

Monday, 4th April, 1932

THE
LEGISLATIVE ASSEMBLY DEBATES

(OFFICIAL REPORT)

VOLUME III, 1932

(14th March to 6th April, 1932)

THIRD SESSION

OF THE

**FOURTH LEGISLATIVE ASSEMBLY,
1932**



CALCUTTA: GOVERNMENT OF INDIA
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Legislative Assembly

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LEGISLATIVE ASSEMBLY.

Monday, 4th April, 1932.

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

MEMBER SWORN:

Sir Charles Watson, K.C.I.E., C.S.I., M.L.A. (Political Secretary).

QUESTIONS AND ANSWERS.

HOLIDAYS FOR THE *HOLI* AND *DEWALI* FESTIVALS.

1111. *Mr. S. C. Mitra (on behalf of Rai Bahadur Pandit T. N. Bhargava): (a) Are Government aware that under the Negotiable Instruments Act in some Provinces two days holidays are given each for *Holi* and *Dewali* festivals, while in others only one day is given?

(b) Are Government also aware that *Holi* and *Dewali* are the most important Hindu festivals?

(c) If the reply to the above questions is in affirmative, do Government propose to issue instructions to all the Provinces that two days holiday be given each for *Holi* and *Dewali* festivals?

The Honourable Mr. H. G. Haig: (a) and (b). Yes.

(c) The Government of India do not propose to take action as suggested, as holidays are declared by Local Governments at their discretion under the power vested in them under section 25 of the Negotiable Instruments Act, 1881.

PAYMENT OF DISABILITY PENSIONS FOR MILITARY SERVICE.

1112. *Mr. S. G. Jog (on behalf of Sardar Sant Singh): (a) Has the attention of Government been drawn to the Royal Warrant of the 6th December, 1919, and especially to Articles 1 and 9 thereof?

(b) If so, will Government refer to the answer given on the 12th February, 1932, to starred question No. 274, and to the answers given on the 9th March, 1932, to unstarred questions Nos. 141 and 142, and state whether the same principles as are embodied in the above articles have not been followed by the Medical Board held on Indian ranks in deciding the point of attributability of disability to war service? If not, why not? Is it a fact that no provision is made in the Army Regulations governing the conditions brought about by the Great War?

(c) Are Government aware of any case in which a disability was not held to have been attributable to war service or ordinary military service but might have been aggravated by the same? If so, did Government meet the claims of such persons whose disability was aggravated by war service and was not due to the serious negligence or misconduct of the discharged man?

(d) How do Government explain the omission of any question in the Army Form Y-1948 on the point of aggravation? Do Government propose to take any steps to re-examine the cases whose disability was aggravated by the service during the Great War?

(e) Are Government aware of any case in which a man might not have been discharged as medically unfit for further service but his disablement became apparent after his discharge, and was evidently attributable to war service, and not due to his serious negligence and misconduct? If so, have Government awarded such persons with disability pensions?

(f) How do Government account for the omission of any provision on this point of after-discharge disablement in the Army Regulations?

(g) Are Government prepared to consider these cases now?

(h) Is it a fact that there have been cases, where men who were not discharged from the Army as medically unfit for further service, but who were suffering from impairment apparently due to war service, and not due to their serious negligence or misconduct, and who were discharged under some other ordinary military heading? If so, have Government entertained claims of such men for disability pension?

(i) Will Government please explain the absence of provision on this matter of impairment in Pension Regulations for the Army in India?

(j) Do Government propose to take any action to have these men medically examined and provided for?

Mr. G. M. Young: (a) Yes.

(b) to (j). The points raised by the Honourable Member will be investigated and a reply laid on the table in due course.

PAYMENT OF DISABILITY PENSIONS FOR MILITARY SERVICE.

1113. ***Mr. S. G. Jog** (on behalf of Sardar Sant Singh): Will Government kindly state whether persons discharged as medically unfit for further service have been deprived of their claim to disability pensions on the ground of their disability being not attributable to war service? If so, why? Is it a fact in those cases the unfitness was due to risks to which the discharged persons were not exposed in their normal out-door and indoor civil life and that their contracts with Government, as contained in paragraph 1053 of Army Regulations, India, Volume I (1915 edition), provided that they will be given injury pensions for illness contracted on field or foreign service?

Mr. G. M. Young: If the Honourable Member means that persons who have incurred disabilities on field or foreign service have been refused pensions on the ground that the disability was not due to such service, Government are not aware of any such cases. I would suggest, however, that the Honourable Member should communicate to me the specific case or cases that he has in mind. I should then be glad to give him information as to the position under the rules.

Mr. S. G. Jog: Are Government aware that there is a feeling of dissatisfaction amongst the discharged people as regards the interpretation of the words "attributable to war service"?

Mr. G. M. Young: I have received and replied to questions on that point, from which it may be inferred that there is a feeling at any rate of uncertainty on the subject.

Mr. S. G. Jog: May I know under what clause all these cases are decided? Was there a contract between these people who went to the war and the Government as regards provision for giving them pension, etc.?

Mr. G. M. Young: I am afraid I could not answer that question offhand. I should want notice.

Lieut.-Colonel Sir Henry Gidney: Will the Honourable Member inform this House whether a marked difference is made between the treatment regarding pensions given as a result of ordinary service and those due to active service?

Mr. G. M. Young: Will the Honourable Member specify a little more clearly what sorts of pensions he means—disability pensions, family pensions or ordinary pensions?

Lieut.-Colonel Sir Henry Gidney: For instance a man who contracts disease whilst stationed in Peshawar which, say, is the base of field operations, as opposed to a man who contracts disease whilst on actual active service.

Mr. G. M. Young: I am afraid I should have to have notice of that question. I have not the regulations by me.

Mr. S. G. Jog: Is it not a fact that Government make a distinction between three classes of service, field service, foreign service and ordinary military service?

Mr. G. M. Young: Yes, Sir; a distinction exists between these three forms of service.

Mr. S. G. Jog: Is it not the convention that if a man actually in war service contracts a disease, it can be attributable to war conditions at the place where he was serving?

Mr. G. M. Young: That is a very complicated question to which I could not possibly reply in answer to a supplementary question.

Mr. S. G. Jog: May I know what was the constitution of the Medical Board which made inquiries into these applications for pensions?

Mr. G. M. Young: I do not know what particular applications the Honourable Member is referring to. There were hundreds of them.

Mr. S. G. Jog: The constitution of the Board that decides these questions as to what was said to be attributable to war conditions?

Mr. G. M. Young: There is a separate Medical Board on every single disability pension case.

Mr. S. G. Jog: Is it not a nice question as to what is the medical and legal opinion on these cases—whether in law it can be said to be attributable to these causes? Were the medical people competent enough to discuss and decide these questions?

Mr. G. M. Young: Yes, Sir, a Medical Board consisting of professional medical officers is the most competent body to decide the question whether a particular disability was or was not attributable to active service.

PAYMENT OF FAMILY PENSIONS IN RESPECT OF CASUALTIES IN THE GREAT WAR.

1114. ***Mr. S. G. Jog** (on behalf of Sardar Sant Singh): (a) Is it a fact that family pensions to a parent, in respect of death casualties of the Great War were promised by Government irrespective of the conditions whether a parent was or was not dependent on the deceased and whether he or she was rich or otherwise?

(b) If so, are Government aware that practice has come into vogue to investigate, (1) the extent of the parent's dependency on the deceased, (2) his or her income from all permanent sources, (3) the inability or otherwise of other living sons to support the parent; and such investigation has affected greatly the meagre resources of the parent in proving his or her claim to family pension, and causing unusual delay in the completion of the investigation (e.g., letter No. Pen./152, dated the 3rd March, 1952, of the Officer Commanding 2/6th Rajputana Rifles, Ahmedabad)?

(c) Are Government prepared to revise the procedure with regard to first claims of family pensions and see that unusual delay is not caused either in the investigation of the claims or in finally disposing of the same by the pension-sanctioning authority?

Mr. G. M. Young: I have called for the facts of the case referred to in part (b) of the Honourable Member's question. A reply to the whole question will be given in due course.

PAYMENT OF FAMILY PENSIONS IN RESPECT OF CASUALTIES IN THE GREAT WAR.

1115. ***Mr. S. G. Jog** (on behalf of Sardar Sant Singh): (a) Are Government aware that family pensions had been refused to be sanctioned simply because the father, the nominated heir, happened to be in receipt of a service pension earned by himself?

(b) If so, will Government please lay on the table a copy of the definition that they have given to the terms "family pension" and "service pension"?

Mr. G. M. Young: (a) Yes, Sir, a family pension cannot be drawn in addition to any other Government pension.

(b) There is no definition laid down beyond what is contained in the words themselves. A family pension means a pension granted to a

deceased soldier's family. A service pension means a pension which a soldier has earned by service, and draws during his life-time.

DECLINE IN THE EXPORT TRADE OF HIDES AND SKINS.

1116. *Khan Bahadur H. M. Wilayatullah (on behalf of Dr. Ziauddin Ahmad): (a) Has the attention of Government been drawn to the figures given below about the import of hides into Germany during the last five years?

(b) Is it not a fact that India has not been able to compete with other countries and that the export trade of hides and skin is falling rapidly? What steps, if any, do Government propose to take to re-establish the export of hide at its old level?

IMPORT OF HIDES INTO GERMANY.

A.—Oalf and Cow Hides.

	1927.	1928.	1929.	1930.
From	Tons.	Tons.	Tons.	Tons.
Sarr District	1113	767	773	539
Belgium-Luxemburg	1578	1956	1782	1712
Denmark	4387	4147	3370	3494
Finland	2960	2349	2037	2752
France	8575	8930	10630	9582
Great Britain	1163	999	1042	1206
Italy	9110	7918	5691	4941
Lithuania	1422	1397	886	866
Holland	4762	3697	2835	2704
Norway	2137	1584	1196	1554
Austria	806	417	725	2492
Poland	2016	2781	1408	4367
Danzig	637	824	476	296
Sweden	5160	3880	3328	4592
Switzerland	3413	2270	1841	1923
Czecho-Slovakia	1283	1639	2440	4916
Absessinia	754	1154	459	683
British East Africa	457	569	444	..
British South Africa	3821	3816	3208	2633
British West Africa	332	455	348	..
British India	9891	10717	6834	5373
China	3257	3419	2520	1431
Dutch India	1048	883	666	704
Argentina	52385	35387	30483	37114
Brazil	14544	11014	10366	11680
Columbia	769	636	1058	996
Cuba	959	1612	1797	2229
Guatemala	400	450	406	429
Paraguay	932	1092	653	741
Peru	661	640	361	..
Uruguay	6882	6514	4780	6937
Venezuela	637	463	570	571
U. S. A.	6024	4474	1620	2148
Australia	8634	1272	1348	738
New Zealand . . . . .	..	248	619	930

B.—OTHER HIDES AND SKINS, EXCEPTED LAMB—AND SHEEP SKINS AND RAW SKINS FOR FURS.

	1927.	1928.	1929.	1930.
From	Tons.	Tons.	Tons.	Tons.
Belgium-Luxemburg	427	276	268	609
Bulgaria	27	247	194	232
Denmark	749	643	..	..
France	3389	2190	3165	3884
Great Britain	4689	4028	3647	3602
Italy	241	231	213	336
Yugoslavia	314	420	287	180
Holland	1973	1330	1224	1839
Austria	290	217	138	393
Poland	234	219	171	256
Danzig	104	110	54	8
Russia (USSR)	323	108	98	304
Spain	461	527	296	668
Czecho-Slovakia	385	483	614	733
Egypt	478	212	64	..
British South Africa	330	426	404	256
Algeria	366	212	..	..
British East Africa . . . . .	..	175	450	436
British India	1075	1577	1117	1237
China	279	318	167	181
Dutch India	117	90	77	202
Argentina	1052	410	..	1835
U. S. A.	798	241	182	213

IMPORT OF HIDES INTO GERMANY.

January—September, 1931.

From	
British India—	100 kg.
Calf and cow hides	32 630
Other hides excepted Lamb—and Sheep Skins and Raw for Furs	9 742

The Honourable Sir George Rainy: (a) Government have not seen elsewhere the statistics given by the Honourable Member.

(b) Government are unable to accept without considerable qualification the statement that India is unable to compete with other countries in the export of hides and skins to Germany. So long as the world trade depression persists they do not consider that any action they might take could restore the export of hides to the position which it occupied before the period of depression began.

UNSTARRED QUESTIONS AND ANSWERS.

TAXES AND DUTIES IMPOSED BY THE GOVERNMENT OF INDIA AND BUDGET SURPLUSES AND DEFICITS.

307. Mr. Badri Lal Rastogi: (a) Will Government be pleased to lay on the table a statement showing year by year the amount and rate of import and export duties as well as the fresh taxes that were imposed by the Government of India since the life of the Legislative Assembly, i.e., since the year 1921 up to date?

(b) Will Government kindly state year by year the amounts of deficits or surpluses that came out at the time of each year's Budget up to 1931-32?

(c) Is it a fact that during the last ten or eleven years the Government of India have imposed new taxes to the extent of Rs. 70 crores on the people of India?

(d) If the answer to part (c) be the negative, what is the actual figure?

The Honourable Sir George Schuster: (a) I would refer the Honourable Member to the Finance Member's speech and the Financial Secretary's Explanatory Memorandum in connection with the Budget for each year since 1921-22.

(b) I would refer the Honourable Member to the table on page 1 of the Explanatory Memorandum by the Financial Secretary on the Budget for 1932-33.

(c) and (d). The Honourable Member has apparently based his calculation on the estimates made at the time when changes in taxation were proposed of what extra revenue such changes would yield. In the actual results then estimated receipts were in many cases not realised, and it is extremely difficult now to determine exactly what is, say, in the current year, the yield of increase in taxes made 10 years ago. The important point is to consider actual results. The total amount of tax revenue in 1922-23 was 64.41 crores while the revised estimate for the current year is 68.98 crores.

PERSONS RETURNED TO THE LEGISLATIVE ASSEMBLY BY THE PATNA CUM SHAHABAD NON-MUHAMMADAN CONSTITUENCY.

808. Mr. Badri Lal Rastogi: (a) Will Government kindly state the names of the different Members of the Legislative Assembly who were elected from the Patna cum Shahabad Constituency (Non-Muhammadan) along with the names of the parties they belonged to?

(b) Will Government kindly state the period for which the different Members from that constituency served in the Assembly?

Sir Lancelot Graham: A statement giving the information asked for is placed on the table.

1st Assembly.

Mr. Sachchidananda Sinha, 25th December 1920 to 13th June 1921	No Party.
Babu Ambica Prasad Sinha, 6th August 1921 to dissolution	Democratic Party.

2nd Assembly.

Mr. Ambica Prasad Sinha, 17th November 1923 to dissolution	Swaraj Party.
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3rd Assembly.

Mr. Ambica Prasad Sinha, 18th December 1926 to 4th June 1927 (Death)	Swaraj Party.
Mr. Rajivaranjan Prasad Sinha, 2nd July 1927 to dissolution	No Party.

SHORT NOTICE QUESTION AND ANSWER.

PARTICIPATION OF INDIA IN THE IMPERIAL ECONOMIC CONFERENCE AT OTTAWA.

Mr. O. S. Ranga Iyer: Sir with reference to the recent announcement by the Secretary of State for India that the Government of India would take part in the Imperial Economic Conference at Ottawa next July, will Government be pleased to make a statement explaining what action they propose to take in the matter?

The Honourable Sir George Rainy: The Government of India have agreed to send a delegation to the Imperial Economic Conference which will meet at Ottawa in July next. They have been informed that the principal item on the agenda of the Conference will be the discussion of a policy of trade agreements between different countries of the Empire and they have been invited in particular to consider the question whether, having regard to the new tariff policy of His Majesty's Government in the United Kingdom, Great Britain and India should enter into a tariff agreement embodying a reciprocal preferential regime so designed as to benefit the trade of both countries. The Government of India have accepted this invitation and His Excellency the Viceroy has, with the approval of the Secretary of State for India, appointed the following gentlemen to represent India at the Conference:

Leader—Sir Atul Chatterjee.

Members—Mr. R. K. Shannmukham Chetty,
Sir Padamji Ginwala,
Seth Haji Abdoola Haroon,
Sahibzada Abdus Samad Khan, and
Sir George Rainy.

If the conclusion of a trade agreement is recommended as a result of the Conference, any changes in the tariff which it may involve will be duly placed before the Legislature for its approval. The Government of India have no wish to put any such changes into effect unless the Legislature is satisfied that they are in the interests of India.

Mr. K. C. Neogy: What instructions are the Government of India giving to this delegation?

The Honourable Sir George Rainy: That, Sir, is a question I am not in a position to answer. I shall be the person to receive instructions and not to give them.

Mr. K. C. Neogy: But the Honourable Member is for the time being representing the Government of India. He has not yet assumed his new office as a member of the delegation?

The Honourable Sir George Rainy: The instructions have not yet been drafted.

Mr. K. C. Neogy: Is the Secretary of State going to give the necessary instructions or the Government of India will give instructions without any reference to the Secretary of State?

The Honourable Sir George Rainy: The Government of India will give the instructions.

Mr. K. C. Neogy: Without any reference to the Secretary of State, may I take it?

The Honourable Sir George Rainy: Unquestionably the instructions will be given by the Government of India.

Mr. K. C. Neogy: I want to know whether there will be any reference to the Secretary of State before the Government of India give their instructions?

The Honourable Sir George Rainy: The Honourable Member, Sir, is, I think, acquainted with the procedure followed in connection with the Tariff Board Reports. There is always communication between the Government of India and the Secretary of State, but the final decision rests entirely with the Government of India. I take it that this is a parallel case.

Mr. O. C. Biswas: May I ask if the constitution of the delegation has been determined on the understanding that the members who compose this delegation will support Imperial Preference?

The Honourable Sir George Rainy: No, Sir; I do not know what the views of the individual members are.

Mr. K. C. Neogy: Will the conclusions of this Conference, so far as they affect India, be placed before this Legislature or the Legislature to be created after the new reforms are introduced?

The Honourable Sir George Rainy: So far as tariff changes are concerned, I have said so distinctly in my answer. The reason why I cannot expand it is because I do not know what other questions may come up at the Conference.

Mr. K. C. Neogy: Will this delegation be authorised to commit India to a definite economic policy?

The Honourable Sir George Rainy: I do not know what definite economic policy exactly my friend refers to.

Mr. K. C. Neogy: Imperial Preference, for example.

