tabled is this :

“ After Explanation 1 to clause 4 of the Bill, the following proviso be inserted :

‘ Provided that :

- (1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act of 1908 and the rules made thereunder,
- (2) the instrument has been duly entered or filed as the case may be in books kept under section 51 of that Act, and
- (3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of the Act ’.

If this amendment is accepted by the House, then that will meet the case of mistakes and irregularities. As regards small properties to which my Honourable friend Mr. Chunder referred, Mr. Sesha Ayyangar has got two amendments, which, as I have already said, I will accept. In that case small properties will be excluded from compulsory registration. There will then be no hardship on purchasers of small properties. Now, the first objection raised is the irregularity or mistakes in registers. The second objection is the difficulty of search and the third objection is with regard to small properties. If the amendments of Mr. Sesha Ayyangar and Mr. Jayakar are accepted, then all these objections will be met.

Mr. Lalchand Navalrai : What about the expenses of search?

The Honourable Sir Brojendra Mitter : That is a matter for the Provincial Governments to make rules under the Registration Act.

Mr. Lalchand Navalrai : What guarantee is there that the Provincial Governments will do it.

The Honourable Sir Brojendra Mitter : That is not a matter for us to consider now. I will make my position clear. At the present moment, all transfers of the value of more than Rs. 100 have to be registered. If exorbitant expenses are incurred under the present law, we cannot help it. In so far as the value of property, in respect of which registration is made compulsory, is concerned, we are making no change. It will be the same as now. If there be any hardship at the present moment, we cannot here do anything by way of affording relief. All we are doing here is this. In respect of properties of a higher value than Rs. 100, registration which is now compulsory will be notice. That is all that is proposed now. If there be facilities for search, then even under the present law it is notice. If there be no facilities under the present law, then under the Privy Council decision, it may not be notice. That is the state of things now. Therefore, whenever that question of notice or no notice arises under the

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present law, protracted litigation is always the result. If you make registration notice, all that litigation will be avoided. Thus it is a beneficent proposal. It saves small properties. It makes provision for mistakes and irregularities. As regards the revision of rules under the Registration Act, that is a matter for the Provincial Governments, which we cannot deal with here. For these reasons I submit that the proposal in the Bill should be accepted by the House.

Mr. M. A. Jinnah : When we adopted this clause, the Honourable the Law Member will remember that he gave us to understand that the Government of India would take steps, as far as it lay in their power, to see that the Local Governments would make rules under the Registration Act, but his statement to-day.....

The Honourable Sir Brojendra Mitter : I was talking of this House. We cannot in this House do anything. Undoubtedly, if this Bill is passed, the Government of India will take every step to impress upon Provincial Governments that their rules under the Registration Act require revision. So far as the Government of India are concerned, the attention of Local Governments will be drawn to the matter without delay.

Mr. M. A. Jinnah : I may tell the House that some of us in the Select Committee were compelled to come to the conclusion that registration should be notice. I do not wish to add anything to what the Law Member has said. As regards small properties, if this House will exclude small properties from registration, then that argument goes. Then really nothing is left except this, that the House should leave the people to litigate on a question of fact whether the purchasers had notice or no notice. It means long trial, evidence on both sides and lots of expense and costs. Having regard to the Privy Council case, if the property is registered, then in 99 cases out of a hundred, the Court will start with the presumption of notice. Therefore, instead of leaving the matter to be litigated in each case, is it not better that we should put an end to all this by treating registration as notice? After a great deal of consideration, we came to the conclusion that this course should be adopted.

Mr. Lalchand Navalrai : Has the Honourable Member considered the question of cost of searching out whether there is any previous document registered?

Mr. M. A. Jinnah : The only expense is the expense of search. We considered that at great length. We made inquiries both as regards presidency towns and the mofussils, and we were told that in most places there is a system of registration, and the cost of search is very small. It is said that the cost of search is high. How high is that?

Mr. N. C. Chunder : It is Rs. 20 in Bengal.

Mr. M. A. Jinnah : You are searching as a pleader or solicitor for a purchaser. You want to see whether the property has been dealt with previously. You go to the Registrar's office to search, merely to see from the register whether that property has been dealt with prior to your buying it. Surely you will try to ascertain what would be the cost of the search of that. It cannot be more than few rupees. (*Cries of "No, no"*.)

Mr. Lalchand Navalrai : Excuse me when I say that, if it is not known whether the property has been dealt with, you may have to search for a number of years backwards and pay one rupee for each year's search.

Mr. M. A. Jinnah : Supposing you should pay a rupee a year—and I take it that generally 40 years' title is good title, and in some cases you may go as far back as 40 years. (*An Honourable Member :* " Even more ") I should have thought 30 years is enough.....

Mr. N. C. Chunder : The Calcutta practice is to go back up to 1865.

Mr. M. A. Jinnah : Well it may be, and I agree that there is the question of the cost of search. I will only say that we were not able to get any information that the cost was so heavy as the Honourable Member now points out to me. We were under the impression that the cost of search was very small. (*An Honourable Member :* " It is not ") Well in that case I again say this. I would appeal to the Honourable the Law Member to see that some redress is given for the purpose of search and to see that this heavy cost is reduced. But there is no other cost that I can think of. Either then, have this and pay Rs. 30 or Rs. 40 (at most it comes to that), or have a law suit and have pleaders on both sides, go on with your case, call witness after witness, which will lead to inconvenience to parties, to protraction of trial, to cost, but you will have to choose between these. Otherwise I see no remedy. And I know this perfectly well that, in so far as Bombay is concerned, there is no objection to the legislation.

Now, there is only one more point. The Honourable Member said that there is no facility for registration. Now that also we considered at very great length and we were told, at least by those Members serving on the Committee who were representatives of Commerce, that in all provinces now the system is being introduced and is growing. Now if you have got a register, and the register is kept according to the rules, and you search that register, and if there is no reference made to that property, then surely you cannot be said to have had notice. If it is there and you neglect to notice it, then you have notice ; but if it is not in there, or if a book is not kept at all—in some parts of the Honourable Member's district there is no register kept—if no such register is kept, then you cannot be said to have notice.....

Mr. Lalchand Navalrai : The Honourable Member did not follow me. I did not mean that no registers are kept, but that there are so many registers kept and there is no index to show it at a glance and so the Registrar has to go through all the registers and therefore the charge will be very heavy.

Mr. M. A. Jinnah : The only answer I can give is that in that case I have no doubt that the Government of India will look into this matter and will urge upon the Local Governments to improve the keeping of their records.

Mr. Lalchand Navalrai : That is putting the cart before the horse.

Mr. M. A. Jinnah : It is not putting the cart before the horse. The very fact that the Legislature is going to pass this Bill, the very fact that

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the Government of India are responsible for it, and the very fact that the Government of India have given an undertaking on the floor of this House that they are going to see to it, I say that is sufficient for my purpose, and I say that the Government will carry it out, and if they do not carry it out, then surely the remedy is in your hands and you can certainly move this Legislature to act in whatever manner you like in the future.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 11th September, 1929.