

27th March 1941

THE

LEGISLATIVE ASSEMBLY DEBATES

Official Report

Volume II, 1941

THIRTEENTH SESSION
OF THE
FIFTH LEGISLATIVE ASSEMBLY,
1941



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Legislative Assembly

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CONTENTS.

VOLUME III.—18th March to 1st April, 1941.

	PAGES.		PAGES.
TUESDAY, 18TH MARCH, 1941—		FRIDAY, 21ST MARCH, 1941—<i>contd.</i>	
Starred Questions and Answers	1579—85	The Dissolution of Muslim Marriages (Amendment) Bill—Introduced	1753—54
The Protective Duties Continuation Bill—Introduced	1585	The Professions Tax Limitation Bill—Introduced	1754
The Indian Tariff (Amendment) Bill—Introduced	1585	The Indian Evidence (Amendment) Bill—Introduced	1754
The Indian Finance Bill—Discussion on the motion to consider not concluded	1586—1632 1633—34	The Code of Civil Procedure (Amendment) Bill—Introduced	1754
THURSDAY, 20TH MARCH, 1941—		SATURDAY, 22ND MARCH, 1941—	
Starred Questions and Answers	1635—49	Starred Questions and Answers	1755—58
Unstarred Questions and Answers	1649—52	Statements laid on the Table	1768—69
Motion for Adjournment <i>re</i> —Interference by the Delhi Police in Khaksar Activities—		Election of Members to the Standing Committee for Roads	1769
Allowed to stand over	1653	Election of Members to the Standing Committee on Emigration	1769—70
Forcible Collection of War Fund—Disallowed	1653—54	Statement <i>re</i> one Krishna Gopal Garg, a convicted Prisoner in Ajmer	1770—71
The Indian Finance Bill—Motion to consider adopted	1654—79, 1680—1716	Election of a Member for the Committee on Public Accounts	1771
Reflection on the conduct of the Chair and Order of Withdrawal against Maulvi Abdur Rasheed Chaudhury	1679—80	Election of Members for the Standing Committee of the Department of Commerce	1772
FRIDAY, 21ST MARCH, 1941—		Election of Members for the Central Advisory Board of Education	1772
Starred Questions and Answers	1717—30	The Indian Finance Bill—Passed	1773—1811
Unstarred Questions and Answers	1730—32	The Tyres (Excise Duty) Bill—Passed	1811—18
Motion for Adjournment <i>re</i> —Interference by the Delhi Police in Khaaskar Activities—Disallowed	1732—33	The Excess Profits Tax (Amendment) Bill—Passed	1818—25
Treatment of Non-Violent Political Prisoners and Undertrials—Disallowed	1733—35	The Protective Duties Continuation Bill—Discussion on the motion to consider not concluded	1825—26
The Indian Merchant Shipping (Amendment) Bill—Passed as amended	1735—43	MONDAY, 24TH MARCH, 1941—	
The Code of Civil Procedure (Amendment) Bill—Circulated	1743—44	Members Sworn	1827
The Hindu Marriage Disabilities Removal Bill—Circulated	1744—53	Starred Questions and Answers	1827—36
		Unstarred Questions and Answers	1836—50
		Statement of Business	1850
		The Protective Duties Continuation Bill—Passed	1850—98
		The Indian Tariff (Amendment) Bill—Passed	1898—99

PAGES.		PAGES.	
MONDAY, 24TH MARCH, 1941—contd.		FRIDAY, 28TH MARCH, 1941—contd.	
Demands for Supplementary Grants for 1940-41	1899—1902	Statement of Business	2037
TUESDAY, 25TH MARCH, 1941—		Election of a Member to the Committee on Public Accounts	2037
Member Sworn	1903	Election of Members to the Standing Committee for the Department of Commerce	2037
Starred Questions and Answers	1903—17	Demands for Supplementary Grants for 1940-41	2038—92
Unstarred Questions and Answers	1917—24	SATURDAY, 29TH MARCH, 1941—	
Election of Members to the Standing Committee for the Department of Labour	1924	Member Sworn	2093
Message from the Council of State	1924	Starred Questions and Answers	2093—2108
Resolution re—		Message from the Council of State	2108
Recognition of Unions of Government Employees—Negatived	1925—67	Statement laid on the Table re Net Earnings of recently constructed Railway Lines	2108
Low Prices of Indian Cotton—Withdrawn	1968—80	Demands for Supplementary Grants for 1940-41	2109—29
THURSDAY, 27TH MARCH, 1941—		The Insurance (Amendment) Bill—Discussion on consideration of clauses not concluded	2129—71
Starred Questions and Answers	1981—90	MONDAY, 31st MARCH, 1941—	
Unstarred Questions and Answers	1990—94	Starred Questions and Answers	2173—83
Motion for Adjournment re discussion of the D'Souza Report—Disallowed	1994—95	Statements laid on the Table	2183
Election of Members to the Central Advisory Board of Education in India	1995	Motion for Adjournment re Arrest and Detention of Mr. Triloki Nath Singh of Lucknow—Disallowed	2184—85
Resolution re Reference of the Delhi Masajid Bill to a Joint Committee of the Council of State and the Legislative Assembly—Adopted as amended, and Nomination of Members on the Joint Committee	1996—2004	Message from the Council of State	2185—86
The Code of Criminal Procedure (Amendment) Bill—Circulated	2004	The Insurance (Amendment) Bill—Passed as amended	2186—2243
The Delhi Muslim Wakfs Bill—Circulated	2004—07	The Delhi Restriction of uses of Land Bill—Discussion on the motion to consider not concluded	2243—44
The Professions Tax Limitation Bill—Circulated	2007—14	TUESDAY, 1st APRIL, 1941—	
The Code of Civil Procedure (Amendment) Bill—Referred to Select Committee	2014—22	Starred Questions and Answers	2245—51
The Indian Evidence (Amendment) Bill—Circulated	2022—23	Unstarred Question and Answer	2251—52
The Indian Succession (Amendment) Bill—Introduced	2024	Short Notice Question and Answer	2252—53
FRIDAY, 28TH MARCH, 1941—		Statements laid on the Table	2253
Starred Questions and Answers	2025—34	Motion for Adjournment re Alleged misuse of the Defence of India Act—Disallowed	2253—54
Unstarred Questions and Answers	2034—38	The Railways (Local Authorities' Taxation) Bill—Introduced	2254
		The Delhi Restriction of Uses of Land Bill—Passed as amended	2255—92

LEGISLATIVE ASSEMBLY

Thursday, 27th March, 1941.