The Honourable Sir George Rainy: That involves tariff changes.

Mr. K. C. Neogy: Tariff changes are merely consequential; what I want to know is whether this delegation will be authorised to commit India to the policy itself?

The Honourable Sir George Rainy: I do not know what use the policy would be if you cannot make the consequential changes in the tariff.

Mr. K. C. Neogy: Supposing these matters are thrown out, even then the Government could with its own extraordinary power pass those measures?

The Honourable Sir George Rainy: What I have said is that the Government of India have no wish to put any such changes into effect unless the Legislature is satisfied that they are in the interests of India.

Dr. Ziauddin Ahmad: I understand that the customs duty between the different countries of the British Empire will form the subject of discussion in this Conference; is this correct or not? I should like to know whether the principle of customs duty between the different countries of the British Empire will or will not be considered by this Conference?

The Honourable Sir George Rainy: I do not know whether the Honourable Member was present when I gave the answer originally. Perhaps I may read again one sentence from the answer.

"They have been informed that the principal item on the agenda of the Conference will be the discussion of a policy of trade agreements between different countries of the Empire and they have been invited in particular to consider the question whether, having regard to the new tariff policy of His Majesty's Government in the United Kingdom, Great Britain and India should enter into a tariff agreement embodying a reciprocal preferential regime so designed as to benefit the trade of both countries."

Dr. Ziauddin Ahmad: I am sorry I was a bit late, and so I did not hear the answer when it was first given. I want to know whether this Conference will also consider the question of the protection duty as distinct from the tariff duty, because there are certain commodities on which we want to have a duty for the sake of protection, irrespective of the yield of revenue.

The Honourable Sir George Rainy: It is quite clear, Sir, that the interest of India must come first and that adequate protection to Indian interests must be an essential part of any agreement.

STATEMENT LAID ON THE TABLE.

MEDICAL EXAMINATION OF LADY PASSENGERS EMBARKING AT CALCUTTA FOR RANGOON.

Sir Frank Noyce (Secretary, Department of Education, Health and Lands): Sir, I lay on the table the information promised in reply to question No. 1040 asked by Mr. Jehangir K. Munshi on the 29th March, 1932.

(a) No. Such passengers are not exempt from medical inspection.

(b) Yes.

(c) and (d). Do not arise.

THE INDIAN AIR FORCE BILL.

Mr. G. M. Young (Army Secretary): Sir, I move that the Bill to provide for the administration and discipline of the Indian Air Force, as reported by the Select Committee, be taken into consideration. With

one possible exception, Sir, to which I shall allude later, this Bill consists of detailed administrative provisions which have been taken, as I explained on previous occasions to this House, from existing Acts, the British Air Force Act, which itself is an adaptation of the British Army Act, and the Indian Army Act. There is nothing in these provisions which is new, there is nothing which is untried. All that we had to do in framing this Bill was to select from one or other of the two Acts the particular provisions which would be most useful to an Indian Air Force, and having done so to scrutinise those provisions to see whether any alteration in them was required. The Select Committee have been through the whole of the Bill, clause by clause, I might almost say, word by word, and I should like to take this opportunity of thanking them for the time and the care which they bestowed upon this task. The result of their deliberations is before the House, in the form of a very short and unanimous Report, which recommends seven or eight small amendments in a Bill of 130 clauses. The very minuteness of the alterations recommended is sufficient to show not only how carefully the Committee have carried out their work, but also how little alteration was required in order to adapt the existing disciplinary Acts on which we were working to the purposes of an Indian Air Force. I think that the House may confidently take this Bill in the form in which it has emerged from the Select Committee, and pass it into law.

I should, however, like to say something about the one clause in the whole of this Bill which is new. Clause 9 was inserted in order to provide a statutory guarantee that the rank and file of the new Force should be Indian. This provision was not absolutely necessary. A similar provision, for instance does not exist in the Indian Army Act, but in view of the fact that there is no class composition in this Force, it was felt that some kind of provision was required as a guide to the enrolling officer, and that the provisions should be put in the statute itself. The clause as originally drafted merely repeated the statutory definition of an Indian, but some Members thought that the wording was not definite enough, particularly in view of the fact that the statutory definition of an Indian includes persons who may be of unmixed European descent. Ordinarily of course there would be no legal or moral justification for excluding such persons from eligibility to the Indian Air Force; but it so happens that they alone among statutory Indians are eligible for enrolment in the Royal Air Force, and it was felt that in instituting an entirely new and distinctive Indian Air Force, there was some justification for excluding from eligibility persons who could enrol themselves if they wished in the Royal Air Force. So we had to draft a clause bearing that in mind. One exception may lead to another; and eventually we evolved a clause which is a little more complicated in form than what we originally had before us but which I think is perfectly easy to understand and will be logical in its effect. The persons who are eligible under the amended clause are subjects of His Majesty or of a Prince or Chief in India, who are either of unmixed Indian descent, or if they are of mixed Indian and non-Indian descent, are domiciled in India, or if they are of unmixed non-Indian Asiatic descent are domiciled in India and their fathers and grandfathers were domiciled in India. This will ensure that only a genuine Indian citizen will be eligible for enrolment in the Force, and I think it is as much as one can impose upon the enrolment officer as a guide. If we went into further details, it would become impossible for an enrolment officer to carry out his statutory instructions.

[Mr. G. M. Young.]

I think that is all that I have to say. As I have said before, this is a long Bill, but it is not new and it is not untried; and I do not think that the House need have any hesitation in accepting it. Sir, I move. (Applause.)

Mr. President (The Honourable Sir Ibrahim Rahimtoola): ~~Motion~~ moved:

"That the Bill to provide for the administration and discipline of the Indian Air Force, as reported by the Select Committee, be taken into consideration."

To this motion there is an amendment from three Honourable Members proposing to postpone the consideration of this Bill to the next Simla session. Before calling upon Mr. Mitra to move his amendment, the Chair should like to inform Honourable Members that it proposes to restrict the debate to the question of postponement only. If the House desires to postpone the consideration of this measure, it would be best if the House discusses and votes upon this one issue only instead of having a joint discussion both on the main motion and on the amendment. If the amendment is carried, the time of the House will be saved, and there will be no discussion on the Bill till it comes up for consideration in the Simla session. If however the House desire to proceed with the consideration of the Bill, that motion will come up for consideration after the amendment has been defeated. I would therefore ask Honourable Members, when the amendment is moved, to restrict themselves to the subject matter of the amendment only. Mr. Mitra.

Mr. S. C. Mitra (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I move that the consideration of this Bill be postponed till the next Simla session. I shall confine my speech only to this motion and I hope that I shall get a chance to speak on the main Bill later on.

Mr. President: Certainly, if the amendment is defeated.

Mr. S. C. Mitra: I move this amendment from the point of view of the bigger constitutional aspect, because I think the House has now ceased to be representative, and it will not only be the duty of this House to see that all important and contentious measures are postponed to the next Simla session, but you, Sir, as the custodian of the privileges of this House, if you are convinced by my argument that this House has ceased to be representative, should exercise your inherent right of adjourning the House *sine die* on this question. Even looking at the front Benches on the Government side, the Government are represented by only one Honourable Member. On this side, the Leader of the Opposition is absent, the Leader of the European Group is absent, and as I shall later on show, a large number of elected Members are absent. This is due not only to their negligence, but it was announced by the Government that the House would sit till the 24th March, and when we first came, we heard that because there was no Finance Bill to be discussed this year, the Assembly might cease to sit even after the 18th March. Now, the session has been extended. We are now on the 4th April, and we do not know when the House will finally adjourn. There are nine Bills and two Resolutions yet to be discussed. We on this side as much as the public at large regret

that many of the elected Members are often absent. If all the elected Members of the House or the Members of the Opposition cared to attend, they could easily frustrate the Government in bringing forward many of their drastic and obnoxious measures because the two chief principal Parties, namely, the Nationalist Party number 40 and the Independent Party number 30, and there are other elected Members also, and we could get a strength of more than 70 Members, and Government have not carried any measure in this House by more than 50 or 55 votes this session. So, the discredit is due to the elected Members not being present in the House. Now, I am not regretting the absence of Members like Mr. Pandian or Mr. Talib Mehdi Khan, or Thakur Mahendra Nath Shah Deo, or Mr. Gopika Ramon Roy, or Tun Aung, who have been absent for the entire session. But I shall read out the names of 13 Members who did not attend more than one week in this session. They are Diwan Bahadur T. Rangachariar, Mr. A. Hoon, Mr. Narasimha Rao, Mr. Govinda Reddy, Mr. Jamal Muhammad Saib, Mr. Dumasia, Mr. Aggarwal, Mr. B. R. Puri, Mr. Sadiq Hasan, Mr. Ram Krishna Jha, Mr. Badi-uz-Zaman, Mr. M. R. Puri and Mr. Kyaw Myint from Burma. All these gentlemen were more or less absent. I do not to-day regret their absence, but my point is that there were others here who wanted to attend but they are absent because the session is now being extended beyond any idea of these elected Members. They are Sir Hari Singh Gour, Leader of the Opposition, Sir Hugh Cocke, Raja Bahadur Krishnamachariar, Sir Cowasji Jehangir, Mr. Lalchand Navalrai, Mr. Mody, Mr. D. K. Lahiri Chaudhury, Mr. Bagla, Mr. Raghubir Singh, Mr. A. Das, Lala Brij Kishore, Mr. Triloki Nath Bhargava, Mr. Shah Nawaz, Mr. Makhdum Rajan Baksh Shah, Sardar Sant Singh, Mr. Shafee Daoodi, Mr. Munshi, and several others who were present till recently. I know that it was the punctilious sense of my Leader Sir Abdur Rahim that kept him on here, otherwise he would have gone away a long time ago. When all these gentlemen are absent, do you really think that this House is really representative of the people of India, and can it take up any contentious measure and decide upon it now? Will it be fair to the country, will it be fair to the elected Members? I brought this question to the notice of the Leader of the House, and when he could not see his way to accept it, I have brought it to the notice of this whole Assembly and for your particular attention. It may be argued that Government are getting their troop always in full strength. If you look to the names of the Members on the Government side you will find that 25 per cent. of the names have been changed. Within 24 hours they can replace a Member, as soon as a man happens to be engaged elsewhere or is not physically well. That advantage is denied to this side of the House. I know there is a rule in the constitution when a Member is absent for a very long period, for 60 days, the Government have a right to declare his seat vacant, but so far as I know it was only applied in my unfortunate case when Government arrested me and put me under restraint under Regulation III, and after 60 days they declared my seat vacant as a Member of the Bengal Council. That was the only case so far as I remember in which this rule has been enforced. There are many others who will not care to attend the session for months and months and yet Government will not take any action to secure their presence. If Government are allowed to extend the time of the Assembly as they like, there is a great danger. If the Honourable the Home Member takes it into his head to change the Ordinances into law, they could easily carry the day with the present thin attendance on the non-official side.

Mr. K. C. Neogy (Dacca Division: Non-Muhammādan Rural): With this subservient Legislature, it can happen even if the Assembly is in full strength.

Mr. S. C. Mitra: Even this subservient Legislature defeated Government once or twice in the division when the House was more representative. Even if we look to the European Group, I see they are represented out of ten men by three men. 60 per cent. of the European Group are also absent at this fag end of the session.

Mr. K. C. Neogy: They always vote with Government. That should not be a matter of complaint with you.

Mr. S. C. Mitra: They are also elected Members. Whether they vote with Government or not is not the point. My contention is that the House is not representative owing to the absence of so many elected Members. I hope, Sir, you will allow me to take a little more time on this amendment because I have given notice of a similar motion in connection with all the items. I shall therefore argue the whole case on this amendment. There is a contentious item like the question arising out of the financial separation of Burma. Then there is the Public Suits Validation Bill. Then there is the Road Fund Resolution in connection with the Federation of Shan States and then there are several motions for Select Committee. As regards the Select Committee motions, there is this much to be said that there is a chance in the third reading to throw out the Bills if they are not sufficiently improved in the Select Committee and if the House is not satisfied. Unless these motions are non-contentious, I say they should not be brought up at the fag end of the session and because the House has already been extended beyond the expectations of Members, several have left and others will leave even to-day. Then there is the Partnership Bill, which this House passed and which has been altered in the Council of State and Government are now certain of carrying the amendment in this House.

Mr. C. C. Biswas (Calcutta: Non-Muhammādan Urban): It was altered in accordance with the recommendations of this House.

Mr. S. C. Mitra: My point is that the Bill has been altered by the other House and it is coming back. The House passed it in one shape and now it has been altered and the House is expected to revise its opinion. These are the general grounds on which I say that the House has ceased to be representative. Simply because I move that the Bills be postponed to the next Simla session, it should not be inferred that I am in favour of the exodus. What I mean is that even if a session is held in Simla, these contentious measures should not be brought forward at the end of the session. Then even as regards the question of retrenchment, the more days we sit here, the more expensive it is, because of the conveyance allowance to Members at Delhi, in that respect Delhi is more expensive than Simla.

Mr. K. C. Neogy: That has already been paid.

Mr. S. C. Mitra: My Honourable friend has not followed my point. I am referring to the conveyance allowance paid here unlike at Simla. If you extend the session here, each day costs more.

Mr. C. C. Biswas: As Members have gone away, the expense will be less.

Mr. S. C. Mitra: Most of the arguments that I have advanced in connection with this motion are applicable to subsequent measures and I suggest that all contentious and debatable Bills and Resolutions should be postponed to the Simla session. Sir, I move.

Mr. Arthur Moore (Bengal: European): Although I cannot support the Honourable Member, I do feel that it is very unfortunate that such an important Bill should come before such a very thin House. I regret it because this is one of the greatest measures that have ever been introduced into this Assembly. I think that we are planting to-day a grain of mustard seed from which I hope there will rapidly spring up a great tree in which some very marvellous and wonderful birds of the air will lodge. And I think, Sir, that in the possibly very difficult days that are still to come in regard to India's new constitution, we may find that the fact that the House is now inaugurating a purely Indian Air Force will prove a very decisive factor in a sense which will entirely commend itself to this House. Therefore I am not prepared to agree on the evidence submitted by my Honourable friend that this is a contentious measure.

Mr. S. C. Mitra: Important.

Mr. Arthur Moore: I agree about the importance. My friend referred for example to the fact that this particular group is reduced to a very small numbers. I am sure that Sir Hugh Cocke and the other Members who most unfortunately have had to go away are not prepared to throw the blame for that on any one but themselves, and the last thing that they would wish is that their absence should be made a reason for delaying such an important measure. I feel the same thing with regard to the Leader of the Nationalist Party, Sir Hari Singh Gour, who was the Chairman of the Select Committee and who undoubtedly gave his blessing to the Bill and did not regard it as a contentious measure. My friend Sir Abdur Rahim's party also put on a very distinguished representative of their party, Sir Cowasji Jehangir. He too is unfortunately absent. I am sure Sir Abdur Rahim will agree with me that he would be very sorry that his friend's absence should be made a reason for delaying this very important Bill. There are also a great many practical difficulties which would result, of which we shall probably hear something from the Government Benches. I shall confine myself to remarking that the intention is that this Air Force should actually come into being this summer (Hear, hear), that cadets have been trained at Cranwell, and that unless the Indian Legislature now provides for them, it will not be possible for them to come on the establishment and be paid. Sir, I oppose the amendment.

Mr. G. V. Prasad Singh (Muzaffarpur cum Champaran: Non-Muhamadan): Sir, I rise to oppose this motion; and I am surprised that a man like my Honourable friend should have made this motion. Sir, my Honourable friend's contention is that this House has ceased to be representative—a contention which cannot hold water. This House is

[Mr. Gaya Prasad Singh.]

as much representative as it was when the Swarajists and the Congress Members left it. If it is not representative, it is incapable of transacting any business, and should the rest of us disappear like other friends whose names he mentioned? In the list which he read out I find the Honourable Member has included the name of Mr. Munshi as being absent, but I find that Mr. Munshi is already there in his seat. He has also mentioned the name of Maulvi Shafee Daoodi. I have seen my Honourable friend this morning, although at this moment he is not in the House. Now this Bill is a non-contentious one, and the time we are devoting to adducing arguments in support of postponement could have been better utilized in examining the provisions of the measure, and seeing it through. Sir, the Air Force Bill and the Broadcasting Bill are two very important measures, and at the same time they are non-contentious in character, and I do hope these two measures will be allowed to pass through in this session. It is not our fault that the House is thin. Sir, the punishment for those who are absent is sought to be visited on those who are present, and who are trying to do their public duty in the best way they can. The date of the commencement of the session is fixed beforehand, but with regard to the termination of the session, it is very difficult to fix a day. That obviously depends upon the business to be done, and on the Members themselves: and if they can retrench their speeches—as my friend, Mr. Mitra, has been trying to make retrenchments in expenditure on the General Purposes Committee—much of the precious time of the House can be saved. (Hear, hear.) (Mr. S. C. Mitra: “You will be a Government Member very soon.”) Sir, as soon as a Member happens to differ from my Honourable friend, Mr. Mitra, well, it is quite natural for him to attribute motives. This, Sir, is one of the features that is to be found in a subject race (Laughter),—that honest differences of opinion are never tolerated. Because I want a measure like this, which I hold to be a non-contentious measure, to be passed in this session, my Honourable friend is going to be sarcastic at my expense. Sir, I hope some will be Government Members sitting on that side under the new constitution (Hear, hear), but because I or some other Members may happen to differ from him, it is not proper for my Honourable friend to cast any reflection on us.

Mr. S. C. Mitra: On a point of order, Sir. I have never said that in my speech anywhere.

Mr. Gaya Prasad Singh: Sir, I heard an interjection to that effect. (Mr. S. C. Mitra: “You hear many things.”) But I am glad to stand corrected.

Mr. President: Order, order.

Mr. Gaya Prasad Singh: Now with regard to the contention that this House has ceased to be representative, I will recall the fact that when the House was fully attended, my friend, Sir Hari Singh Gour's Resolution—which all will admit was of such supreme importance—was nevertheless defeated by a substantial majority. So if this House has ceased to be representative, my Honourable friends who hold that view should have left this Chamber, and not allowed expenditure of public money to

continue, and then turn round and say that this House is not representative. My Honourable friend has also said that the Honourable the Leader of the House should not allow contentious measures to be brought forward at the fag end of the session. If any new contentious measure be brought forward, it will be time for us to join hands, and oppose that measure; but this Bill was introduced so far back as the 3rd February, 1932. It was referred to the Select Committee on the 6th February, and we are now considering the report of that Committee on the 4th April. Therefore it cannot be said that the Government have sprung a surprise with this measure. I understand that the Indian Air Force is to be constituted during the summer; and it is necessary that the personnel should be selected, and arrangements made as soon as possible. The ordinary Simla session will as usual be held towards the end of August (*Mr. Amar Nath Dutt*: "Oh, you seem to know everything!"), and if this Bill has to stand over, I think much time will be wasted, and much useful work, which ought to be done with regard to the inauguration of the new Force, will have been left undone. Sir, I therefore oppose this motion.

