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SEVENTH SESSION

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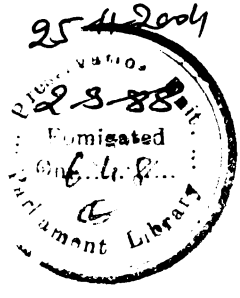
SECOND COUNCIL OF STATE, 1929



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COUNCIL OF STATE.

Thursday, 26th September, 1929

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

TRANSFER OF PROPERTY (AMENDMENT) BILL.

THE HONOURABLE MR. L. GRAHAM (Secretary, Legislative Department): Sir, I move that the Bill further to amend the Transfer of Property Act, 1882, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.

Sir, with reference to this motion I find it somewhat difficult to decide exactly what course I should take. The Bill, which contains nearly 63 clauses, is a Bill of very considerable magnitude, not only in the length of the Bill, but in the importance of the changes which it makes in the law relating to transfer of property. There are so many principles involved in this Bill that I should find it difficult to set out broadly the changes which have been made in respect of the law without delivering a speech of very great length and necessarily a speech of very great detail, which, I think, the Council would only find extremely tedious. None the less, Sir, rather than devote myself to the details of the Bill I should like to say something about the history of the Bill. The Bill, Sir, has behind it a long history and connected with that history are many distinguished names, which I should like to bring before the Council. In the earlier stages which take us back to the period before the war, we find Sir William Vincent attempting a draft and putting some of his best work into that draft. Naturally, during the war, no further progress could be made, but the urgency of dealing with this very important subject has always been kept in mind by the Government of India, though they have not, it must be confessed, been very successful in the years immediately following the war. But for that there are, I think, ample reasons, and no charge of dilatoriness can be brought against the Government of India in this respect. Under the new Constitution, Sir, the first Law Member was Sir Tej Bahadur Sapru, and it is to his name in particular that I should like to pay a tribute, because he really is the initiative force at the back of this measure for bringing up to date the law relating to the transfer of property. Under Sir Tej Bahadur's instructions an officer was placed on special duty in the Legislative Department to collect the case law on the subject and generally to examine all suggestions which had been received from various quarters and also the material previously collected in this Department with a view to amending and bringing up to date the law. That officer, Mr. Mukherjee, performed, I consider, a very distinguished piece of work, and I may add that he is now a Judge of the Allahabad High Court. Most unfortunately, as Honourable Members are aware, Sir Tej Bahadur Sapru was not able to complete his term of office, and thereafter a period ensued in the

[Mr. L. Graham.]

Legislative Department when —I mean no disrespect to them—there were only temporary occupants of the post of Member, and it was impossible for them to carry on the work initiated by Sir Tej Bahadur Sapru. Two incumbents of the office, Sir Muhammad Shafi and Sir Narasimha Sarma, remained in office for comparatively so short a time, that it was impossible for them to take up this very great burden of work. On the appointment of Mr. S. R. Das, the work was resumed. The late Mr. S. R. Das, took a very great interest in this work, fully appreciating the importance of it, and after examining everything that had already been done, he decided that the best method of dealing with this very grave problem was to secure the appointment of a Special Committee, a Committee which by its constitution can undoubtedly be described as a Committee of experts. That Committee was constituted as follows: The Honourable Mr. S. R. Das, as Law Member, Chairman, the Honourable Mr. B. L. Mitter (as he then was), Advocate General, Bengal, Mr. D. F. Mulla, Dr. Surendra Nath Sen, at that time Advocate of the Allahabad High Court and now on the Bench of that High Court. By way of Statement of Objects and Reasons to this Bill, there has been appended the report of that Special Committee, and Honourable Members will have read that report including Appendix B which is made up of Notes on Clauses, which in themselves are a very valuable addition to the literature on the subject. If Honourable Members read this publication they will, I think, admit that the work was done with extreme care and thoroughness. The result, Sir, is the Bill before us and another Bill which I shall later ask the Council to take into consideration. I should like before referring to the points in the Bill place on record my profound regret—and I am sure the Council will share it—that the Honourable Mr. S. R. Das was not spared to bring this measure himself before the Indian Legislature.

From the report of the Special Committee attached to the Bill by way of Statement of Objects and Reasons, Honourable Members will see that the whole Act has been thoroughly overhauled. In so doing two main principles were borne in mind, the first to deal with obscurities and ambiguities which were shown to exist in the law as a result of the conflicting decisions of the High Courts—in some cases solved by final appeals to the Privy Council, but in other cases the conflict still remains—and the second to bring the law which dated back to 1882 up to date. The law of property is not a static law, and since that time there have been many developments. The additions to the British Statute-book will make that point clear to all Honourable Members. The progress in dealing with this branch of the law in England culminated with the Law of Property Act in 1925, and it was thought that we must consider not only the question of eliminating conflicts of decision which had arisen in the High Courts, but also to see to what extent we should bring our legislation into line with the latest developments in the English law. The main points in which the Bill now before the House seeks to amend the Act of 1882 are set out on page 3 of the Statement of Objects and Reasons and they are the following:

> Firstly, the omission of the words " Hindus and Buddhists " in section 2 whereby the provisions of Chapter II will apply to all cases except those governed by a special rule of Muhammadan Law.

Secondly, the provision of making registration amount to notice of a registered document; also provision making constructive notice to an agent notice to the principal.

Thirdly, the validity of transfers in favour of a class, when some members of that class are unable to take.

Fourthly, the validity of a direction as to accumulation for a certain period and for certain purposes.

Fifthly,—this is a very important point indeed—the statutory recognition of the equitable doctrine of part performance.

Sixthly,—here the Committee's recommendations were not finally accepted in the lower House— the Committee proposes the compulsory registration of wills and mortgages relating to immoveable property of whatever value and of all leases except those from month to month or for any term not exceeding one month. I do not think any member of the Committee or the House willl deny for a moment the desirability of that proposal, but it was felt that the country or parts of the country, at any rate, were not ready for that change, and consequently Government gave way.

Seventhly, the abolition of the remedy of foreclosure in the case of all mortgages except a mortgage by conditional sale or an anomalous mortgage providing expressly for foreclosure.

Eighthly, there is a provision for compelling a mortgagee to exhaust his remedies against the mortgaged property before enforcing his personal remedy.

Ninthly, the amendment of the provisions regarding sale without the intervention of the Court.

Tenthly, the extension of the principle of "subrogation."

Eleventhly, the modification of the law of "merger".

And, lastly, the provision requiring leases to be executed by both parties.

Honourable Members will observe the Bill is largely concerned with that extremely difficult subject, the Law of Mortgages, and Honourable Members who have read the detailed notes on clauses will, I trust, appreciate the amount of labour which was put into the work of the Committee, and will, I trust, agree with me that a great deal has been done towards disposing of the difficulties arising from the conflict of the Courts, and also that a very great deal has been done to reduce the amount of litigation which is in future likely to arise out of mortgages.

With these few words, Sir, I move.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces: Nominated Non-Official): Sir, I feel I cannot refrain from paying my tribute of admiration and respect to our talented Law Member and the expert Committee that has devoted so much pains and expenditure of time and trouble over this most important measure. My Honourable friend, Mr. Graham, has already spoken of the work done in this connection by certain individuals who were connected with the Legislative Department, and particularly Sir William Vincent and other Law Members who during their term of office have contri-

[Sir Maneckji Dadabhoy.]

buted towards the preparation of this very important measure. The Transfer of Property Act to my mind is one of the most difficult, intricate and complicated measures, probably barring the Code of Civil Procedure. This law was framed in 1882, but before that law was framed, learned jurists and eminent lawyers who constituted the two Law Commissions had to devote for several years their attention to the formulation of a law which would not only include certain important provisions of the Conveyancing Act of England but the old Regulations of Bengal, of the years 1798 and 1806, and the Bombay Regulations of 1827, which referred to immoveable property. The Transfer of Property Act has, as some of the legal Members of this Council are aware, been amended on no less than 12 occasions since it was passed in 1882. But, unfortunately, no thorough revision of the measure was undertaken till this expert Committee was appointed by the Government of India for the purpose of going through the whole Act and finding out what changes were necessary by reason of the conflicting decisions of the various High Courts, by the alteration in the law of conveyancing in England, and also the difficulty experienced in the working of the Act. We have now in this Bill the result of the labours of this expert Committee, and I am glad to notice that in this Bill two cardinal principles have been strictly adhered to and no amendment has been attempted which would have merely the effect of improving the wording and phraseology of the old Act, but the new principles which have received sound judicial interpretation and which have been judicially recognised, have been examined, settled and incorporated in this Bill. The Bill also embodies new principles which have been necessitated by the revision of the Conveyancing Act in England from time to time, and the Bill now before this House may be regarded as a measure consolidating and codifying the whole law of property as it exists to-day. The most important modifications effected by the Bill may be summarised by stating that the Bill before the House makes the law explicit regarding notice, both actual and constructive, validating all transfers in favour of a certain class when some members of that class are unable to take, the compulsory registration of sales and mortgages relating to immoveable property of whatever value, in derogation of the existing law which permits the transfers of immoveable property of a value under Rs. 100 without registration; and the registration of all leases except those from month to month or for any term not exceeding one month. The present Bill also includes provisions for the abolition of the remedy of foreclosure in the case of all mortgages except a mortgage by conditional sale. It makes it obligatory on a mortgagee to exhaust his remedies in the first instance against the mortgaged property before enforcing his personal remedy.

It further provides for the validity of a direction as to accumulation for a certain period and for certain purposes, for the amendment of the provisions regarding sale without the intervention of the Court, the modification of the law of " merger ", the extension of the doctrine of subrogation and the formal execution of leases both by the lessor and the lessee. It also has recast the law relating to fraudulent transfers, and it has provided for the doctrine of part performance. It has also recognised in a statutory manner the obligation to transfer to a third party instead of retransference to the mortgagor on the liquidation of the mortgage-debt.

Sir, on a measure of such supreme importance, and complicated as it is, it would be idle for me or any other person in this House to offer comments on the individual provisions of the law. Even if I differed with the expert Committee in the recasting and framing of certain provisions, I would willingly surrender my opinion to the combined learning, knowledge and experience of this expert Committee who have taken such an amount of infinite trouble over this measure, and to the best of their ability and judgment have placed before the country a Bill of a most difficult character codified and consolidated in consonance with modern judicial decisions of the various High Courts. It is for this reason that I shall not take up the time of the Council in commenting on the various provisions of the Bill, particularly as we have the assurance of this expert Committee that they have scrutinized section by section the whole of the Transfer of Property Act in order to find out if any other provision of that Act which is not included in this Bill required revision. In view of that assurance, I am quite content to give my vote for the passing of this measure without any further discussion. I understand also that several amendments have been suggested by several Honourable Members which are to be moved to-day. I appeal to my Honourable friends that, in a measure of this supreme importance which has been so carefully considered by this expert Committee, in deference to their combined knowledge, not to press their amendments and I think that this Council will be doing a prudent thing if it passes the Bill as placed before this House to-day.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE (West Bengal: Non-Muhammadan): Sir, I join with my Honourable friend Sir Maneckji Dadabhoy in extending our most cordial thanks to, and expressing our appreciation of the great labour and assiduity with which this Bill has been drawn up by, the Special Committee, and I agree with the Honourable the Mover of this motion that it is to be really regretted that the Honourable Mr. S. R. Das is not to-day with us to join in the deliberations in connection with this Bill, a Bill which was initiated during his régime as Law Member. The proposal had no doubt been made in previous years to take up the amendment of the Transfer of Property Act from time to time, and that was ever since 1902 or 1903, when one of the earliest amendments of the Act was made. But it was not till the late Mr. S. R. Das took it up seriously as Law Member that the attention of Government was directly drawn to it, and we have the result to-day in the form of this Bill.

I cannot agree with my Honourable friend Sir Maneckji Dadabhoy that because there was a Special Committee, and because the Special Committee consisted of some of the most learned lawyers of the land, therefore we ought not to have any difference of opinion with that Committee. Sir Maneckji Dadabhoy, who at one time of his life had been in the legal profession, knows as much as I do that difference of opinion is tolerated in the legal profession to an extent which is not done in any other profession or any other calling; and especially when we are asked to consider such an important measure as the Transfer of Property (Amendment) Bill, by which, as the Honourable Mover as also the last speaker has pointed out, some of the most vital principles in the Transfer of Property Act are being amended, there is bound to be difference of opinion among the different Members of this House. Nobody can suggest that the opinion that is held by me or by any other Honourable Member

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is the correct one, because it must be left to the judiciary afterwards to decide which opinion is the correct one.

With regard to the more important problems that have been scrutinised by the Special Committee and the suggestions which have been made, I do not think any useful purpose will be served by repeating them or referring to them in detail at this stage. But, Sir, there is one point which I want to bring to the notice of this Council at this stage. A Bill which is of such importance, and of such magnitude—only if we look to the different clauses of the Bill—that Bill was passed by the other House the other day and the papers were circulated to us last week. We have no doubt got here the notes on the different clauses and we have also had circulated to us the opinions that were received from the different provinces after the Bill in its present form had been introduced in the Legislative Assembly. But, in my opinion at least, it is absolutely impossible for any Member of this House to go into the detailed provisions of these Bills and go through the opinions that have been expressed by the different public bodies or different authorities in the different parts of the country within the time that was at our disposal. The existence of a second Chamber in the constitution brings in the necessity of placing before the second Chamber the Bills that are passed in the other Chamber in the same way as they are done in the other Chamber. No doubt it is not open to the second Chamber to have another Select Committee, or to refer the Bill for public opinion if this has already been done by the other Chamber. But surely sufficient opportunity should be given to the Members of the second Chamber to go through the details of the Bills that are placed before them. Sir, in this case, amendments have been proposed to a large number of sections of the Transfer of Property Act; new sections have been added, and it is absolutely necessary to read the Bill together with the whole of the Transfer of Property Act. That is a responsibility which I think cannot be satisfactorily discharged by the Members of this House within the time at their disposal. Then again, Sir, when amendments are made in such extensive form, it should have been made possible to the Members of this House to have the original section and the amended section put side by side in a pamphlet circulated to the House. I understand that that was done at one stage before the Legislative Assembly, and I fail to see why that was not repeated here. The other difficulty that I had felt was that the Bill as passed by the Legislative Assembly is divided into different clauses; the numbering of these clauses has been altered by the Legislative Assembly from the numbering as it existed in the original Bill as introduced in the other House. The result is that the opinions we have got and the Notes on Clauses have reference to the originally numbered clauses and not to the clauses as now numbered. So far as Notes to Clauses are concerned, the sections of the Act are also mentioned and they can be easily traced, and it is easy to find out which particular clause of the original Bill is being amended or is being noted upon. But with regard to opinions we are in that difficulty. Moreover, the Bill had been introduced in the Legislative Assembly on a previous occasion and opinions had been sought by Government from the different provinces on that Bill. That Bill lapsed owing to the old Assembly being dissolved and the new Assembly coming into existence. But the opinions which had been received at that time were not circulated to

the Members of the House, and the difficulty is that throughout the opinions which we have now got reference is continually made to the opinions that were previously expressed. When I come to some of the amendments I shall point out, Sir, how it is impossible for us, who have not got the opinions expressed on the original Bill, to find out what the opinions of the different provinces were on the clauses of the Bill as originally drafted. These are difficulties which I do not want to press at this stage on this particular Bill, but I want Government to remember these points for the future, so that the Members of the second Chamber may not be under these disadvantages.

THE HONOURABLE MR. L. GRAHAM: Sir, I shall only deal with a few of the remarks made by the last speaker, who suggests that he has been put, as he says, at a disadvantage. The first complaint is that adequate time was not given. The Bill was only laid in this House a week ago and consequently he has not had time to give the necessary amount of attention to it. But, Sir, I would suggest to the Honourable Member that in this week all that has been necessary for him to consider is the amendments actually made by the Legislative Assembly. The previous stages of the Bill have all been published in the Gazette, and any Member who was interested in the law of transfer of property and the proposed amendments thereto, having his Gazette copies, would surely have scanned them to know what the position was when the motion was made in the other House that the Bill, as reported by the Select Committee, be taken into consideration. Therefore, Sir, as I understand the position, all that was necessary for him to examine in this last week were the amendments made in the other place.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: Was the report of the Select Committee circulated to the Members of this House ?

THE HONOURABLE MR. L. GRAHAM: The Report of the Select Committee like all Reports of Select Committees was published in the Gazette and copies of the Gazette are supplied to Members. What they do with them I do not know. There was one more substantial point which came from the Honourable Member, and that was, that the earlier set of opinions was not supplied. Well, I could defend that on technical grounds, Sir, by saying that the opinions on the earlier Bill were not papers to this Bill, but I prefer to take a more generous line and say that, although there was no obligation on us to supply those papers, if the Honourable Member when examining the opinions on the second Bill had merely said to the Department that he found it somewhat difficult to follow those opinions, we of course should have supplied him with copies of the earlier opinions. But I cannot accept the suggestion, Sir, that we are obliged to circulate, that we should have circulated, the opinions on the earlier Bill, because, as I have said, they are not papers on this Bill. I trust then, Sir, that the House will not feel that they have been ungenerously treated in this respect. The reason really why we brought the Bill before the House this Session—I gave the House as long as possible, whereas I might have given them only three days—was that the Select Committee were very emphatic that this Bill should be brought into operation as soon as possible, and the date which they inserted in the Bill was the first day of April, 1930. Now, if we had delayed dealing with this Bill till our February Session, there is no doubt, Sir, that we should have been called upon to insert another amendment in the Bill giving a further period of notice for the Bill to be brought into

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operation, probably Members would have suggested the 1st of January, 1931; and so the delay which is already great would have been even more serious. I trust then, Sir, the House will agree with me that they have not been unreasonably treated.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill further to amend the Transfer of Property Act, 1882, for certain purposes, as passed by the Legislative Assembly, be taken into consideration".

The motion was adopted.

Clause 2 was added to the Bill.

THE HONOURABLE THE PRESIDENT: The question is:

"That clause 3 do stand part of the Bill."

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: Sir, I beg to move:

"That in clause 3 of the Bill the words 'the word "Hindu" and' be omitted and consequential changes be made."

THE HONOURABLE MR. L. GRAHAM: May I suggest that the amendment of the Honourable Kumar Sankar Ray Chaudhury be taken first. It is to omit the whole clause.

THE HONOURABLE THE PRESIDENT: I think it would be more satisfactory if the Honourable Srijut Rama Prasad Mookerjee moved his two amendments first. In the event of those both being defeated, the Honourable Kumar Sankar Ray Chaudhury's amendment will hardly arise. Whereas, on the other hand, if the Council first disposes of the Honourable Kumar Sankar Ray Chaudhury's amendment that the whole clause be omitted, we should still have to deal separately with each of the amendments of the Honourable Srijut Rama Prasad Mookerjee.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: Sir, as I want my two amendments to be voted on separately, that is why I have given notice separately. Sir, in clause 3 the reference is to section 2 of the Transfer of Property Act. In the last few lines of section 2 of that Act the words are:

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

The effect of clause 3 of the Bill will be that "Hindu" and "Buddhist" will go out and only the Muhammadans would not be affected by the second Chapter of the Transfer of Property Act.