The Assembly met in the Assembly Chamber of the Council House at Eleven of the Clock, Mr. President (the Honourable Sir Abdur Rahim) in the Chair.

STARRED QUESTIONS AND ANSWERS.

(a) ORAL ANSWERS.

STENOGRAPHERS IN CERTAIN OFFICES.

507. *Sardar Sant Singh: (a) Will the Honourable the Home Member kindly state the total number of stenographers in the following offices on the 20th February, 1941, and how many of them are Sikhs:

- (i) Civil Aviation Office;
- (ii) Director General, Posts and Telegraphs;
- (iii) Education, Health and Lands Department;
- (iv) Director General, Indian Medical Service;
- (v) Agricultural Marketing Adviser to the Government of India;
- (vi) Central Board of Revenue;
- (vii) Director, Intelligence Bureau; and
- (viii) Controller of Printing and Stationery?

(b) What was the total number of vacancies in the above offices created in connection with war and how many posts were reserved for the Sikh community?

(c) Is the Honourable Member prepared to issue instructions to all the Heads of the Departments to allow all the communities to appear at such tests where the vacancies are 'general'?

The Honourable Sir Reginald Maxwell: (a) and (b). I lay on the table a statement giving the required information.

(c) There are already instructions that vacancies in the stenographers' grade should be filled with due regard to the rules regarding communal

(1981)

representation and the rules provide that unreserved vacancies are open to all communities on their merits.

Statement showing the total number of stenographers on the 20th February, 1941, the number of Sikhs in them, the vacancies created in connection with the war and the number of posts reserved for Sikhs in the following offices :

Offices.	Total No. of stenographers on the 20th February 1941.	No. of Sikhs.	Total No. of vacancies created in connection with the war.	Posts reserved for members of the Sikh Community.
Civil Aviation Office	9	Nil.	2	Nil.
Director-General, Posts and Telegraphs	10	Nil.	1	Nil.
Education, Health and Lands Department	9	Nil.	Nil.	Nil.
Director General, Indian Medical Service	5	Nil.	1	Nil.
Agricultural Marketing Adviser to the Government of India	5	Nil.	Nil.	Nil.
Central Board of Revenue	7	Nil.	Nil.	Nil.
Director, Intelligence Bureau	9	1	Nil.	Nil.
Controller of Printing and Stationery	1	Nil.	Nil.	Nil.

Mr. Lalchand Navalrai: May I know if these stenographers are recruited directly or from the ranks of the clerks in the Departments?

The Honourable Sir Reginald Maxwell: I don't understand what the Honourable Member means

Mr. Lalchand Navalrai: Are these stenographers appointed directly, or from the ranks of clerks in the Departments?

The Honourable Sir Reginald Maxwell: I should require notice of that.

Mr. Lalchand Navalrai: May I also know if these stenographers have to go through the Public Service Commission Examination, as the clerks do?

The Honourable Sir Reginald Maxwell: I should require notice of that.

RIGHTS FOR DEATH AND DISABLEMENT COMPENSATIONS FOR CASUALTIES DUE TO WAR IN INDIA.

508. ***Mr. Lalchand Navalrai:** (a) Will the Defence Secretary be pleased to state if it is a fact that in the United Kingdom statutory rights for death and disablement compensations for casualties due to the Great War were recognised by an Act of the Parliament passed immediately after the war?

(b) Is it a fact that in India the Regulations provide that no pension can be claimed as a right, and correction slips empower the Government of India to withhold the grant in full or in part of service, disability or family pensions, children allowances and gratuities or arrears thereof admissible under the Regulations? If so, why is a different treatment adopted in India?

(c) Is it a fact that there are prohibitory orders against petitions and appeals for the grant of death and disablement pensions submitted or drafted by private agencies? If so, why?

(d) Is it a fact that the Secretary of the Invalid Soldiers' Association, Karol Bagh, Delhi, was prosecuted for drafting an appeal in 1940? If so, under what regulation?

(e) Will the Honourable Member be pleased to state how the relatives or friends should approach the authorities on behalf of the deceased or disabled soldier for the grant or otherwise of pension or other grants and who are authorised to draft petitions or appeals for them?

Mr. C. M. G. Ogilvie: (a) I have been unable to identify the Act of Parliament to which the Honourable Member refers.

(b) It is a fact that no pension can be claimed as a right, whether British or Indian.

(c) No.

(d) No. The facts are that a person who described himself as Secretary of the Association mentioned was prosecuted on a charge of attempted cheating in respect of a petition purporting to bear the thumb impression of a sepoy who had died more than six months before the application submitted on his behalf was drafted.

(e) By application to the Officer Commanding the unit in which the soldier last served or to the local District Soldiers' Board.

Anyone is at liberty to draft a petition or appeal

Mr. Lalchand Navalrai: May I know if the Honourable Member is aware that there is a difference in regard to payment of these pensions in England and India?

Mr. C. M. G. Ogilvie: The Honourable Member is giving me information. I know nothing of the kind.

Mr. Muhammad Nauman: Could the Honourable Member tell me what he knows of the regulations in the United Kingdom in regard to payment of pensions there?

Mr. C. M. G. Ogilvie: The Regulations are voluminous and are published in the form of Royal Warrants. They lay down among other things that pensions depend upon good conduct.

Mr. Lalchand Navalrai: Then, there is that much difference, and the Honourable Member knows so much about it?

Mr. C. M. G. Ogilvie: As far as I know, there is none at all.

OFFICERS RESIGNING COMMISSIONS IN THE 12TH AND 13TH MALABAR BATTALIONS, INDIAN TERRITORIAL FORCE.

509. *Maulvi Muhammad Abdul Ghani: (a) Will the Defence Secretary be pleased to state when Lieutenant-Colonel B. Moseley took up the Command of the 12th and 13th Malabar Battalions, Indian Territorial Force?