Mr. B. Sitaramaraju (*Ganjam cum Vizagapatam: Non-Muhammadan Rural*): Sir, I rise to support this motion for postponing consideration of this Bill. The Honourable gentleman who has now spoken has not told us that the heavens will fall if the consideration of this Bill is postponed to the Simla session. When my Honourable friend, the Leader of the European Group, said that this is an important measure, I entirely agree with him that it is so (*Mr. Arthur Moore*: "I agree that it is an important measure"), but that is exactly the reason why I should consider that such an important measure consisting of a hundred and odd sections should not be taken up at the fag end of the session, because the point which I understand was made by my Honourable friend Mr. Mitra is, and with which I am in agreement, that a reasonable and fair debate on a motion like this could not be secured at the fag end of the term on account of the thinness of the House. That is not the fault of those Members who are present, as my Honourable friend Mr. Gaya Prasad Singh has said; it is rather our misfortune that they are absent. It is not a charge therefore which can be made against the Government that these Members are absent,—I agree. But my Honourable friend, Mr. Mitra, showed the advantages which the Government have in having their Members always present as they could fill their absent Members' places at any time and the disadvantages from which we on this side suffer. Not only this legislation, but a number of other Bills are now crowded together at the fag end of the term, and my point is that a fair and reasonable debate on this and other motions cannot be secured in these circumstances now when so many people are absent; and so I appeal to you, Sir, as the custodian of the House, that whatever may be the causes for the absence of Honourable Members from this House, nevertheless the House is so thin that it would not be desirable that we should proceed with this legislation as reasonable debate cannot be had. With these few remarks I support the motion.

The Honourable Sir George Rainy (*Leader of the House*): Sir, I am afraid that Government are quite unable to accept the amendment moved by my Honourable friend, Mr. Mitra.

One of the points he made was that the House were given to understand that the session was going to terminate on the 24th March. I

[Sir George Rainy.]

presume that he refers to the circular dated the 28rd December, 1931 which was issued to all Members. All that is said on the point there is that the Honourable the President of the Legislative Assembly has been pleased to direct provisionally that there shall be meetings of the Legislative Assembly for the disposal of official business on the following days, the last of these days being the 24th March. A circular of that kind issues every session, and directions are asked for from the President up to a certain date, the earliest date by which it is thought possible that the business can be got through. But it is never more than provisional; it does not amount to any sort of pledge that it will not be necessary to sit longer. My experience is that in every session since I have been in this House, it has invariably been necessary to go on sitting longer than the latest date for which directions were originally issued.

Then, Sir, my Honourable friend says that Government should not bring on contentious legislation at the fag end of the session. What was the course the Government have actually taken this session? At the beginning of the session we were told that we ought not to bring on the contentious Income-tax Bill in the first week of the session before Members had assembled and that it was unfair to the House to do so. Now we are told that at the end of the session we should not bring contentious measures because Honourable Members want to go away. That being so, the middle of the session is not large enough to contain all the contentious measures. If both ends of a candle are burnt away, very soon there will be very little left at the middle. But is it a fact that these measures are contentious? At the beginning of the session, in order to meet the wishes of the House, we took the Income-tax Bill later than was originally proposed. We then proceeded with all the Bills which could really be considered contentious in the ordinary political sense, and the House spent a great deal of time on two of them, namely the Bill to supplement the Bengal Criminal Law Amendment Act, and the Foreign Relations Bill. What remains now is not, I maintain, contentious in that sense at all. Take the case of this particular Bill we have before us. The Report of the Select Committee is dated 8th March. I presume it must have been in the hands of Honourable Members since the 10th March, that is, 25 days ago, with the result that notice has been given of three amendments to one clause although there are 129 clauses in the Bill. What reason can Government have for thinking that the House regards that as contentious? Take the Broadcasting Bill, that is another example. I do not believe for a moment that it is a contentious Bill. Take the Bills that arise out of the Haj Committee's Report. Are they contentious measures? Are they contentious in the sense that there is a strong body of opinion in the House which would refuse even to send them to a Select Committee. I must protest against the view advocated by my Honourable friend. After all this House, if it wishes to discuss as fully as it did and which it was quite entitled to do, one of the measures to which I have referred, then it becomes necessary to sit somewhat longer in order to dispose of the remainder of the work, and I do not think it is unreasonable on the part of the Government that they should ask the House to sit longer when the measures that remain to be discussed by the House are not measures which are contentious, or in which it can be fairly said Government have put them down now in order to secure a majority which otherwise they could not have got. I

do not think there is any one of these Bills now on the programme in which it makes the smallest difference as to their being carried or not carried at what period of the session they are being taken.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Before I put the question, I am not sure whether I need take any serious notice of the appeal which has been made to the Chair. Honourable Members are aware of what happened when the Swaraj Party walked out and the ruling which the Honourable Mr. Patel gave on the first day, modifying it on the following day. I have got the proceedings here, but I do not wish to trouble the House with it. There is, however, one point to which I should like to refer. The Honourable Member has contended that a large number of elected Members have either been absent throughout the session or are absent now. In all democratic countries the responsibility for the discharge of obligations and duties of an elected member is the concern of the electorate. It is the duty of the constituency to call to account its representative who is remiss in the discharge of his duties on the floor of the House. The Honourable Member has asked whether the Chair would allow any very controversial measure to be sprung upon the House at the last moment. The Chair is bound to protect the rights and the privileges of the House (Applause) and if Government ever attempted any such thing without adequate reason, the Chair would take care that the House is not forced to discuss it, but if Honourable Members expect that the Chair would have any sympathy with those Honourable Members who take so much trouble and incur considerable expenditure in getting elected to the House and then do not care to attend to their duties, it is expecting too much. On the present occasion, the Bill, as has been pointed out, has been before the House for a considerable time. The Select Committee has reported upon it but it could not be brought up for discussion earlier because the Chair took care that the House should have an opportunity of fair debate on all questions which were submitted to its decision. Public business has to be done and elected Members are provided with the opportunity of contributing towards it. It is for them to decide whether they will avail themselves of it or not. The Chair trusts that the effect of this discussion will be that Honourable Members will make it a point to be present here to discharge the obligations which they have taken upon themselves.

Mr. S. O. Mitra: After the remarks that fell from the Chair I beg leave to withdraw the amendment.

The motion was, by leave of the Assembly, withdrawn.

Mr. President: The House will now proceed to discuss the motion for consideration.

Hon. Captain Rao Bahadur Chaudhri Lal Chand (Nominated Non-Official): Sir, I rise to support the motion for consideration of this Bill. This is one of those Bills which will be welcomed from all parts of the House. It is in fact an earnest of the sincere desire of Government to respect our ambitions and aspirations. I am particularly glad that it has fallen to the lot of a Punjab Civilian, whose connection with the Punjab, the sword-hand of India, can be traced to more than one generation, to steer this Bill through this House. The Bill has not been altered in

[Hony. Captain Rao Bahadur Chaudhri Lal Chand.]

any particulars by the Select Committee, and I hope I shall not be guilty of any breach of rules or etiquette to this House when I disclose that throughout the discussions in the Select Committee the attitude of the Honourable Member, Mr. Young, was that of an Indian.

12 NOON. The Bill when passed into law will give us a force which will be wholly Indian from top to bottom, and when we realise the importance of an air force in future warfare, it will be found to be the most important section of the Army of the country. The old days of invasion from land are gone; the old defences are useless and the future wars of the world will be fought in the air. So the formation of an Indian air force, important as it is, is also an index of the trust that Government has in our fighting material. I need hardly refer here to the perfect unanimity with which the report of the Select Committee has been presented before the House, and I hope the House will deal with the Bill in the same spirit of co-operation and trust. Although the Bill is original in its nature yet, as Honourable Members will see, its provisions have been borrowed from the Indian Army Act and the Royal Air Force Act. So it cannot be said that we are enacting methods which have yet to be tried. Sir, at this stage we need not go into details; that we can do when considering the Bill clause by clause. I would only repeat that the Bill is a most welcome measure, and I am sure this is the view that will be taken in all parts of the House. Sir, I support this motion.

Mr. Gaya Prasad Singh: Sir, I rise to accord my whole-hearted support to this Bill. The Bill inaugurates the creation of a new force which hitherto has been non-existent in India. I mean the Indian Air Force. The place of the Indian Air Force has long been taken up by the Royal Air Force. The Royal Air Force is an English force, but a portion of the Royal Air Force has, I understand, been utilised for service in this country. No Indian has hitherto been admitted to the Royal Air Force under statutory rules. This House has been anxious for the creation of a self-contained Indian unit in substitution for the Royal Air Force, and the Bill seeks to prescribe the discipline of the proposed Indian Air Force. The Bill is a non-contentious measure. It will be seen that there are 130 clauses in the Bill, and amendments have been tabled only on one clause, that is, clause 9. I am glad to see that Government in their Statement of Objects and Reasons have laid it down that the personnel of the Indian Air Force will be primarily Indian, and clause 9 of the Bill defines the class of persons to whom this Bill is to apply. Clause 9 says that the person to be enrolled

Mr. President: Would it not be better if the Honourable Member reserved his remarks till amendments are actually moved to clause 9? That is the one clause to which amendments have been proposed.

Mr. Gaya Prasad Singh: I am not going to explain at length the purport of clause 9, but I was merely referring to it in order to show that it has been so drafted as to confine enrolment in the Indian Air Force to persons mainly Indian or of Indian extraction and domicile. I will reserve my remarks on clause 9 till the time when the amendments actually come to be moved. It is a matter of great regret that in many important departments of Government, Indians have hitherto been excluded. They have been excluded from many sections of the Army, from

the military Engineering Department, and many other national activities in the country. From the Royal Air Force, Indians have naturally been excluded because that is an English formation. Now this Bill inaugurates an era when we shall have our Indian personnel and Indian officers in the Air Force, and the Bill merely seeks to prescribe discipline and the punishments that have to be given for breaches of discipline, and so on. I do not think it is necessary for me to explain the other provisions of the Bill, we went carefully into them in the Select Committee. With these few words I accord my whole-hearted support to this measure. (Cheers.)

Mr. S. C. Mitra: Sir, I also generally support this Bill. It is not my contention that it is useless or unnecessary. What I said was that it is a very important measure and I can show that by referring to some of these clauses. Clause 31 deals with death sentences under nine heads; clause 35 deals with mutiny and also prescribes death sentences on three counts.

Mr. B. V. Jadhav (Bombay Central Division: Non-Muhammadan Rural): Why have no amendments been tabled on them?

Mr. S. C. Mitra: I do not say that they are unreasonable; what I say is that it is a very important Bill which provides for many things and in many cases even death sentences have been provided for. I do not say it is unnecessary or that it need be amended but it is an important thing. That is my main point. My Honourable friend Sardar Sant Singh was in the Select Committee and he was very anxious to be present and move his amendment to clause 9, but because of stress of duty he could not stay. But he was most anxious to stay and deal with clause 9. That was one of the grounds why I brought in this motion for postponement of the consideration of this measure. Though they have provided, as my friend Mr. Gaya Prasad Singh said, that the air service should be confined to Indians, they have also provided that anybody who, even though he may not be an Indian, can manage to bring his father along with him from outside the border and declare that they intend to stay here will be entitled to be in this service. I think there is an amendment to this clause, and when that comes up I will argue this point, but it does involve a great principle. In the Civil Procedure Code there is definition of "Indian domicile" and I should like to know why in this case that is departed from and why this facility is given to any man who can bring his father with him and ask him to declare that his real intention is to stay in India. My apprehension is that the practice now obtaining in the Army of recruiting less educated and less cultured units, on the martial races theory, may be followed here. We fear that instead of the provinces supplying their quota, or instead of following the other principle of allowing minorities to have their proper representation, recruitment may as hitherto, be confined to Gurkhas beyond the Indian border or the tribal Pathans from across the frontier. My Leader says they are not recruited now. But, I find that this martial race theory has been followed so far as the Bengalis and Madrasis are concerned. They were considered to be martial races when the English came but . . .

Mr. G. M. Young: May I interrupt my Honourable friend for a moment? My Honourable friend is talking about martial races. I have

[Mr. G. M. Young.]

already pointed out in this House that there is no class composition in the Indian Air Force, and that all Indians are eligible for it. As a matter of fact, three Bengalis have already been recruited.

Mr. S. C. Mitra: I am very grateful to the Honourable the Army Secretary that unlike the Army, in the Air Force there will be no theory of martial races practised and that they have discovered it is a wrong principle. That satisfied me a great deal. I am in general accord with the disciplinary measures suggested in this Bill and I support it.

Mr. B. V. Jadhav: Sir, I rise to support the proposal brought forward by the Honourable the Army Secretary. The formation of an Indian Air Force is very necessary; and we cannot afford to lose any further time; and this Air Force cannot be formed unless there is legislative sanction behind it and therefore it is urgently necessary that this measure should form part of the Statute-book. Modern warfare requires that a country which wants to defend itself should have all its arms properly developed. The air arm has come into prominence since the late war and it has been found as a result of warfare on the North West Frontier that this air force is very useful and is very effective. Therefore it is necessary that this force should be developed as early as possible, and I congratulate Government for taking this step, and also for taking care that it should be formed mainly of Indians. There may be doubts or contentions about the nationality of an individual; but I take it, Sir, that those who are born on the soil ought to be called Indians and they ought to have the first claim. This question need not be taken into consideration at this time. I am in full accord with this measure and I desire that the Air Force should be developed as rapidly as possible. The Government and the Army Department may find that they will be in a position to reduce other branches of the Army, in that way economising money for the purpose of spending largely on the development of the Air Force. I heartily support the measure.

Dr. Ziauddin Ahmad (United Provinces Southern Divisions: Muhammadan Rural): Sir, I rise to support this motion. Though this particular Bill contains 130 clauses printed on 84 pages, if we read them carefully, we find that these are not new clauses. They are already in force in other departments of the Army, and we have had no complaint in the working of these sections. They have been carefully examined by the members of the Select Committee and the only serious objection that was raised was to clause 9, which we discussed day after day, and not less than ten different drafts were laid before the Committee and they were discussed at one stage or another and finally we came to some agreement; and as is the case with all compromises, it does not please everybody, but at the same time it did not displease anybody; and all the members of the Committee gave their unanimous consent to the draft which is now embodied in this particular Bill; and therefore I beg to support this motion as this Bill is not of a contentious nature; though it appears to be very bulky, there is no new principle involved in this Bill.

Mr. C. S. Ranga Iyer (Rohilkund and Kumaon Divisions: Non-Muhammadan Rural): Sir, the Honourable gentleman from Aligarh, who is a mathematical expert, has borne testimony to the arithmetical accuracy

of the numerous sections and sub-sections, 130 in all, of this Bill. After that there ought not to be any dispute on this side of the House over the Bill. I can understand the enthusiasm of the Army Secretary to do something tangible and useful on the eve of his departure from our midst, and therefore I congratulate him on having conquered this House without much difficulty.

Mr. G. M. Young: Sir, I think I need only say that the very favourable reception given to this Bill is a source of great gratification to the Government and to myself.

Mr. President: The question is ;

"That the Bill to provide for the administration and discipline of the Indian Air Force, as reported by the Select Committee, be taken into consideration."

The motion was adopted.

Clauses 2 to 130 were added to the Bill.

The Schedule was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

Mr. G. M. Young: I beg to move that the Bill, as amended, be passed.

The motion was adopted.

THE INDIAN TARIFF (WIRELESS BROADCASTING) AMENDMENT BILL.

The Honourable Sir Joseph Bhoré (Member for Industries and Labour): Sir, I move:

"That the Bill to provide funds to enable Government to continue wireless broadcasting in India, by increasing the import duties leviable on wireless reception apparatus, be taken into consideration."

Sir, Honourable Members of this House are aware of the somewhat melancholy financial history of broadcasting in this country. Broadcasting was started by private enterprise in the year 1927 and an unbroken succession of annual deficit budgets drove the company into liquidation in 1930. Thereupon with the concurrence, I believe, of the Leaders of all Parties in this House, Government entered the field, acquired the company's assets for the very reasonable figure of 3 lakhs, and have ever since continued to administer the enterprise. As I will show presently, although Government by their administration have reduced the gap between receipts and expenditure, they have not yet been able to quite balance the two sides of the account. When therefore the Retrenchment Sub-Committee came to review the entire financial position, broadcasting with its deficit budget stood out in the general atmosphere of retrenchment and economy with challenging clearness as an object calling for the pruning knife. We on our part, Sir, were not able to claim this as essential expenditure and we therefore accepted provisionally the recommendations of the Sub-Committee and gave notice to the staff

[Sir Joseph Bhore.]

concerned. This action of ours immediately called forth a very strong expression of public opinion, which was a very surprising testimony indeed to the popularity of broadcasting in this country. We received representations from many members of the public, from the manufacturers of wireless accessories in this country, from dealers both large and small, who complained that flourishing businesses would be shut down and that we would be increasing the distress which the general depression has spread throughout the country. I have reason to believe that many Members in this House will endorse that view. I have in mind particularly my Honourable friend Mr. Gaya Prasad Singh, whose strong advocacy of broadcasting in this House we all remember. We therefore, taking into account all these representations, decided to continue broadcasting while we searched every possible avenue for finding means to balance the broadcasting budget, and the results of that search I am now about to place before the House. I ought at this point to correct a slight omission which has taken place in the Statement of Objects and Reasons. One sentence in that Statement runs as follows:

"They (the Government of India) consider however, that the service should not be a charge upon the general tax-payer, and they accordingly propose that the import duties on wireless reception apparatus should be enhanced so as to ensure that the customs receipts associated with broadcasting may suffice to cover the cost of the service."