My objection to the deletion of the word "Hindu" is this. It is stated in the Notes on Clauses which have been circulated to Members that the word "Hindu" is not necessary here, because the only points of difference between the Hindu Law and the provisions of the Transfer of Property Act contained in Chapter II have now been changed and the law is the same in the Hindu law as in the Transfer of Property Act. In the first place, I do not agree that anybody can say with certainty that all the provisions of the Hindu law have been looked into by any person, by the Committee even; the Committee does not say in specific terms that all the provisions of the Hindu law have been examined and that there is no provision of the Hindu law anywhere which does not militate against the provisions of Chapter II of the Transfer of Property Act

The next point that is raised by the Committee and also by the Honourable the Law Member is that there ought to be certainty as to the law of property. The effect of section 2 of the Transfer of Property Act is that the whole of Chapter II would be applicable to all persons even if they be Hindus unless they can show that there is some provision of Hindu law which militates against the provisions of the Transfer of Property Act. The onus is on the person who alleges that there is some difference between the provisions of the Hindus law and the Transfer of Property Act. Therefore, there is no uncertainty with regard to law of property even if this provision is allowed to stand. I would in this connection draw the attention of the House to the remarks that were made at the time when the Act was originally passed in 1882. Sir, I would refer to the speech of the Honourable Mr. Evans in the Imperial Legislative Council on the 26th of January, 1882. The historical reason why this expression was added in the section is clear from this speech of Mr. Evans :

" In Chapter II (of the Transfer of Property Bill) several rules were introduced from the Succession Act, 1865, defining the limits within which property could be tied up by settlement *inter vivos* and laying down the rule restricting perpetuities ".

The report of the proceedings at that time was not in the direct form, but was in the indirect form and the report continues in this way :

" He has always been apprehensive that these rules would unduly extend the powers now possessed by Hindus (under the rule in the Tagore case) of tying up the properties after their deaths. The rule in the Tagore case which prohibited gifts or bequests to unborn persons was not the Hindu law as declared by the highest tribunal, except so far as the rules now proposed to be embodied in the Act, had been made applicable to the wills of Hindus in Bengal by the Hindu Wills Act, 1870.....Mr. Evans' difficulties on this point had been removed in a singular manner. The Honourable Maharaja Jatindra Mohan Tagore and the Honourable Raja Siva Prasad, conceiving, in common with many of their fellow-countrymen, that the rule in the Tagore case did not correctly represent the Hindu law and that Hindus were by their own law empowered to tie up their property for ever without any restriction, had rejected the extensive powers conferred upon them by the Bill as too limited, and he asked that a clause should be added to Chapter II providing that nothing contained in that Chapter would affect any rule of Hindu law."

—and then the last sentence is important—

" As the effect of this was to leave this important question as it stood for the present and to give an opportunity for its full consideration in future, he had gladly acceded to the proposed amendment, though regarding it from a different point of view from that taken by his proposer."

This is what was stated by the Honourable Mr. Evans in 1882. But over and above that, I would like to point out that to my mind there is at least one other case where Chapter II, if applied, in the present form, would interfere with the provisions of Hindu law. It is known to the lawyer Members of this House that, if a gift is made by a Hindu to a person who ordinarily holds a limited stake in the property, then the presumption will be—in the absence of a definite statement in the document—that the gift is not an absolute gift, but a limited one.

If the provisions of Chapter II of the Transfer of Property Act be applied in that case, then under section 8 of the Act it would have to be shown from the document itself that the property given is not an absolute one but a limited one. Take, for instance, this concrete case. If a Hindu donor gives a property to his widow and in the same deed gives another property, say, to his nephew, then according to the principles of Hindu law the widow will be

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taken to get only a limited stake in the property, whereas the nephew would get an absolute stake in the property which is given to him. The language used might be the same, but according to the present decisions of the Judicial Committee the interpretation put on that deed will be that it was the intention of the donor to create in favour of the nephew an absolute stake in the property, but only a limited stake in favour of the widow. Sir, I would submit that this is one case which, if this amendment proposed in the amending Bill is accepted, would be modified.

The next point is this. Even if it be taken for granted for argument's sake that the existing provisions of the second Chapter of the Transfer of Property Act are in consonance with the provisions of Hindu law, what guarantee is there that no modification will be made in the second Chapter of the Transfer of Property Act which would militate against the provisions of Hindu law? Merely because the existing provisions of the second Chapter are in consonance with the provisions of Hindu law would not justify the deletion of the word "Hindu" from this section. If the word "Hindu" is retained in the section, then the position would be that, if at any later stage any proposal is made to modify any of the provisions of the second Chapter of the Transfer of Property Act, and if that provision militates against the provisions of Hindu law, then that will be brought directly to the notice of the Hindus in India, whether that provision is necessary or wanted by them or not. Sir, it is an accepted policy of Government that, so far as the personal laws are concerned of Hindus, Muhammadans, Buddhists, and others, those would not be modified by the ordinary law. If the word "Hindu" is omitted from this section, then it will be open to the Legislature to indirectly modify the provisions of Hindu law which is not a desirable state of things.

Then again, Sir, Chapter II of the Transfer of Property Act, section 10, is limited in its application to all persons other than Hindus, Muhammadans or Buddhists. Here is one section in the second Chapter which is specifically made inapplicable to Hindus, Muhammadans and Buddhists. The Special Committee has not recommended the deletion of these words here, because in the opinion of the Committee, and rightly so, the provisions of this section ought not to be made applicable in the case of people other than the Christians.

There is one other aspect of the thing which I want to draw the attention of the House to before I sit down. Sir, in the report of the Special Committee at page 3, the 10th paragraph, the Committee there enunciates the general principles which have guided them in proposing the different amendments. The principles are these. A reference was made to this principle by my Honourable friend, Sir Maneckji Dadabhoy:

> "In the Bill submitted to us the policy which appears to have been followed was that no amendment should be admitted which would merely effect an improvement in the wording but that new principles of importance which had been judicially recognised since the passing of the Act should be incorporated."

Sir, if we take this principle into account and even if we take the view point of the Honourable the Law Member that the word "Hindu" is redundant here, is it not a verbal alteration which is being attempted by the proposal that is now before the Council?

When there is a definite section of the public or even of this House who hold that the word is not redundant, then what harm would be done by leaving the word "Hindu" there? It would not in any way affect the meaning of the section, at least the meaning which the Special Committee wants to read into that section. Sir, this is so far as my first amendment is concerned, unless it is your wish that the second amendment should also be discussed now. I shall move it later on.

THE HONOURABLE THE PRESIDENT: Amendment moved:

"That in clause 3 the word 'Hindu' be omitted and consequential changes be made."

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY (East Bengal: Non-Muhammadan): Sir, as I am not likely to have an opportunity of saying anything with regard to the amendment that I have tabled, I think I should say a few words in support of the amendment moved by my Honourable friend. My Honourable friend has already referred to the fact that it was contended on behalf of the supporters of this clause that there is no difference between Hindu Law and the Transfer of Property Act now, and I would like at this stage to draw the notice of this House to another point in which there is a difference. If reference is made to page 46 of this book dealing with clause 49, section 100, the Special Committee observes as follows:

"As a charge does not involve a transfer of interest in the property subject thereto it has been held that it cannot be enforced without notice",

and they cite, in support of this observation, several rulings reported in 9 Allahabad, 13 Allahabad.....

THE HONOURABLE THE PRESIDENT: I do not think the Honourable Member need read the list of rulings. Every Member in the House has it.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: I am only citing it.

THE HONOURABLE THE PRESIDENT: It is not necessary to cite the ruling. It is in the body of the report.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: And there is the ruling in 33 Calcutta, but there is another ruling reported in 27 Calcutta at page 194, which says:

"Where maintenance has been a charge upon the property and the property is subsequently sold, the purchaser must hold it subject to the charge."

So that as regards the charge for maintenance created by a Hindu, if that charge is given effect to by a decree and it stands as a charge by virtue of that decree, a subsequent purchaser cannot avoid it according to that ruling. What the new proposed amendment of section 100 is going to do now is to take away this privilege in favour of charges created for maintenance according to Hindu law, for clause 50 of the Bill says that:

"after the words 'in the execution of his trust' the following words shall be added, namely:

'and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge'."

[Mr. Kumar Sankar Ray Chaudhury.]

So that if a person has no notice of the charge he is not bound by that. My submission, therefore, is that here is a provision which is going to affect the Hindu Law as laid down in 27 Calcutta at page 194. Therefore, it is necessary that clause 3 should be deleted.

THE HONOURABLE SIR BROJENDRA MITTER (Law Member): Sir, this question whether the word "Hindu" should be retained or not was very carefully considered both by the Special Committee as well as by the Select Committee in the lower House. Sir, before I deal with the specific points which the Honourable Mr. Mookerjee has raised—and they are weighty points and every one of them has been carefully considered—I should like to draw the attention of the House to the fact that on this point of retention of the word "Hindu", we received opinions from 35 persons and bodies. Out of these, 28 approved of the action the Committee had taken, and 7 disapproved but adduced no reason. Anyhow, I am glad that the Honourable Member has adduced some reasons and I shall deal with them presently. I am only drawing the attention of the House to this fact to show that the consensus of opinion is in favour of the action we have taken in deleting the word "Hindu". But that is neither here nor there: if there are good reasons it does not matter whether 28 out of 35 choose the wrong course and 7 the right. Now, have we chosen the wrong course? One of the arguments adduced by the Honourable Mr. Mookerjee is that there is no harm in retaining the word—(I am not taking the points in order but I shall take them all).

Sir, my submission is this that, in drafting Bills, the question is not whether there is any harm in retaining a word, but whether it is necessary to retain the word. It is one of the canons of legislative drafting that everything unnecessary or superfluous or redundant should be avoided. If I can convince the House that this word is superfluous or redundant, then I do not think that the Honourable Mr. Mookerjee would press his point that because there is no harm in keeping a redundant word, let it be left there. I shall endeavour to show that this word is absolutely redundant. Sir, the existing section runs thus:

12 NOON.

"Nothing in the second Chapter of this Act shall be deemed to affect any rule of Hindu law".

I am leaving out Muhammadan and Buddhist laws for the present. Sir, no one up to now has suggested that there is anything in the second Chapter which is against any rule of Hindu law. That being so, this provision is absolutely unnecessary. If Honourable Members ask me why it was inserted in the Act of 1882, I say that it was for the simple reason that at that time, in 1882, there was a rule of Hindu law, which did militate against the provisions of Chapter II. That rule was that gifts could not be made in favour of unborn persons. Prior to 1916, no Hindu could make a gift to an unborn person. In that year came what is known as the Setalvad Act by which gifts to an unborn person were permitted, and that was followed, as the lawyer Members of this House know, in Madras by two Acts in 1920 and 1921; so that, after 1921, throughout India, a Hindu could make a gift to an unborn person. That was the one rule of Hindu law which militated against Chapter II, and in order to save that rule this clause was necessary in 1882. After 1921, this provision became redun-

dant, and even the Honourable Mr. Mookerjee, who has studied this question, could not point to any single section in Chapter II which was repugnant to any rule of Hindu law. That being so, it is redundant. I shall come to the Honourable Mr. Kumar Sankar Ray Chaudhury's contention on section 100. Sir, section 100 does not come in Chapter II. Therefore, we have got nothing to do with it. There is an amendment in regard to section 100. When that amendment is moved, I shall deal with the right of maintenance more fully. For my present purpose it is enough to say that section 100 does not come in Chapter II. The first argument of the Honourable Mr. Mookerjee is this, that there is no harm in retaining it. My answer is, that that is looking at the matter from the wrong end of the telescope. It is not that there is no harm in retaining it, but is it necessary ? That is the test and I have shown that it is unnecessary.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : Is there anybody who can claim that he knows every conceivable point of Hindu law ?

THE HONOURABLE SIR BROJENDRA MITTER : I am coming to that, Sir. The Honourable Member referred to section 8. Section 8 of the Transfer of Property Act runs thus :

" 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."

The Honourable Mr. Mookerjee's argument is this. Supposing in one document there is a gift to a widow and a gift to a nephew. According to the rule of Hindu law, the widow gets a limited interest and the nephew gets an absolute interest. Well, Sir, I contest that proposition. It is not according to any rule of Hindu law that the widow gets a limited interest. It is because of the prevailing feelings and sentiments in the Hindu community, the intention gathered by the court is that it was to give a limited interest to the widow and to give an absolute interest to the nephew. The section says :

" Unless a different intention is expressed or necessarily implied ....."

The courts have said this, that having regard to the prevailing feelings and sentiments among the Hindus, the necessary implication is that the intention was to give a limited interest to the widow and an absolute interest to the nephew. There is no question of Hindu law ; no question of any rule of Hindu law there. The whole question is a question of intention to be gathered from the document itself having regard to the probable ideas of the donor and his relationship to the donee. So, that is a question of intention, and not any rule of Hindu law. Section 8 is not in any way concerned with any rule of Hindu law.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : Will it be permissible to imply the intention from the conduct of the parties later on ? Because up to the present moment the necessary implication that was drawn was drawn not only from the document but also from the conduct of the parties. According to section 8 the implication would be from the document only.

THE HONOURABLE SIR BROJENDRA MITTER : What I was saying is this. It is the duty of the court to gather the intention. The document has to be construed. The court sets about to find what really the intention was, and in gathering the real intention, the court has to take into account who the

[Sir Brojendra Mitter.]

donor was, who the donee was, and what was the relationship between them. When all this is found, the court determines to what community they belong. If such a document were executed by an Englishman in favour of his wife, the court would immediately say that an absolute interest was intended, because when a husband makes a gift of a property to a wife, and the donor and the donee are both English people, the intention generally is that an absolute interest should pass. The courts have held in a series of decisions that, if both the donor and the donee are Hindus, the intention must have been what a Hindu woman ordinarily takes, that is, a limited interest. The whole question is a question of intention, which the court determines. It is not a question of any rule of Hindu law, because there is no rule of Hindu law by reason of which the woman must always hold a limited interest. Although when a woman inherits property, she takes a limited interest, there is no rule of Hindu law whereby a woman can never hold an absolute interest in property. That being so, we are not troubled with any rule of Hindu law in so far as section 8 is concerned. All that section 8 says, is that the true intention is to be gathered. Now the true intention is to be gathered not from any rule of Hindu law, but from what was probably in the mind of the donor when he made the gift. This the court determines from various circumstances. It is always a question of fact. It is not a question of law. It is a question of fact to be gathered from circumstances. That is my answer to the argument based on section 8.

Then, the Honourable Mr. Mookerjee says that section 10 specifically excludes Hindus, Muhammadans and Buddhists. Well, that supports my argument instead of supporting his argument, because, where it was necessary to save the position of Hindus or Muhammadans or Buddhists, the Act has made specific provision. There is no necessity to have a general saving clause, and therefore we propose to exclude the word " Hindu " from this section.

The next point which the Honourable Mr. Mookerjee urged was that, who can say that there is no rule of Hindu law which may militate against the sections of Chapter II. But the question is this, is there anything in Chapter II which militates against any rule of Hindu law ? We in the special Committee went through every section and traced the history of every section, and it was found that the provisions of every single section in Chapter II were applied in cases of Hindu law, mostly by the Privy Council. If Honourable Members be interested in the matter, let them take up any annotated edition of the Transfer of Property Act, and they will find that in the notes to every section the authorities given are cases of Hindu law decided in the Privy Council. If it be said, well, there may be some hidden rule of Hindu law which is not known to us at the present moment, that some unknown manuscript may be found in a Buddhist monastery in Nepal or Tibet in which some new rule of Hindu law may be discovered, my answer to that is this. If that be a fundamental rule of Hindu law, then it will be for the Hindu community to approach the Legislature to incorporate it in the Transfer of Property Act ; because the only way in which we can now amend our laws is through the Legislature. If any such brilliant discovery be made at any time the Legislature would not shut its doors. Sir, my contention further is this, that to prevent the setting up of unknown and mysterious doctrines of Hindu law, it is necessary to delete those words. It is well known to my friend Mr. Mookerjee that in a certain celebrated case in

Calcutta years ago, a Sanskrit manuscript on adoption was produced in which there was a certain rule as to how property should be divided between the adopted son and subsequent born sons. According to that manuscript a decision was come to, and, subsequently it was discovered that that manuscript was a forgery. The matter came before the Privy Council a few years ago, and the Privy Council said that they were satisfied that the book was not authentic, but the decision had been followed for the last hundred years and they were not going to unsettle decisions.

Now, Sir, I come to my last point that, in law, when you are dealing with title to immoveable property, it is much safer to be certain, it is much more desirable to be certain than even to be accurate. Certainty is of greater importance than even the substance of the law, because people should know where they stand. The law may be defective, but if people know that this is the law, well, that gives certainty to title. If you leave something vague which may militate against Chapter II, when the whole law is being thoroughly revised, you leave open a door for uncertainty to title which I hope this House will deprecate. All we are intending to do is to ensure certainty of title, to ensure certainty in the law, so that people dealing with immoveable property may know where they stand.

For these reasons, Sir, this amendment is not acceptable.

THE HONOURABLE MR. G. S. KHAPARDE (Berar Representative): I wish to submit one point which is my difficulty. How is the intention to be derived from a document ? The learned Law Member said that it is on the caste of the man who has made the will, the ideas that were prevalent at the time and the ordinary manner in which things were done. If those are the criteria on which the intention of a document is to be gathered, I submit that our whole system of Hindu law is now in process of dissolution. The whole thing is so to say in a condition of flux. Last year we passed a law here regulating inheritance among women, and each time such a question arises interpretation on those lines will be impossible. I have taken part in such legal discussions in my time and I do to this day, and I humbly submit that when you come to interpret a will, are you going to turn to the date of the will, ascertain what the caste of the man was and what the opinions of the people were at that time ? I submit that that will be an impossible way of interpreting things....

THE HONOURABLE SIR MANECKJI DADABHOY : You have been doing that for the last 50 years.

THE HONOURABLE MR. G. S. KHAPARDE : Not in that way ; at least so for as my experience goes and I have appeared before the Privy Council in a number of cases. That is not the way it is done. So if the word " Hindu " is omitted here, what will happen in regard to other matters ? Sir, themeaning of a document is to be derived within the four corners of that docunt. I therefor feel a difficulty and am disposed to support the amendment.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras : Non-Muhamadan) : Sir, I entirely agree with the Law Member in this matter. I would only say to the Honourable Mr. Khaparde that with regardtor what Hindu law means nobody is certain. One of the erudite Honourable Judges of the Madras High Court, the late Sir T. Sadasiva Aiyar, used to say that old Hindu

[Mr. V. Ramadas Pantulu.]

law never gave a limited right to a woman but an absolute right. Therefore, he generally refused to gather any intention in a document which purported to make a gift to a lady of a gift of only a limited interest in the absence of clear words. To leave these vague words in the clause would therefore leave the door open to numerous speculations on Hindu and Buddhist laws. I think the arguments advanced by the Law Member are absolutely convincing.