(b) How many senior and junior officers have resigned their commission from these two Battalions since then and what are the reasons for their resignations?

(c) How many such officers were asked to resign by the Commandant and what were the reasons for the same?

(d) Is it a fact that some of these officers who were asked to resign protested against it? If so, will the Honourable Member be pleased to state the grounds of protest stated by them?

(e) Will the Honourable Member state the reasons for the percentage of resignations from these Battalions being so high when compared with other Units of the Indian Territorial Force?

(f) Is it a fact that the Head Clerk of the 13th Battalion, Indian Territorial Force, who had put in over twenty years' service was sacked by the Commandant last year but was reappointed to the same post by the present Commandant of that Unit?

(g) Is it a fact that over hundred men were recruited by this officer from Travancore in 1940, who were brought to Bangalore at Government expense, and who had to be sent back at Government expense and this entailed a huge waste of public money?

(h) Is the Honourable Member prepared to institute a searching enquiry into this matter and take necessary action to create confidence in the senior and junior officers and men of this Unit with a view to allaying public feeling in Malabar?

Mr. C. M. G. Ogilvie: (a)—(h). The information is being collected and a statement will be laid on the table in due course.

STENOGRAPHY ALLOWANCE TO CLERKS IN THE GOVERNMENT OF INDIA DEPARTMENTS.

510. ***Mr. Umar Aly Shah:** (a) Will the Honourable the Home Member please state whether the Government of India have sanctioned a stenography allowance of Rs. 20 per mensem for two clerks in each Department to encourage the practising typists to learn the work of stenography?

(b) If the answer to part (a) above be in the affirmative, will he please state whether Second Division clerks are eligible to draw this allowance? If so, under what conditions? Are there any Departments of the Government of India in which Second Division clerks have been granted this allowance? If so, which are those Departments?

(c) Will the permanent posts of stenographers in the different Departments be filled from those drawing this allowance?

(d) Will the Second Division clerks drawing this allowance be eligible for promotion to the First Division also?

(e) Has any instruction been issued to various Departments of the Government of India Secretariat to bear in mind the provisions of the Home Department resolution relating to representation of various communities while giving stenography allowance to the practising typists? If not, are Government prepared to issue such instructions now?

The Honourable Sir Jeremy Raisman: (a) Yes.

(b) Yes; on condition that they have been deemed unfit for promotion to the first division. The information asked for in the latter part of the question is not immediately available.

(c) These persons will have prior right to consideration for appointment to permanent posts subject to communal considerations.

(d) No.

(e) The Home Department Resolution referred to applies to direct recruitment to posts and not to the grant of allowances of this kind. It may, however, be added that instructions have issued to make it clear that notwithstanding the existence in Departments of clerks drawing the stenography allowance all vacancies in the stenographer's grade should be filled with due regard to the communal representation rules.

CERTAIN INCOME-TAX OFFICERS STOPPED AT THE SECOND EFFICIENCY BAR IN THE UNITED PROVINCES.

511. *Qazi Muhammad Ahmad Kazmi: (a) Will the Honourable the Finance Member please state how many Income-tax Officers have been stopped at the second efficiency bar within the last four years in the United Provinces, and whether the procedure laid down in paragraph 6(i) of the Income-tax Officers Manual (1933 edition) correction list No. 1, paragraph 30, was followed in their cases before the bar was placed? If not in all cases, in how many was it not followed?

(b) Have Government considered the advisability of sending for such cases, and dealing with them in a judicial way after giving the aggrieved officers an opportunity to explain the charges—if any—against them, or getting their cases examined by some one from outside the Department in a proper judicial way?

(c) Were the Federal Public Service Commission previously consulted in these cases, as required by section 266 (3) (c) of the Government of India Act, 1935? If not, why not?

(d) Are the officers of the Income-tax Department who had been appointed by the Local Governments before the Income-tax Act of 1922 came into force, entitled to appeal to the Provincial Governments and, if so, are Government prepared to refer all such cases for consideration to the Provincial Governments?

(e) If the answer to part (d) be in the negative, what are the provisions under which the right of appeal to Local Governments has been stopped?

The Honourable Sir Jeremy Raisman: (a) to (e). The information is being obtained and will be laid on the table of the House in due course.

" ADDITIONAL INCOME-TAX OFFICERS " IN CERTAIN PROVINCES.

512. *Qazi Muhammad Ahmad Kazmi: (a) Will the Honourable the Finance Member please state whether it is or it is not a fact that in some provinces some Income-tax Officers with full assessment powers have been given the appellation of 'Additional Income-tax Officers'?

(b) If the answer to part (a) be in the affirmative, what is the legal authority for this appellation?

(c) Have Government considered the advisability of dropping the appellation of 'Additional Income-tax Officer'?

The Honourable Sir Jeremy Raisman: (a) Yes.

(b) The appellation 'additional' is used merely as a matter of convenient distinction when more than one officer is appointed for a circle which is not divided into different sections. But all Officers performing the duties of an Income-tax Officer in that circle are duly appointed as such (and not as Additional Income-tax Officers) under section 5(3) of the Income-tax Act, 1922.

(c) Government do not consider that any special advantage is to be gained by dropping the prefix 'additional'.

Qazi Muhammad Ahmad Kazmi: What about the control of the staff by the Additional Income-tax Officer? Have all the Income-tax Officers got one and the same staff, or they have different powers of control?

The Honourable Sir Jeremy Raisman: As a matter of convenience, one of the officers is in charge of all staff questions, but their statutory powers are the same.

Qazi Muhammad Ahmad Kazmi: What I want to know is, whether the Additional Income-tax Officer is at all responsible for the conduct of the staff which is working directly under him?

The Honourable Sir Jeremy Raisman: I think he is, Sir; but in certain matters, where disciplinary measures have to be taken, they will be taken by the Income-tax Officer in charge of the establishment for that Circle.

THEFTS AND BURGLARIES IN NEW DELHI.