There was an omission after the words "customs receipts" and the sentence should have read as follows: "so as to ensure that the customs receipts, together with other revenue would be sufficient to cover the cost of the service". I think, Sir, it will be common ground with everybody in this House that if broadcasting is to continue, it should not in existing circumstances, involve a charge on general revenues. There are two ways in which we can avoid doing so, firstly by a reduction of expenditure and secondly by an increase in receipts. I will take the reduction of expenditure first. I may say that we have as a matter of fact ruthlessly applied the pruning shears. During the present year, the expenditure has been reduced to 2 lakhs and 59 thousand, which is the very lowest on record, and for the coming year we have reduced even this to the figure of 2 lakhs and 38 thousand. We have now cut down to the bone and yet we find a gap of over 60,000 rupees to cover, taking all sources of income into account. I would ask the House to remember that the reduction of expenditure cannot be carried too far without its reflecting adversely on receipts. If you decrease the attractiveness of broadcasting either by the poor technical quality of your transmission or by the poverty of your programmes, and these must inevitably result from too rigid an economy in expenditure, then you must be prepared for a contraction in your clientele. Nevertheless the charge cannot be brought against us that we have been extravagant, and I think I shall be able to prove this from the following figures. Whereas in the three years under private management, the expenditure was in round figures Rs. 2,97,000, Rs. 3,35,000 and Rs. 3,17,000, we have reduced the expenditure in our time to Rs. 2,59,000 this year, and we hope to reduce it to Rs. 2,88,000 in the coming year. The losses have been reduced from Rs. 1,67,000, Rs. 2,15,000, and Rs. 1,85,000 during the years of company management to Rs. 1,44,000, and finally we hope to Rs. 68,000. We still have this gap between receipts and expenditure. We are therefore now driven to the only other expedient, namely, that of increasing our receipts. Unhappily, Sir,

experience in the past has shown that the immediate prospect of our being able to increase to any appreciable extent our receipts from license fees is very strictly limited. Evasion unfortunately takes place; in spite of the fact that we are doing all we can to tighten up the administration of the law, the users of wireless sets escape through the meshes of our net; they have done so, and I am afraid they will continue to do so, but I hope far less successfully in the future than in the past, as we are taking very special measures which we hope will stop to some extent this leakage in our receipts.

The only practical hope, at present, Sir, of increasing our income so as to enable us to balance the broadcasting budget lies, therefore, in an increase of the taxation of the requisites of listening-in at the source, that is, at the point of entry into the country, and this is what we are now proposing to do. We are proposing that the duty on wireless reception instruments and apparatus and component parts other than valves and loud speakers, etc., which now pay an import duty of 25 per cent. *ad valorem*, should be increased to 50 per cent., which is the existing duty on such things as electric wireless gramophones and musical instruments. Our second proposal is that the duty on wireless valves designed exclusively for reception should be enhanced from 25 per cent. *ad valorem* to 50 per cent. *ad valorem*. This is the charge at present imposed upon electric bulbs, and finally we propose that the duty on loud speakers and amplifiers not definitely designed for public speaking sets or electric gramophones should also be increased from 25 per cent. to 50 per cent. Judging from the conversations that I have had with many dealers on this matter, I feel confident that they will accept these increases in preference to closing down broadcasting. I have spoken to a great many licensees, and they have all agreed to some such form of self-taxation rather than face the alternative of the closing down of broadcasting. I want to make it clear that these increases will fall on the users of a luxury or at any rate an amenity which is confined to a comparatively few. It will not affect the users of the large number of sets which are manufactured in this country and which do not require valves. I am not able, Sir, to give to the House an exact estimate of the yield of these taxes for many reasons, but I think we may confidently hope that the yield of these new import duties will be more than sufficient to help balancing the broadcasting budget. Now if we do that, and if the bogey of continued deficits is out of the way, the future of broadcasting should be ensured and this will I hope give to the public that confidence in its future continuance that is absolutely essential if we are largely to increase our circle of clients.

Broadcasting, Sir, has a great future I believe in this country; but we will need to frame a comprehensive and progressive policy in regard to it when we are in a position to do so financially. At present financial considerations have made us do little more than mark time since we took over the venture, and I am afraid that for some years to come at least, financial conditions may impede the progress that we all look forward to so confidently. But I am certain, as I have said, that there is a great future for broadcasting in this country: and if, by the means which I am now proposing, we are able to carry it over these critical years, I feel certain myself that broadcasting is destined not merely to bring us in a rich return but to prove an instrument of the utmost educative value to the country. Sir, I move. (Loud Applause.)

Mr. B. Das (Orissa Division: Non-Muhammadan): Sir, I am glad to find that on account of adversity and financial distress wisdom has at last dawned on the Government. Two or three years ago when the Honourable Member's predecessor (Sir Bhupendra Nath Mitra) brought forward a similar Bill, some of us expressed a doubt about broadcasting. Sir, I live in the backwoods of Orissa where the music of those divine temples is more sweet to me than broadcasting; I do not enjoy the good fortune to live in Muzaffarpur like my friend, Mr. Gaya Prasad Singh (*An Honourable Member*: "There are splendid *lichis* there also"), whom my Honourable friend, Sir Joseph Bhore, complimented on his keen interest in broadcasting. To me broadcasting has been a puzzle; especially so when I come to modernised cities like Delhi and find people working hard on their wireless sets as others work on cross-word puzzles and trying to get into communication with Bombay and Calcutta and never getting any message, I feel, thank God, I live in a part of the country which is not attracted by the spirit of broadcasting. Sir, I entirely agree with my Honourable friend, Sir Joseph Bhore, that broadcasting is a luxury; and, if the Department is to continue, all its expenses should come from the luxurious class; and not only should the licensing fees be increased, but I entirely support this increase of the duty on broadcasting implements up to 50 per cent. Sir, the Honourable the Finance Member I am glad to see is now here. The other day we were talking of the evasion of taxation, and my Honourable friend, the Finance Member, heard just now from his colleague that the luxurious classes in India evade their taxes and do not pay even the licensing fees on their wireless sets. Sir, my Honourable friend, when he thinks of accusing the poorer classes of evasion of taxation, should therefore remember that it is the rich classes who evade more taxes. Sir, I do not mind broadcasting to continue, but I do hope that, whatever the expenses, if the 50 per cent. duty is not sufficient, my Honourable friend will see that the licensing fees should be doubled for those who want to have the special privilege in their evenings to enjoy what is happening in other places and other climes.

Mr. S. C. Mitra (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I congratulate the Honourable Sir Joseph Bhore on bringing forward this Bill. We were very reluctant in the Retrenchment Committee to recommend the abolition of this service, and we are very glad that the Honourable Member has found ways whereby the poor in this country will not be taxed and at the same time this broadcasting service will be retained. Sir, I do not agree with my Honourable friend, Mr. B. Das, that broadcasting is a mere luxury, or that the ordinary man's enjoyment should consist merely in securing food and clothing. There are other small comforts, and broadcasting has helped us a great deal in having an educative effect in many ways. We can now put ourselves in contact with the civilized world, and with different parts of India itself and thus reap much educative value, and it is not a mere waste and luxury. It is part of the conventional necessities of civilized life. Sir, I support the motion.

Mr. Gaya Prasad Singh (Muzaffarpur *cum* Champaran: Non-Muhammadan): Sir, the Indian Air Force Bill was a very important, but
 1 P.M. a non-contentious measure, and this House enthusiastically passed it. This Broadcasting Bill is also a non-contentious measure, and I hope the

House will pass this Bill also with acclamation. I remember, Sir, I went to Calcutta last year, and I visited the broadcasting station, and the Radio Association. I also remember that a memorial which was signed by hundreds of influential persons was presented to my Honourable friend Sir Joseph Bhore protesting against the proposed closing down of broadcasting, and suggesting ways and means for making it self-supporting. I visited two years ago the broadcasting station in Bombay, and since then I have begun to take some little interest in broadcasting. There are two or three points on which I should just like to say a few words. I find that piracy associated with broadcasting is somewhat extensively practised, and steps may be taken to exterminate this evil, so that people who do not hold licenses may not unfairly take advantage from broadcasting. The second point is that the present license fee of Rs. 10, if inadequate, may have to be increased a little bit.

Mr. B. Das: Double it.

Mr. Gaya Prasad Singh: Not so much. The third point is overhead charges in the establishment are much more than they should be. I think the overhead charges also might be reduced. The history of broadcasting has been given in very eloquent terms by my Honourable friend Sir Joseph Bhore. The Marconi Company was started in 1925, but for want of support from the public, and for want of financial assistance it had to be closed down. Then the Indian Broadcasting Company, Limited, was floated in Bombay in 1927, but for want of financial support it was languishing, until Government took it up, with the consent of the Members of this House. I understand that the total number of licenses has reached the figure, 8,390 and more. If the license fee be increased a little bit, the receipts from this source together with the import duties which are sought to be imposed upon the importation of wireless reception apparatus might be sufficient to put broadcasting on a self-supporting basis, without it being a burden upon the general revenues. Broadcasting has got a high educative value. It may be utilised in schools and colleges, and as a means of communication for lectures and other purposes just as we have got lantern lecture shows. Broadcasting may be used for awakening the masses, and for putting some light and education into them. I quite agree that broadcasting should not be made a general charge on the public revenues, and the Bill we are discussing is a measure which proposes to keep alive broadcasting in India as a state institution without at the same time making it a burden on the general revenues. With these few words, I strongly support the motion of my Honourable friend Sir Joseph Bhore.

Mr. Amar Nath Dutt (Burdwan Division: Non-Muhammadian Rural): Sir, I rise to join in the chorus of appreciation showered on my Honourable friend Sir Joseph Bhore, although I do not agree with my Honourable friend who has just sat down that the fee of Rs. 10 should be raised to Rs. 20.

Mr. Gaya Prasad Singh: I did not suggest that.

Mr. B. Das: I suggested it.

Mr. Amar Nath Dutt: At any rate his colleague from Bihar and Orissa said that it should be doubled. I do not agree with that suggestion. I am glad that some steps are being taken so that broadcasting may not die.

[Mr. Amar Nath Dutt.]

In fact at one time in the Standing Finance Committee, my Honourable friend over there who has just sat down seriously considered whether or not to discontinue this broadcasting in order to give some relief to the general revenues. After all, this is a matter of very small amount and even if this raising of import duty was not given effect to, the Government would have been perfectly justified in making a little more grant that was necessary for broadcasting. As my Honourable friend said, broadcasting has great educative value, and I should like to see it more and more popularised by installing broadcasting apparatus in every village

An Honourable Member: And in the Assembly also.

Mr. Amar Nath Dutt: I don't mind. It should be installed in every village so that this small amenity of civilised life may be available to the poorest of the poor living in mud hovels of villages. In these days, there is hardly any enjoyment in villages. The present economic distress has stopped *jathras* and *kathakatas* which combined education with pleasure in village life. I know how poor people work in the hot sun from morning till evening, and then go back and squat on the floors of their houses for the rest of the night without any enjoyment whatsoever. If only they had some little amusement like this, I think their life would be enlivened and cheered. In fact I would ask the Government to give a little more grant to save this broadcasting. With these words, I support the motion.

The Honourable Sir Joseph Bhore: Sir, I have nothing to say beyond expressing my gratitude to Honourable Members in this House for the reception which they have accorded to this very small measure. I may say that, so far as I myself am concerned, my own anticipations with regard to the future development of broadcasting coincide to some extent with the ideas expressed by my Honourable friend Mr. Amar Nath Dutt. As regards the three points raised by my Honourable friend Mr. Gaya Prasad Singh, I may assure him that they have been constantly under the consideration of the Government of India. There are very obvious objections to an increase in the license fees, but I will not trouble the House with my arguments in this case. I will confine myself to an assurance that all these points which have been made to-day will receive the most careful attention of the Government of India.

Mr. President: The question is:

"That the Bill to provide funds to enable Government to continue wireless broadcasting in India, by increasing the import duties leviable on wireless reception apparatus, be taken into consideration."

The motion was adopted.

Mr. President: Clause 2.

Mr. S. C. Jog (Berar Representative): I take this opportunity of joining in the chorus of congratulations to the Honourable Sir Joseph Bhore for having introduced this measure. As a matter of fact this broadcasting was practically in the throes of death and but for this timely help rendered up to this time, this luxury would have been killed.

Mr. President: Will the Honourable Member move his amendment first.

Mr. S. G. Jog: I move this very small amendment:

"That in clause 2 (b) in the proposed item No. 43 of Schedule II to the Indian Tariff Act, 1894, the words 'including all electric valves, amplifiers and loud speakers' be omitted."

I see no purpose in putting these words here, especially when you say, "wireless reception instruments and apparatus and component parts thereof not specifically designed and so on". I see no propriety in putting these words, "including all electric valves, amplifiers and loud-speakers". Unless the Government explain to me the propriety of putting in these words, I for one, would like to press my amendment. If these words are deleted, I do not think it will affect the purpose of the Government in any way at all. One of the duties of the Legislature is to make the language as accurate as possible, and any superfluity is to be avoided. If I tell you that I give you all the belongings of mine in this House, it is not necessary to make any particular mention of some articles in the House like silver-ware, furniture, etc.

An Honourable Member: There is no harm in doing so.

Mr. S. G. Jog: That is the exact thing. We are legislators and not laymen. Our language has to be accurate and we have to avoid unnecessary points and superfluities. With these few words I suggest that Government should have no difficulty in accepting my amendment which does not affect Government or the revenues in the least.

The Honourable Sir Joseph Bhore: Sir, this amendment may, as my Honourable friend says, be a very small amendment, but I am afraid it may have some considerable effect. We are advised that the words to which he objects, though they may be merely explanatory, are really necessary to remove possible difficulties in interpretation, and I am afraid therefore that we cannot possibly accept it. If objection is taken on the ground that other than wireless apparatus will be roped in I ought to explain that there really is no difficulty in the matter, because our experts advise us that the parts of a talkie apparatus, for instance, are normally specially designed for that purpose and that they could not be classified as wireless apparatus under the terms of the Bill. In actual fact there should be no difficulty in the case of amplifiers and loud-speakers, but there may be some difficulty in the case of valves intended for talkie apparatus, some of which are equally suitable for broadcast receiving apparatus and gramophones. It may be that under the terms of this clause as it stands we may include a somewhat wider list than is intended, but I would urge that these are all luxuries and it will certainly give me no sleepless nights to see other luxuries roped in and made to pay a 50 per cent. duty. Sir, I must oppose the amendment.

Mr. President: The question is:

"That in clause 2 (b) in the proposed item No. 43 of Schedule II to the Indian Tariff Act, 1894, the words 'including all electric valves, amplifiers and loud speakers' be omitted."

The motion was negatived.

Mr. S. G. Jog: Sir, I beg to move the next amendment standing in my name and which runs as follows:

"That in clause 2 (b) in the proposed item No. 43 of Schedule II to the Indian Tariff Act, 1934, the words 'and imported along with' be omitted."

The object of this measure seems to me that when the apparatus or the other parts are designed for purposes other than wireless reception, they are to be exempt from duty. But this clause says "designed for purposes other than wireless reception or are not original parts of and imported along with instruments or apparatus so designed". That means that if they are imported along with the main apparatus then they are duty free but if they are brought in separate parts or after some time, Government wants to levy duty on them. I think I have understood it correctly. What I cannot understand is what the object of Government would be. If they seriously want to exempt these articles, if they are designed for any purposes other than broadcasting, what matters it to Government whether they are brought with the apparatus or separately after some time? I fail to understand the propriety of such invidious and wrong distinctions. I suggest therefore that my amendment should be accepted and these words omitted. If the object of Government be to exempt those articles which are designed for purposes other than broadcasting, then they should be exempt whether brought with the apparatus or at any time afterwards. With these words I recommend that the amendment should be accepted.

The Honourable Sir Joseph Bhoré: Sir, perhaps I might take a little time and explain to the House exactly the importance of the suggestion made by my Honourable friend. There are certain articles that are not exclusively used for broadcast reception purposes, but they can be used both for such purposes and also for other purposes, for instance, talkie apparatus. The object of the latter part of the entry, that is to say, the part to which my Honourable friend objects, is to render liable to the new duty in addition to things specially designed for broadcast reception, such of those articles to which I have referred as are not quite ascertainably meant for non-broadcast reception. It can be ascertained only if it is specially designed for or is an original part of or imported along with a talkie and other equipment with which it is intended to be used. If we were to omit the words "and imported along with", some importers would undoubtedly represent things of this dual nature as being replacements intended to be used for talkie apparatus, and we should have no assurance that in fact they were not designed as broadcast receiving replacements. I think therefore that we would be running an unnecessary risk by omitting these words. I do not think it can impose any very heavy or great hardship upon any class of importers and we would prefer therefore to retain the words to which my Honourable friend is taking exception.

Mr. President: The question is:

"That in clause 2 (b) in the proposed item No. 43 of Schedule II to the Indian Tariff Act, 1934, the words 'and imported along with' be omitted."

The motion was negatived.

Mr. President: The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

The Honourable Sir Joseph Shore: Sir, I move that the Bill be passed.

The motion was adopted.

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

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

THE PUBLIC SUITS VALIDATION BILL.

Sir Lancelot Graham (Secretary, Legislative Department): Sir, I move that the Bill to validate certain suits relating to public matters, as passed by the Council of State, be taken into consideration. As I have already observed, this Bill has been passed by the Council of State, so that the first motion in respect of this Bill in this House is the motion that the Bill be taken into consideration. The purposes of this Bill are, I think, sufficiently set out in the Statement of Objects and Reasons. Briefly, the position is that under sections 91 and 92 of the Code of Civil Procedure, in respect, in the first instance, of suits relating to public nuisances, and in the second instance, of suits relating to public charities, certain powers of initiation are vested in the Advocate General. Under section 93 the powers conferred by sections 91 and 92 on the Advocate General may, outside the Presidency towns, be with the previous sanction of the Local Government exercised also by the Collector or by such officer as the Local Government may appoint in this behalf. I would draw the attention of this House to the words "previous sanction of the Local Government". It has been generally understood that these words implied a general sanction; that is, that a general sanction could be given by the Government, and no particular sanction was required in respect of each suit brought by the Collector or the officer appointed by the Local Government. That practice became universal; and it was a matter of considerable surprise when it was declared by their Lordships of the Privy Council that we had been wrong in our interpretation of the section. All the governments in British India and all the High Courts have, I understand, shared in that error; and I think it was not a very unnatural error. Anybody reading that section would, I think, inevitably hesitate between the two meanings, and I think he would say that really the more reasonable meaning was that the sanction was intended to be a general one. That, however, has now been decided against us—the sanction has to be a particular one. The result is that a very embarrassing position has been caused to those litigants who were under the impression that they were

[Sir Lancelot Graham.]

proceeding in a perfectly lawful way, having obtained all the authority which was believed to be necessary from the Local Government. They now find that suits are liable to be dismissed, and in fact that suits are being dismissed in pursuance of this decision of the Privy Council in the case of Prem Narayan v. Ram Charan and others.