THE HONOURABLE THE PRESIDENT: The original question was:

"That clause 3 do stand part of the Bill."

Since which an amendment has been moved:

"To omit the words 'the word "Hindu" and' and to make consequential changes."

The question is that that amendment be made.

The motion was negatived.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: With regard to my next amendment I think I am on stronger ground than the last one. The amendment is:

"That in clause 3 of the Bill the words 'and the words "or Buddhist"' be omitted and consequential changes be made."

Sir, although the Transfer of Property Act was passed in 1882 that Act was not made applicable to Burma till very recently. Therefore, the most important argument advanced by the Honourable the Law Member that with regard to Hindu law since 1882 we have had all these points inquired into—whether there was any point of difference between the provisions of Hindu law and the second Chapter of the Transfer of Property Act—would not be applicable to Burma. I do not claim to know the Buddhist law and the only opinion on the strength of which this proposal is now before the Council is the opinion expressed by the Government of Burma and by the High Court of Burma. That opinion had been given when the Bill was originally circulated, and we have not been given the actual opinion which was given by those two authorities. Sir, my submission to this House would be that so far as the Government of Burma is concerned, they are not expected to know what the provisions of Burmese law are, and so far as the Judges are concerned, with due respect to them, they were not required to compare the provisions of the Transfer of Property Act and Burmese law for more than a year or so when their opinion was given. Sir, I feel that this matter ought to be inquired into more fully before an amendment is made in an Act which has been in force since 1882. The force of the argument that the word is redundant, I submit is not applicable in this case with the same force as in the case of Hindus. It is rather the absence of adequate information about this point that prompts me to propose this amendment.

THE HONOURABLE SIR BROJENDRA MITTER: In this case, Sir, the only two authorities who know anything about the Buddhist law favour the deletion.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: What does the Government of Burma know about Buddhist law?

THE HONOURABLE SIR BROJENDRA MITTER: My friend Mr. Mookerjee knows that when a Local Government is asked to express an opinion on any

particular measure, it always consults persons who are likely to give an authoritative opinion on that point. I can say from personal experience that when the Bengal Government was asked to give any opinion on any measure, I used to be invariably consulted when I might give an informed opinion. Mr. Mookerjee knows very well that a Local Government never returns an opinion without ascertaining the views of persons who are likely to express an authoritative opinion on the subject. The only two bodies which gave opinion on this matter are the Government of Burma and the High Court of Rangoon, and both of them favour the deletion. In the face of that, I think it would not be wise on our part to retain the words.

THE HONOURABLE THE PRESIDENT: The question is;

"That in clause 3 of the Bill the words 'and the words "or Buddhist" ' be omitted and consequential changes be made".

The motion was negatived.

Clause 3 was added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 4.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: Sir, I beg to move:

"That in *Explanation I* of clause 4 of the Bill, after the words 'any person acquiring' the following words be inserted, namely, 'subsequent to such registration'."

In the Explanation in clause 4 the definition of "notice" is being modified and the first Explanation is about the notice about registered documents. The Bill as originally drafted has been modified to a certain extent by the other House, but I think it ought to be made clear that it is only in the case of such documents as are registered before the transaction that a person is imputed with notice. Probably that is the intention of the framers of the Bill, but I think that that is not clear from the wording of the Explanation, and I would adopt the words of the Honourable the Law Member in saying that we (in the Legislature) ought to make the law as clear and unambiguous as possible. Let it not be left for future decision by the judiciary and for the litigant public to pay lawyers before that question is decided. Sir, if my amendment is accepted, the position will be that only of such documents as might have been registered before I take a property I would be imputed with notice; but the words as put down here are susceptible of the other meaning; even though I may search the Registration Office before my purchase and take a property and if other persons deal with the property and have documents registered in the Registration Office, I would be imputed with notice of those subsequently registered documents as well. I am sure that is never the intention either of the Committee or of the Honourable the Law Member. It is only for that purpose that I propose the addition of these words.

THE HONOURABLE MR. L. GRAHAM: Sir, after hearing the Honourable Member move his amendment, and since I received notice of it, I have read this Explanation with the utmost care to see whether two possible meanings could possibly be attached to it, and I am convinced—and any body who has read

[Mr. L. Graham.]

the Explanation with care must be convinced— that only one possible meaning can attach to these words :

" Where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property..... shall be deemed ....."

That surely means, Sir, that acquisition must be after the registration. I would therefore say to the Honourable Member that the words which he is proposing to introduce will be redundant, and therefore offend against another canon of drafting to which the Honourable the Law Member referred in dealing with an earlier amendment ; the words are entirely superfluous ; and a provision made in the Bill in this revising House which merely inserts superfluous words appears to me to be a bad practice.

THE HONOURABLE THE PRESIDENT : The question is :

" That in Explanation I of clause 4 of the Bill, after the words ' any person acquiring ' the following words be inserted, namely, ' subsequent to such registration '. "

The motion was negatived.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : The next amendment that I have to move is :

" That Explanation II of clause 4 of the Bill be omitted and Explanation III be renumbered as Explanation II of clause 4 of the Bill."

This Explanation deals with the notice of the title of persons who may be in possession of the property. At page 4 of the notes, the Special Committee deals with this clause. The Special Committee says that it is not clear how far possession is to be regarded as notice and then after considering that point suggest that this Explanation be added. In this connection I would draw the attention of the House to the opinion expressed by the Bengal Chamber of Commerce with regard to this clause. At page 18 of Paper No. I of the Opinions, this is what the Bengal Chamber of Commerce says :

" Explanation II provides that a person dealing with immoveable property ".

—and then the clause as drafted is quoted—

" and when the matter was previously before them, the Committee did not take exception to the proposal because it appeared that the proposal embodied in the Explanation followed as a natural corollary to the definition of notice. In principle there is nothing objectionable in the view that a person dealing with immoveable property should be assumed to have notice of the title of the person in ' actual possession ' thereof. But on reconsideration the Committee are disposed to think that the proposal should not be acted on. The expression ' actual possession ' is extremely difficult to define "

I would draw the special attention of the Law Member to this :

" the expression actual possession is extremely difficult to define and instances are not inconceivable in which a tenant, although not in physical occupation, may yet be said to be in actual possession—as for example, when trees belonging to him are on the property ."

THE HONOURABLE SIR MANECKJI DADABHOY : That is a travesty of law.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : This is not at all a travesty of law, but you have to deal with these things in the court of law every day of your profession. Sir, here another thing is not alluded to.

The proposed Explanation deals with persons who are in actual possession thereof. The clause is silent whether he is in possession of the whole or in possession of a part only. If I am going to purchase a property, say, of 500 bigahs, if any person be in possession of one bigah of that 500 bigahs and if that person claims the title to the whole of that property, I am under this Explanation imputed with this notice of the claim of the person who is in possession of one bigah only. There is the further difficulty that there is no law which compels the person in possession to explain what kind of title he has got or what claims he has got with regard to the whole property. When I cannot compel a person to give all the information concerning the property, how can I be imputed with a notice with regard to the title which he might have secretly claimed? No distinction is here made between a part possessor and a possessor of the whole, and no provision is also made for making it possible for the purchaser to get information from the person in possession, Sir, I would further submit that the definition of "notice" as now drafted under the first part of clause 4 makes ample provision for bringing any such cases as might be regarded as reasonable. Under the first part of clause 4, 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. The present section with regard to the definition of "notice" is somewhat on these terms, that has been of sufficient force and courts have been able to impute notice on careless purchasers of titles which other persons in possession might have got. My objection is that the Explanation does not take note of any exception whatsoever but imputes the notice not only in a reasonable case, but indeed in all cases which might be regarded as unreasonable even. A person who has to take a property must be careful, he must be diligent, but you cannot impute the notice of anything and everything that may be on the land and which may be secretly thought of by any person in possession. Sir, the purpose for which the Explanation is sought to be introduced would, I think, be amply provided by the definition of "notice" itself, and the Explanation is not necessary and ought not to be put in.

THE HONOURABLE MR. L. GRAHAM: Sir, I understand from the Mover that he considers this Explanation to be superfluous.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: Not wholly superfluous.

THE HONOURABLE MR. L. GRAHAM: Partly superfluous. But I would, in the first place, point out that in the Notes on Clauses on this subject it is stated with reference to the existing state of the law that it is not clear how far possession is to be regarded as notice. That is not a statement as regards what is desirable but as to what is the position under the existing law. The Committee themselves go on in no uncertain voice to explain what they think should be the position with regard to the occupation of a property. They go on to say:

"Possession which operates as notice, however, must be actual possession. It does not seem reasonable that a person entering into a transaction regarding immoveable property should be in the position to ignore the question of possession or should neglect to inquire into the nature of the possessi on or the title of the person who is in actual possession of such property, if he is not the person with whom he is dealing'."

[Mr. L. Graham.]

I submit, Sir, that the objections raised by my Honourable friend are purely fanciful, and that the recommendation made by the Committee and embodied in the Act is an extremely sound recommendation and is necessary as an Explanation to the more general terms in which the definition of "notice" has been framed in the Bill. I therefore oppose the motion.

THE HONOURABLE THE PRESIDENT: The question is:

"That Explanation II of clause 4 of the Bill be omitted, and Explanation III be renumbered as Explanation II of clause 4 of the Bill."

The motion was negatived.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY; Sir I beg to submit that this clause is rather premature. There was a long discussion about this clause in the Legislative Assembly, and the Honourable the Law Member himself admitted that the law of registration is not quite perfect and he would try his best to get it perfected. I therefore submit that before that is done this clause ought not to be introduced, specially because this is perhaps one of the very few cases in which an attempt is now being made to go against the latest decision of the Privy Council. That decision has been that a question of notice is a question of fact and has to be decided on the merits of each particular case. We ought not to change that law so hastily, especially when the law of registration is not quite perfect. I therefore oppose this motion.

THE HONOURABLE SIR BROJENDRA MITTER: Sir, this clause was inserted in the Bill solely for the purpose of setting at rest the conflict of judicial decisions in different High Courts, as to when registration has to be considered to be notice or not.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: But the Privy Council have said there is no difference.

THE HONOURABLE SIR BROJENDRA MITTER: I am coming to the Privy Council decision. There is a considerable conflict of judicial decisions on this point. Now, what the Privy Council has said is this: that whether registration should be considered as notice or not should be treated as a question of fact. That is the law as settled now. What is the effect of it? In every case, when the issue of notice or no notice is raised, you have a mass of evidence on either side to show that in the particular circumstances of that case it did not amount to notice or that it did amount to notice. It is to avoid that volume of litigation, which is the direct result of the Privy Council decision, that we have introduced this.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: I was not opposing it on the merits but said that it was premature. It is proper first to amend the registration law and then have this amendment made.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: Sir, one fact has not been referred to by the Honourable the Law Member—the procedure for registration in the different provinces will have to be modified in the near future, and that has to be done before this Act is given effect to. And I find from the proceedings of the Legislative Assembly that the Honourable the Law Member gave the assurance that he would get all the provinces to have

provision made so as to make it possible that this clause is given effect to from the 1st April 1930. I would certainly accept the statement made by the Honourable the Law Member, but I am very doubtful whether in the different provinces it will be possible to introduce those changes immediately, and if it is not so done, I would like to know what is the suggestion. Would it not have been much better not to have clause 4 passed now but to have it passed in the Delhi Session of the Council so that, in the meantime, if the modification of the registration rules are completed in the provinces, we would certainly accept the proposal in clause 4 as very salutary ? I do not in the least oppose the principle enunciated here. I do not think my Honourable friend Mr. Ray Chaudhury does. He was referring to the Privy Council decision. The Honourable the Law Member is perfectly correct in saying that it would lead to much more litigation if clause 4 is not included. But I am only apprehensive whether it is practicable to have the registration rules modified immediately in the different provinces.

THE HONOURABLE SIR BROJENDRA MITTER : Sir, the point was raised that if you make registration notice, having regard to defective registers kept in the provinces the provision might work hardly. That was the point. To that, I gave an assurance in the other House that the Government of India would take immediate steps to draw the attention of the Provincial Governments to effect improvements in the matter of keeping their registers. That is a matter which need not take very long. This Bill, if it is passed by this House, will come into operation in April next. There are six months in the meantime, and in six months the registration rules may certainly be expected to be revised in the provinces. I hope Honourable Members will accept that assurance from me that, as soon as this Bill is passed, the Government of India will draw the attention of the Provincial Governments to effect improvements....

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Supposing legislation becomes necessary ?

THE HONOURABLE SIR BROJENDRA MITTER : It is only in the rules that an improvement is required. All that was said was that the registers kept were not easily available, that the registers kept were not always properly indexed. Certain defects like these were pointed out which made it difficult to make a search, because, if you have not got a proper index, necessarily you have got to run through the whole book before you can get to the matter which you want investigated. Proper indexing and proper registers are matters for rules, not matters of legislation. Under the Registration Act, Local Governments have got the power to make rules. Under the rule-making power, they can easily make the improvements to which we shall draw their specific attention.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : Will an index of all the past years be taken up and re-done properly ?

THE HONOURABLE THE PRESIDENT : The matter has been sufficiently discussed. There is at the moment no amendment before the House. I would suggest that the Honourable Member should discuss it with the Honourable the Law Member afterwards outside the House.

[The President.]

The question is:

"That clause 4 do stand part of the Bill".

The motion was adopted.

Clause 4 was added to the Bill.

Clauses 5 and 6 were added to the Bill.

THE HONOURABLE THE PRESIDENT: The question is:

"That clause 7 do stand part of the Bill."

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: Sir, my amendment is:

"That clause 7 of the Bill be omitted."

I do not think I need move it. I think I have to oppose the clause itself.

THE HONOURABLE THE PRESIDENT: Yes. The Honourable Member should not move it as an amendment.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: I have said that. The reason why I object to this clause is this, that it is not clear what is meant by the words used here "secured or determined". The clause runs:

"A right to future maintenance, in whatsoever manner arising, secured or determined cannot be transferred".

The principle is that future maintenance cannot be transferred. Supposing a widow is given Rs. 50 a month as maintenance, that ought not to be allowed to be transferred. I agree there. But when property is given to a widow in lieu of maintenance—and that is what I take it is meant by "secured or determined"—what would be the position? She cannot transfer the property in any way, and here transference means that she cannot even lease out the property during her lifetime. I would draw the attention of the House to page 5 of the notes. Clause 7 is referred to as section 6 there. This is the pertinent portion to which I want to refer:

"Although an agreement or a decree would make such right definite, it is nevertheless a right created for the personal benefit of the qualified owner and should not be alienable".

Now, when any maintenance is secured by a decree, it is not always the actual amount of money but a property which is given to the widow for maintenance or for the matter of that, to any other person. There was the same objection which was raised by the Bengal Chamber of Commerce. They also said that, if the rule was enforced, a property which is given to a life tenant or limited interest, if she has no right to alienate the property in whatsoever way, then there will be other difficulties. This is at page 18 of the Opinions, Paper No. 1. This is what the Bengal Chamber of Commerce say:

"This clause seeks to prohibit transfers of 'right to future maintenance' and places such rights in the same category as the chance of an heir-apparent. Rights of maintenance often arise in Hindu families in the case of females who are not entitled to participate in the joint estate. The Committee understand that transfers of such rights are permitted by Hindu law, and that nstances are not uncommon where maintenance claims are surrendered to enable the male members of a family to dispose of joint property. It is now intended to take away this liberty with a view to place these rights beyond the reach of improvident managers or trustees of joint property. The restriction thus sought to be imposed is likely to introduce a check on the free transfer of property and serious difficulties

might arise in cases where lands or immoveable property affected by rights of maintenance are required for industrial purposes. The Chamber is accordingly of opinion that the clause should be deleted."

There is another type of cases which I was thinking of. In the impartible estate, the maintenance is given to the junior members of the family, whether it is called *babuana* grant or by some other term, by which property is sometimes given absolutely to the junior member and at other times it is a limited interest which is given to the junior member for maintenance. Would these kinds of cases come in under this clause also ? That is the difficulty under which I am labouring, and if the Honourable the Law Member will assure me that all these cases do not come within this clause, then I will not press my objection. To my mind, whether the Honourable the Law Member and I agree or not, I am sure this will have later on to be taken up to the law courts and decided by them as to what this means.

THE HONOURABLE SIR BROJENDRA MITTER : Sir, I think the Honourable Mr. Mookerjee is under a misapprehension. All that is sought to be made inalienable is a right to future maintenance. We are not seeking to make inalienable any immoveable property upon which maintenance is charged. The clause is designed to protect that right—however that right may arise, however that right may be secured, or however that right may be determined.

We are dealing with the right to future maintenance, not dealing with any tangible property. It is an intangible right. This clause is intended to protect persons who have got the personal right to maintenance. That right may arise by agreement. Suppose a widow and the husband's brothers come to an agreement that she should be given a certain maintenance. All we are seeking to do is that that right to get future maintenance should not be alienated. Then, it may be secured or unsecured. The brothers, for instance, may set apart a certain property ; that is not the widow's property and she has no right to alienate that. Of course, if there is a charge on it, then the owners of the property, that is the husband's brothers, may not transfer that property free from that charge. The maintenance may also be secured on property by decree. That is the meaning of the word " secured ". And " determined " is important—determined by decree, for instance. It is by reason of the cases mentioned in the Notes on Clauses that the word " determine " was used. So that, all that is sought to be done is this. If a widow has got a right to future maintenance, she cannot alienate that right ; of course if any arrears of maintenance be accumulated in her hands she can deal with it ; it may be attachable or alienable. That is not interfered with. We are only dealing with the right to future maintenance. The widow cannot alienate that right. It has nothing whatever to do with tangible property. This disposes of Mr. Mookerjee's point in regard to property known as *babuana* grant in the case of impartible estates. There, property is given for maintenance ; but we are not dealing with tangible property at all. We are dealing with the right to get future maintenance whether that right arises by agreement, or whether that right is determined by a court in a decree, and howsoever that right may be secured, whether by agreement or otherwise. It is only that right to get future maintenance which we desire to make inalienable, for the benefit of the widows concerned, who are entitled to protection at the hands of the Legislature.

THE HONOURABLE THE PRESIDENT : The question is :

" That clause 7 do stand part of the Bill. "

The motion was adopted.

Clause 7 was added to the Bill.

Clauses 8, 9, 10, 11, 12, 13, 14 and 15 were added to the Bill.

THE HONOURABLE THE PRESIDENT : The question is :

" That clause 16 do stand part of the Bill."