513. ***Mr. Govind V. Deshmukh:** Will the Honourable the Home Member please state:

- (a) the number of thefts and burglaries committed in New Delhi, month by month, in 1940 and 1941 up to the end of February;
- (b) the value of property involved in each case of theft during the above period stating the cases in which the culprits have been convicted and property recovered;
- (c) the localities in which the thefts, etc., have been more frequent, and whether Government are in a position to ascribe any reasons therefor, and the measures proposed to be taken to prevent the same;
- (d) the number of thefts, etc., that have occurred during the above period in the Reading Road quarters, New Delhi;
- (e) whether it is a fact that cases of theft involving property worth about Rs. 3,000 and Rs. 5,000 have occurred in January and February, 1941, on Reading Road and Mata Sundri Road, respectively and still remain untraced;
- (f) whether Government are aware that there is a feeling of insecurity among the tenants of Government quarters in New Delhi on account of the frequency of thefts;

- (g) whether a request was made to the Department of Labour by a section of the tenants living in Government quarters on Reading Road that they may be allotted quarters in some safer locality, and whether this request has been accepted; if not, why not;
- (h) whether Government are aware that there is a feeling among the tenants of Government quarters that the police arrangements in New Delhi are not adequate to prevent or trace cut thefts;
- (i) what steps Government are taking to allay these feelings and making the police arrangement adequate to cope with the situation; and
- (j) whether the aid of the Criminal Investigation Department was taken in tracing the above thefts; whether it is a fact that the primary duty of the Criminal Investigation Department is considered to be to trace political crimes, and not others? Are Government aware that the aid of the Criminal Investigation Department is taken for tracing cases of theft, etc., in Provinces?

The Honourable Sir Reginald Maxwell: The Honourable Member will appreciate that it must take some time to collect all the detailed information that he has asked for. I have called for a report and will lay a complete reply on the table in due course. Meanwhile, I would invite his attention to the answers I have given on this subject to Mr. Azhar Ali's questions Nos. 234 to 237 asked on November 22nd, 1940, which were laid on the table on 11th February, 1941.

Mr. Govind V. Deshmukh: In that reply the blame has been thrown on the residents who engage their servants, and it was stated that they were engaging their servants without inquiring into their previous antecedents. Is the Honourable Member's attention drawn to the fact that it is largely the public servants themselves who are responsible for thefts of private citizens, because it has been found that constables themselves are taking part in thefts? Have Government made any inquiries particularly after the report that a constable was caught redhanded in committing thefts?

The Honourable Sir Reginald Maxwell: I think a private person ought to make enquiries about the antecedents and character of the servant whom he wants to engage before asking the police to do it.

Mr. Govind V. Deshmukh: As a matter of fact, they did so. The answer throws the blame for these thefts on the tenants themselves for they had not inquired into the antecedents and character of the servants whom they engaged. As a matter of fact, before any man engages his servants, he generally makes full inquiries about their antecedents and character. The reason why I am pointing out this, is, because a constable was caught redhanded when committing thefts in one of these houses.

The Honourable Sir Reginald Maxwell: The Honourable Member is giving me information.

Mr. Govind V. Deshmukh: That answer does not really satisfy me, namely, referring me to whatever questions were put by Mr. Umar Aly Shah.

Mr. Lalchand Navalraj: Have any additional arrangements been made since then for the safety of these quarters?

The Honourable Sir Reginald Maxwell: The Honourable Member may take it for certain that the utmost efforts are being made by the police to trace all these thefts and to round up the gangs responsible for them.

Mr. Lalchand Navalraj: Have any additional arrangements been made for increasing the police or taking other precautions?

The Honourable Sir Reginald Maxwell: That is a question which might arise when I have got the further information called for in respect of this question.

Mr. Govind V. Deshmukh: May I know if the Honourable Member will make an enquiry into the character of the police in that locality?

(No reply.)

Mr. Govind V. Deshmukh: May I have a reply?

The Honourable Sir Reginald Maxwell: No reply.

ALLEGED MISUSE OF CERTAIN POWERS UNDER THE INCOME-TAX ACT BY THE INCOME-TAX AUTHORITIES.

514. *Dr. Sir Ziauddin Ahmad (on behalf of Khan Bahadur Shaikh Fazl-i-Haq Piracha): (a) Will the Honourable the Finance Member please state whether his attention has been drawn to a letter published in the *Hindustan Times* of the 11th February, 1941, under the caption "Income-tax Assessment"?

(b) How many notices under section 52 of the Income-tax Act were issued by the Delhi authorities during the last year 1940-41?

(c) Are Government aware of the discontent prevailing in the mind of the public for the too frequent use of that section?

(d) Is it a fact that, for escapement of a petty sum of tax, an assessee is presented with an ultimatum to either accept criminal prosecution, or in the alternative to pay the compounding fee varying from twelve to twenty times the amount of the tax that may be due, e.g., for a tax of Rs. 40 to 50, Rs. 800 to Rs. 1,000 are demanded as composition fee?

(e) Are Government aware of the public feeling in Delhi that the Income-tax authorities are not using the powers conferred on them by sections 52-53, of the Act properly, and that their sole interest is to increase the revenues by bringing ordinary cases of *bona fide* mistakes and omissions within the purview of those sections?

(f) Is it a fact that the applicability of section 52 is at the discretion of the Income-tax authorities themselves?

(g) Are Government prepared to enact that powers of the Inspecting Assistant Commissioner are confined to his only making a report of section

52 cases to a Judicial Officer who, after hearing the other side, should decide whether the conduct of the assessee really falls within the purview of that section and who should also fix the composition fee? If not, why not?

(h) Are Government prepared to make the orders of the Assistant Commissioner under section 52 and 53 appealable?

(i) How do Government justify one interested party sitting in judgment on the other, and at the same time depriving the latter of the right of appeal as well?

The Honourable Sir Jeremy Raisman: (a) Yes, Sir.

(b) to (i). I have called for a report from the Commissioner of Income-tax and a reply will be laid on the table of the House in due course.

Mr. Lalchand Navalrai: Before giving sanction under section 52, are the assesseees given an opportunity to explain and to satisfy that no sanction should be given?

The Honourable Sir Jeremy Raisman: I think that the proceedings preceding the sanction under section 52 contain a full indication of the assessee's own attitude in the matter.