Now, Sir, Government do not claim to be the originators of this motion. In fact the original begetters of this Bill are sitting on the Opposition Benches, and therefore I may say that this Bill is a non-controversial measure, and I should say also a very useful measure, agreed upon by both sides of the House. For that reason alone I think it is not necessary for me to make a lengthy speech. The first proposal came from my Honourable friend, Mr. Biswas, in the form of a Bill, and at about the same time my friend, Mr. Sen, was saying to me daily, "When are you going to produce this Bill?". We were ourselves immediately convinced of the necessity for the Bill, but it seemed proper that we should consult Local Governments and that they should consult the High Courts. The result is complete unanimity and we have accordingly brought forward this Bill.

As I said in the beginning, and as I now quote from the Statement of Objects and Reasons, "The Bill is intended to remove a hardship. It validates all suits now pending and also provides for the retrial of all claims which may have been in the meantime dismissed, whether in the Court of first instance or in the Court of appeal, on the ground of the absence of the requisite sanction". Sir, I move.

Sir Abdullah Suhrawardy (Burdwan and Presidency Divisions: Muhammadan Rural): Sir, I move that the consideration of the Bill be postponed to the next Simla Session. My reason for moving the amendment is that Bill is of a highly controversial nature in spite of the declaration of the Honourable the Mover that it is not so. He is of that opinion simply for the reason that, according to him, "the begetters of this Bill sit on the Opposition Benches". Who are "the begetters" I do not know exactly, but our Honourable friend has enlightened us by mentioning two names. There may be many more who might be the begetters of this polyandrous Bill; but this morning, Sir, in the course of your ruling you remarked that the Chair would not allow any very controversial measure to be sprung upon the House, and that the Chair is jealous of the dignity of the House. That has been the view of President Patel also. If I may be permitted to read out a passage from the reports of the debate, Mr. President Patel on a similar occasion said:

"The Chair has a duty to see that the machinery of the Government of India Act is not abused to the prejudice of the people of this country and for that purpose the Chair possesses sufficient powers in the shape of the adjournment of the House *sine die* or in the shape of refusing to put any motion to the House....."

Mr. President: Will the Honourable Member read Mr. Patel's ruling given on the following day?

Sir Abdullah Suhrawardy: I have not got it; but I have got a copy of your own remarks, Sir, before me in which you say:

"The Honourable Member has drawn attention to the fact that he has asked whether the Chair would allow any very controversial measure to be sprung upon the House at the last moment. The Chair is bound to protect the dignity, the rights and privileges of the House."

I shall show, Sir, that this is a Bill of a highly controversial nature. The very fact of the admission of my friend, Sir Lancelot Graham, that this innocent looking Bill had its origin in the Opposition and that the two "begetters" of this Bill are Members of this House, and yet the Government chose to move it in the House which, in the happy phrase of Mr. Ranga Iyer, is a House where "the benumbing penumbra of second childhood pervades" shows that this Bill was moved there simply with the object of depriving this House of making a motion to circulate the Bill for eliciting public opinion thereon. If I were only to read out section 92, the House will realise how controversial this Bill is. My Honourable friend Sir Lancelot Graham did not read out sections 91 and 92; he simply mentioned them. Section 91 deals with public nuisance, and I have nothing to do with that; but section 92 is not so innocent as it looks. I see a copy of the Civil Procedure Code before me, and I will just read to the House that particular section and leave it to the Honourable Members to judge whether this measure is of a highly controversial nature or not, however innocent looking it may appear to be. Section 92 runs as follows:

"In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate General, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the Local Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree—

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (d) directing accounts and inquiries;
- (e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorising the whole or any part of the trust property, to be let, sold, mortgaged or exchanged;
- (g) granting such further or other relief as the nature of the case may be, etc., etc.

I do not think I need read out the remaining portion of the section. I think I have already satisfied the House by reading out the section how controversial this Bill is. Who is going to decide whether a trust is for a public purpose, whether it is of a charitable or religious nature, and other intricate questions when the decree involves such important matters as the removal of the trustee or the sale or mortgage of trust property? For that reason a check has been provided in order to stop reckless and harassing litigation, in the shape of the consent of the Advocate General being required or of two or more persons having an interest in the trust property. Now, so far as the Presidency towns are concerned where there is an Advocate General the consent of the Advocate General is sufficient. This Bill does not affect the authority of the Advocate General, nor does the Privy Council judgment affect it. The authority which is affected by the Bill is that where the Collector is required to give sanction. My learned friend Sir Lancelot Graham remarked that all High Courts share in that error, namely, in the error of thinking that no special sanction is necessary in each case by the Collector. Well, the object of that provision of the Bill is quite obvious to those who are familiar with the history of the legislation when section 92 was introduced in the Act of 1908. The

[Sir Abdullah Suhrawardy.]

Legislature deliberately made a distinction between the Advocate General and the Collector. So far as the Advocate General, who is an officer of the Crown, is concerned, no special authority in every case was required; but where the Collector is concerned, special authority is required. It may be that for the Collectors who happen to be District officers heavily burdened with work, and more so in these days of unrest and political disturbance, who are very fond of outdoor life, and are too busy with their tennis and other social amenities to find time to apply their mind to each particular case Government thought that a general sanction as proposed in this Bill was quite enough.

Now, what does the Bill propose to do? The Bill proposes to undo what the Privy Council has done. For years and years since 1908, all the High Courts of India have shared in an error, to use the language of my friend Sir Lancelot Graham. Now, the error has been pointed to them by the Privy Council, the highest Court of appeal in the Empire. Now, what does the Bill propose to do? To render that judgment infructuous in the name of public interest. Really, there is no such public interest involved in this measure. It is the interest of a particular individual. I have taken the trouble of reading the debates in the Council of State, and I find there is nothing stated excepting a reference to the section, and the Honourable the Law Member in the short space of five minutes had the Bill passed there including a congratulatory speech from the Honourable Mr. Basu. I find from this debate, the real reason for bringing forward this legislation before this House. It is, as I said, a wolf in sheep's clothing or perhaps it is a sheep in wolf's clothing. It is virtually a non-official Bill which has been brought forward in the garb of an official Bill and fathered upon Sir Lancelot Graham who repudiates the paternity of the child. The Honourable Mr. Bijoy Kumar Basu says:

"Sir, I congratulate the Honourable the Law Member for having brought this Bill, because there are a large number of suits which are pending in various provinces, which will be affected, as explained by the Honourable the Law Member, if this Bill is not passed into law. One of these suits is pending in my province—I mean the Tarakeshwar Temple suit,—and only this morning I read in the papers that in a pending appeal in that suit application has been made in the Calcutta High Court to have the suit dismissed on this very ground, and the date that has been fixed for the hearing of that application is 18th April. I only hope, Sir, that this Bill will be passed during this session, so that suits of that nature might not be dismissed for no fault of the parties. I have still more to congratulate Government, because they have so promptly taken up the suggestion which I am proud to say was made to them from a non-official source for a Bill of this kind; I believe as a matter of fact a draft non-official bill was sent up to Government by the representative of Calcutta in the Legislative Assembly—Mr. Charu Chandra Biswas....."

Many Honourable Members may not know much about this temple of Tarakeshwar. It is a veritable Somnath in Bengal, and it attracted the attention of many an invader and conqueror from the North and it could not escape the eagle eye of the Congress. The temple was about to be demolished, as Mr. Biswas is aware, when the Swaraj movement was at its height and the Satyagraha commander-in-chief led the siege to that temple. After a time peace terms were proposed by the Swarajist Leader and there was every probability of a peaceful settlement. But for reasons better known to Mr. Biswas and perhaps also to Mr. S. C. Mitra the peace efforts failed. I leave them to complete the history, the genesis of this litigation, if they care to do so. I leave it deliberately incomplete at this stage. Any way, my point is this. I hope I have made it sufficiently

clear that this Bill is of a highly controversial character. By way of contrast, may I refer to a Bill with which you must be very familiar, namely, the Wakf Validating Act? If I am not mistaken, in 1905 or thereabouts the Privy Council upset the Muslim law on the subject of waqfs and in the case of *Abul Fata v. Mussomay Dhur Chaudhury* the Privy Council went out of their way to impose their own views regarding what a public charitable trust should be, in Muslim law. The Muslim community suffered long as a result of that judgment. There was a good deal of agitation, yet it was only in 1913, years after the judgment had been passed, that Mr. Jinnah succeeded in having his Wakf Validating Act passed through the old Imperial Legislative Council, and that also in the teeth of opposition. It was subsequently found that that Bill had to a certain extent defeated its own object because it was held that it had no retrospective effect, and it was only in 1929 that a Wakf Validating Bill was introduced by my Honourable friend Mr. A. H. Ghuznavi and it took a year or two years to be passed in this Assembly.

My Honourable friend the Law Member himself carefully went through the clauses when the Bill was before the Select Committee, balanced the pros and cons, the advantages and disadvantages of giving retrospective effect. Now, why all this indecent haste? We have been deprived, by the method of having this Bill passed by the Council of State, of having the public opinion elicited on it, and if to-day you rush through this Bill the public will not get the benefit at all of expressing its views on this measure. After all, what are you going to do? As a matter of fact, I consider this Bill to be highly reprehensible because in the interests of certain individuals you are introducing this Bill. Wherein lies the hardship? There is no hardship at all. Every day the courts of law dismiss cases on some legal point or other, and if suits are liable to be dismissed it will give a sort of opportunity to the litigants to settle the cases out of court. The Privy Council says and rightly says that special sanction must be given in each case and you want by this legislation to undo what the Privy Council wants to be done. The Collector may have been busy with the no-rent campaign in the United Provinces; he has not had time at all to go through the papers, or he may be very busy with the terrorist movement in Bengal round about Tarakeshwar and so on. And he has only to give formal sanction. I see in this House the vision of an ex-Collector within whose jurisdiction the Tarakeshwar temple is situated. He may have probably given his sanction, and the sanction stands ten years ago or many years ago—given for political reasons it may be, in order to defeat the Swarajist machinations to loot the temple and fill their coffers with the spoils to carry on the great campaign of Swaraj and freedom. What reasons actuated him we do not know. Any way, you now seek to keep that sanction alive. I wish the Honourable the Mover of this motion had at least placed before us the Privy Council judgment and given us the reason why the Privy Council judges made a distinction between the Advocate General and the Collector. (*An Honourable Member*: "He cited a case.") He did not give the reasons. Very well, Sir. These are my reasons for moving my motion.

Diwan Bahadur Harbilas Sarda (Ajmer-Merwara: General): I rise to support the motion of my Honourable friend Sir Lancelot Graham. The object of the Bill is simply this. Up to this time Government used to appoint the Collectors of districts to exercise the powers of the Advocate

[Diwan Bahadur Harbilas Sarda.]

General by general order, and whenever any suit was filed in which the permission of the Advocate General was required, the Collector used to give permission. The Privy Council have now said that in every case that the Advocate General's consent is necessary, the Government should invest the Collector with the power of the Advocate General to give such permission. We are not concerned in this Bill with the principles on which the Collector gives permission. The only question is whether the Collector should be appointed to give permission in each suit, or whether he can be given a general power to do so by the Government. No principle of law and no important issue is involved in this Bill. Whether a Collector is empowered in each case to give his consent or whether he is empowered generally to give his consent to these suits, makes absolutely no difference so far as the principles on which the Collector exercises his judgment to give his consent for the institution of a suit are concerned. And that is the really important point. Owing to a certain decision of the Privy Council, certain suits have been invalidated, not because there was any question of law involved, but because any law was broken. That being so, it is inflicting unnecessary hardship on people if you invalidate their suits and place them in a position to have undergone all that expense for nothing and institute fresh suits. I have carefully considered the matter and I do not see that there is any real objection or any matter of controversy with regard to the consideration of this Bill. I therefore support it.

Mr. B. Das (Orissa Division: Non-Muhammadan): I rise to support the motion moved by my Honourable friend Sir Abdullah Suhrawardy. I think that this is a piece of legislation which, had the Government moved at an earlier stage of the session, this House would have seen to it that it was circulated for public opinion. So, the Government passed it through the Council of State and then they brought it here. This Bill I consider is a complete encroachment on the constitutional right of this House. If my Honourable friend Sir Lancelot Graham wanted this Bill to be passed so hastily, I understand that he drafted 11 or 12 Ordinances, and why did he not draft an Ordinance to invalidate all the judgments of the Judges in Bengal and why should he follow this procedure? That would have been quite fair. Why should they ask us to condone the action of the Local Government of Bengal and may be of other Local Governments, and also to condone the action of the Advocate General of Bengal and those of other provinces, who are the legal advisers to Government? Why did they not point out to the Local Governments the mistakes that are taking place? Whenever we ask a short notice question about anything, the case is *sub judice*, and this House should not interfere with the course of law. To-day we are asked to give retrospective effect and invalidate the judgments given by certain judges during the last six months. Why should we do that? My Honourable friend Sir Lancelot Graham knows that we have no respect for the system of British administration

Mr. B. V. Jadhav (Bombay Central Division: Non-Muhammadan Rural): Have you respect for the administration of temple grants by the *Shebaitas*?

Mr. B. Das: I am not concerned with the merits of the case; I am only concerned with the constitutional aspect that is involved in this Bill. There are eminent lawyers on both sides, and I hope that my esteemed

and learned friend Sir Abdur Rahim will rise and expound the law that is involved in this Bill. We have still a little respect left for British justice. I

3 P.M. understand from my friend Sir Abdulla Suhrawardy that the Bengal Government have been committing errors for years and years and you now come up before the Legislature asking them to regularise the action of the Bengal Government and other Governments in connection with pending cases. You want to go back and annul the judgments of the last six months. That is an encroachment on the liberty of the judiciary and on the liberty of the House and this House should not be a party to it. It would ask respectfully my friend Sir Lancelot Graham to withdraw this Bill and draw up an Ordinance, as he has drafted so many Ordinances. On this ground I whole-heartedly support the motion of postponement of consideration till the September Session. In the meanwhile if an Ordinance is passed, we will take no responsibility. Let them come up in September and the House will be full then and the Bill can be discussed in all its aspects.

Mr. C. C. Biswas (Calcutta: Non-Muhammadan Urban): I am not at all surprised to find my Honourable friend Sir Abdulla Suhrawardy speak in the manner he did. It is quite a long time since my friend bade his final good-bye to the High Court. If my friend had only taken the trouble to go through the Privy Council judgment and the provisions of this Bill, he would not have felt so shocked at all. I venture to submit that it is not at all a controversial measure, and I shall satisfy the House that it is not so. It is a very simple and harmless measure, nevertheless very necessary. What is the position which has been created by the decision of the Privy Council? Sections 91 and 92 of the Code of Civil Procedure refer to two classes of suits, suits relating to public nuisances and suits relating to public charitable trusts. Such suits may be brought either by the Advocate General himself in the Presidency towns, acting on behalf of the public or by two or more persons with the consent of the Advocate General. That is the provision. The whole idea is that these suits being suits instituted in the public interest require very careful consideration before they are launched, and that is why the consent of the Advocate General is required. Section 93 of the Code then goes on to provide for such suits outside the Presidency towns, that is, suits in the mofussil. The Advocate General is not functioning there, but that is no reason why people residing in the mofussil should be deprived of this remedy. Section 93 accordingly provides that outside the limits of the original jurisdiction of the High Courts, the Collector or some other special officer whom the Government may appoint in this behalf may exercise the powers which may be exercised in Presidency towns by the Advocate General. That section further goes on to lay down that before the Collector or the special officer who may be appointed in this behalf may exercise such powers, the Collector or such special officer must have the previous sanction of the Local Government. As my Honourable friend Diwan Bahadur Harbilas Sarda very clearly pointed out, this previous sanction of the Local Government is required, not as to whether the suit should be brought, but merely as to whether the Collector or other officer should exercise the powers of the Advocate General. That is all. That previous sanction is not given upon a consideration of the facts of any particular case. The duty of examining the facts of any particular case is cast upon the Collector or the special officer. Government merely gives sanction to the Collector or the other officer to exercise the powers of the Advocate General. I shall place before you the

[Mr. C. C. Biswas.]

terms of a notification under this section which was published by the Government of Bengal, and I believe that notifications in similar terms have been published in other provinces also. This notification purports to authorise the Collector and other officers to act under this section. It reads:

"In exercise of the power conferred by section 93 of the Code of Civil Procedure, 1908, the Governor in Council is pleased hereby to sanction the exercise of the powers conferred by sections 91 and 92 of that Code upon the Advocate General by the Collectors and Deputy Commissioners in the Presidency Division, excluding the town of Calcutta, Burdwan Division and the district of Darjeeling within the limits of their respective districts."

The view which had all along been held was that a notification in such general terms was sufficient to convey the sanction required by section 93. For the first time last year their Lordships of the Judicial Committee, upon an objection raised for the first time in the Privy Council, were, however, pleased to hold that this previous sanction of the Local Government must be obtained specifically in respect of every individual suit, and a suit instituted under the authority of a notification in such general terms must consequently fail on that technical ground. That is the position. The object of this Bill is not to undo the Privy Council, not to reverse the judgment of their Lordships so far as the future is concerned. So far as suits which may be instituted hereafter are concerned, the interpretation which has been adopted by the Privy Council will stand. But it so happens that if something is not done to save pending suits, the result will be that plaintiffs, who have brought such suits through no fault of their own, will be put to considerable hardship. And who are the plaintiffs in such cases? Not persons who have anything to gain, but very much to lose indeed, if they fail—persons who act from a sense of public duty. All these suits are now threatened with dismissal, if the new procedure now held by the Privy Council, as necessary is applied. The question is whether or not we here, acting as representatives of the public, will stand by those who from a sheer sense of public duty have thus come forward to protect and rescue the public endowments?

Mr. B. Das: Do not the lawyers charge fees for these cases?

Mr. C. C. Biswas: The lawyers unfortunately charge fees for these cases, and they have got to be paid by these people, who are, however, not deterred by that consideration from coming forward as plaintiffs. If they lose, they have got to pay the costs. On the other hand, if you allow these suits to be dismissed on this technical ground, who are the people who thrive as a consequence? Those who have been charged with maladministration and mismanagement of these public funds, and in some cases also found guilty by the judgment of at least one competent Court.