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : May I know if I would be in order in moving all these amendments together ? They are all connected.

THE HONOURABLE THE PRESIDENT : If the Honourable Member feels that the defeat of his first amendment would involve the fate of the rest, then I think he had better move them all together.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Sir, I beg to move :

" That in the new section 53A, proposed to be inserted by clause 16 of the Bill,—

(*a*) after the words ' contracts to transfer ' the words ' or transfers ' be inserted ;

(*b*) in the second paragraph of the section after the words ' and the ' the words ' person contracted with or the ' be inserted ;

(*c*) in the same paragraph the words ' the transferee ' be omitted ;

(*d*) in the third paragraph of the section after the words ' and the ' the words ' person contracted with or the ' be inserted ;

(*e*) in the fourth paragraph of the section after the words ' being in force ' the words ' contractor or the ' be inserted."

With regard to the next amendment I think there is some mistake in the printing. It should be :

" (*f*) in the fourth paragraph of the section after the words ' enforcing against the ' the words ' person contracted with or the ' be inserted."

I seek your permission, Sir, to make that change in that amendment. Then (*g*) is :

" (*g*) in the Proviso to the section after the words ' rights of a ' the word ' subsequent ' be inserted."

I beg to submit that these are all drafting amendments. The section contemplates two cases. One is the case of an agreement to transfer and the other is a case of an ineffectual transfer, both followed by subsequent acts of part performance. But in the different paragraphs only one or the other case is dealt with. Take, for instance, the first paragraph :

" Where any person contracts to transfer for consideration any immoveable property."

That does not contemplate the case of an in-effectual transfer. Therefore, I want to add the words " or transfers " after the words " contracts to transfer" So that it will run :

" Where any person contracts to transfer or transfers any immoveable property, etc."

Then take the next paragraph,

"and the transferee has, in part performance".

—that contemplates the case of a transfer only and not an agreement to transfer. Therefore I want to add the words "person contracted with or the" before the word "transferee" in the first line. Then I want to omit the words "the transferee" in the same paragraph because I want both the cases to be comprehended and the word "transferee" therefore becomes unnecessary. Then the next paragraph contemplates the case of a transferee only and not of a contract to transfer—

"and the transferee has performed or is willing to perform his part of the contract".

So I want to add the words "person contracted with or the" before "transferee". Then in the next paragraph—

"has not been completed in the manner prescribed therefor by the law for the time being in force"—

—this is a case of an executed contract and I want to bring it into line with the previous contracts mentioned in the section. Therefore after the words "for the time being in force" I want to insert the words "contractor or the", and after the words "enforcing against the" lower down in the same paragraph I want to add the words "person contracted with or the". Then my last amendment is in the proviso:

"Provided that nothing in this section shall affect the rights of a transferee....."

I want to add the word "subsequent" before "transferee" because we do not contemplate that a prior transferee will be bound by this transaction. Those are the objects of my amendments.

THE HONOURABLE SIR BROJENDRA MITTER: Sir, I think the Honourable Member is under a misapprehension. Before I deal with the amendments, may I just explain what the intention of the new section 53A is? Clause 53A gives statutory recognition to the equitable doctrine of part performance. As Honourable Members are aware, there may be a contract to transfer a property. When there is a mere contract to transfer a property, the property is not transferred. The property would be transferred when there is a conveyance. Thus, there are two stages, the stage of contract and the stage of conveyance. When the transfer is completed by a conveyance, the ownership of the property passes on to the transferee. Sir, we are dealing not with the stage of conveyance, but with the prior stage of contract. When there has been a contract for a transfer, but the transfer has not been effected by conveyance, it is at that stage that the doctrine of part performance comes into play. If there is an ineffectual transfer, there is no conveyance. We are still in the stage of contract, and that is covered by the words in this clause. The existing clause in the Bill, as drawn up, will cover cases of ineffectual transfers. That being so, there is no room for introducing the words "or transfers". If you introduce the word "transfers", if a transfer has been completely effected, then where does the doctrine of part performance come in? There the whole transaction is complete. Although the transfer has not been effected according to law, that is by a document registered, in such cases if one party to the contract takes possession or partly performs his part of the contract, then

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the well known maxim of equity, that equity regards that as done which ought to be done, comes into operation; and, therefore, we say if one party to the contract—we are not in the stage of conveyance at all—has done his part, then the other party to the contract would be estopped from denying that the first party has got a valid transfer. The whole of this section deals with the stage of contract. It has got nothing whatsoever to do with a completed transfer, and I think the Honourable Member's amendments were drafted on the misapprehension that an ineffectual transfer was a transfer; but an ineffectual transfer is *not* a transfer. All the subsequent amendments are consequential. Then, he wants to add the word "subsequent" in the Proviso. It is not necessary. If the Honourable Mr. Ray Chaudhury looks at section 48 of the Transfer of Property Act, he will find that it deals with priorities, that is, priorities according to date. Therefore the word "subsequent" is not necessary.

THE HONOURABLE THE PRESIDENT: The question is:

"That this amendment* be made."

The motion was negatived.

Clause 16 was added to the Bill.

Clauses 17 and 18 were added to the Bill.

THE HONOURABLE THE PRESIDENT: The question is:

"That clause 19 do stand part of the Bill."

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: Sir, my amendment to clause 19 is in these terms:

"That in the new clause (*f*) proposed to be inserted by sub-clause (*c*) of clause 19 of the Bill for the word 'in' where it first occurs the words 'within the municipal jurisdiction of' be substituted, and for the word 'in' where it occurs for the second time the word 'of' be substituted."

The purpose for which I have brought this amendment is this. The Honourable the Law Member knows very well that in Calcutta mortgage by deposit of title deeds is allowed, but whether it is within the original jurisdiction of the High Court or within the municipal jurisdiction of the town, there was a difference of opinion, and the present view, at least in Calcutta, is that it is within the original jurisdiction of the High Court of Calcutta. That is due to the wording of the section and another piece of legislation. This section is brought in here in the same form as it was originally. No change has been made, but because of the difficulty that has been raised, I want to make it clear that it is not within the original jurisdiction of the High Court of Calcutta, but within the municipal jurisdiction of Calcutta. Whenever the word "town" is used in any Act, the commonsense point of view is that the town is the municipal town which we know; but when there is that possibility and when that difficulty has arisen, I want to make it clear that mortgage by deposit of title deeds would be allowed within the municipal limits of the town of Calcutta. I do not know exactly what is the position in Madars, Bombay, Karachi, Rangoon, Moulmein, Bassein and Akyab. At least in some places where there are no High Courts, it must be the municipal limits of those towns. For example, in the case of Karachi, Moulmein,

* *Vide* page 276 of these proceedings.

Bassein or Akyab, there is no original civil jurisdiction of the High Court for those towns. Therefore we have one interpretation to be put with regard to towns where there is original civil jurisdiction of the High Courts and there is another interpretation with regard to towns where there is no original civil jurisdiction of the High Court. That is the purpose for which I have proposed this amendment.

THE HONOURABLE SIR BROJENDRA MITTER: Sir, I think the Honourable Member, after I have explained the matter, will not press his amendment. Honourable Members know that the principle underlying the provision for mortgage by deposit of title deeds is that in commercial ports it is not possible always to effect a regular mortgage within a short time. Such a mortgage would involve investigation of title which may take days, and, in order that commercial people may be able to raise money on mortgage of their properties quickly, this provision was made. So, it is intended that the provision for mortgage by deposit of title deeds should be limited to commercial towns and should not be extended in any way. Therefore, these towns, Calcutta, Madras, Bombay, Karachi, Rangoon, Moulmein, Bassein and Akyab are specifically mentioned. The provision may be extended to other towns which the Governor General in Council may, by notification in the Gazette of India, specify in this behalf. It is left to the Governor General in Council to specify the limits within which this particular form of mortgage should be allowed. Sir, it has been held, as the Honourable Mr. Mookerjee has pointed out, that the town of Calcutta means the limits of the ordinary original civil jurisdiction of the High Court which is the commercial port of Calcutta.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: Not now.

THE HONOURABLE SIR BROJENDRA MITTER: If my friend wants to extend it to municipal Calcutta, he would be extending it northward, southward and eastward which would double the area of the town of Calcutta. It was never the intention, when this provision was enacted, that it should be extended to places other than commercial ports. Probably the Honourable Mr. Mookerjee knows that there is a Statute by which the limits of the town of Calcutta have been defined, subject to the power of the Local Government to change the limits from time to time. So that, if it be found necessary at any time that the limits of the town should be extended, it would be for the Local Government by notification to amend the boundaries.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: But the Local Government can extend the boundaries not for any definite purpose like this but generally.

THE HONOURABLE SIR BROJENDRA MITTER: Supposing the limits of the town of Calcutta are extended by the Local Government by a notification under their statutory power, then that extended area would come under the operation of this section, because the extended area would then be included in the town of Calcutta. That is one reason why I say that we should not here attempt to extend the limits within which these mortgages by deposit of title deeds may be permitted. We should not do it as a matter of policy. There is a further objection which affects the revenues of the Provincial Governments. When there is a mortgage by deposit of title deeds, no stamp fee is required. That

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being so, if you extend the area, you affect the revenue of the province concerned. We must not do anything here by which provincial revenue may be affected.

THE HONOURABLE THE PRESIDENT: The question is:

"That these amendments* be made in clause 19".

The motion was negatived.

Clause 19 was added to the Bill.

Clauses 20, 21, 22, 23 and 24 were added to the Bill.

Clauses 25, 26, 27, 28, and 29 were added to the Bill.

THE HONOURABLE THE PRESIDENT: The question is:

"That clause 30 do stand part of the Bill".

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: Sir I beg to move:

"That in sub-section (2)(a) of the new section 65-A proposed to be inserted by clause 30 of the Bill, after the words 'every such lease' the words 'shall not be permanent and' be inserted."

My object in making this amendment is that there ought to be at least a provision expressly stating that such lease should not be made a permanent one. Sub-clause (2) (a) would then run as follows:

"Every such lease shall not be permanent and shall be served as if made in the ordinary course of management."

I want it to be specifically and clearly laid down that permanent leases should be allowed to be granted by the mortgagor.

THE HONOURABLE SIR BROJENDRA MITTER: Sir, I must oppose this amendment. What we have provided is the present law—we have done nothing new here. It is the law but there was no specific provision in our Act, that is why we have framed this clause. What we say is that a mortgagor, after he has mortgaged his property, should have the power to grant a lease of his property, but we ha e placed restrictions upon his powers, so that he may not exercise his powers capriciously. He may only grant the lease in the ordinary course of management and in accordance with the local law, custom or usage. Now, if it be the local law, custom or usage in any particular locality that none but a permanent lease is taken by anybody, then, if you deny the mortgagor the right to grant a permanent lease in these circumstances, you deny him the right to grant a lease at all. Mr. Ray Chaudhury knows very well that in many parts of Bengal no tenant would take land except on a permanent lease. They will not take it on a shorter lease. Now, if you say to a man who has mortgaged his property that he must not grant a permanent lease, then you deny him the right to grant a lease at all. Is that to the interest either of the mortgagor or the mortgagee? The mortgagor cannot till the land himself. He has got to grant a lease. But if you deny him the power to grant a permanent lease, when the local usage and custom demand it, the result will be that the land will remain uncultivated to the prejudice both of the mortgagor and mortgagee.

* *Vide* page 278 of these proceedings.

Therefore, I submit my Honourable friend should not press his amendment. Sufficient safeguards have been provided. If the local usage permits only shorter leases, then the mortgagor will certainly not be allowed to grant a permanent lease. The restrictions being there, the further restriction which may amount to total denial should not be adopted.

THE HONOURABLE MR. V. RAMADAS PANTULU: I wish to say one word in support of what the Law Member has said. The Tenancy Acts in some provinces recognise mortgagees as landholders. In Madras, no landholder can give a lease of *ryoti* land for any short period which does not carry with it the incidence of a permanent lease. If this enactment says he shall not give a permanent lease, there will be a conflict of laws between the provincial enactments and the Imperial enactment, and it will be very disastrous. Therefore, I think the words would have a very mischievous legal effect in some ways.

THE HONOURABLE MR. G. S. KHAPARDE: In my country, Sir, there is no local custom. In the absence of local custom what will be the practice ?

THE HONOURABLE SIR BROJENDRA MITTER: The words are " in the ordinary course of management ", whatever may be the ordinary course of management.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: I only want to add one word. A permanent lease may have to be granted in certain cases. But when a permanent lease is given and a large *salami* is taken and only a small rent is reserved, what becomes of the security ? The security is gone.

THE HONOURABLE SIR BROJENDRA MITTER: Clause (*b*) provides for that.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: The proviso is there that no premium shall be paid. Even if it be so under the law, no premium will be paid openly, but a large premium would be taken secretly and a small rent would be reserved. That cannot be avoided by the Act or by the Legislature. Therefore, there ought to have been some step taken by which the interest of the creditor would be safeguarded. With regard to local custom and usage, that is again a very vague term. It is very difficult to know what are the local usages or customs with regard to the granting of leases. That would create further litigation.

THE HONOURABLE THE PRESIDENT: The question is :

" That in sub-section (*2*)(*a*) of the new section 65-A, proposed to be inserted by clause 30 of the Bill, after the words ' every such lease ' the words ' shall not be permanent and ' be inserted."

The motion was negatived.

THE HONOURABLE THE PRESIDENT: The question is :

" That clause 30 do stand part of the Bill. "

The motion was adopted.

Clause 30 was added to the Bill.

THE HONOURABLE THE PRESIDENT: The question is :

" That clause 31 do stand part of the Bill. "

(Honourable Members did not respond when the President put the question.)

THE HONOURABLE THE PRESIDENT: If Honourable Members say neither "Aye" nor "No" they put the Chair in a difficulty. I shall put the question again:

The question is:

"That clause 31 do stand part of the Bill."

The motion was adopted.

Clause 31 was added to the Bill.

THE HONOURABLE THE PRESIDENT: The question is:

"That clause 32 do stand part of the Bill."

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERKJEE: Sir I move:

"That in the new section 67A proposed to be inserted by clause 32 of the Bill after the words 'two or more mortgages' the words 'in respect of the same property' be inserted."

Sir, I am in very good company so far as this amendment is concerned, because Mr. Lal Gopal Mukherjee, now Mr. Justice Lal Gopal Mukherjee of the Allahabad High Court, who was deputed by the Government of India to work on the amendments to be made in the Transfer of Property Act. proposed the very same thing. His opinion is on page 38 of the opinions This opinion was given by him subsequently when the Bill was drafted by the Legislative Department and sent to the High Court of Allahabad for the opinion of the Honourable Judges. This is his opinion:

"This amendment as proposed (he refers to the clause) is indefinite. The case reported in XXV C. W. N. 129 refers to several mortgages over the same property. The amendment will be clear if the words 'in respect of the same property' is added after the words 'two or more mortgages.' It will entail hardships on the mortgagor as well as on the mortgagee if two or more mortgages over different properties are combined in one suit, as it would compel the mortgagor to redeem them all which he might not be prepared to do. Moreover, in certain cases, it will be difficult too for courts to prepare decrees if the mortgages and properties are different. I will therefore suggest that the above amendment be confined to mortgages over the same property only."

If you refer to page 32 of the Notes on Clauses, you will find there described the steps taken by the Calcutta High Court to safeguard the interests of the mortgagee and the mortgagor in the case there referred to, namely, the case in 25 C. W. N., 129. I need not repeat them here. Those are accepted by the Special Committee as the most equitable one, and it is to give effect to those provisions or rather those steps, that this provision is made in the amending Bill. Sir, it may be said, and I think that is what is going to be said by the Honourable the Law Member, that it is absolutely clear from the section itself that it is only with regard to mortgage in respect of the same property that this section applies. Both the Honourable the Law Member and I have experience of the Bar. But when we have the definite recommendation of one of His Majesty's Judges, we have to take note of that, because it would not do for the Legislature here to say or for the Honourable the Law Member to say that that is the interpretation that I put on the clause.

The interpretation will be put by the High Courts, and the mentality of the Judges can very well be ascertained from the opinion that has been given by the Honourable Mr. Justice Lal Gopal Mukherjee. In view of this, I think this amendment ought to be accepted by the Honourable the Law Member.

THE HONOURABLE SIR BROJENDRA MITTER: Sir, this point was considered with great care by the Special Committee. The first objection to the addition of these words is this. If you say "two or more mortgages in respect of the same property", strictly speaking, it would be meaningless, because the same property cannot be mortgaged twice. I will tell you how. After the property is mortgaged, the mortgagor has not got that property in him. He has got only the equity of redemption.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: There is difference of opinion in the different courts on that point.

THE HONOURABLE SIR BROJENDRA MITTER: We considered it very carefully. The same property cannot be mortgaged twice. Once the property is mortgaged, all that is left in the mortgagor is the equity of redemption. That being so, when he mortgages the second time, he does not mortgage the original property but mortgages only the equity of redemption. Therefore, strictly speaking, it is not the same property. That is the technical legal objection. If you refer to section 61 of the Act, as amended, there also we were faced with this difficulty, and we omitted the word "property." We simply say:

"A mortgagor who has executed two or more mortgages in favour of the same mortgagee."

Once you introduce the word "property" you will be creating difficulties, and it may be contended that the two mortgages are not of the same property but of different properties. It is for that reason that we deliberately omitted any mention of property. If you say that by "property" is meant a physical entity and not the bundle of rights constituting property, that would conflict with the whole tenour of the Transfer of Property Act.

THE HONOURABLE MR. NARAYAN PRASAD ASTHANA (United Provinces Northern: Non-Muhammadan): Sir, I must confess that I am not satisfied with the explanation which has been given by the Honourable the Law Member, because, on page 32 of the Notes on Clauses we find it stated:

"When, however, a mortgagee holds several mortgages in respect of the same or different properties, it will be prejudicial to the mortgagor if the mortgagee is allowed to enforce one mortgage and keep the other mortgages alive."

Where a mortgagee holds one mortgage over property A and another mortgage over property B of the same mortgagor, then it means that he must bring one suit to enforce both the mortgages. The Honourable the Law Member has said that the different properties in this clause would mean perhaps in one case the equity of redemption and in the other case the property itself. But I think it is susceptible of the interpretation that it may mean two quite distinct properties, A and B, and in a case like this where a mortgagor has two houses and he mortgages one at one time to one person and the other at another time to the same person, then the mortgagee would be obliged to bring in one suit for the two mortgages, namely, one mortgage upon the house A and another upon the house B. That would be a hardship upon the mortgagor, because in that case the mortgagor would be compelled to redeem both the properties A and B, though he may be willing to have one property sold and the other redeemed. Therefore, I think this clause should be made clear to show that the mortgages must be on the same property.

THE HONOURABLE THE PRESIDENT: The original question was:

"That clause 32 do stand part of the Bill."