Mr. Lalchand Navalrai: That is not it. What I am asking is this. It is the Income-tax Officer who asks for sanction from the Inspecting Assistant Commissioner, and I ask, is it because the Income-tax Officer has followed the same procedure, therefore the Inspecting Assistant Commissioner does not give an opportunity before he gives sanction, because he is the authority who gives sanction?

The Honourable Sir Jeremy Raisman: Yes, but the essence of the procedure is that sanction is given on the basis of facts which have emerged in the course of the ordinary proceedings.

Mr. Lalchand Navalrai: The Income-tax Officer does his duty, but sanction is not given by the Income-tax Officer. Sanction is asked for, and given *ex parte* now-a-days, I may inform the Honourable Member. Therefore, I ask, why should it be *ex parte*?

The Honourable Sir Jeremy Raisman: It is not a judicial action. The action is of an executive character. It follows on a review of the facts of the case, and there is no room for argument on the matter. It is the exercise of a discretion on the basis of known facts.

Mr. Lalchand Navalrai: But the matter is judicial so far as it goes to a Court. If there is no sanction, it cannot go to Court, therefore it is a judicial matter.

The Honourable Sir Jeremy Raisman: The Honourable Member's argument would lead to the position that, before a prosecution is undertaken by the police, there should be a case before the Superintendent of Police. there should be an argumentation.

Mr. Lalchand Navalrai: I may inform the Honourable Member that I know it personally that it is not through the police that the cases are lodged; it is through the Income-tax Officer that the cases are lodged. There are actually instances

Mr. President (The Honourable Sir Abdur Rahim): Next question. The Honourable Member has put his question and he has got the answer.

Mr. Lalchand Navalrai: I am asking whether they are going to make any enquiries into this, and, if not, why not?

The Honourable Sir Jeremy Raisman: I am not going to make any enquiries, because I am satisfied that the procedure provided by law is adequate and suitable for the case.

NON-EXERCISE OF GENERAL POWERS OF REVIEW BY THE INCOME-TAX COMMISSIONER.

515. *Dr. Sir Ziauddin Ahmad (on behalf of Khan Bahadur Shaikh Fazl-i-Haq Piracha): (a) Will the Honourable the Finance Member please state whether after the Appellate Tribunal came into existence from the 25th February, 1941, the Income-tax Commissioner has ceased to exercise his general powers of review, *vide* notes on section 53, Part III of the Income-tax Manual?

(b) If so, what relief have Government provided for those assesseees whose term of appeal had expired before that date and who were counting on filing a review within the prescribed period of one year?

(c) Are Government prepared in such cases to order that either the Commissioner should still continue to exercise his powers of review, or the period of limitation of appeals be relaxed and extended in their favour so as to enable them to avail of the right of appeal? If not, why not?

The Honourable Sir Jeremy Raisman: (a) Yes, except in respect of such proceedings as were pending before him on 25th January, 1941.

(b) None.

(c) No. Government consider that assesseees had ample notice of the fact that the Commissioner's powers of review would lapse with the institution of the Tribunal and of the date on which the Tribunal commenced to function.

UNSTARRED QUESTIONS AND ANSWERS.

CLERICAL POSTS IN THE ARMY HEADQUARTERS IN CONNECTION WITH WAR.

208. Sardar Sant Singh: (a) Will the Defence Secretary please state the total number of clerical vacancies created in the Army Headquarters in connection with war and filled by the Defence Department up to 1st March, 1941?

(b) How many of them are Hindus, Muslims, Sikhs, Anglo-Indians and Christians?

(c) How many of the total number of vacancies were offered to lady clerks?

Mr. C. M. G. Oglvie: (a), (b) and (c). A statement is laid on the table.

Statement showing the total Number of clerical Posts created in Army and Air Headquarters since the beginning of the War upto 1st March, 1941, and the Communities of the personnel filling them.

Total number of vacancies created.	Communal composition of the personnel filling those vacancies.									No. of vacancies not yet filled.
	Hindus.	Muellims.	Sikhs.	Indian Christians.	Europeans.	Anglo-Indians.	Parals.	Lady clerks.	B. O. Ra.	
788	301	105	29	7	7	16	2	138	161	17

STENOGRAPHERS IN THE OFFICE OF THE FINANCIAL ADVISER, MILITARY FINANCE.

209. Sardar Sant Singh: (a) Will the Honourable the Finance Member kindly state the total number of stenographers (permanent and temporary) on the 1st March, 1941, in the office of the Financial Adviser, Military Finance, and how many of them are Sikhs?

(b) If the reply to the second part of part (a) be in the negative, is the Honourable Member prepared to take steps to recruit a suitable Sikh stenographer?

The Honourable Sir Jeremy Raisman: (a) Twelve, of whom seven are permanent. None is a Sikh.

(b) The claims of Sikhs are considered along with those of candidates belonging to Minority Communities (other than Muslims) for whom, under the rules, one post out of twelve is earmarked.

SUPERINTENDENTS AND CLERKS IN THE OFFICE OF THE DIRECTOR, DEFENCE AUDIT SERVICES AND ITS CIRCLE OFFICES.

210. Sardar Sant Singh: Will the Honourable the Finance Member please state the total number of Superintendents and clerks (permanent and temporary) in the office of the Director, Defence Audit Services and its Circle Offices and how many of them are Sikhs?

The Honourable Sir Jeremy Raisman: 139 of whom seven are Sikhs.

RIGHTS FOR DEATH AND DISABLEMENT COMPENSATIONS FOR CASUALTIES DUE TO WAR IN INDIA.

211. Bhai Parma Nand: Will the Defence Secretary please state whether it is a fact that in the United Kingdom, statutory rights for death and disablement compensations for casualties due to the Great War, were recognised by an Act of the Parliament passed immediately after the

war, while in India the Regulations provide that no pension can be claimed as a right and Correction Slips empower the Government of India to withhold the grant in full or in part of service, disability or family pensions, children allowances and gratuities or arrears thereof admissible under the Regulations? Do Government propose to confer upon Indian ranks the same or akin rights as are recognised for British personnel in England? If not, why not?