Sir, I am not ashamed of declaring for the information of my Honourable friend that it was my privilege, after I read this judgment of the Privy Council, to invite the immediate attention of Government to the serious situation created by that decision in respect of pending suits, and I went further. I also gave notice of a private Bill. Unfortunately the time was so short that a private Bill would have had no chance of going through in this session. Therefore, Sir, I suggested that an official Bill

might be introduced, and I acknowledge with gratitude that Government have come forward with such readiness in response to what I believe is a public demand. (Hear, hear.) The reason why a Bill was moved in the Council of State was that there was no time to bring it forward here. It is very important that this Bill must be passed in this session, and I will explain why. In most of these pending suits there have been receivers appointed,—receivers who have taken charge of these trust properties; the receivers have been making collections, they have large funds in their hands, and those who are defendants in these suits—the managers of these endowments—naturally do not like that the management should have been taken away from them and placed in other hands. Now many of these suits have been pending in appeal courts, but the receivers continue all the same. I know one particular suit in which the receiver has about 3 lakhs of rupees in his hands. Suppose we allow this Bill to stand over. What is the consequence? The mover has read out from a speech made by an Honourable Member in the other House from which I gather that the 18th April is the day fixed by the High Court for the hearing of an application in connection with a pending appeal in such a case in the Calcutta High Court. That application is that by reason of this Privy Council judgment, that suit should be struck out. If this Bill is not passed, that application is sure to succeed, because the judgment of the Privy Council, unless it is reversed or modified by the Indian Legislature, is binding upon all courts, and the High Court must therefore give effect thereto and dismiss the suit. The result of such a dismissal will be that the receiver will stand discharged. Then all these 3 lakhs of rupees which the receiver has got in his hands will disappear into the pockets of certain people. My friend over there says, "Wait till September, allow the Bill to be postponed till the September Session, and the Bill provides that within six months you can take steps to revive the suit". Suppose the suit is revived within six months after September then this money which in the meantime will have disappeared will never be found again; and not merely that, during the intervening months, more funds will have been collected, and more funds will have found their way into pockets where they should never go. It is because Government are so anxious to avert such a result, such a public calamity, I should say, in respect of public trusts and charities, that they have brought forward this Bill, and they deserve all the thanks of this House. (Hear, hear.)

Sir, my friend need not be apprehensive. I am neither a wolf nor a sheep. Nothing of the kind. On the other hand, my friend has tried with all the dexterity which anyone who has been detached for a long time from courts can command, to draw a very lurid picture of the controversial character of this Bill. He has, for instance, read out section 92. Now what has that got to do with this Bill, Heaven alone knows. We are concerned only with the question whether pending suits should be allowed to be hit because the Privy Council have now held that the sanction required under section 93 must be given specially for each suit, and not in general terms. My friend, Mr. B. Das, raises a controversial issue. What is that big issue, I for the life of me have been unable to comprehend. I think he says that this House was not given the opportunity to consider the Bill in the initial stage; in other words, that this House has been deprived of the opportunity of delaying its passage more and more! As the Bill was moved in the Council of State, a motion for circulation would

[Mr. C. C. Biswas.]

of course not be accepted here. If the Bill had come before this House first, my friend would probably have had the chance to move such a dilatory motion. That cannot be done now. Sir, I really do not see why we should be anxious to adopt any such tactics here, that can only produce one impression on the public mind—the impression that we are interested in stifling suits which have it for their object the purification of these public trusts.

Sir Abdur Rahim (Calcutta and Suburbs: Muhammadan Urban): Mr. President, this measure involves an extremely serious constitutional issue. My learned friend, Mr. Biswas, asked what that constitutional issue was. I will tell the House in very few words what that issue is. The Privy Council have decided a certain appeal on the question whether the sanction granted in a suit under section 93 of the Civil Procedure Code was valid or not. It has decided that according to the correct interpretation of the law, that suit had not the sanction that the law required. I do not think that it is the position of the Government that the decision of the Privy Council is wrong. I understand that that is not the position of the Government, and I shall proceed on that basis. I shall proceed on the basis, therefore, that the decision of the Privy Council on the question of law involved was correct. If that interpretation of the law was correct, then all suits that have been filed hitherto on the wrong interpretation of the law have to be dismissed; and it is a matter of everyday occurrence in court that suits that are filed without having conformed to the requirements of law in certain respects are liable to be dismissed, and many a suit is dismissed every day on that ground as the Honourable the Law Member and other lawyers in this House know very well. Now, then, what is this Legislature asked to do? What are we asked to do? Not to say that the decision of the Privy Council is wrong. We cannot say that. We are asked to say that that decision, that that interpretation of the law must not be applied to the suits which have already been filed contrary to that interpretation of the law. Does it not really come to the same thing,—that you are validating suits which according to the correct interpretation of the law were not validly filed, that is to say, in filing it the provisions of the law had not been complied with. Is that the function of the Legislature? The function of the Legislature is to pass a law and to leave entirely to the courts the interpretation of that law and the application of that law to particular cases. If this Legislature were to interfere because in the opinion of the Government or of certain Members of this House a certain interpretation of the law is wrong or should not be enforced, where is the matter to end? We should be usurping the functions of the courts, which I submit, with all respect to the House, this House has not got the machinery and is not in a position to perform. It is a function which can be performed properly only by the courts and by the courts alone. As a matter of fact in cases which are disposed of on what are called technical interpretations of the law, hardship is caused to litigants. That happens every day. But I have never heard that that is any ground for coming forward with a Bill, with a legislative measure, in order to relieve those litigants, because owing to the wrong advice given by their lawyers, they lost their suits. If the decision of the Privy Council is right in this case—and I maintain it is right—and as they point out this decision of theirs follows an earlier decision, then in that case what we are asked to

do is to say that the litigants who succeeded in the lower or appellate courts should be deprived of their success by a measure passed by this House. The position which I take is that the Government will not dispute this; that this Legislative Assembly has nothing whatever to do with the interpretation of the law. If this Assembly finds that a certain law as authoritatively interpreted by the courts is not in the interests of the public then it can change the law. That is a perfectly legitimate function of the legislature but to go further and give it retrospective effect in the manner proposed by this Bill is undoubtedly wrong and it is a very serious matter which I submit the Government ought to take into consideration.

Having regard to the procedure that has been adopted in this case, the Bill was not circulated and cannot be circulated now for eliciting public opinion. In all cases which are instituted in the courts, there are two parties and surely it is not right on the part of Government because certain parties have lost in the courts or are likely to lose to come forward and support them here and get the Bill passed in order to enable them to succeed. This is a very serious aspect of the position that has been created. I do not know whether the Honourable the Law Member has got any precedents for a Bill of this nature. The Waqf Bill which has been cited by an Honourable Member of this House really has no bearing on this case. The Waqf Validating Bill purported to validate certain acts of parties, certain acts which they are allowed to do, not suits. That is a very different matter altogether. The Waqf Validating Act, I think, enacts that waqfs that had been created by parties before the passing of the Waqf Act relating to waqfs in favour of the waqfs' descendants, that in those cases, the waqf should be held to be valid, but the legislature was careful and rightly careful to see that any rights acquired by other parties in the property in the meantime would not be affected. Here, we should not be advancing any such cases. Here suits have been filed, some parties have lost, may be on a technical objection, that is to say, purely legal objection but why should we interfere in their favour? If we do that, I should like to know where we are to end. We should be turning this Legislative Assembly into another court, a court which is to sit in judgment even on the Privy Council. Surely, the Honourable the Law Member will not contend that and I am sure he will not countenance the position which leads to that effect.

I should like the Government to reconsider its position so far as this Bill is concerned and at least postpone its consideration to the September Session. That is the least they can do. There may be some cases which may be adversely affected, some causes may be lost, a position which cannot be helped. We know the courts sometimes do take a wrong view of law, sometimes the Privy Council itself finds it necessary, though in a somewhat disguised form, to amend its own previous interpretation of law, but that is a matter which cannot be helped. It is a matter of everyday occurrence. The position which Government ought to take up is that at least they should not hurry with this Bill but consult the High Courts, consult the Local Governments and consult public opinion before they proceed any further with this measure. As I have said there are always two parties to a litigation, the one party has lost and the other has won. We ought not to interfere because we think the party which won ought not to have won. This is a serious matter which Government ought to consider and we ought not to set a precedent of this nature, because once you do it, you really do not know what cases will not be brought up here.

[Sir Abdur Rahim.]

Parties losing their case in courts will bring a Bill of this nature and that would be an intolerable position. I hope again that the Government will reconsider its position.

The Honourable Sir Brojendra Mitter (Law Member): I have listened to my Honourable friend Sir Abdur Rahim with great interest, and if I agree with him in any respect, it is on one point only, namely, that this is a serious matter. I will go further and say that this is a very urgent matter and not merely serious. As regards the other points, I am sorry I find myself in disagreement with him. He has treated suits on public charities as if they are suits between two private individuals. My Honourable friend Sir Abdur Rahim knows, probably better than anybody else in this House, that the Crown is the protector of public charities and suits between two private individuals are of an entirely different nature from suits relating to a public charity. Therefore when my Honourable friend said

Sir Abdur Rahim: Why does not the advocate General or some other Government official institute such a suit?

The Honourable Sir Brojendra Mitter: My Honourable friend said that Government by bringing in this Bill was helping one of the parties to succeed, that it was helping the plaintiffs to succeed. I do not admit that we are helping anybody to succeed. We are only giving the plaintiffs a chance to succeed and if the plaintiffs do succeed then public charities are rescued from fraudulent trustees. This is the effect of plaintiffs succeeding in suits under section 92. No Government should be ashamed of protecting public charities against fraudulent trustees, but I disclaim the imputation that we are helping any of the parties to succeed in the sense of helping any private interest. We are merely helping the plaintiffs in restoring to them the chance of which they have been deprived by the Privy Council judgment for no fault of their own. That is all that we are doing.

Sir, as regards the genesis of the Bill my friend Sir Abdulla Suhrawardy seemed to be somewhat nervous. In order that there may be no misapprehension I will tell this House exactly what the genesis of the Bill was.

Sir Abdulla Suhrawardy: I did not say so. It was the Secretary of the Honourable the Law Member, Sir Lancelot Graham, who said that, the bcgetters of the Bill sit on the Opposition Benches.

The Honourable Sir Brojendra Mitter: I will tell the House quite frankly the genesis of this Bill. As soon as the Privy Council judgment was published, I received a large number of telegrams, letters and representations from various parts of the country pointing out that by reason of this judgment hundreds of suits stood liable to be dismissed. What was to be done? When I was considering this matter a private Bill was sent by my friend Mr. Biswas and he wanted to introduce the Bill in this House. I considered that Bill also. I found that it required some revision in the drafting and I also found that if a private Bill were introduced

there was no time for the Bill going through the Legislature this session. And therefore I thought that in the interest of the general public,—not in the interest of this litigant or that litigant,—but in the interest of the general public and, in the interest of public charities of which the Crown was the protector, a measure like this was necessary, to save pending suits from dismissal which was inevitable. Therefore I introduced a Government Bill. For the sake of convenience I introduced it in the Council of State instead of bringing it up here in the first instance. That, Sir, is the genesis of the Bill. There is no secrecy about it; a large number of representations came to me and a Member, an elected Member, did send in a Bill. But I took it upon myself because I was convinced of the urgency of the matter.

Mr. B. Das: Why don't you postpone it till September?

The Honourable Sir Brojendra Mitter: I tell you why. Then all the mischief will have been done. One instance has been given by my friend Mr. Biswas. All lawyer Members of this House know that whenever a suit of this kind is instituted, it is immediately followed up by an application for a receiver and acts of maladministration by fraudulent trustees are alleged. They are investigated and if the court is satisfied that a *prima facie* case has been made out a receiver is appointed as a matter of course. As soon as the receiver is appointed, he takes charge of all the assets of the charitable foundation. He not only takes charge of the assets, but he collects current income. The result is that the alleged fraudulent trustee is out of it for the time being. Now, if this measure is not passed in this session what will happen is this; applications will be made in every pending suit by the defendant that by reason of the Privy Council decision,—they will take no account of a Bill being pending in the Legislature,—the suit is liable to be dismissed. The courts will have no option but to dismiss these suits; all the receivers will be *ipso facto* discharged and all the monies which are in the hands of the receivers will have to be made over to the fraudulent trustees. That will be the effect of postponing the Bill and that is precisely the mischief which we want to prevent.

Sir Abdur Rahim: Why do you call them fraudulent when nothing has been proved?

The Honourable Sir Brojendra Mitter: Sir Abdur Rahim has been a Judge for many years and he will bear me out when I say that no receiver is appointed unless a *prima facie* case is made out; and in these cases of public charity the *prima facie* case which has to be made out is that the trustee has been guilty of fraud or breaches of trust. That being so, whenever you find in these cases a receiver appointed, there is a *prima facie* case of fraud or breaches of trust which has been made out to the satisfaction of the court. And, it is in order to prevent monies which are now in the hands of receivers falling into the hands of fraudulent trustees that it is urgently necessary that no time should be lost in passing this measure.

So, my first point is this. Sir Abdur Rahim is under a misapprehension when he thinks that suits under section 92 are like ordinary suits between two private individuals. These are suits of a different nature

[Sir Brojendra Mitter.]

in which the Crown has a vital interest as the protector of public charities. Secondly, the urgency of the measure is to prevent monies belonging to public endowments and public charities being frittered away by people against whom serious allegations have been made; because, without serious allegations no suit is maintainable under section 92.

Sir Abdur Rahim's next point is that by entertaining this measure the Legislature is usurping the functions of the court. Sir, I submit it is doing nothing of the sort. The Legislature is not called upon to pronounce upon the merits of any suit. It is concerned only with a matter of procedure, a procedure of which Government and all the courts in this country had taken one particular view for the last half century or more. That view of the procedure is now declared by the Privy Council to be wrong. For no fault of anybody but for simply following a procedure, which was honestly believed to be the correct procedure and which all the courts in this country had pronounced to be the correct procedure, numerous pending suits are threatened with dismissal. If the Legislature, in conditions like this and without going into the merits of any case, gives relief to this large body of plaintiffs, that is not usurping the functions of the court. The primary function of the court is to adjudicate upon the merits.

Sir Abdur Rahim: Not on questions of procedure?

The Honourable Sir Brojendra Mitter: I said the primary function of the court is to adjudicate upon the merits. The preliminary function is to see that the correct procedure is followed. If the Privy Council judgment had not been made, all the courts would have said that in these cases the correct procedure had been followed: We are now confronted with the Privy Council judgment which has intervened. What we had considered to be the correct procedure now turns out to be the wrong procedure. In these circumstances it is, I submit, the duty of the Legislature to come to the rescue of the aggrieved people, who for no fault of their own and after having spent money and time for the sake of protecting public charities, now find themselves threatened with dismissal of their suits. That being so, it is peculiarly the function of the Legislature to step in and give relief to these plaintiffs. That is not usurping the function of the courts. We are giving relief against the consequences of the Privy Council decision only in the pending cases.

These are all the points which have been made. I submit that this is not merely a serious matter,—hundreds of suits are pending all over the country,—but it is an urgent matter. If this measure, which we consider to be a beneficent and necessary measure, is to be effective at all, it ought to be passed by this Legislature and today if possible.

Mr. C. S. Ranga Iyer (Rohilkund and Kumaon Divisions: Non-Muhamadan Rural): Sir, the Honourable the Law Member and the Honourable the Leader of the Independent Party, who are certainly two old legal luminaries in this House, have presented to this House both sides of the shield asking the laymen to judge for themselves. Sir, the Law Member's force of reasoning, I must admit, has dimmed Sir Abdur Rahim's lustre of eloquence. Coming to the argument of my friend, Mr. B. Das, I must certainly say that Mr. Das very rightly stood for

the supremacy of this House over the Council of State, and my friend, the Honourable Sir Lancelot Graham, by bringing down this Bill from the Upper House to the Lower House has acknowledged that supremacy. As that Upper House exists and the law permits that a measure could be brought down from the Upper House to the Lower House to give the final stamp of approval, I do not think anything unconstitutional has been attempted or illegal perpetrated. So far as procrastination of this particular Bill is concerned, quickness of decision has always been considered to be a virtue of the legislators, whether in this country or in any other country; and the very fact that this matter has been discussed in the Council of State—and the discussion in the Council of State was not conducted *in camera*—ought to be sufficient justification for proceeding with the Bill, now that the matter has been before the public for a sufficiently long time for the Members of the House to form an opinion for themselves. I am not an advocate for absentee lawyers on this side of the House. Members of the Legislature, if they are not sufficiently interested in matters coming before the Legislature and are therefore absent, are responsible for their absence and those who are present cannot abdicate their duty. I need not emphasise the urgency of the matter so lucidly and clearly put by the Honourable the Law Member. All that I need say is that my party leaves it an open question while lawyers on my side who are present are on the side of the Honourable the Law Member.

Dr. Ziauddin Ahmad (United Provinces Southern Division: Muhammadan Rural): Sir, I was rather surprised at the speech delivered by my Honourable friend, Mr. Ranga Iyer. I thought he would always fight for the true interests of the Assembly and for justice. But recently he has put on a new mantle and he opposes anything sensible, reasonable, or anything which emanates from the party to which he does not belong. I really do not know. . . .

Mr. President: Will the Honourable Member speak to the motion?

Dr. Ziauddin Ahmad: I am just coming to the motion. One thing I do not understand very clearly is this; here was a private Bill of a certain individual and the Law Member took it upon himself to make it a Government Bill; he did not stop there; he went further and instead of presenting the Bill before this House he went first to the Council of State and brought it down here from that place. I think this reverse process really showed the weakness of the case, because had he really considered it a strong case he would have come to the Legislative Assembly first. I am myself not a lawyer; but the way in which this Bill has been piloted, first as a private Bill, then made into a Government Bill and then taken straight to the Council of State, where any Bill can be carried with certainty, shows the weakness of the whole case. There is one thing which is certain; and that is that any Bill which is brought before the Council of State is as certain to be carried as two and two make four. In the case of the Assembly now, on account of the change of attitude which the Leader of the Opposition has adopted, I say the Government are now mathematically sure to carry any Bill in the Assembly, but till recently the Government were not sure of this position. It was clearly pointed out by the Leader of the Independent Party that the Government ought not really to interfere in a matter like this. It is really the function of the court;

[Dr. Ziauddin Ahmad.]

and if we begin to legislate in this manner, it may be for the interests of individuals or of a particular party, I think we do not know where we will land ourselves. The Honourable the Law Member came out as a champion of endowments. I wish he would support and present a Bill about endowments in general and take possession of all endowments in the country

The Honourable Sir Brojendra Mitter: I wish I could.