Since which an amendment has been moved:

"To insert after the words 'two or more mortgages' in the new section 67A, proposed to be inserted by clause 30 of the Bill, the words 'in respect of the same property'."

The question is that that amendment be made.

The motion was negatived.

Clause 32 was added to the Bill.

The Council then adjourned for Lunch till Ten Minutes to Three of the Clock.

The Council re-assembled after Lunch at Ten Minutes to Three of the Clock, the Honourable the President in the Chair.

THE HONOURABLE THE PRESIDENT: The question is:

"That clause 33 do stand part of the Bill."

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: Sir, I beg to move:

"That in sub-section (*1*) of the new section 68 proposed to be substituted by clause 33 of the Bill—

(*a*) for the word 'a' where it first occurs the word 'the' be substituted; and

(*b*) for the word 'sue' the words 'bring a money suit' be substituted."

My object in moving this amendment is simply to clearly explain the nature of the suit here. The other sections which precede it relate to a suit for redemption and sale and this is a suit simply to recover the money, and the words "right to sue for the mortgage money" are not clear enough for that purpose. I therefore propose that this amendment should be made.

THE HONOURABLE MR. L. GRAHAM: Sir, I am still at a loss to understand why the Honourable Member has moved this amendment. We have only reproduced the words of the existing Act in this clause. Our Bill makes no change at all. Section 66 of the existing Act starts off with the words:

"The mortgagee has a right to sue the mortgagor."

We have taken out the word "mortgagor" and say:

"The mortgagee has a right to sue for the mortgage-money."

The Bill makes no change at all in this respect, and I am entirely at a loss to understand why this amendment has been moved.

Sir, I oppose the amendment.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: I wanted to make it more clear.

The motion was negatived.

THE HONOURABLE THE PRESIDENT: The question then is:

"That clause 33 do stand part of the Bill."

The motion was adopted.

Clause 33 was added to the Bill.

Clause 34 was added to the Bill.

THE HONOURABLE THE PRESIDENT: The question is:

"That clause 35 do stand part of the Bill."

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: Sir, I beg to move:

"That in sub-section (*1*) of the new section 69A, proposed to be inserted by clause 35 of the Bill, after the words and figures 'under section 69 shall' the words 'after giving notice to the mortgagor in writing' be inserted."

My object in moving this amendment is simply to give notice to the mortgagor, so that he and his tenants might know that a receiver is going to be appointed and there might be no difficulty about the receiver recovering the rents from the tenants thereafter. That is the simple object of my amendment, and I propose that it be accepted.

THE HONOURABLE MR. L. GRAHAM: Sir, I suggest that this amendment is entirely superfluous. No notice to the mortgagor of the appointment of a receiver can be necessary, and it is not necessary to be provided in the Bill. The appointment is to be of a person who is named in the mortgage-deed. If no such person is named in the mortgage-deed, it is to be made by the court, in which case the mortgagor will necessarily get notice. I therefore oppose the amendment, which is superfluous.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: Will the amendment that stands next in my name be moved separately?

THE HONOURABLE THE PRESIDENT: That will be a separate amendment.

The motion was negatived.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: Sir, I beg to move the amendment that stands in my name:

"That to sub-section (*1*) of the new section 69A, proposed to be inserted by clause 35 of the Bill, the following proviso be added, namely:

'Provided always that the mortgagee on exercising his right to appoint a receiver, mentioned in the mortgage-deed, under this section, shall forthwith intimate the fact and the name of the receiver to the mortgagor by registered post'."

I have mentioned by registered post, because under the General Clauses Act all notices are to be sent by post. Sir, the principle underlying this amendment is somewhat similar to the principle of the amendment which has just been lost. But I would draw the attention of the House to two facts. Under the new section, a receiver may be mentioned in the mortgage-deed. It may be that the mortgage-deed itself may mention that X, Y or Z will be appointed receiver; the mortgagee and the mortgagor may agree to the names. What my amendment provides for is that if the receiver is appointed by the mortgagee from among the names suggested in the mortgage-deed, then notice of that fact should be sent to the debtor. The reason is this. Although the person is accepted by both the parties, the fact that the mortgagee is exercising his right should be brought to the notice of the mortgagor. Unless and until that is done—it must be done at some stage or other—there will be various complications. When the receiver appointed under this section wants to take possession of the property, the tenant on the premises would like to know what

[Srijut Rama Prasad Mookerjee.]

authority he has got and he will have to correspond with the mortgagor to find out what the real situation is. Not only that. It may be that the mortgagor, before he is put to that indignity—it might be taken to be an indignity by some to have a receiver appointed for his property—might very well like to redeem the mortgage. He will have no opportunity to redeem the property before the receiver actually attempts to take possession. There is the third factor to be considered in this connection, that if the mortgagee transfers the mortgage to a third party, who may be acting not *bonâ fide* but simply to harass the mortgagor, he would be appointing the receiver, taking possession of the property; and there is no provision in this section which forbids him from doing that without any reference to the mortgagor. These are the considerations which prompted me to table this amendment. I know that this section has been introduced here from the English Act almost *verbatim*, though not absolutely *verbatim*. I do not, however, know the conditions in England, but, so far as we in India are concerned, I think such a contingency ought to be provided for, especially where the mortgagor is not always a literate person in the sense that he knows all the effects of the appointment of a receiver—what are the rights and duties of the receiver. If a clause like this is added, I think that would be to the interest of the mortgagor, much more than to the interest of the mortgagee; various other provisions in the Bill have been drawn up keeping in view the interest of the mortgagor much more than the interest of the mortgagee, and I would appeal to the Honourable the Law Member to approach this question from that point of view.

THE HONOURABLE SIR BROJENDRA MITTER: Sir, I quite appreciate that my Honourable friend, Mr. Mookerjee, is prompted by the feeling that the mortgagor ought to be safeguarded and that is the purpose of the amendment. But he is safeguarded as I will presently show. Mr. Mookerjee says that the transferee of the mortgagee can harass a mortgagor. Well, it makes no difference whether the harassment comes from the mortgagee or the transferee. Therefore, the question of the transfer of the mortgage does not come in at all.

3 P.M.

Then, my Honourable friend says, there may be indignity in the appointment of a receiver of mortgaged property. Sir, all I say is this. A mortgagor who owes money to the mortgagee and is not in a position to redeem the property ought not to be allowed to complain of indignity if the mortgagee takes such action to enforce his mortgage and to get his money as the law permits. Therefore, the question of indignity or sentiment does not come in here at all.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: This is a small proposal—not a receiver appointed by the court.

THE HONOURABLE SIR BROJENDRA MITTER: I know. Then my friend says the mortgagor may be an illiterate person and he ought to know what is being done to the property. Well, my answer to that is this. This is confined to English mortgages, and English mortgages are usually executed in big towns and not in the villages. Those who execute English mortgages usually go to a solicitor or to a lawyer to draw up a proper document. The question of illiteracy does not come in here at all. It is not like a deed-writer sitting under a banyan tree and drawing up a deed.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: But it is possible to be done in the mofussil as well.

THE HONOURABLE SIR BROJENDRA MITTER: It is possible. Everything is possible. But I am taking a practical view of the matter. Practically, there will not be any hardship, as the mortgagor will know if there be any interference with his property. And then my Honourable friend says, which is certainly a point worth consideration, that a tenant ought to know that the receiver who claims to collect rent from him is properly authorised. The tenant surely will not pay rent to an outsider unless the outsider satisfies the tenant by the production of a document or otherwise that he has been properly authorized. Therefore, the tenant will not be prejudiced in any way because he will not pay his rent until he is satisfied. The onus is upon the mortgagee who appoints a receiver to clothe the receiver with such authority as will satisfy the tenant.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: But, if the receiver sues him for rent, will he not be liable ?

THE HONOURABLE SIR BROJENDRA MITTER: He will be liable. But what is his liability ? To pay rent. Whether he pays it to A, B or C is immaterial so long as he gets a good discharge and is not made to pay over again.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: But if without knowing about the receiver being appointed he enters on his defence, he will have to pay the cost of the suit.

THE HONOURABLE SIR BROJENDRA MITTER: A defaulter cannot complain if on account of his default the receiver brings a suit for rent which he is liable to pay.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: But before that, the tenant will have the rent.

THE HONOURABLE THE PRESIDENT: The Honourable Member has not exercised his right to make a speech ; he is making numerous interjections. If he has any remarks to make on the Honourable the Law Member's statement, I suggest that he rise and make a speech himself afterwards ; that he is perfectly entitled to do.

THE HONOURABLE SIR BROJENDRA MITTER: Sir, I fail to appreciate the point that a suit on default is harassment. All that my Honourable friend Mr. Mookerjee's amendment asks is that the mortgagor should get notice of the appointment of the receiver. Very well. He gets notice when the person rightfully entitled to collect rent from him has made a demand or has brought a suit against him upon his default. The only point to which Mr. Mookerjee draws the attention of the House is this. Supposing there are 3 persons named in the document alternatively, X, Y and Z, as receiver. How is the mortgagor to know that Y has been appointed ? The mortgagor will not be prejudiced by the appointment. But if Y takes any steps to the prejudice of the mortgagor, he will have to satisfy the mortgagor that he has been properly appointed by the mortgagee. The mortgagor gets notice. Want of previous notice cannot conceivably operate to the prejudice of the mortgagor. Therefore I submit this amendment is entirely unnecessary. The mortgagor is amply protected.

THE HONOURABLE THE PRESIDENT :- The question is :

"That to sub-section (*1*) of the new section 69A, proposed to be inserted by clause 35 of the Bill, the following proviso be added, namely :

'Provided always that the mortgagee on exercising his right to appoint a receiver, mentioned in the mortgage-deed, under this section, shall forthwith intimate the fact and the name of the receiver to the mortgagor by registered post'."

The motion was negatived.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : Sir, here is another amendment which, at least to my mind, is necessary in the interest of the mortgagor :

"That in sub-section (*8*) of section 69A, proposed to be inserted by clause 35 of the Bill, after the words 'and shall' the words 'at least once every twelfth month' be inserted."

Sir, various provisions have been put down under section 69A as to what the duties of the receiver appointed under this section will be and how he is to act. Under sub-clause (*8*) of the proposed section 69A the way in which the funds collected in the hands of the receiver are to be distributed are mentioned. When all the purposes for which the funds may be utilised in the first portion of sub-clause (*8*) are exhausted, then comes the last portion. That is, if there be any balance left in the hands of the receiver, then that would be paid to the mortgagor or whoever is otherwise entitled to the mortgaged property. No time limit is put in the section within which this accounting is to be made. It may be that after meeting all the charges enumerated in the first portion of sub-clause (*8*) from 1 to 5 there may not be sufficient funds in his hands, but if there be any, then within what time is he compelled to pay the balance to the mortgagor ? Sir, I think a time limit ought to be put within which he is to render accounts. If he had been a receiver appointed by a court of law then he would have been compelled to render accounts to the court of law once every 12 months ; if not, sometime monthly or once every six months in special cases. Because it may be that the receiver appointed may not be rendering accounts for two or three years, and it is not open to the mortgagor to know whether any sum is due to him or not. It is not until and unless the accounts are rendered that he can know whether the mortgagor is entitled to any sum, and if so, what. It is to safeguard the interest of the mortgagor from that point of view that I have submitted this amendment for the consideration of this House. Such a clause would be in consonance with the spirit of the whole section which has been put in here in the Transfer of Property Act by this amendment.

THE HONOURABLE MR. L. GRAHAM : Sir, I think the Honourable Mover has very largely provided the answer in his own arguments. There is no certainty at all that in every twelve months there will be money available to be paid over to the mortgagor, and he will therefore be providing, it seems to me, by his amendment that the receiver has to pay over something every twelve months where there may be nothing to pay.

As regards the mortgagor being kept in doubt or ignorance about the position, it seems to me that he has a remedy by application to the court under sub-section (*10*). The receiver is already so carefully tied down by the provisions of this section that I see no advantage in tying him down to do a thing which it may be impossible for him to do. I therefore oppose the amendment.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: I fail to see why, even if there is no money to pay over to the mortgagor, accounts should not be rendered from time to time.

THE HONOURABLE MR. L. GRAHAM: That is not the amendment, I beg to say, Sir.

THE HONOURABLE THE PRESIDENT: The question is:

"That in sub-section (8) of section 69A, proposed to be inserted by clause 35 of the Bill, after the words 'and shall' the words 'at least once every twelfth month' be inserted."

The motion was negatived.

THE HONOURABLE THE PRESIDENT: The question then is:

"That clause 35 do stand part of the Bill."

The motion was adopted.

Clause 35 was added to the Bill.

Clauses 36, 37, 38, 39, 40 and 41 were added to the Bill.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: I do not propose to move the amendment* which stands in my name to Clause 42, Sir.

Clauses 42, 43, 44 and 45 were added to the Bill.

THE HONOURABLE THE PRESIDENT: The question is:

"That clause 46 do stand part of the Bill."

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: In this case, again, I am fortified by the opinion of one of His Majesty's Judges. I move:

"That after clause (c) of the new section 91, proposed to be substituted by clause 46 of the Bill, the following clauses be added, namely:

'(d) the guardian of the property of a minor mortgagor on behalf of such minor;

(e) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot'."

Sir, the notes on this particular clause appear on page 43. There it is mentioned that:

"Section 91 specifies persons who, in addition to a mortgagor, are entitled to redeem. Clauses (a) and (b) can be suitably combined in one clause. Clauses (d) and (e) are superfluous, and, in our opinion, should be omitted."

But no explanation has been given in the Report of the Special Committee as to how these two clauses of the existing Bill are regarded as superfluous. As I said in the beginning, the opinion that I am now placing before the Council is fortified by the expression of opinion again by Mr. Justice Lal

* That in the new section 81 proposed to be substituted by clause 42 of the Bill:
(a) after the words "then mortgages" the words "or transfers for full value" be inserted;
(b) after the words "the subsequent mortgagee" the words "or transferee for full value" be inserted; and
(c) after the words "properties not mortgaged" the words "or transferred" be inserted.

[Srijut Rama Prasad Mookerjee.]

Gopal Mukherjee, whose opinion appears on page 40 of the Opinions. He says:

"The amendment proposes to delete clauses (*d*) and (*e*), but I think that in order to make the rights of the guardian of a minor or the committee or other legal curator of a lunatic or an idiot the above clauses should be retained."

If reference is made to the Act itself, you will find that the clauses, as I have given them here, appear in the existing Act. The only thing that can be said is this. Under the new section 91, any of the following persons may redeem, or institute a suit for redemption of the mortgaged property. Clause (*a*) deals with any person who has any interest in, or charge upon, the property mortgaged. No mention is made here of any other person acting on behalf of the person who has the interest in the property. In clauses (*b*) and (*c*) also there is no reference to any person who claims the right to redeem, who is not the person himself but a representative of the person who has the interest. Clauses (*d*) and (*e*), as I have put them down, and as they appear in the present Act, were put down to bring in the representatives of the persons so mentioned. Clause (*d*) here deals with the guardian of the property of a minor mortgagor on behalf of such minor and clause (*e*) deals similarly with idiots or lunatics for whose estate a committee or a legal curator might have been appointed. Sir, I do not know under which subclause the Honourable the Law Member thought that my clauses (*d*) and (*e*) were provided for already. At least there is the opinion that it is not included within the proposed clauses (*a*), (*b*) and (*c*). When there is this difference of opinion, there is at least this chance of those people not being allowed to come in to redeem the property. I think these clauses should be added, because it should not be left to a Judge to say, later on, that, because you are the representative of the minor's property, or a representative of the lunatic's property, and as your case is not specifically dealt with in section 91, you are not allowed to redeem the property. Certainly that is not the intention either of the framers of the Bill or of the Special Committee. On these grounds, Sir, I think, in order to make the position absolutely clear, these clauses should be added, and they are not redundant as stated by the Committee.

THE HONOURABLE SIR BROJENDRA MITTER: Sir, I am surpised that my Honourable friend Mr. Mookerjee should have moved this amendment. Sir, my Honourable friend knows very well, as any one acquainted with law in this House knows it, that suits on mortgages are now not regulated by the Transfer of Property Act but by the Civil Procedure Code, Order XXXIV. The Civil Procedure Code makes specific provision for suits by or on behalf of persons under an incapacity, which include a minor, a lunatic, an idiot, and so on. We are considering under clause 46 who can redeem. If the mortgagee does not take the money the mortgagor can bring a suit for redemption. If a minor or any other person under incapacity be the mortgagor and if such mortgagor wants to redeem, who can bring the suit? Under the Civil Procedure Code it is the mortgagor who can bring the suit, by his guardian or committee, as the case may be. The suit is brought in the name of and on behalf of the person under incapacity, because it is the mortgagor who is redeeming. That being so, it is no longer necessary to

retain in section 91 clauses (*d*) and (*e*). All the other clauses relate to persons who can redeem on their own account; (*d*) and (*e*) are the only two clauses where a person can redeem on behalf of the person under incapacity. When a guardian or a committee redeems, he does not redeem on his own account. He redeems on behalf of the minor or the lunatic—on somebody else's behalf. We propose, in this Bill, to limit section 91 to persons who can redeem on their own account. And there is no harm done, because if a minor wants to redeem, sub-clause (*a*) provides for it. A minor mortgagor who has got an interest in the property can redeem, but a minor cannot redeem by himself. He can redeem only through his guardian. A lunatic cannot redeem by himself, he can only redeem through his committee. Therefore it is not necessary to retain clauses (*d*) and (*e*), since the Civil Procedure Code provides for redemption suits.

THE HONOURABLE THE PRESIDENT: The question is:

"That after clause (*c*) of the new section 91, proposed to be substituted by clause 46 of the Bill, the following clauses be added, namely:

'(*d*) the guardian of the property of a minor mortgagor on behalf of such minor;

(*e*) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot'."

The motion was negatived.

THE HONOURABLE THE PRESIDENT: The question then is:

"That clause 46 do stand part of the Bill."

The motion was adopted.

Clause 46 was added to the Bill.

THE HONOURABLE THE PRESIDENT: The question is:

"That clauses 47, 48, 49, 50, 51, 52 and 53 be added to the Bill."

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: Sir, I would ask your opinion on my amendmen which is the last one on the list. It relates to clause 50 but it is an independent amendment. I do not know whether I am in order in moving it now.

THE HONOURABLE THE PRESIDENT: The Honourable Member is proposing an amendment to section 100 of the Act.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: It is clause 50 of the present Bill which deals with section 100.

THE HONOURABLE THE PRESIDENT: There seems to be further amendments to section 100 which are already provided for by clause 50 of the Bill. I will put therefore clauses 47, 48 and 49.

Clauses 47, 48 and 49 were added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 50. The Honourable Member might make his amendment sub-clause (*c*) of clause 50.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: Sir, the law relating to charges is very unsatisfactory. I shall first of all explain my motion, then I will formally move the amendment. Charges arise in various ways, by acts of parties and by operation of law, and are sometimes the result of

[Mr. Kumar Sankar Ray Chaudhury.]

decrees. So far as the Transfer of Property Act is concerned, it is an Act, as the Preamble will show, to regulate the transfer of property by act of parties. The Preamble runs thus:

"Whereas it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; It is hereby enacted as follows".