Mr. C. M. G. Ogilvie: The attention of the Honourable Member is invited to the reply which has today been given to parts (a) and (b) of starred question No. 508.

PROSECUTION OF ONE PANDIT PURAN PRATAP SHARMA FOR DRAFTING AN APPEAL FOR CONTINUATION OF A DISABILITY PENSION.

212. Bhai Parma Nand: (a) Will the Defence Secretary please state whether it is a fact that up to the year 1932, there were provisions in the Army Orders issued by His Excellency the Commander-in-Chief to the effect that petitions and appeals for the grant of death and disablement pensions, submitted or drafted by private agencies shall not be entertained and that Civil Courts are prevented from entertaining any claim relating to pension, grant of money or land revenue conferred or made by the British Government? ...

(b) Is it a fact that one Pandit Puran Pratap Sharma, Secretary, the Invalid Soldiers Association, Karol Bagh, Delhi, was prosecuted for drafting an appeal in 1940 at Delhi to the Secretary, Defence Department, Government of India, under Recommendation IX of the War Pension Committee, for the continuance of a disability pension stopped in the years 1925-27 and the type-writer, carbon papers and correspondence of the Association were seized by the police on 29th March, 1940? In how many cases and with what arrears, have Government continued pensions under their promise made while accepting Recommendation No. IX of the Informal Committee on War Pensions?

Mr. C. M. G. Ogilvie: (a) No, but in 1932, an Indian Army Order was published drawing the attention of the local military authorities to the correct channel for the submission of applications or complaints in the interests of *ex*-soldiers' themselves, and advocating the establishment of direct communication with the claimants. This order contained no direction that petitions or appeals submitted by private agencies should not be entertained.

(b) I invite the attention of the Honourable Member to the reply that has today been given to part (d) of starred question No. 508. If any property was seized by the police it is open to the person concerned to apply to the Chief Commissioner for its return.

The time and labour involved in the collection of the information desired in the concluding portion of this question would be out of all proportion to the value of the result.

PROSECUTION FOR CHEATING OF CERTAIN FAMILIES RESIDENT IN INDIAN STATES RECEIVING DEATH PENSIONS.

213. Bhai Parma Nand: Will the Defence Secretary please state whether it is a fact that recently certain families receiving death pensions

and residing in Indian States, were prosecuted by the Government of India for cheating the Indian Exchequer and the full amount of pension received by them was demanded back if they wished to save themselves from the charge? If so, will Government please lay a statement on the table showing the names of the accused females, the names of the particular courts in which they were prosecuted and the results of the prosecution?

Mr. C. M. G. Ogilvie: Government are aware of only one recent case in which a prosecution of the kind mentioned was launched against a pensioner. This was against one Mussammat Kesri and was instituted because Government were informed that she was not the real widow of the soldier in respect of whose death she had been granted a family pension.

The case was tried in the Court of the Naib Nazim, Nizammat Sheikhawati, Jaipur State, who held that she was the widow of the dead soldier with whom she contracted "Nata" during the life time of her first husband.

The pension was accordingly restored to the widow with effect from the date on which its payment was originally stopped.

JUDGMENT BY THE NAIB NAZIM OF SHEIKHAWATI (JAIPUR STATE) IN EMPEROR *versus* MUSSAMMAT KESRI.

214. Bhai Parma Nand: (a) Will the Defence Secretary please state whether the attention of Government has been drawn to the Judgment dated 16th August, 1938 by the Naib Nazim of Sheikhawati (Jaipur State) in Emperor *versus* Mussammat Kesri, in which he held that the Government of India, having received a capitalized value of the death pension from His Majesty's Exchequer was not cheated and that a sanction of the British Exchequer was necessary for prosecuting a war pensioner? If so, will Government please state if some appeal was preferred against this judgment? If not, have they issued orders that for further prosecution in respect of claims to death and disablement pensions, previous sanction of His Majesty's Government should be secured and that a certificate from the Collector under sections 4 and 6 of the Pensions' Act, 1871, should be obtained? If not, do Government propose to do it now?

(b) Do Government propose to give some compensation in cases in which the accused pensioner, or his correspondent, was discharged by the Criminal Court? If not, why not?

Mr. C. M. G. Ogilvie: (a) Government have seen the judgment referred to, against which there was no appeal, but they do not consider that any further orders are necessary, as no prosecution could be undertaken without their sanction.

(b) As stated in reply to the Honourable Member's previous question, the pension in the case of Mussammat Kesri was restored with effect from the date on which payment was originally stopped. Government see no grounds for giving compensation in either case,

RECOMMENDATIONS OF THE WAR PENSIONS COMMITTEE AND GOVERNMENT ORDERS THEREON.

215. Bhai Parma Nand: Will the Defence Secretary please state if Government are prepared to respect the recommendations of the War

Pension's Committee and Government's orders thereon? If so, do they propose to make some special arrangements whereby the breaches of their orders can be rectified?

Mr. C. M. G. Ogilvie: Government do respect the recommendations of the War Pensions Committee and their own orders thereon. They are always ready to enquire into reports of breaches of their orders, but see no necessity for special arrangements.

MOTION FOR ADJOURNMENT.

DISCUSSION OF THE D'SOUZA REPORT.

Mr. President (The Honourable Sir Abdur Rahim): Order, order. I have received notice of a motion for adjournment of the business of the House from Sardar Sant Singh to the following effect:

"I ask for leave to make a motion for the adjournment of the business of the Assembly for the purpose of discussing a definite matter of urgent public importance, namely, not giving an opportunity to this House to discuss D'Souza's Report on an official day in this Session in compliance with the assurance given on the floor of the House by the Honourable Member for Communications on behalf of the Government."

I do not exactly remember the terms of the undertaking. Perhaps the Honourable the Communications Member will tell the House what happened.