Dr. Ziauddin Ahmad: Sir, we have examples of other countries which have taken direct charge of all the endowments, they are administered by the State departments. If he is really a great champion of the endowments and I am sure that he is, he will certainly bring forward a Bill and if he does so I can understand his position and I promise full support. He will certainly be able to carry it in the House. But to interfere in the administration of trusts simply under the excuse that he has brought forward shows the weakness of the method he has adopted and that his whole case is very weak.

Mr. B. V. Jadhav: Sir, I am really surprised to see that there has been so much opposition to this innocent Bill. It is well known that trustees of Hindu temples have turned themselves into absolute owners and have been doing anything they like with the trust property; and as the British Government have been rather indifferent to these things, these persons have been left to enjoy the property as if it was their own. The Civil Procedure Code makes provision for calling these *shebaitis* or trustees before the court and asking them to show that they have been administering the trust properly. But the procedure laid down has been a very difficult one and a very expensive one, and unless in very urgent cases, or unless the property is very big, nobody generally thinks of instituting a suit. But the gravity of the situation is shown by the fact that, in spite of these difficulties, so many cases have been pending before the courts all over the country; and it is quite necessary in the interests of justice that these cases should continue to go on, and the wrongful persons or those who have committed breaches of trust should be brought to book. If this Bill is not passed all these persons will be wrongfully benefited and therefore great injustice will be done. My friend, Dr. Ziauddin Ahmad, asked why Government were not taking these trusts under their own management. He cited the instance of a foreign country which was managing its own trusts and perhaps he had the Soviet Government in Russia in view. I wish to inform him that in the State of Mysore, a Muzrai department has been established and is managing all these public trusts; and in the small State of Kolhapur the same thing is going on. So the Hindu Princes are quite alive to the necessity of managing these religious trusts in order to carry out the intentions of the original donors; and I may also state here that the Government of Madras since the reforms have had a Bill passed there and they are managing the endowments of the Hindu trusts also to the benefit of the general public; and the so-called trustees are there brought under check, and that was done by the ministry of the Justice Party. So I whole-heartedly support this Bill and oppose the motion of adjournment.

Several Honourable Members: The question may now be put.

Mr. President: I accept the closure. The question is that the question be now put.

The motion was adopted.

Sir Lancelot Graham: Sir, I have very few remarks to offer at this stage. Firstly, I should like to thank those

Mr. S. C. Mitra: On a point of order, Sir. The motion before the House is that this matter be postponed till the next Simla Session. Is that carried?

Mr. President (The Honourable Sir Ibrahim Rahimtoola): No, No; it is the amendment that is now being debated. The whole question has been allowed to be debated to save time. The motion for postponement will be put to the House after the reply has been given.

Sir Lancelot Graham: I understand, Sir, that I am to reply both on the motion for postponement and

Mr. President: No, there is an amendment for the appointment of a Select Committee.

Sir Lancelot Graham: Therefore, Sir, I am to reply solely on the question of postponement. Very good, Sir. That has been so effectively dealt with that, I think, all that is necessary for me to do is to repudiate the charge which was somewhat light-heartedly levelled against the Government of having introduced this measure in the Council of State in order to prevent the bringing in of a motion in this House that the Bill be circulated. I confess, Sir, I was surprised that my friend Sir Abdullah Suhrawardy should have thought me capable both morally and intellectually of such machinations. That bright idea never suggested itself to me for a moment. We were solely concerned with helping both Houses to get through their business in as reasonable a time as possible. By the time we had decided to bring in legislation on this point, our programme here was so packed that there was no room to insert the earlier stages of this Bill, and therefore it was purely for the convenience of business in this House and the other that we introduced the Bill in the other House. Had we been really as wicked as my friend Sir Abdullah Suhrawardy suggests, we might have moved in the other House the Bill to refer to Select Committee, and if we had done that, then no amendment of any sort could have been moved in this House, except for postponement. Therefore, I think the House will agree that we have not in any way trifled with the dignity and powers of this House. It is fully recognised that in this bi-cameral legislature legislation may be initiated in either Chamber. We do in practice introduce most of our legislation in this Chamber, but I doubt if a single session of this Legislature has passed since 1921 in which some Government measures have not been initiated in the Council of State.

There are one or two points in my friend Sir Abdur Rahim's speech which have really been dealt with by the Honourable the Law Member. My friend said there was no precedent at all for this sort of thing, and we were simply putting a premium on litigants. The justification for this legislation is that the mistake is not really that of the litigants. The error was a universal one, and in my opinion a reasonable one. I am not saying

[Sir Lancelot Graham.]

that the decision of the Privy Council is incorrect. Personally, I am convinced that it was correct, but at the same time I say that the error was a reasonable one, and it was an error on the part of Government. Consequently these litigants had to suffer, and that point has also been dealt with already. These litigants are taking upon themselves a very unpleasant duty in the interests of the public. Their suits are being dismissed on account of a reasonable mistake, and the only way to do any sort of justice, I submit, is to bring in a Bill of this kind and to put it through as quickly as possible, for, Sir, time literally is of the essence of this legislation. People say, "Well, pass this Bill six months later", but I think that Honourable Members who make that suggestion do not realise that litigants have not got an unlimited purse at their disposal. Therefore, it is absolutely essential that no more money nor time should be wasted. It is a waste of time, and therefore this measure should be passed without any undue delay. Sir, I oppose this motion.

Mr. President: The question is:

"That the consideration of the Bill be postponed till ^{opted} next Simla Session."

The motion was negatived.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The next amendment on the Order Paper is for circulation which cannot be moved under Rule 29.

The next amendment which can be moved stands in the name of Mr. Maswood Ahmad to refer the Bill to a Select Committee.

(Mr. Maswood Ahmad was absent.)

Khan Bahadur Haji Wajihuddin has given notice of the same amendment.

Khan Bahadur Haji Wajihuddin (Cities of the United Provinces: Muhammadan Urban): Sir, I beg to move that the Bill to validate certain suits relating to public matters be referred to a Select Committee consisting of Sir Lancelot Graham, Sir Abdur Rahim, Dr. Ziauddin Ahmad, Sir Abdullah Suhrawardy, Captain Rao Bahadur Chaudhry Lal Chand, Rao Bahadur Pandit, Mr. S. Fazl Haq Piracha, Mr. B. Das, Mr. Amar Nath Dutt, Mr. K. Ahmed, Sirdar Harbans Singh, Mr. Muhammad Muaz-zam Sahib Bahadur, Mr. Ghuznavi and the Mover, with instructions to report in the next session, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five. My reason for moving this amendment is to have an opportunity for the public to go through the whole matter. Sir, I am a layman, a plain man of business, and I cannot understand why there should be such great hurry for upsetting the judgment of the Privy Council, which is the highest court of appeal in the Empire. I am sure there is no public demand asking Government to adopt such a measure. The general public knows nothing about the matter, and therefore public attention should be drawn to it and we the representatives of the public should be given an opportunity to form our opinion. I therefore hope that my motion to refer the Bill to a Select Committee will be adopted by this House.

Mr. Muhammad Anwar-ul-Azim (Chittagong Division: Muhammadan Rural): Sir, there is an amendment in my name in almost identical terms to the one moved by my friend Khan Bahadur Haji Wajihuddin, and if I take this opportunity to say a few words I would spare the House from

repeating the same motion again. I have listened with a great amount of interest to what has fallen from my esteemed friend the Law Member and also from my esteemed friend the Honourable the Leader of the Independent Party. One of the speakers said that on certain matters of importance both Sir Brojendra and Sir Abdur Rahim have differed and it would not be right for others to take a detached view one way or the other. As one more or less connected with this line of business in which Sir Abdur Rahim is and my friend Sir Brojendra was engaged, I think it will be pertinent on my part to say what I most humbly think about the merits of this Bill. The constitutional issue raised by Sir Abdur Rahim goes into the root of the whole matter—whether this Legislature can sit on judgment over the works of the Judicial Committee of the Privy Council.

The Judicial Committee have passed judgments regarding the merits of Section 93 of the Civil Procedure Code—and they say that sanction of Government in all cases must be obtained now. This Bill says that sanctions will be taken from this time upward, but they should like to give relief to those people, who have lost their cases on account of the present ruling with retrospective effect from November, 1931. This, Sir Abdur Rahim said, is improper—and here comes in the conflict. To my judgment Mr. President, Sir Abdur Rahim is right and the action of the Govern-

ment in this matter is certainly wrong. I hope that this is the last occasion on which the Government of India on the legislative side, or for that matter on any side, have been advised to introduce important measures of this kind in the Council of State. We know the importance of having a bi-cameral legislature, but there are certain things which should not be done. Will my Honourable friend Sir Lancelot Graham advise the Finance Member to introduce a Bill which may savour of bringing some money into the coffers of the State, in the Council of State? The Honourable the Law Member by way of meeting the argument of Sir Abdur Rahim said, yes, it is correct that courts here in this country are possessed of two functions, one whether a particular suit which comes before them is of proper jurisdiction, and second, to try the case on its merits. By the introduction of this piece of legislation, the Government have tried to usurp the functions of the court, and the contention of my Honourable friend Sir Abdur Rahim has not been properly met by the Government. Why is this inordinate hurry? I know of instances in which a particular decision was the result of the mental aberration of a Judge of the High Court in this country. People know the kind and quality of cases which come before the judicial tribunals in this country. Cases under section 124 of the Penal Code require the sanction of the Local Government and for want of proper sanction they are dismissed. I am certain my Honourable friend knows very well, and I think some time ago it was represented to him by certain people in this country whether it is not a fact that there have been different kinds of decisions of the highest courts in this country with regard to section 497 of the Criminal Procedure Code. When important cases of that kind are brought to the notice of the Government, I have never known that they have taken any serious notice of them. It is far from me to impute any motive to any side or any person, but it looks outlandish and rather hasty for Government to come in with this piece of legislation at this fag end of the session with such a hurry. I know personally we were interested in a case in 1905 that went up to the Privy Council. That was decided by the Privy Council in a correct form—and if the decision of the Privy Council had been given effect to in 1905

[Mr. Muhammad Anwar-ul-Azim.]

or 1906, I assure you, Mr. President, that lots of property would have been saved and those of some very loyal citizens of the Empire. But those are old cases. If we had people of the ability of Mr. Biswas they would have been able to get through legislation to confrm the Privy Council's decision. But that is an old story. My Honourable friend the Leader of the Independent Party asked, what will be the effect if this Bill is taken up in the Simla Session? The reply came from Mr. Biswas, "Oh, the whole world will come down, the receivers will be grabbing the whole money". But my Honourable friend Mr. Biswas knows very well that the receivers have to furnish very heavy securities. It may be personal security sometimes, but the receiver has got to account for every *courie* that comes into his hands. Besides Mr. President what is the proof that these trustees are all swindlers? It creates a lot of uneasiness in the minds of us all this side, because this Bill is to be passed immediately. There are more important things which the public thought that the Government should take notice of, but they slept quietly over them and did not take any notice, but this is not likely to hurt anybody, and I am really surprised that Government should simply blurt out that they have hundreds of instances where these people will be penalised. But is this a fact? They have not been able to bring out even one instance. Again, where is the decision of the Privy Council? If it was possible for Members to know where the Privy Council had gone against the existing law, of course, we might have been able to take a proper view. I am surprised that my Honourable friend Mr. Jadhav should so lightly treat the suggestion of Dr. Ziauddin Ahmad. Dr. Ziauddin Ahmad said, if Government were so solicitous with regard to the preservation of old properties, they should have been able to bring in some measure by which those properties could be properly administered.

Mr. B. V. Jadhav: May I inform the Honourable Member that it is a provincial subject and the Provincial Governments may take it up?

Mr. Muhammad Anwar-ul-Azim: What was the reply of the Government? It was a very unconvincing reply. My view is this. If the Bill had been introduced here and allowed to roam over all parts of the country, then public opinion would have been available, we would have seen what the public Press had to say, what the platform had to say, about it. But to merely swallow the whole thing on the speech of Mr. Basu and the Honourable the Law Member, I feel it is rather difficult to do so. Mr. Das and others have taken the constitutional aspect of the case, and they have my support. The Government of India are the victim of many things, and this is an instance in view. The *Wakf* properties of the Mussalmans will come under the mischief of this Bill.

I am also surprised to see that Government lend their support to measures, which are likely only to benefit a few individuals only.

With these few words, I support the motion of my Honourable friend Khan Bahadur Haji Wajihuddin.

Mr. S. C. Sen (Bengal National Chamber of Commerce: Indian Commerce): I oppose the motion for reference of the Bill to a Select Committee. This is a dilatory motion in par with the two previous ones, and I submit that the Bill need not have been put forward if it could not be passed at once. The whole object of the Bill is to prevent further

1 mischief being done. The only principle underlying the Bill is to make good a wrong which has been done by reason of a wrong interpretation,—or as my Honourable friend Sir Lancelot Graham said, although it is a mistaken interpretation, it is a reasonable mistake committed by the Local Governments and it is the duty of the Government to come before this House and the other House and to pass a law by which to remedy the wrong which has been unintentionally done to the litigants who at very great expense had taken upon themselves a public duty to do good to the public trusts. As the Law Member rightly pointed out, these suits are not of a private nature but of a representative character as it is called. The plaintiffs represent the public but to represent the public they have to go through certain formalities, one of the formalities being that they should obtain the sanction of the Collector of the districts and of the Advocate General in the Presidency towns. Under section 93 of the Civil Procedure Code the Local Governments have to authorise the Collectors or other persons to give sanction. The Local Governments throughout India took the view that they could by general order authorise the Collectors by general order to give sanction. The Privy Council, however, considered that a general order was not sufficient and that special order in every case was necessary. The result is that all suits now pending are liable to be dismissed for no fault of the parties. Who is the person who will be benefited if this legislation is not passed? The poor fellows who launched into litigation for the public benefit would lose the costs already incurred because the Government officials made mistakes. There is no constitutional question involved in the matters that the Legislature is riding rough-shod over the courts or the judiciary. That is not the question before us. The question before us is merely whether the persons who would ultimately suffer by reason of the decision of the Privy Council upsetting a practice extending over 60 years should be given any remedy, any delay will defeat the object. With these observations, I oppose the motion for Select Committee.

Sir Abdur Rahim: I support the motion to refer the Bill to Select Committee. As I listened to my friend the Honourable the Law Member in support of the motion to take the Bill into consideration, it seemed to me that he has been lapsing into his old habits of an advocate. He has raised points which would be all right in a court of law as coming from an advocate of a certain party, but I do submit to this House that arguments like that are no answer to the important constitutional issue that arises in connection with this measure. The point he wanted to make was that these suits were suits with reference to public trusts and therefore the decision in these suits must be treated on a different basis from decisions on other suits.

The Honourable Sir Brojendra Mitter: No, no.

Sir Abdur Rahim: It comes to that, at any rate that these suits must be treated on a different basis. My friend suggested that public endowments ought to be protected. Is he prepared then to contend that all the suits that are instituted under section 92 of the Civil Procedure Code are really *bona fide* suits and deserve to succeed? Does he not know by experience that many of these suits are *mala fide* and deserve to fail?

The Honourable Sir Brojendra Mitter: All we are saying is this—give the courts a chance to say so.

Sir Abdur Rahim: That brings me to his next point, that the decision of the Privy Council was in regard to a question of procedure and therefore this legislature is entitled to set the Privy Council right. Is that a good argument? Is that a good constitutional argument; because the decision has been on a question of procedure, therefore this Legislature should take up the function of a court of appeal and set aside the decision. Questions of procedure are sometimes very important. Procedure is often the essence of a suit and surely it is the court which is best fitted to say whether the right procedure has been followed. What about questions of limitation? How many suits are not dismissed because they are filed a few days too late. *Prima facie* we may say this is very hard. Could you bring in a law to give relief to those litigants who have been too late? Litigants are sometimes badly advised by lawyers. In that case, is it any justification for the legislature to say—here are these poor litigants who were not at fault. They engaged lawyers, paid them handsome fees in order to derive advantage from their legal experience and technical knowledge and they have been misled. Therefore we must set matters right. Is that really the argument of my Honourable friend the Law Member? I should have thought that the Government would consider this as a serious question and not hurry the Bill like this. They will be establishing a bad precedent. Are Government prepared to bring in Bills of this character, whenever any such cases happen? I should like the Government to declare that. They would be putting themselves in a very false position indeed if they took up an attitude of that kind.

It has been said that this is a very urgent matter. A receiver has been appointed in some suit. Several lakhs of rupees are in his hands and may have to be refunded to the trustees if the decision against the plaintiff stands. That is the position. What have the public been doing all this time and why were not proper steps taken in time against trustees who are now alleged by two or three members of the public to be in the wrong? Are there not many cases of mismanagement in which no action is taken? Are there not honest trustees as well? Are not there trustees who are harassed by interested litigants who easily get a fiat from the Advocate General or the Collector or the Local Government in order to institute suits of this character? Can that be denied? The whole position really resolves itself into this. You are saying that in certain cases litigants should not be allowed to take advantage of the law as has been interpreted by the Privy Council. Is that the right position for Government to take up? I am not interested either in endowments or in persons seeking to set right the administration of any particular endowment. I am raising this question as it involves constitutional issues of very grave importance.

The Honourable Sir Brojendra Mitter: If I understood my Honourable friend Sir Abdur Rahim rightly, he is supporting this motion.

Sir Abdur Rahim: Yes.

The Honourable Sir Brojendra Mitter: Then he accents the principle of the Bill and he wants this Bill to be referred to a Select Committee to see to the drafting.

Sir Abdur Rahim: That is the least that could be done now.