So it cannot properly be the scope of this Act to deal with charges created by the operation of law or by decrees, and as a matter of fact there is no provision in the Act as to how charges are to be created by act of parties. There is no provision in the Transfer of Property Act to regulate the creation of charges. All that section 100 says is as to how charges are to be enforced, and then they bring in charges by operation of law. I therefore submit that charges should receive careful consideration independently of this Act and we should not take away some of the benefits which charges receive by the provision of the last paragraph of clause 50. I have already stated that charges created by decrees for the maintenance of Hindu widows cannot be defeated by subsequent purchasers. That was the decision reported in 27 Calcutta at page 194 and it follows an earlier decision in a Weekly Reporter case. That benefit is now being taken away by the last paragraph of clause 50 where it is stated:

"And save as otherwise expressly provided by any law for the time being in force no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge".

So that charges will be defeated by a mere transfer of the property if the transferee has no notice. Charges are an important subject, because most of the private and public benevolent purposes are created by way of charges. So also is the maintenance of widows and other dependents of the family, and, if such charges are not to prevail against any subsequent transferee, the whole object of public benevolence will be frustrated. There is another thing. The second paragraph of section 100 says:

"Nothing in this section applies to the charge of a trustee and the trust's property for expenses properly incurred in the execution of his trust".

So that a trustee's lien remains. It is valid against a purchaser for value without notice. So is the case of a seller's lien, that is also a charge on the property, but that prevails against a subsequent transferee. I do not understand why other charges, especially charges which have already been held to be operative and binding upon subsequent purchasers should be deprived of the benefit given to them by law. As regards charges created by the operation of law I do not think, so far as I am aware, there is anywhere any provision laid down as to how the charges are to be enforced. Sometimes they are declared only as first charges; that is the case under section 65 of the Bengal Tenancy Act. I do not know how it is in the other provinces in case of the rent charge. There is no provision as to what effect it would have as a charge upon subsequent transferees. In the absence of such provision this last paragraph of the proposed amendment embodied in clause 50 will, I think, operate against them, because there is no such provision in the law as to how this charge is to take effect. All that is laid down is that rent is to be the first charge. As

a mere charge, if it cannot prevail against a subsequent transferee, where then would be the landholder's safeguard for the realisation of the rent ? I therefore propose in my amendment that the words " or by operation of law " should be omitted from section 100 and an independent provision should be made in respect of charges created by the operation of law and the whole subject of charge should be carefully considered and gone into and proper amendments put in proper places.

With these words, Sir, I beg to move :

" That in section 100 of the said Act the words ' or by operation of law ' be omitted : and that the following words be inserted at the end of the section, namely : ' or to a charge created by the operation of law ' ."

The section would then run thus :

" Where immoveable property of one person is by act of parties made security for the payment of money to another,"

That is the first part of the amendment, and the other part of my amendment will come in at the end of the section :

" Nothing in this section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust or to a charge created by the operation of law."

That is my object in moving this amendment.

THE HONOURABLE THE PRESIDENT : Amendment moved :

" That the following be inserted as sub-clause (*c*) of clause 50 :

' (*c*) The words ' or by operation of law ' be omitted, and the following words be inserted at the end of the section, namely, ' or to a charge created by the operation of law '."

THE HONOURABLE SIR BROJENDRA MITTER : Sir, I am sorry that the Honourable Mr. Ray Chaudhury did not pay us the compliment of reading the Bill which we have prepared and I will show presently how. He says that the Bill does not provide for the enforcement of charges. If the Honourable Member will look at ....

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : I said that the Bill did not provide how charges were to be created.

THE HONOURABLE SIR BROJENDRA MITTER : Sir, the Transfer of Property Act shows how charges are created by operation of law. It is of course well known that provision need not be made for all conceivable cases. Parties can by agreement always create a charge for which no provision need be made. If my Honourable friend will look at section 55 (*4*) (*b*), he will see provision is made for vendor's lien ; section 55 (*6*) (*b*) makes provision for purchaser's lien and section 95 refers to charge in favour of a co-mortgagor. These are all charges created by the operation of law. Then, section 39 specifically deals with maintenance.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : No charge is created.

THE HONOURABLE SIR BROJENDRA MITTER : Widows' maintenance is not by itself a charge. Section 39 deals with widows' maintenance. That maintenance is a floating charge, not crystallised till by decree of court

[Sir Brojendra Mitter.]

or by agreement it is made a charge. I will draw the Honourable Member's attention to a passage from Sir Rash Behari Ghose's book on Mortgage:

"It would seem that under the Hindu law, although a widow has, in a certain sense, a lien on the estate of her deceased husband for maintenance, the charge cannot be enforced against a *bonâ fide* purchaser for value; for it is only a floating charge, which does not crystallise till some specific property is set apart either by agreement or by a decree of court. The law which was previously in a somewhat nebulous condition has now been settled by the Transfer of Property Act."

What we are doing here is not changing that law at all. What was nebulous was already crystallised by the Transfer of Property Act of 1882. What we are doing is to further elucidate the manner in which the charge can be enforced and the change we propose is this, that it should be enforced as in the case of a simple mortgage. That is the only change we propose in section 100. Further we provide—

"Save as otherwise expressly provided by any law for the time being in force"

—which obviously refers to sections like 55, 95 and 39 of the Transfer of Property Act—

"no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge."

If the widow's maintenance has not crystallised, then that maintenance cannot be enforced against a *bonâ fide* purchaser for value without notice. We are not making any change in the law.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: When it matures into a charge, what happens?

THE HONOURABLE SIR BROJENDRA MITTER: Then a subsequent purchaser would be postponed either on the ground of priority or on the ground of notice. If he has no notice, the law of priority comes in.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: It is not a question of encumbrance but of a subsequent purchaser.

THE HONOURABLE SIR BROJENDRA MITTER: The purchaser stands in the same position as the encumbrancer. If there is a charge upon a property, that charge will prevail against a subsequent purchaser as against any other subsequent transferee, be he a purchaser or a mortgagee or a lessee. In any case, by the law of priority the prior charge will prevail against a subsequent transferee. We are not changing the law in any way. In the case of charges, we are recognising statutory charges. Government revenue and public dues have always priority over mortgages and encumbrances created by the act of parties and we are also saving charges by operation of law, to which I have already referred. Sir, we are not making any new law; we are only clearing up the old law and we are only providing a machinery for the enforcement of charges as in the case of simple mortgagees.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: I would like to have one point explained by the Honourable the Law Member. Take the case of a widowed daughter-in-law. The father-in-law has the moral liability

for the maintenance of the widowed daugther-in-law; but as soon as the property comes into the hands of the heirs of the father-in-law, it ripens into a legal liability. Now, in that case, it is something different from the widow's right of maintenance on the property. I do not know any case where the point has been decided, but by the modification that is now being made, the charge which that widowed daugther-in-law has on the property will be defeated by the transfer.

THE HONOURABLE SIR BROJENDRA MITTER: It is not a charge, Sir. It is only a right. A moral right against a father-in-law ripens into a legal right against the heirs of the father-in-law. Very well. But it is a mere right and that right can be enforced in a court of law, and the court of law can create a charge or that right can be secured by a charge by agreement of parties. Till that is done it is not a charge at all and certainly that right is not on a higher basis than the right of a widow to maintenance out of her husband's property. It is not a charge till it is crystallised either by agreement or by decree of court.

The motion was negatived.

Clause 50 was added to the Bill.

Clauses 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62 and 63 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. L. GRAHAM: Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

TRANSFER OF PROPERTY (AMENDMENT) SUPPLEMENTARY BILL.

THE HONOURABLE MR. L. GRAHAM (Secretary, Legislative Department): Sir, I move that the Bill to supplement the Transfer of Property (Amendment) Act, 1929, as passed by the Legislative Assembly, be taken into consideration.

I think, Sir, in connection with this Bill there is no need for me to make any definite speech. If Honourable Members will only listen to the Preamble of the Bill they will realise the reason. That Preamble runs as follows:

"Whereas by reason of the passing of the Transfer of Property (Amendment) Act, 1929, it is expedient that certain amendments should be made in certain other enactments; It is hereby enacted as follows:—".

In fact, Sir, this Bill is really of a consequential nature. I think therefore it is enough for me to move it.

The motion was adopted.

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

THE HONOURABLE MR. NARAYAN PRASAD ASTHANA (United Provinces Northern: Non-Muhammadan): Sir, as the amendment which I have put before the House relates to the insertion of a new clause altogether in this Bill and not to the amendment of any of the clauses of this Bill, and considering the mood of the House at this time, I think I will not move my

[Mr. Narayan Prasad Asthana.]

amendment but bring it as a separate amending Bill to the Code of Civil Procedure.

Clauses 9, 10, 11, 12 and 13 were added to the Bill.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE (West Bengal: Non-Muhammadan): Sir, with regard to clause 14, may I ask if the Schedule comes under clause 14 or is to be taken up separately, because it is with regard to forms in the Schedule that I wish to speak.

THE HONOURABLE THE PRESIDENT: The Schedule is actually attached to clause 8 of the Bill, but I shall put the Schedule separately to the Council. There seems to be no connection between the Schedule and clause 14.

Clause 14 was added to the Bill.

THE HONOURABLE THE PRESIDENT: The question is:

"That this be the Schedule to the Bill."

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: Sir, I am drawing the attention of the House to Form No. 3A and Form No. 4. According to the old Civil Procedure Code, the form of the decree either for the preliminary decree for foreclosure or the final decree was such that the interpretation had been put by the different High Courts that when a decree for foreclosure was got and the person got the property, he was even then entitled to the costs of the suit from the debtor. That is, if there is a decree, say, for Rs. 40,000 for principal and interest, and Rs. 4,000 for costs, by the final execution of the decree for foreclosure, only the mortgage dues are satisfied—the costs might be realised separately; the Honourable the Law Member will remember the passage in Dr. Ghosh's Law of Mortgages where he criticises this point. According to Dr. Rash Behari Ghosh the decision was wrong and that on a foreclosure decree being obtained and the property coming to the creditor, the mortgaged debt is cleared up and the mortgage debt there, in Dr. Ghosh's opinion, would include not only the principal and interest but also the costs. But the decision of the High Court, Calcutta, at least was that it did not include the costs and therefore there could be a separate execution of the decree for costs. After the amendment of the Civil Procedure Code, or rather when the new Code came into existence in 1908, the forms were changed. In the preliminary decree some changes have been made. I would point out here that in paragraph 2 of Form 3A occurs the words:

"It is hereby ordered and decreed as follows:—

(*i*) that the defendant do pay into Court on or before the .....day of.... or any later date up to which time for payment may be extended by the Court of the said sum of Rs.....;

(*ii*) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession, etc....."

What I want to clear up is this. Is it the intention that the costs would be paid separately or are costs included within the foreclosure? If reference is

made to the final decree form—that is Form No. 4 (at the top of page 16, about the third line) it is stated :

" that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the said mortgage :

It is hereby ordered and decreed that the defendant and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned ; and (*if the defendant be in possession of the said mortgaged property*) that the defendant shall deliver to the plaintiff quiet and peaceable possession of the said mortgaged property."

This final decree is absolutely silent about the costs. There was a case before the Calcutta High Court the other day,—it has not yet been reported,—where this question came up as to whether the costs which had been decreed under the preliminary decree for foreclosure are satisfied by the final decree and possession being given or whether a separate execution of the decree for costs would lie. That is the question, Sir, which I want to be cleared up here.

There is one other point. A distinction was made between a decree for foreclosure and a decree for sale. If there was a decree for sale, unless there was a personal decree against the defendant, there could not be a separate enforcement of the decree for costs against the defendant. But that was not so in the case of a decree for foreclosure. It is not the whole amount, the principal, interest and costs, that is satisfied by the final decree by the property being given possession of to the mortgagee but it is otherwise. I think that question ought to be cleared up.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras : Non-Muhammadan) : Clause 3 on page 15 says :

" And it is hereby further ordered and decreed that, in default of payment as aforesaid ".

" *As aforesaid* " means as stated in paragraphs 1 and 2. Paragraph 2 (*ii*) speaks of the costs as well. Unless both are paid there is default. The matter seems clear to my mind.

THE HONOURABLE MR. RAMA PRASAD MOOKERJEE : In spite of all that, in default of payment as aforesaid, he would be entitled to a final decree for foreclosure. Will he be entitled to foreclosure and to costs ? Before the final decree is passed, the money is paid into court ; and then the person gets the principal, the interest and the costs. But no mention is made here about the costs separately as it was made in the old Act. That has created the difficulty in the court.

THE HONOURABLE SIR BROJENDRA MITTER (Law Member) : Sir, may I explain ? The Honourable Member will see that in the preliminary decree paragraph 2, sub-clause (*2*), provides that :

" on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10 ".

Therefore, in the preliminary decree all costs are included. Rule 10, provides :

" In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure or sale or redemption, the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage-money such costs of suit as have been properly incurred by him since the decree for foreclosure or sale or redemption up to the time of actual payment."

[Sir Brojendra Mitter.]

All costs are therefore included in the preliminary decree. When we come to the final decree for foreclosure, it is provided as follows :

" And it appearing that the payment directed by the said decree (*i.e.*, the preliminary decree) and orders has not been made by the defendant (which includes payment of the costs)."

In such a case, there is a final decree for foreclosure. And paragraph 2 says this :

" And it is hereby further declared that the whole of the liability whatsoever of the defendant up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished."

Once the final decree is made, that discharges the mortgagor from all liability whatsoever including the costs of the suit and subsequent to the suit up to the date of the final decree for foreclosure. There is no further outstanding liability. Everything is wiped out by the final decree. It is clear that that is the intention of this form.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : That is what I wanted to know.

THE HONOURABLE MR. NARAYAN PRASAD ASTHANA : May I point out an omission here ? The savings clause should be clause 15. It is not covered by clause 14. It ought to be clause 15.

THE HONOURABLE MR. L. GRAHAM. Does the Honourable Member mean that the Schedule should be numbered as a clause of the Bill ?

THE HONOURABLE THE PRESIDENT : He is referring to the savings on page 12. As far as I can see, it is really not a question of an amendment. It is merely a printing error. I will put the Schedule first.

The question is :

" That this be the Schedule to the Bill. "

The motion was adopted.

The Schedule was added to the Bill.

THE HONOURABLE THE PRESIDENT : With regard to the point raised by the Honourable Mr. Asthana, for which I am obliged to him, I must put clause 15.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : I may point out that, as far as my memory goes, it was a separate clause previously, but probably because of an amendment in the Assembly, it is put down here as a sub-clause.

THE HONOURABLE SIR BROJENDRA MITTER : There was no amendment in the Assembly.

THE HONOURABLE MR. L. GRAHAM : I am assured, Sir, that this is a mere omission of the printer.

THE HONOURABLE THE PRESIDENT : The question is :

" That clause 15 do stand part of the Bill. "

The motion was adopted.

Clause 15 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. L. GRAHAM: Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

INDIAN INCOME-TAX (PROVIDENT FUNDS RELIEF) BILL.

THE HONOURABLE MR. E. BURDON (Finance Secretary): Sir, I move that the Bill further to amend the Indian Income-tax Act, 1922, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.

Sir, I am very glad to see that there are no amendments on the paper and that even the critical eye of my Honourable friend Mr. Rama Prasad Mookerjee has found no imperfection in the Bill.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: Except a query about one clause.

THE HONOURABLE MR. E. BURDON: For, while I believe the Bill to be a benevolent and non-controversial measure and in its principle to be perfectly simple, it is in its details very complicated and I should find it difficult to discuss points of detail in a meeting of the full Council. I think we may congratulate ourselves that we have been saved a very great deal of trouble in that way by the Select Committee of the Legislative Assembly who are responsible for the final form of the Bill as it comes before us.

The Bill, Sir, seeks to give relief in respect of income-tax to certain private provident funds. At present Government, Railway and other similar provident funds receive certain concessions which include very valuable benefits by way of relief from income-tax. The commercial community have been urging for some time past that these concessions should be extended to provident funds maintained by business firms and companies for their employees. Now, these concessions are susceptible of considerable abuse and the administrative problems that arise out of this possibility are very complicated, much more complicated than any that arise in the case of Government provident funds. It is the difficulty of these problems that was responsible to some extent for the apparent want of sympathy displayed by Government in the earlier stages of the discussions which they had with the commercial community, Chambers of Commerce and others. But continued study has helped to smooth the difficulties and Government definitely decided last year to grant the concession of relief from income-tax subject to certain safeguards. The main outlines of the decision were communicated to Chambers of Commerce in October last and were also announced by the Honourable the Finance Member in the meeting of the Associated Chambers of Commerce at Calcutta in December. Since then the Government of India have devoted a great deal of time and trouble to working out a detailed scheme. I must not however forget to acknowledge the very valueable assistance we have received from the commercial community, both European and Indian, in coming to a final conclusion, and I am glad to say that the scheme embodied in the Bill is an agreed scheme to which representatives of both the Federation of Indian Chambers of Commerce and all the Associated Chambers have given their blessing.

4 P.M.

[Mr. E. Burdon.]