The Honourable Sir Andrew Clow (Member for Railways and Communications): The position is this: In the preceding Session, you would recollect that I was put certain questions and asked to allot time for discussion of D'Souza Report, and I was pressed by, among other Members, Sir Ziauddin Ahmad. In reply, I said more than once that if any appreciable number of Members considered that the budget debates were insufficient, and if they tabled Resolutions on the subject, Government would consider the allotment of time on an official day in the event of those Resolutions failing to find a place in the ballot. No Resolutions were tabled at all on this subject, but the matter was again raised during the debates on the Railway Budget when a cut motion was moved by Mr. Deshmukh but was withdrawn on my giving a certain assurance. What I said on that occasion was:

"I recognise that the D'Souza report is a matter of interest. I have been asked by the Party which is absent, and I was asked in the last Session also to allot time for it. And if it is the general desire of the House that there should be official time allotted to this subject I shall recommend that to the Leader of the House who, I have no doubt, will consider it."

At that time, having been asked by the two largest Parties in the House to allot time, I assumed it was the general desire and I gave notice of a motion on the subject. Afterwards it was brought to my notice that the Muslim League Party did not desire to discuss the subject. I, therefore, consulted the Leaders of the other two Parties, the fourth Party not having been formed at that time. I found that, while the Congress Nationalists were still anxious to discuss it, the European Group had no particular desire to have a debate in the House in the matter. I then informed the Leaders of the Parties that I did not propose to make my

motion but that I would bring the matter before the Central Advisory Council for Railways where it could be discussed in a full and perhaps more dispassionate manner. If it is the desire of the House to discuss the motion, we are still prepared to allot time for it, but if it is not the general desire of the House I do not feel why I should take the initiative in bringing the motion myself, no Member having at any time tabled a Resolution on the subject.

Mr. M. S. Aney (Berar: Non-Muhammadan): I have only to add one thing. The facts are as stated. When the assurance was given, the Honourable Member has admitted that at least two largest Parties had expressed a desire to have a discussion on the floor of the House. The condition on which the assurance was given was then fulfilled. If subsequently some persons changed their mind that is no reason for him to change his mind also. Therefore, I hope that he will stick to what he has undertaken to do and allow the discussion to go on.

Mr. President (The Honourable Sir Abdur Rahim): I understand from the Honourable the Communications Member that if there is still a general desire on the part of Members of the House that there should be such a discussion, he would be ready and willing to give a date for the purpose, or at any rate to find time for the purpose.

The Honourable Sir Andrew Clow: Yes, Sir.

Mr. President (The Honourable Sir Abdur Rahim): I should like to know if there is such a general desire.

Syed Ghulam Bhik Nairang (East Punjab: Muhammadan): No, Sir.

Mr. M. S. Aney: We do not want to go into voting over this.

Mr. President (The Honourable Sir Abdur Rahim): There is no such desire. The motion is disallowed.

Mr. M. S. Aney: I believe the Honourable Member stands by the assurance that this matter will come up for discussion before the Central Advisory Committee.

The Honourable Sir Andrew Clow: It will come up on the 1st of April.

ELECTION OF MEMBERS TO THE CENTRAL ADVISORY BOARD OF EDUCATION IN INDIA.

Mr. President (The Honourable Sir Abdur Rahim): I have to inform the Assembly that upto 12 Noon on Monday, the 24th March, 1941, the time fixed for receiving nominations for the Central Advisory Board of Education in India four nominations were received. Subsequently two members withdrew their candidature. As the number of remaining candidates is equal to the number of vacancies, I declare Dr. Sir Ziauddin Ahmad and Dr. P. N. Banerjea to be duly elected.

**RESOLUTION RE REFERENCE OF THE DELHI MASAJID BILL
TO A JOINT COMMITTEE OF THE COUNCIL OF STATE AND
THE LEGISLATIVE ASSEMBLY.**

Kunwar Hajee Ismaiel Ali Khan (Nominated Non-Official): Sir, I move:

"That this Assembly do concur in the Resolution passed in the Council of State recommending that the Bill to make better provision for the administration of Masajid and the Endowment of the Jama Masjid, Fatehpuri Masjid and Kalan Masjid of Delhi be committed to a Joint Committee of the Council of State and of the Legislative Assembly and that the Joint Committee do consist of twelve members."

Dr. P. N. Banerjea (Calcutta Suburbs: Non-Muhammadan Urban): How does this motion come in first?

Mr. President (The Honourable Sir Abdur Rahim): There is no express provision for a motion of this character, and the Chair thought that, having regard to the list given in the Standing Order, this is the appropriate place for a motion for Joint Select Committee.

Kunwar Hajee Ismaiel Ali Khan: I shall give a short history of the origin of this Bill

Mr. T. Chapman-Mortimer (Bengal: European): Sir, I did not hear your ruling. May I know if this motion has priority over other business?

Mr. President (The Honourable Sir Abdur Rahim): He has made his motion, and he is entitled to make a speech in support of his motion.

Sir F. E. James (Madras: European): It establishes a precedent that on a non-official day a Resolution of this kind can at very short notice be admitted and take precedence over other items which have been standing on the paper for some time.

Mr. President (The Honourable Sir Adur Rahim): The Chair had to consider this matter and it gave its decision in answer to Dr. Banerjea's query. Standing Order 7-A did not provide for a motion of this character, but it provided for two motions as regards Bills passed by the Council of State, and the Chair held that as this also related to a Bill introduced in the Council of State, that was the proper place where it could be put in, and the Chair allowed that motion to be placed where it appears now.

Kunwar Hajee Ismaiel Ali Khan: If you will allow me, Sir, a few minutes at this stage, it would help me to give the short history of the Bill. I had the honour and privilege to originate this Bill in the other place during Budget Session of 1939. It was circulated for the purpose of eliciting opinion in the same year. In the Budget Session of 1940, when I became the Member of this Assembly it was automatically lapsed but I am very much thankful to my esteemed friend, the Honourable Mr. Hossain Imam, who very kindly adopted this Bill and now it is before this House for commitment to a Joint Select Committee.