The Honourable Sir Brojendra Mitter: Either he was speaking on the motion for reference to Select Committee or he was speaking on something outside that motion. I take it that my Honourable friend, the Leader of the Independent Party, would not be guilty of any error of procedure, and he was talking in support of this motion for reference to a Select Committee. Sir, acceptance of a motion for reference to a Select Committee means this that you accept the principle of the Bill, but that there are drafting defects which may be remedied in Select Committee. (*Sir Abdur Rahim:* "Not merely that.") Sir, not a single word has been said in criticism of any of the clauses of the Bill by my learned friend. Therefore I take it he has no quarrel with the drafting of the Bill. The principle is accepted and the drafting is all right. Now I should like to know how he reconciles the two positions he has taken up. He has not criticized any of the clauses. He attacks the principle of the Bill, and yet he supports the motion for reference to a Select Committee! Sir, neither the Mover of this motion nor my friend, Mr. Anwar-ul-Azim, who supported this motion touched upon a single clause of the Bill. So, I take it that all the Honourable Members who are supporting this motion accept the principle of the Bill. If they accept the principle of the Bill, and they find no fault with the drafting then, I have got no quarrel with them.

Rao Bahadur B. L. Patil (Bombay Southern Division: Non-Muhamadan Rural): Sir, I rise to support the motion for referring the Bill to a Select Committee. The Honourable the Law Member just said that the Leader of my Party did not refer to any of the clauses of the Bill. I maintain, Sir, that in effect he did refer to the clauses of the Bill in this way. He said that when a suit is dismissed, important rights accrue to a certain party. Now the question before us is, are we going to disappoint him? Are we going to take away his rights accrued after the suit has been dismissed? That is the point that was made. Now let us consider some of the clauses of the Bill. There is a clause in that Bill that suits already dismissed after some date in November until the passing of this Bill into law will be restored by reason of this Bill being passed into law. If that is so, what provision have you made for making amends to the person whose rights you are going to take away now? That, Sir, was the thing that was pointed out by my Honourable friend, Sir Abdur Rahim, and that is the reason why I support this motion; because if this Bill goes to Select Committee, they will at least make certain provisions for the benefit of persons who will suffer by reason of this Bill being passed. Then, Sir, my Honourable friend, Sir Abdur Rahim, discussed every implication arising out of this Bill and he also touched upon the principles involved in this Bill. It is true that we cannot go against the principle, but I submit that we get still another opportunity to throw away the Bill altogether and it is for that reason that my friend still spoke on the principle. Now let me point out that there is absolutely no hurry for passing this Bill into law. It is submitted by the Honourable the Law Member that if at all this Bill is to be passed, it must be passed in this session only because he says that the public trusts are in danger, that the trustees are likely to fritter away public money. I say this is very rare; because as a practising lawyer

[Rao Bahadur B. L. Patil.]

I know a number of vexatious suits filed against trustees simply because there is a private grudge, simply because they themselves are not the trustees.

Then, Sir, what is the procedure before suits are filed? A copy of the plaint is sent either to the Advocate General or to the Collector of the district and he considers the plaint from top to bottom and from bottom to top. He will consult his subordinates and he will take their opinion. If the matter in question is a serious one or if he thinks that really the property is in danger and that there is any possibility of money being frittered away, certainly he will personally undertake to prosecute the case. If we look into the provisions of the section, we will see that there is discretion given either to two persons among the public or to the Collector or to the Advocate General himself to prosecute the suit. Therefore I say in all cases where there is any serious danger to public money, suits are undertaken by the Collector or by the Advocate General. My Honourable friend the Law Member or the Honourable Member in charge of the Bill may be knowing how many suits are actually filed by the Advocate General or the Collectors; will they look into their records? I submit they must be very few and can be counted on one's fingers.

Then, Sir, I ask, is it fair that we should sacrifice the principle involved, or that we must allow some property to be wasted away? The former course, I think, is inadvisable because, as my esteemed leader submitted, we would be setting up a very bad precedent. Is it proper for this Legislature to lend its helping hand to all defaulters, to all people who are negligent and who have with eyes wide open neglected to take proper precautions, to obtain proper sanction? For these reasons I fully support the motion for reference to a Select Committee.

52. **Honourable Members:** The question may now be put.

Diwan Bahadur Harbilas Sarda: Sir, I wish to say a word with regard to the two points which have recently been made. It was said that this Bill makes the Legislative Assembly sit as a judge to correct the mistakes of the Privy Council. As I understand the Bill, this is not a proper representation of the case. The Privy Council have interpreted the law in one way. The Local Governments have interpreted it in another way. This Bill does not say that we shall correct the interpretation of the Privy Council. This Bill has been brought in only because the Government think that the Local Governments have wrongly interpreted the law, and in order that the wrong interpretation may be set aside and that any losses caused to people because of the wrong interpretation put upon it by the Local Governments may be made good, it is because of that that the Government have undertaken this Bill. I think it was also asked, will Government bring forward such validating Bills again? I think if such circumstances arise again, then it will be the bounden duty of Government to bring forward such Bills. If any people, litigants or others, are put to loss because of Local Governments' mistakes, it is the duty of the Government of India to put the thing right and validate these things so as to save the people from unnecessary loss. I think, Sir, that as the whole thing was due to the mistake of the Local Government, the Government of India have done

very well in bringing forward this Bill, and I think we must thank the Government of India for so speedily trying to put things right. (Hear, hear.) We have to thank the Government instead of condemning it.

(Several Members moved that the question be now put.)

Mr. President: The question is that the question be put.

The motion was adopted.

Sir Lancelot Graham: Sir, I do not wish to take up the time of the House but I think my Honourable friend the Law Member has conclusively shown that my Honourable friend Sir Abdur Rahim, at any rate, thought he was merely supporting a dilatory motion and did not realise that he was accepting the principle of the Bill. The House has already given its decision on the earlier dilatory motion, and although this motion in form is not a dilatory motion, I have no doubt at all in my mind that it really was intended to be a dilatory motion and there are no arguments for me to meet now because all those arguments have been put forward before. Therefore, I oppose this motion.

Mr. President: The question is:

"That the Bill to validate certain suits relating to public matters be referred to a Select Committee consisting of Sir Lancelot Graham, Sir Abdur Kanim, Dr. Ziauddin Anmad, Sir Abdulla Suhrawardy, Captain R. B. Chaudhri Lal Chand, Rao Bahadur S. R. Pandit, Mr. S. Fazl Haq Piracna, Mr. B. Das, Mr. Amar Nath Dutt, Mr. K. Ahmed, Sirdar Harbans Singh, Mr. Muazzam Sahib Bahadur, Mr. A. H. Ghuaznavi, and the Mover, with instructions to report in the next session and that the number of Members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

The motion was negatived.

Mr. President: The question is:

"That the Bill to validate certain suits relating to public matters as passed by the Council of State be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

Mr. President: Clause 3.

Mr. B. Das: Sir, I beg to move:

"That clause 3 be omitted."

I do not mind Government passing clause 2 which is legislating to give effect from the date this Bill is enacted into an Act by the sanction of this House. But clause 3 introduces a phase which no elected Member of this House should subscribe to, because here, we are going to invalidate the judgment of the Judges, and why should we do it? I do not know whether this has happened in the past. My lawyer friends say that it happened once or twice in a blue moon. This is not a case which happens very often. As my Honourable friend Mr. Sen said, if mistakes had been made, they must be

[Mr. E. Das.]

recurred. But who committed the mistakes? If the Local Government made mistakes, then blame the Local Government, sack the Local Government, dismiss the Governor, the District Magistrate and everybody. Even the Advocate General who advised the Government never pointed out these mistakes and today we condone the mistakes of the Local Governments and Advocate Generals. I am not here holding a brief for the Local Governments. I therefore suggest to the Honourable Member my friend Sir Lancelot Graham, if he subscribes to the principle of clause 3, he should bring it out in the form of an Ordinance and not take the sanction of the elected Members of this Assembly. That we should here legislate against judgments passed by High Court Judges, and Judges of Privy Council under any form of procedure is intolerable. May I ask the Honourable the Law Member whether he is going to introduce that practice into everything and into every kind of mistakes which the Government of India make. I do not think my Honourable friend the Law Member would advise his colleagues in the Executive Council to do that. If he had given proper advice, these Ordinances would not have been enacted. If the Honourable the Law Member is so much alive to the situation in the country, he would have strongly differed from his colleagues about the Ordinances. The Honourable the Law Member in his first speech observed that the opinions of the High Courts and Local Governments have been collected and the Government of India hold certain views

The Honourable Sir Brojendra Mitter: I never said that opinions had been collected. What I said was that the High Courts, all the Courts and all the Governments had gone wrong according to the judgment of the Privy Council. Hitherto the view taken not only by Local Governments but by the High Courts, the subordinate courts and by all the lawyers practising in this country was all one way and that view now turns out to be wrong. The view universally held is now held to be wrong.

Mr. B. Das: I am glad to know that all the High Court Judges have gone wrong. I do not mind clause 2 of the Bill. But in clause 3 you are going to ask that the judgments already delivered should be quashed. You are invalidating certain judgments. Who is going to pay the costs of those parties? They will all bring out their taxed costs. Under the terms of their contract, high officials of Government won't pay. If the Honourable the Law Member and my Honourable friend Sir Lancelot Graham are so anxious about the parties who are involved in this case, why do they not put in another clause to the effect that these judgments will be quashed and the money that has been spent by the different parties will come from the pockets of the Local Governments, of course, Local Government means tax-payers' pockets.

Mr. K. C. Neogy (Dacca Division: Non-Muhammadan Rural): Out of the pocket of the Law Member and High Court Judges, perhaps.

Mr. B. Das: Or as my Honourable friend Mr. Neogy suggests why should not the costs be met out of the salaries of High Court Judges or even of my Honourable friend the Law Member. I think, Sir, this is a piece of jobbery. It is an outrageous clause which is embodied in this clause 3. It is a piece of jobbery.

Mr. C. C. Biswas: It is a legislative jobbery.

Mr. B. Das: Yes, it is a legislative jobbery of which my Honourable friend Mr. Biswas is the inspirer. It is an outrageous way of doing things which I think every elected Member should oppose and vote down.

Mr. S. G. Jog: On this side of the House, as a Member of the Nationalist Party, I have got great respect for my Honourable friend Mr. Das. I generally take him as a very safe guide to follow in all other matters except law. As a lawyer I think in this particular case I must use my own discretion even at the risk of throwing my revered friend overboard. I can certainly excuse my engineering friend of not understanding the urgency, the necessity, the equity and the justice of the measure that has been introduced. I can certainly excuse him, but I am not prepared to excuse my lawyer friends who take a different view of the whole measure. My Honourable friend's suggestion is to omit clause 3, that is practically taking the soul out of the body. If the suits that have been dismissed are not to be restored, then what is the remedy? Why should these people suffer for the mistakes of so many judicial officers for which they are not at all responsible? A particular view has been taken for nearly a century, and fortunately or unfortunately it was not brought to their notice, and for this should the people suffer? I think Government would have been charged with some other things if they had not moved this Bill and moved it in such haste and hurry for bringing relief to these litigants. Sir, I oppose the amendment proposed by Mr. Das.

Mr. C. C. Biswas: Sir, I will just point out that such instances of intervention of the Legislature are not at all rare. For instance, when the Privy Council held that in regard to certain suits on mortgages the sixty years' limitation was not applicable, but the 12 years' rule would apply although all along the sixty years' rule was held to apply, what happened? The Legislature intervened, and they added a provision in the Indian Limitation Act by which they provided

An Honourable Member: That was not done in one day; it took two months.

Mr. C. C. Biswas: I thought that aspect of the question was disposed of by the amendments which have been defeated. Now we are on the merits of the Bill, and I am pointing out that exactly the same thing was done in regard to the Indian Limitation Act as is now proposed in respect of section 93, Civil Procedure Code. That was also done in consequence of a decision of the Privy Council to the effect that the sixty years' rule would not apply, but the 12 years' rule. I refer to section 31 of the Limitation Act. It expressly provided that where in any such case the claim of any mortgagee was wholly or partly dismissed or extinguished after a particular date because of the view taken by the Privy Council, the courts shall restore such suits upon application made within two years; because those suits would not have been liable to be dismissed upon the view of the law, which had prevailed for a long time but was now unexpectedly turned down by the Privy Council. The whole idea was to save suitors from the consequences of an unexpected decision. Exactly the same thing is happening here. If you have the Bill, you must have clauses 3 and 4.

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Mr. C. S. Ranga Iyer: Sir, there is just one word I want to say. I wish my Honourable friend Dr. Ziauddin Ahmad were present here to witness the very enjoyable spectacle of the Chief Whip of my Party, Mr. B. Das, a martyr to conviction, cheerfully becoming a pleasant cushion to Members sitting behind him. On this motion as on other previous motions we have left the matter an open question and are animated by no animus towards the Independents (Hear, hear) on the undependable Benches. (Laughter.)

Sir Lancelot Graham: Sir, there is really very little that I wish to say on this point, but I think we are doing the fairest thing we can do. This clause will have the effect of restoring the *status quo ante* and allowing the suit to be decided on its merits. I can imagine nothing more just, I therefore oppose the amendment.

Mr. President: The question is that clause 3 be omitted.

The motion was negatived.

Clause 3 was added to the Bill.

Mr. B. Das: Sir, I move that clause 4 be omitted. I listened very attentively to the very short speech that my Honourable friend Sir Lancelot Graham made and he said that in equity and fairness clause 3 should be maintained. I should like to ask him one or two simple questions. I want to know why a decree that has been passed after the 30th day of November 1931 should be set aside. Why not the 30th November of 1930 or some other previous year?

Sir Lancelot Graham: Because that is the date of the Privy Council judgment.

Mr. B. Das: If my Honourable friend was so kind and so fair to the litigants, why did he not think of refunding the money that the litigants spent in the previous cases and which they fought and won? Will the Local Governments or the Government of India bear those costs? Sir, I have heard it mentioned by previous speakers that the public is spending money at great sacrifice and the trustees are spending money for these law suits. I am not interested in these mutts, or wakfs or religious trusts, whether belonging to Hindus or Muslims. I am not concerned with the fact whether the trustees mismanage the funds in the name of the public or whether the original owner who is some *mahant* mismanages them. But when the previous speakers mentioned that the public are spending their own money like water, I ask them, who told them to spend their own money? They are spending that money surely with the idea that when they get hold of the three lakhs, which my friend Mr. Biswas said is lying somewhere in the bank, they will take a share out of that. So, Sir, it is not a fact that those who have advocated this Bill and those who spoke on behalf of the trustees have done all philanthropic work. The trustees have some ulterior motives as also the other side, the old proprietors, the *mahants*, had ulterior motives. But I accuse the Government of the serious charge that they are doing something which is outrageous and which should not be done on the eve of great constitutional changes.

Sir Lancelot Graham: Sir, all I can say is that if I am doing something quite outrageous, I am quite content to have a large majority of the House with me.

Mr. President: The question is that clause 4 be omitted.

The motion was negatived.

Clause 4 was added to the Bill,

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

Sir Lancelot Graham: Sir, I move that the Bill, as passed by the Council of State, be passed.

Mr. Amar Nath Dutt (Burdwan Division: Non-Muhammadan Rural): Sir, during the past ten years I have never found the Government so very reasonable and so very alert to protect the interests of the people entrusted to its care. I congratulate the Honourable the Law Member as also my Honourable friend behind who has been the inspirer of a Bill like this. We in Bengal certainly want that these suits should not be thrown out on a very technical ground. At the same time I should be wrong if I were not to state before this House what I feel about this particular piece of legislation and also about the judgment of the Privy Council. Sir, every lawyer is aware of the doctrine of *factum valet*, and it was up to the Privy Council to act up to that doctrine and say that when things have been going on for a series of years like this they must accept it and not base their judgment on such technical flaws. I think the Privy Council was wrong in not acting up to the doctrine of *factum valet* or is it that they thought that this was a case in which the doctrine of *factum valet* did not apply. In either case I believe that it is not for us to legislate so as to upset the judgment of the highest court of the British Empire. With all my sympathies for those who would suffer if this Bill were not passed—in fact no one will be more pleased if this Bill is passed for the particular case to which reference has been made here; but at the same time I cannot deny that this is neither our province, and it is not our duty as legislators, if I may say so, to enact a measure like this. I ask myself: have we ever found that when really the public charities and interests of the poor people were at stake, Honourable Members coming in such haste and introducing measures like this? I have not. Perhaps they have turned over a new leaf and I hope they will continue in future to do so.

In the Bill which came into our hands, I find the Statement of Objects and Reasons is dated the 8th March, 1932. The swiftness with which this Bill was introduced in the House of Elders just to shut it out of not very obliging Members here, who might file an amendment motion for circulation, was very cleverly done. I wish that all this zeal had been shown in a better and a higher cause. If I am saying anything about the principle of the Bill, it is because I feel that this Bill is certainly not a happy specimen of either the intellect or the heart of my Honourable friend over there for whom I have the greatest admiration and respect. In fact my idea has been that some one must have persuaded him to such an extent that he could not resist the temptation

The Honourable Sir Brojendra Mitter: The force of public opinion.

Mr. Amar Nath Dutt: As for public opinion, I have not as yet found any meeting held in any part of the country, or either anything in the newspapers or elsewhere. I really welcome the provisions of the Bill

[Mr. Amar Nath Dutt.]

which is very salutary, and I am glad that it is going to be passed. All this I say (Laughter); but at the same time the lawyer's sense in me revolts when I find that the highest law officer of the Crown, after a brilliant career at the Calcutta High Court and at the bar, and being Law Member, has become the victim of enacting such a measure as this. We also heard that this was following a decision of the Privy Council; if that were so, I think it was up to him to come at that time; and when he did not come at the time but comes now, people should not be criticised if they hold that there must be something behind, something at the bottom of it all. Whatever that might be, I congratulate my Honourable friend on this Bill, and I whole-heartedly accept the provisions of the Bill for the welfare of the public; but I protest against the manner in which this Bill has been rushed through, and if there be any occasion in future I will demand of Government to do things like this when the imperative interests of my country and my countrymen demand it; and if they fail to do anything at that time, I will say that they are not sincere. I hope they will remember this. Of course my Honourable friend the Leader of the House is going away; I know he would have been true to his promise if he had been here and another Member of the Government has gone away already; but I hope their successors will follow in their footsteps and hence forth be more alert in preserving the public interests and the interests of the people.

Mr. C. C. Biswas: Did not my Honourable friend sign a representation to the Viceroy that a Bill of this kind should be brought forward?

Mr. Amar Nath Dutt: Yes; and so I say I am happy that this Bill has come up.

Sir Lancelot Graham: Sir, I have merely to say that I thank my supporters—both those who approved of the Bill and those who disapproved of the Bill; I understand they all support me.

Mr. President: The question is:

“That the Bill to validate certain suits relating to public matters, as passed by the Council of State, be passed.”

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 5th April, 1932.