The next point which I must make clear is that it is not the intention of Government to place these private provident funds on precisely the same footing as Government provident funds in all respects. I mentioned this matter to the Council the other day in dealing with the Bill relating to quasi-Government provident funds and I gave in some detail the reasons for the differentiation. I explained also that the commercial community had accepted the Government's view on this point. What Government actually promised was to place contributions to private provident funds on the same footing as insurance premia, and as a matter of fact this Bill goes rather further and exempts from income-tax not only the contributions made to the provident funds but also the income from the investments of those funds. This, I feel sure, will be acknowledged as a generous interpretation of the undertaking which Government gave originally last year. As I have already stated, the details of the Bill are complicated and do not lend themselves easily to clear exposition in full Council. Broadly speaking, what is aimed at is that up to a limit of 1/6th of the employee's salary contributions made by him and those made by his employer should be exempt from income-tax. In addition, the employee can obtain rebate of income-tax on insurance premia subject to a limit of exemption of 1/6th of his total income, including his contributions to the provident fund. We do not of course propose to confine the concession only to those funds in which the contributions actually made are themselves subject to the above limits. Both the employee and the employer, if that is the arrangement between them, may deposit additional sums in the provident fund. It is therefore necessary to arrange for some method of taxing the excess contribution and the interest thereon. Two methods were possible, namely, (1) either to let off the excess contributions from year to year and levy tax when the accumulated excess contributions are made over finally to the employee, or (2) to deem by a legal fiction that such excess contributions are part of the employee's income from year to year and tax him from year to year on those excess contributions. Government were inclined to favour the former, and the Bill as introduced in the Legislative Assembly contained that proposal. The Select Committee on the other hand have preferred the latter and Government have accepted it. In order to minimise the risk of abuse, the concession will be confined to recognised provident funds. The Bill lays down certain fundamental conditions which the funds will have to satisfy before they can be recognised. These conditions are set out in clause 58C, and the most important of the conditions are (1) that the funds shall be vested in two or more trustees under an irrevocable trust; (2) that the employer shall not be entitled to recover any sum whatsoever from the fund except where the employee is dismissed for misconduct or voluntarily leaves employment without adequate reasons; (3) that in any case recoveries shall be limited to the contributions made by the employer himself; (4) that subscriptions of the employee and contributions by the employer shall be regular and not casual; and (5) that the employee shall be employed in India or the principal place of business shall be in British India. Recognition will be given by the Commissioner of income-tax of the province, and if the Commissioner refuses recognition, an appeal will lie to the Central Board of Revenue. Because of the possibility of abuse the Government of India reserve the power to withhold or withdraw recognition—even if the conditions of the Statute are satisfied—

in those cases in which there is clear evidence of abuse or risk of abuse. We hope that occasions for the exercise of this power will never arise. Government will also take power to prescribe a maximum rate of interest beyond which all interest paid to the employee will be taxable. This provision is an obviously necessary precaution. Government are also taking power to provide for inspection of accounts by Income-tax Officers, for laying down the form in which accounts shall be kept and for the settlement of certain transitional problems. It will be realised that by this measure Government are embarking on a difficult administrative experiment. They have therefore attempted in the main to lay down broad principles in the Bill and had left much detail to be evolved by experience. For this reason Government wish to take sufficient rule-making power both for the Governor General in Council and for the Central Board of Revenue to make changes from time to time as may be found necessary in regard to details.

I do not think, Sir, that there is anything further that I need say by way of general explanation of the principles of the Bill, and I will end as I began by saying that I trust the absence of amendments means that the Council are satisfied as to the details.

Sir, I move.

The motion was adopted.

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

THE HONOURABLE THE PRESIDENT : The question is :

" That clause 5 do stand part of the Bill. "

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE (West Bengal : Non-Muhammadan) : Sir, I congratulate the Government on the provisions of this Bill, because, as has been explained by the Honourable Member in charge, it goes into a matter which has been agitating the different private employers and their employees throughout the country. The only point I want to clear up is, that in the special Chapter which is being added, under section 58A, sub-clause (*b*), an employer is defined in these terms :

" (*b*) an 'employer' means—

(*i*) a Hindu undivided family, company, firm or other association of individuals or persons, or

(*ii*) an individual engaged in a business, profession or vocation whereof the profits and gains are assessable to income-tax under section 10 or section 11,

maintaining a provident fund for the benefit of his or its employees ;"

Sir, I want to know whether this definition is taken by Government to include institutions as are registered under Act XXI of 1860. That is the Act under which most of the public institutions in the country, educational institutions, public libraries, etc., are registered. Employees in those institutions should, in my opinion, come under clause 5, because the principle which has been accepted by Government, which we find enunciated in the first paragraph of the Statement of Objects and Reasons, should include these people.

THE HONOURABLE MR. E. BURDON : Sir, with reference to the request of the Honourable Member, I consulted my technical advisers on this point yesterday and I am assured that the answer to the Honourable Member's question is in the affirmative.

Clause 5 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. E. BURDON : Before making my final motion, I wish to express my gratitude to the Council for the courtesy they have displayed in permitting the time to be shortened, as a result of which it has been possible to bring this Bill to its final stage in the course of this Session. By doing so, they have enabled the Honourable the Finance Member to implement a promise which he gave to the representatives of the commercial community with whom he has been in treaty for some time past in regard to this measure. As my Honourable friend Mr. Rama Prasad Mookerjee has said, private employers have been agitating for some measure of this kind for a considerable time. I have endeavoured to explain the reasons for the delay which has taken place, and I think it will be evident to anybody who studies the intricacies of the Bill itself that there was some cause for delay. Consequently, as there has been so much delay, the commercial community has been particularly anxious that the delay in the final stages should be minimised as far as possible, and the Honourable the Finance Member undertook to do his very best towards this end. Once more I wish to thank the Council for the co-operation that they have given to the Finance Department in this matter.

Sir, I move that the Bill further to amend the Indian Income-tax Act, 1922, for certain purposes, as passed by the Legislative Assembly, be passed.

The motion was adopted.

RESOLUTION *RE* FIXATION OF MINIMUM WAGES IN CERTAIN TRADES.

THE HONOURABLE THE PRESIDENT : The Council will now resume discussion on the Resolution* moved two days ago by the Honourable Mr. Ryan.

THE HONOURABLE MR. T. RYAN (Industries and Labour Secretary): Sir, when I moved this Resolution last Tuesday, with reference to the draft Convention and Recommendation regarding the machinery for fixing minimum wages in certain trades, my Honourable friend Mr. Ramadas Pantulu raised three points : first, that papers were not sent in advance ; secondly, I understood him to say he did not see why the Council should deal with this question now ; and thirdly, he suggested, or he was apprehensive, that a definite vote in favour of the Resolution would be tantamount to registering a definite disagreement with the Convention. As regards the first point, as I have already explained, the papers were in fact sent out some months ago, but apparently did not reach or were overlooked by Honourable Members. Anyhow, they

*"That this Council, having considered the draft Convention and Recommendation regarding the machinery for fixing minimum wages in certain trades adopted at the Eleventh International Labour Conference, recommends to the Governor General in Council that he shall not ratify the draft Convention nor accept the Recommendation."

have since been recirculated, and I think all Honourable Members have now had an opportunity of reading them. The reason why the Council is asked to deal with the question now is simply because of the provisions of Article 405 of the Treaty of Versailles. I shall, with your permission, read a short extract from that Article. This Article occurs in the portion of the Treaty relating to the International Labour Organisation and it provides that :

" Each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than eighteen months from the closing of the session of the Conference, bring the Recommendation or draft Convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action."

In this case, Sir, in the ordinary course, the draft Convention and Recommendation with which we are now concerned would have been brought before the Legislature during the last winter Session ; but at that time an announcement was made with regard to the appointment of a Labour Commission and the Government thought it best to await the publication of the terms of reference to that Commission and to take advantage of the special 18 months' limit provided by the Article that I have just read. As regards the third point, the Honourable Member was apprehensive that a definite vote in favour of this Resolution would be tantamount to registering a definite disagreement with the Convention. It is certainly not the desire of the Government that the Resolution should bear that interpretation. It is perhaps arguable that it might be a possible interpretation ; but I wish to say definitely that it is not the interpretation which Government place upon it ; and perhaps with that definite statement recorded in the record of this debate the Honourable Member may be satisfied. The view of the Government of India is simply that whatever final decision may be taken at the proper time with regard to this draft Convention and Recommendation, a final decision to ratify them cannot properly be taken at present, and it is therefore proposed that the Governor General should be advised not to ratify the draft Convention or to accept the Recommendation. Honourable Members have seen the papers and they will no doubt have read in full the speech of Dr. Paranjpye made before the Conference in which he made it quite clear that the Government of India have every desire to give a full and sympathetic consideration to the subject, and that if they observed for the time a neutral attitude it was simply because they had not then got the necessary material to justify them in coming to the conclusion that the establishment of wages boards in India was at present practical or, if established, that they would be certain to be beneficial. And, Sir, as I mentioned on Tuesday, the subject is clearly within the scope of the terms of the reference to the Royal Commission which will start working within a few weeks ; it has been specifically included in the list of subjects upon which the Royal Commission have invited evidence. I hope, Sir, that in view of this explanation, the Council will have no difficulty in accepting the Resolution, which, as I have said, is purely a temporizing one and purely non-committal as to what may be the decision on the subject of the draft Convention and Recommendation when the time comes for a final decision.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras: Non-Muhammadan) : Sir, I thank the Honourable Mr. Ryan and the Honourable the Leader of the House for the courtesy they have shown us by re-circulating

[Mr. V. Ramadas Pantulu.]

the papers. Of course I take my Honourable friend's assurance that they were circulated some months ago ; they might have been sent to us and we might have mislaid them. All the same, I thank them for furnishing the necessary papers. But, Sir, I regret that after reading the papers, I find it extremely impossible for me to assent to this Resolution. The situation seems to be extremely intriguing. Not till I read the bulletin circulated to me and also the proceedings of the Eleventh International Conference did I fully appreciate the implications or the significance of my Honourable friend Sir Maneckji Dadabhoy springing up to his feet the other day and launching an anticipatory denunciation of what I was supposed to have said or what I was going to say. Sir, the attitude of the Government of India seems to me, on reading the entire literature on the subject, to be utterly indefensible. The Convention of 1928, where this question of fixing the machinery for a minimum wage was decided, was attended by as many as five representatives of the Government of India and 12 representatives on behalf of Indian employees and the employers—and the Convention itself was a very largely attended one. Of the 55 member-countries so many as 46 countries were represented ; 338 delegates and advisers took part. The representatives of employers and employees who went from India took a very active part in the discussion during the debate, both in the discussion on the Convention draft and the Recommendation, and their amendments were fully considered by the international Assembly and negatived. The employers' delegates wanted to limit the scope of the Convention to the fixation of the minimum rate appropriate to the lowest grades of ordinary workers and the employees' delegates, on the other hand, wanted to enhance the scope of it to all cases where there was no adequate machinery to fix minimum wages and a living wage was not assured. Both these amendments were turned down though the principle of the second is given effect to in the Recommendation and a *via media* was found which seems to be an eminently satisfactory one. Notwithstanding these facts, we are told in the short report of the three representatives of the Government of India, which I find is very inadequate if not actually misleading, that the Government of India had instructed them not to participate as they had not requisite information. They are good enough to inform us that :

" The chief constructive work of the Conference was the adoption of the draft Convention and the Recommendation on Minimum Wage-Fixing Machinery. We were obliged to abstain from voting on these, in view of the need of further enquiry before it can be decided whether or not such machinery is practicable and desirable in India."

The plea put forward by Dr. Paranjpye that the Government of India had not adequate time to consider this was very strongly and forcibly controverted by the employees' delegates who attended the Convention. I will read one passage from the speech of Diwan Chaman Lal, the employees' delegate, with regard to the attitude taken up by Dr. Paranjpye on behalf of the Government of India. I am reading from the official Report of that speech at page 441 :

" In this connection, Mr. President, I would ask your leave to make a remark or two about the statement made by the Delegate representing the Government of India, Dr. Paranjpye. The only interesting thing about the statement that Dr. Paranjpye made was that he made it in a very sweet voice : otherwise, I am sorry to find that the statement he placed before you was hopelessly pessimistic and inadequate.

The first complaint that Dr. Paranjpye had to make with regard to the Government of India was that they were not in a position to take up a definite attitude on this matter,

merely because they had not had sufficient time. May I ask Dr. Paranjpye whether it is not a fact that, for at east fifteen months, this subject has been before the Government of India, and whether they have not had ample opportunity to consult Local Governments and public bodies, workers' organisations and employers' organisations? Yet fifteen months is apparently too short a period for the Government of India to come to any sort of conclusion. They have come here with blank minds."

And, then, Sir, he goes on to say that in those 15 months they had hardly consulted any recognised labour organisations or trade unions but consulted only one gentleman in the Central Provinces, a nominated Member of the Central Provinces Council.

Mr. Chaman Lal, Sir, when he said the Government of India had 15 months, was speaking, so far as I can see, on the 15th of June 1928. The Government of India has since then had another 15 months, from the 15th of June 1928 up to the end of September 1929; and this question was not taken up for the first time in the Convention of 1928. It was really taken up in 1927. A questionnaire was framed, it was sent up to the Government of India, they collected a lot of opinions, and after 30 months they have still not got adequate material before them to make up their mind.

THE HONOURABLE SIR MANECKJI DADABHOY: When was the appointment of the Whitley Commission announced?

THE HONOURABLE MR. V. RAMADAS PANTULU: I will come to the Whitley Commission. The draft Convention was passed in May 1928, the Whitley Commission announcement was certainly made some months after that date. Then, Sir, the attitude of the Government representatives at the Convention was somewhat perplexing. Dr. Paranjpye, whose speech is reproduced in this book circulated to us, has made it very clear in two or three places that the Government of India intended to place this matter before the Central Legislature for a full and ample opportunity to discuss the whole question connected with the fixing of a minimm wage. But I find that nothing of the sort has been done, though the draft Convention was made so early as May 1928 and more than 15 months have elapsed. They have not taken the very steps they promised to take before the Convention. I will read only one perplexing sentence from the speech of Dr. Paranjpye:

"Moreover, apart from the desirability of acting in concert with Provincial Governments in such a matter, the Government of India could not, of course, in any case ratify the Convention without the concurrence of their own Legislature, and they are unable in every case to commit the latter in advance, as they differ from most of the Governments represented here in that they do not command a majority in their Legislature."

This reads as if the Government were in favour of it but, as they could not commit their Legislature to it, they were not willing to commit themselves before the Convention. But Dr. Paranjpye did not inform the Convention correctly as to what was going to happen in India. There was at least one Chamber in India in which Government commanded a majority. They could take the matter on the last day of the Session to that House and get any decision it wanted. But he did not disclose these facts. Therefore, Sir, I say that the whole position here is intriguing.

The Honourable Mr. Ryan states that he is only asking for negative action and he has not asked the Government of India to take any definite or positive step. I quite appreciate that. But what is the action we are asked to take? We have a Convention, adopted by an international organisation in

[Mr. V. Ramadas Pantulu.]

which 46 nations have taken part and that too after due deliberation and discussions from the employees' and employers' points of view put before them; we are asked not to ratify it. I know, Sir, whatever meaning Mr. Ryan may place on such action, that the action taken by this House will be construed as one of playing into the hands of the Government of India. Why should this House be asked to do this? As a matter of fact, we have been told that a Resolution is not binding on the Government and when we pass a Resolution they do not generally accept it. This is only a Resolution and Government may or may not accept it. But if the Government of India do not wish to ratify it, why, I ask in all humility, should they get the sanction from this House of all Houses to support their conduct? Why should they compromise the dignity of this House and the reputation of the Government of India by taking a vote from us on the last day of the Session and going before the International Convention and telling them: "Here is our second Chamber which has asked us not to ratify it"? By all means do not ratify it, if you do not want to. But why do you want it to be said by us, I cannot understand. I think, Sir, it is a very intriguing situation and I do not think the Government of India have acted fairly towards us by seeking to commit this House to a course of action which will be strongly resented elsewhere and lead international organisations to attach no value to the opinions of this House in future. Why did the Government not face the Legislative Assembly with a similar Resolution? There was a definite undertaking given to the International Conference that the whole matter will be placed before the Central Legislature with a view to having a thorough investigation. Here is a part of the Report:

"We seek to announce to the Conference that the Government of India have every desire to give full and sympathetic consideration to the subject and that a proposal to have a thorough investigation of it will be placed before the Indian Legislature."

I ask in all humility, is this way to satisfy the undertaking given in such clear words to the Conference? I submit it is not, and I ask my Honourable friend not to press this motion in such a way as to absolutely compromise the dignity of this House. The Government of India's action is neither *bonâ fide* nor fair in this matter.

I have only a short time left to me and I shall say one or two words on the merits. The principles involved in the Convention are mainly two, namely, that in fixing the wage, the standard of living should be taken into consideration, and that a man should get a living wage. The amount of it is fixed by a machinery to be set up in which employers and employees will be equally represented and in which the Government will have a determining voice. The second principle is that if there is a dispute, both the employers and the employees can go to the national Government and ask for a machinery to be set up in which the matter will be decided. These are the two principal points. The draft Convention is made so elastic, is made so easy of acceptance by the Government, that there is really no reason why any Government should not adopt it. The First Article says:

"Every Member of the International Labour Organisation which ratifies this Convention undertakes to create a machinery whereby minimum rates of wages can be fixed for workers employed in certain of the trades or parts of trades (and, in particular, in home

working trades) in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low."

And, then, the other clause relating to the machinery itself provides ample safeguards so that the Government of India can have its own way practically in the matter. When all that has been done, I really do not see why in a matter like this, the Government of India should flout international opinion.

One word more, Sir, about the Whitley Commission. I do not see why a matter which affects labour from the international standpoint, and to which so many civilised countries of the world have agreed, should be re-opened and why the Whitley Commission should be at liberty to go into the matter afresh. The Whitley Commission ought to accept this. If it is honest, it ought to accept the Recommendation and the Convention arrived at at the International Conference, at which India was fully represented both by the Government and by the employers and employees. Therefore, to say that they are going to re-open the question before the Whitley Commission is in itself intriguing. That a Convention adopted by so many nations, which has an international force, and which is worded in such a way as to suit the conditions of every country, should be asked to be re-opened by the Whitley Commission is itself proof positive that the Government of India is against it. Even the employers' delegates who went to Geneva have not taken the attitude which the Government of India have taken. Mr. Narottam Morarjee, Mr. R. K. Shanmukham Chetty and others who were there did not at all go to the extent that the Government of India have done now. The vote of this House will certainly be misconstrued as merely enabling the Government of India to save its face before the International Labour Conference. I will appeal to my elected colleagues not to be parties to this transaction. This is not the way of consulting the Legislature. This is not the way of fulfilling the undertaking given to the International Conference. This is not the way of doing the thing. If the Government of India do not wish to ratify, by all means let them not do so. Our Resolutions are only recommendatory. When it suits them, it is taken as binding on them, and when it does not suit them, it is not taken as binding. I appeal to my Honourable friend, in view of what I have said, to withdraw his Resolution.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces: Nominated Non-Official): Sir, at this late hour, I do not desire to inflict a long speech on this House, but I must point out that after having heard my Honourable friend Mr. Ramadas Pantulu .....

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: On a point of order, Sir. When consideration of a Resolution which has already been moved is taken up again, is it open to Honourable Members to speak again and again day after day?

THE HONOURABLE THE PRESIDENT: I take it that the point raised by the Honourable Member is that everybody who has spoken to-day or attempted to speak spoke also the other day. But I treated the speeches the other day, particularly from the time when the Honourable Mr. Ramadas Pantulu rose, as speeches to the point as to whether the discussion should then be adjourned or should proceed. I think to the best of my recollection the Honourable Sir Maneckji Dadabhoy spoke to that point only, namely, the adjournment of the discussion. The merits of the Resolution are still open to him.

THE HONOURABLE SIR MANECKJI DADABHOY: Sir, I beg to state that even after having given my best attention to the Honourable Mr. Ramadas Pantulu I feel bound to state that I have not been able to follow his line of argument. He is under the impression that by passing a Resolution of this character we shall be going against the ordinary Convention, and we shall not be adopting the attitude which has been adopted by the other nations which attended the International Labour Conference. I am afraid he is labouring evidently under some grave misapprehension. He thinks that because India's delegates have attended the Labour Conference in Geneva, they are bound by the decision arrived at by the Conference. Nothing of the sort. It is open to any nation either to ratify or to oppose any such Convention passed at any Conference, and I should be very sorry if on any occasion the privilege of this House was taken away or trampled under foot. My Honourable friend also thinks that Government has some sinister object in bringing forward this Resolution at this stage. He has not been able to tell us what object Government could have in bringing forward this Resolution except to comply with the ordinary practice which has been followed in this House on various other occasions when the decisions of other International Conferences were either ratified or disapproved.

THE HONOURABLE MR. V. RAMADAS PANTULU: Why has this not been brought in the Assembly yet?

THE HONOURABLE SIR MANECKJI DADABHOY: I cannot tell you why it has not been brought before the Assembly. Mr. Ryan will probably be able to say. But I think that this House should feel very proud that a Resolution of such momentous importance has been placed before this House for consideration and not taken to the Assembly in the first instance.

THE HONOURABLE MR. T. RYAN: May I say that this Resolution has also been brought forward in the Assembly?

THE HONOURABLE MR. V. RAMADAS PANTULU: So far as I know, it has not been so brought.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: When was it brought forward?

THE HONOURABLE MR. T. RYAN: It is on the list for to-day. I have not seen the record of the debate.

THE HONOURABLE SIR MANECKJI DADABHOY: The Government in bringing forward this Resolution is acting strictly in conformity with previous precedents. On previous occasions similar Resolutions have been brought forward for consideration, and to my knowledge, on two or three occasions we have not ratified the decisions of the Conference at Geneva.

The next point which my Honourable friend has urged is, why should Government, at this late hour, have thought it right to bring forward this Resolution and what was the necessity at all to bring forward such a Resolution? I think my Honourable friend Mr. Ryan has made that point clear both on last Tuesday and to-day, that it is obligatory that this sort of Resolution must be brought before the Legislature and either ratified or rejected. That is required by the Treaty of Versailles; after that clear fact stated before this Council, I am surprised that my Honourable friend Mr. Ramadas Pantulu

should charge Government with some sinister motive in bringing forward this Resolution.

Then my Honourable friend has dealt with the merits of the Resolution. I am just informed that this very day the discussion of this Resolution is taking place in the other House.

THE HONOURABLE MR. V. RAMADAS PANTULU: It is only on the agenda in a safe place. It has not taken place yet and will not take place.

THE HONOURABLE SIR MANECKJI DADABHOY: As regards the merits of the Resolution he stated that if so many other nations who are in a majority have accepted this, why should India stay its hand and not adopt the measure? Dr. Paranjpye made it perfectly clear that it was not only a question of time, but materials were not available to the Government of India who wanted to be fair and just in this matter and wished to collect all the materials, consult Local Governments, weigh the whole situation from all points of view before bringing it forward. Mr. Ryan assured this House on Tuesday last that at some later date, after the report of the Whitley Commission is published and if this Recommendation is supported by it, he would bring it before this Council again. Another matter I might bring to the notice of my friend Mr. Ramadas Pantulu is the fact that only last cold weather we have passed an industrial measure known as the Trade Disputes Bill that gives to both the employer and the employee the machinery for adjusting matters in dispute, in regard to wages or anything else. If the employees in any trade are dissatisfied with the wages they receive, they can ask for the appointment of a tribunal under that Act. So after all the argument that there was no such great necessity as my Honourable friend Mr. Ramadas Pantulu suggests for taking this Resolution immediately into consideration is untenable. Further, the Whitley Commission has already started for India and one of the questions they have been asked to solve is this very matter. It is only right and proper that all the evidence should be placed both by the Government and by private individuals before the Commission, which will then come to a decision and be able to throw a flood of light on this very question. I am sorry therefore that my friend Mr. Ramadas Pantulu should have made an unreasonable appeal to the Members of this House to reject it. I have greater faith in the sagacity and judgment of this House that they will not countenance any such appeal and that they will vote for Government in support of this Resolution.

THE HONOURABLE MR. P. C. DESIKA CHARI (Burma: General): Sir, I do not propose to detain the House at this very late hour except for a few minutes. The question on its merits has been very fully put forward from the point of view which I think ought to weigh with the non-official Members of this House by my friend Mr. Ramadas Pantulu. I do not think it is necessary for me to go into details. After going through the literature supplied to me and perusing the Recommendations and Conventions, I think those Recommendations and Conventions would supply a great want in India, seeing that labour in most parts of the country is not organised. Nearly 90 per cent of labour is not organised. It is very desirable that there should be some machinery set up as early as possible, so that the ugly manifestations of labour unrest that we find in various parts now may not spread to

[Mr. P. C. Desika Chari.]

other places as well. The Recommendations and Conventions are quite reasonable and they give a very great latitude to the Governments concerned. They can fix the machinery when they choose in such a place or in such an industry as they think fit. They are given a very wide discretion and there is no time limit, and they are only asked to create a machinery as early as possible. That is perfectly harmless. I strongly protest against the reasons which have been put into the mouth of Dr. Paranjpye. He was merely the Government's spokesman and spoke in view of the special difficulties which the Government found itself in here. That has been exploited to a considerable extent and the impression is created that the Legislatures are always obstructing whenever the Government wants to do something in the interests of labour.

THE HONOURABLE MR. G. A. NATESAN (Madras: Nominated Non-Official): How do you know Dr. Paranjpye's mind ?

THE HONOURABLE MR. P. C. DESIKA CHARI: I can find out from the speech itself. I mean he was merely giving out something as the spokesman of the Government of India. I can read between the lines and read the speech as a whole.

THE HONOURABLE SIR MANECKJI DADABHOY: You are a prophet.

THE HONOURABLE MR. P. C. DESIKA CHARI: We can find the mind of a particular person from his spoken words, and from his spoken words I find that he has been labouring under a very great disadvantage in giving expression to the views of the Government of India, and it seems as though he has been speaking under very great restraint. The wording of the report leads me to think that under instructions Dr. Paranjpye and the other Government delegate were obliged to take the attitude they did.

THE HONOURABLE MR. V. RAMADAS PANTULU: Only Dr. Paranjpye attended. The other two did not attend.

THE HONOURABLE MR. P. C. DESIKA CHARI: I find that Dr. Paranjpye only had a watching brief. He was asked if necessary to explain matters. Perhaps the Government of India were not anxious even that Dr. Paranjpye should explain matters, because he was asked to do so only if necessary. And the explanation given there for the attitude of Government is very unsatisfactory. I find from the speeches of the employees' and workmen's delegate that these Conventions and Recommendations were considered as in the right direction and were necessary in the interests of both labour and capital in India. I thought that the Recommendations and Conventions would be welcomed not only by labour but by capital, with a view to seeing that labour is not exploited by persons in other movements and that the establishment of machinery as recommended in these Conventions would act as a very great check to the way in which labour is being exploited in India. We were told that the Whitley Commission had been appointed and would go into this very question of creating machinery for fixing minimum wages. I find from the tour programme of the Whitley Commission that Burma has been excluded.

THE HONOURABLE SIR MANECKJI DADABHOY: Burma is an agricultural country.

THE HONOURABLE MR. P. C. DESIKA CHARI: It is also a very important industrial country. If you do not know the conditions you may read the report about that country before contradicting me who has first-hand knowledge. It may be an agricultural country like India but it is really a very important industrial province, more so than many other provinces of India.

THE HONOURABLE SIR MANECKJI DADABHOY: What have you got besides oil-fields?

THE HONOURABLE MR. P. C. DESIKA CHARI: We have got every thing. I do not want to take notice of any interruptions. My point is this. I do not know whether it is the work of the Whitley Commission or of the Government of India or of the Burma Government and I do not know which has been responsible in taking care to see that the conditions in Burma are not brought to the public notice by this enquiry which is to be started very shortly, and I may say for the information of the Members of this House that there are about a million Indians in Burma and the vast majority of them are labourers drawn from almost every province of India. It is not really a purely provincial question; it is an all-India question; and so far as I am aware, there has been no organisation of labour in that province and it is very difficult, in view of distances and the difficulties of travel, to organise labour in that province. In these circumstances, I am not very much concerned about the recommendations of the Whitley Commission and I think it is my duty to vote against this Resolution, because the Whitley Commission or no Commission, it is not going to affect the conditions of my province.

With these words, I oppose this Resolution with all the emphasis at my command.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE (West Bengal: Non-Muhammadan): The first point that I want to bring to the notice of the Honourable Mr. Ryan is that he has just now stated that a similar Resolution is before the Legislative Assembly to-day. We know this is the last day of the Session of the other House. If this Resolution is not reached to-day, as in all probability it will not be, then what will be the attitude of the Government? Even if they have a majority in this House, and the question is not considered by the Assembly to-day, will the Government of India still write back to the authority concerned and say that the proposals have not been ratified by the Government of India? If this is considered to be such an important matter—and it is certainly a very important matter, even Sir Maneckji Dadabhoy has agreed that it is a very important matter, and there is the responsibility and dignity of this House concerned—why was not such a Resolution brought at an earlier stage? There were other earlier official days in both Houses when this Resolution might have been brought up and this question might have been thoroughly discussed on the floor of this House as also in the other place.

THE HONOURABLE SRI MANECKJI DADABHOY: But how are you to do it?

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: The time left to-day is too short to take note of interruptions even from Sir Maneckji Dadabhoy; we shall then be sitting beyond the usual time.

[Srijut Rama Prasad Mookerjee.]

The other point that I would like to bring to the notice of this House is that Articles 1, 2 and 3 as they appear in Part III of this Report are by themselves wholly innocuous. The whole question is whether the Government of India are ready to accept the principle of having an authority to determine the wages in different parts of India—they ought to do it—whether the Government of India would look to the interests of the capitalists only or to the interests of the labourers as well. Let this House, on this occasion at least, look to the interests of the labourers more than the rich and the capitalist and, to quote the language of my Honourable friend Sir Maneckji Dadabhoy, the sagacity and prudence of this House would be heightened before the public eye if this House rises to the occasion and rejects this Resolution.

THE HONOURABLE MR. T. RYAN : Sir, I feel that my Honourable friend Sir Maneckji Dadabhoy has dealt with the matter so fully that really very little is left for me to say. There are, however, a few remarks suggested by the observations of Honourable Members. With regard to the discredit attached by my Honourable friend opposite to the statement of the Government Delegates that there had not been adequate time for the discussion of this matter, I would explain that if one takes the initial date on which such a matter as this is mooted and the date by which a final reply is due to reach Geneva, and attach very little importance to the delays which inevitably occur in the various stages throughout the investigation and discussion, the time may seem long ; but in actual practice there was very little time for the Government of India to formulate their views on this matter. I find that the Government of India were addressed on the 15th July 1927 ; the letter reached the Government of India only in August 1927. We then received the questionnaire on the minimum wage fixing machinery and it was stated with some emphasis that our reply must reach the Labour Office in Geneva on the 15th November 1927. That is to say, the time we had was from fairly early in August until the middle of November 1927 ; the time was manifestly inadequate to consult Local Governments, to consult the representatives of employers and employees, to collate their views and to formulate the views of the Government of India. So much for the time.

I am afraid I cannot follow my Honourable friend on the right who prefers to read what the Government Delegates did not say *between* the lines, to what they did say *on* the lines ; and who believes that what they did say was dictated by the Government of India. I can find no support in the documents at my disposal for the latter suggestion. I am asked again why the matter has been put before this House. I can only repeat—I regret to have to say it for the third time—that it was done under a compelling requirement of the Versailles Treaty. It is under the provisions of that enactment that measures of this kind or proposals of this kind have to be placed before the Legislature, which in the case of India means both Houses of the Legislature. Again, I think I have been charged with disregarding the dignity of this House in bringing this forward on the last day of the Session. The gentleman who makes this charge is himself responsible for the item being put down on the agenda for the last day of the Session, because he did not read the papers sent to him several months ago.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE : They did not reach us.

THE HONOURABLE MR. T. RYAN : Even if the papers did not reach him, they were available in the Library.

THE HONOURABLE SIR MANECKJI DADABHOY : We have only a ten days' Session.

THE HONOURABLE MR. T. RYAN : He does not see why the Whitley Commission should be given an opportunity to re-open the question of an international Convention which has already been agreed to. That of course is very far from the fact. We are not proposing to re-open a question that has already been settled : we are considering only the draft of a Convention. He appeared to understand from what had been stated on the subject that the Government of India are against the Convention, I can only say that in the reply to the questionnaire, which was sent to Geneva, the Government of India gave a very distinct indication of their inclination to sympathise with provisions of the kind contemplated at that time, which have since been embodied in the draft Convention ; but they could not, for the reasons which have been repeatedly explained, commit themselves finally, nor can they do so at present.

Finally, Sir, we heard much about the omission of Burma from the tour programme of the Whitley Commission. I have not seen the final tour programme which in any case covers only the portions of the country to be visited when the Whitley Commission will be in India for the first time. I believe it is not proposed to visit Burma during the first visit of the Commission to India, but I have every reason to believe that the Commission will visit India twice and, so far as I know, they intend to visit Burma on the second occasion.

THE HONOURABLE MR. P. C. DESIKA CHARI : Is the Honourable Member in a position to assure us that the Commission will visit Burma ?

THE HONOURABLE MR. T. RYAN : I am unable to say absolutely what will happen in the future, but so far as I know—and I believe my information is reliable—the Commission will visit Burma ; in this connection the point was raised a day or two ago with me personally by the Honourable Member on my right who promised to look in at my office where I could put him in touch with an absolutely reliable source of information ; but the Honourable Member, who does not care to believe what is written but prefers to read between the lines, is equally unable to adopt the obvious course of obtaining information.

5 P.M.

THE HONOURABLE MR. P. C. DESIKA CHARI : The information is even now not obtainable.

THE HONOURABLE THE PRESIDENT : The question is :

"That the following Resolution be adopted :

'That this Council, having considered the draft Convention and Recommendation regarding the machinery for fixing minimum wages in certain trades adopted at the Eleventh International Labour Conference, recommends to the Governor General in Council that he should not ratify the draft Convention nor accept the Recommendation'."

The Council divided :

AYES—20.

Ashraf-ud-Din Ahmed, The Honourable Khan Bahadur Nawabzada Saiyid.
Basu, The Honourable Rai Bahadur Suresh Chandra.
Burdon, The Honourable Mr. E.
Charanjit Singh, The Honourable Sardar.
Clayton, The Honourable Mr. H. B.
Dadabhoy, The Honourable Sir Maneckji.
Dutt, The Honourable Mr. P. C.
Graham, The Honourable Mr. L.
Gwynne, The Honourable Mr. C. W.
Latifi, The Honourable Mr. Alma.
Maqbul Hussain, The Honourable Khan Bahadur Sheikh.
Muhammad Hussain, The Honourable Mian Ali Baksh.
Natesan, The Honourable Mr. G. A.
Ram Saran Das, The Honourable Rai Bahadur Lala.
Ryan, The Honourable Mr. T.
Suhrawardy, The Honourable Mr. Mahmood.
Symons, The Honourable Major-General Sir Henry.
Thompson, The Honourable Sir John.
Weston, The Honourable Mr. D.
Woodhead, The Honourable Mr. J. A.

NOES—10.

Asthana, The Honourable Mr. Narayan Prasad.
Desika Chari, The Honourable Mr. P. C.
Khaparde, The Honourable Mr. G. S.
Mookerjee, The Honourable Srijut Rama Prasad.
Padshah Sahib Bahadur, The Honourable Saiyed Mohamed.
Ramadas Pantulu, The Honourable Mr. V.
Rama Rau, The Honourable Rao Sahib Dr. U.
Ray Chaudhury, The Honourable Mr. Kumar Sankar.
Sinha, The Honourable Mr. Anugraha Narayan.
Surput Sing, The Honourable Mr.

The motion was adopted.

ELECTION OF A MEMBER TO THE GOVERNING BODY OF THE INDIAN RESEARCH FUND ASSOCIATION.

THE HONOURABLE THE PRESIDENT : The Council will proceed to elect a Member to the Governing Body of the Indian Research Fund Association. The voting papers will be distributed to the Honourable Members. I may say that, as there are three candidates, if at the first ballot any Honourable Member does not obtain a clear majority of the votes cast, that ballot will be treated as an eliminating ballot, and the Member at the bottom of the ballot will be excluded and there will be a fresh ballot between the two Members at the top. In the event of an equality of votes between the two Members at the bottom I shall cast lots as to which should be excluded.

(The ballot was then taken.)

THE HONOURABLE THE PRESIDENT : There have been cast for the Honourable Dr. Rama Rau 21 votes, for the Honourable Mr. Mahmood Suhrawardy 5 and for the Honourable Mr. P. C. Desika Chari 3. There was one spoilt vote. I, therefore, declare the Honourable Dr. Rama Rau duly elected.

THE HONOURABLE MR. L. GRAHAM (Secretary, Legislative Department): Sir, in the unavoidable absence of the Honourable Sir Fazl-i-Hussain who is detained elsewhere, I would like to seek your direction as to the time when the Council should sit to-morrow. It has been agreed that the Council should sit tomorrow for the consideration of the Child Marriage Bill. The Council has also to remember that tomorrow is Friday, and it is customary, when we sit on Friday, to give extra time in the middle of the day for the Muhammadan Members to fulfil their religious obligations. It has been suggested—and I understand that the Muhammadan Members who are present are in agreement—that you should make a direction that tomorrow we should sit at 10 o'clock in the morning, that we should sit from 10 to 12, and then adjourn from 12 to 2-30 in the afternoon.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras: Non-Muhammadan): I have no objection, Sir. 10 o'clock would suit us if you have no objection.

THE HONOURABLE MR. ANUGRAHA NARAYAN SINHA (Bihar and Orissa: Non-Muhammadan): Would it not be possible to sit at 9-30 A.M. ?

THE HONOURABLE MR. G. S. KHAPARDE (Berar Representative): Why not at the usual time ?

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE (West Bengal: Non-Muhammadan): As has been stated by some, it is not very convenient for us to come at 10 A.M., and then go back at 12, and come back again at 2-30 P.M.

THE HONOURABLE MR. L. GRAHAM: That is the suggestion, Sir.

THE HONOURABLE SRIJUT RAMA PRASAD MOOKERJEE: If there is no other time suitable, we have to agree to it.

THE HONOURABLE MR. V. RAMADAS PANTULU: I think we had better agree.

THE HONOURABLE THE PRESIDENT: I realise that Honourable Members will be put to a certain amount of inconvenience. I need hardly say that I am prepared to sit at any hour which is convenient to the majority of the Honourable Members. I therefore think that I should adopt the suggestion put forward by the Honourable Mr. Graham that we should sit from 10 to 12 and then have an extra long adjournment. The Council will now adjourn till 10 o'clock tomorrow morning.

The Council then adjourned till Ten of the Clock on Friday, the 27th September, 1929.