The objects of the Bill are set out in the Statement of Objects and Reasons. I have stated what this Bill is intended for. It is to make better provision for the administration of mosques mentioned above and

for many others for which the Chief Commissioner of Delhi thinks it necessary. These historical mosques are situated at the heart of the capital of the Government of India with a large property which yields income of a considerable amount. Unfortunately, the present management is anything but smooth. In the years 1862 and 1877, Government arrived at an agreement with a few Muslims and formed two different managing committees of the Jama Masjid and Fatehpuri Masjid but the membership of these committees was for lifetime without any rules and regulations. By this Bill the term of membership is changed from lifetime to five years. Sir, times have advanced and changed and the public in general have no confidence in such unrepresentative and undemocratic committees. The large property attached to these mosques yields a large income and the public is in complete darkness about the management. No annual administration report is issued by the present committees nor have I seen any audited accounts in any paper. It is highly desirable that the Committee which is to manage such a large property which these mosques possess should be properly constituted by some piece of legislation and not by mere agreement.

I shall now quote briefly some of the opinions, received on this Bill, from Provincial Governments, many branches of Muslim League and many other Muslim institutions, which are all in favour of this Bill.

The Central Provinces Government says:

"The Muslims of this province whose opinions have been received are in favour of the Bill."

Khan Bahadur H. M. Wilayatulla, Retired Deputy Commissioner and one of our late colleagues, says:

"I am in entire agreement with the principle of this Bill. When the Committee was formed in 1862, for the management of some mosques of historical and archaeological importance in Delhi and the properties attached to them, representative institutions were unknown. Under the arrangement which was decided upon then, the term of membership of any member who is nominated on this committee is his life time. This is now out of date and under the changed conditions now prevailing it is desirable that the committee should be representative and should consist of members who should be elected from time to time. The present members can seek re-election if they desire to do so under clause 5 of the Bill. The present method of the formation of the management committee needs being changed in the light of altered conditions. The change will minimise complaints of mismanagement, whether true or false, and is a very desirable measure."

Then, the Bombay Government says—this was before the constitution was suspended and the popular Government was a responsible one:

"This Government agrees with the aims and objects of the Delhi Masajid Bill."

All the provinces are in favour of this Bill. There are one or two which are opposed but so far as the spirit of the Bill is concerned, every one is in support of this measure. In Assam, Mr. Fakhruddin Ali Ahmed, Finance Minister, Assam says:

"The Bill is in fact of local interest but as affecting the Muslim community; I have gone rather hurriedly through its provisions. The principle involved therein has my entire support and I hope the Bill as a whole will be found very useful in effecting a control over the Masjid property."

The Madras Government says:

"I am directed to enclose copies of the opinions on the Bill cited above received from officers and others consulted on the provisions of the Bill, and to state that there is no objection in this province to the main principles of the Bill."

[Kunwar Hajee Ismaiel Ali Khan.]

The Punjab Government says:

"I am directed to forward copies of the opinions of the Honourable Judges of the Court of Judicature at Lahore and the selected District and Sessions Judges in the province on the provisions of the Delhi Masajid Bill, and to say that the Provincial Government support the Bill in principle."

The Registrar, High Court, Lahore, says:

"I am directed to forward a copy of opinion recorded by the Honourable Mr. Justice Din Muhammad on the above measure, and to say that the Honourable Mr. Justice Abdul Rashid, the Honourable Mr. Justice Ram Lall and the Honourable Mr. Justice Sale agree with it."

Coming to the Delhi Province, the Chief Commissioner invited written opinions and there were only eight opinions received.

Mr. M. S. Aney (Berar: Non-Muhammadan): Were these opinions circulated amongst the Members of this House?

Kunwar Hajee Ismaiel Ali Khan: Yes, they were circulated in 1939. I am not going to read all the opinions in detail. Coming to the Delhi Province, there were only eight opinions which were received by the Chief Commissioner and among those eight opinions two were only against the Bill, and these two were from the Managing Committee of the Jama Masjid and Fatehpuri Masjid, Delhi, which were directly affected by this measure. The remaining six of them not only support this Bill but they want a similar measure applicable all over India. The Joint Secretary, Anjuman-Mohafiz-i-Auqaf, Delhi, the Secretary, Managing Committee, Sunehri Masjid, Delhi, Sh. Muhammad Shafi Bari, Delhi, Khan Sahib Sh. Mahmud Hussain Zaidi, P.C.S. (retired.), Honorary Magistrate, Delhi, Sayed Aijaz Hussain Shah, P.C.S. and Ch. Mushtaq Husain (Retd.), P.C.S., Delhi, are all in support of this measure. The Chief Commissioner himself says:

"My personal opinion is as follows. I believe that public opinion favours reform. At the same time there is considerable divergence of views on the Bill as it stands."— Now when he says "divergence", I may state for the information of the House that a conference was called by the Chief Commissioner on the 20th July, 1939, and in that conference he invited only twelve persons and out of those twelve persons seven were the life members of these committees which this Bill wanted to abolish; the majority were of those who were personally interested one way or the other in this measure, and thus the Chief Commissioner describes as "a divergence of opinion". In the end, Sir, I want to remind the Government of their pledge, which was given in the other House by the Home Secretary. he said, Sir, in reply to my motion for circulation in other place:

"Government's future attitude will depend entirely on the opinions which come as a result of circulation."

I have mentioned that more than 99 per cent. of the opinions are in favour of the Bill so Government must help us in this matter. I appeal, in the name of democracy, to every section of this House to support this popular measure. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim): Motion moved:

"That this Assembly do concur in the Resolution passed in the Council of State recommending that the Bill to make better provision for the administration of Masajid and the Endowment of the Jama Masjid, Fatehpuri Masjid and Kalan Masjid of Delhi be committed to a Joint Committee of the Council of State and of the Legislative Assembly and that the Joint Committee do consist of twelve members."

Maulvi Muhammad Abdul Ghani (Tirhut Division: Muhammadan):
Sir, I move:

“That in the motion, for the words ‘twelve members’ the words ‘fourteen members’ be substituted.”

Sir, the reasons are very simple. In the first place, the strength of this House is more than double, it is almost three times the strength of the other House. Secondly, up till now it has been a convention of this House to take members from the different Parties. Accordingly, the Muslim League Party also gave some names. They were three. But I find that all the names given by the Muslim League Party and agreed to by the Mover have not been included in the motion. Therefore, I have thought it proper to propose that the number be increased from twelve to fourteen,—and the number fourteen will not be a large one for a Joint Select Committee of both the Houses. When this Bill is before the House I submit that there is another comprehensive Bill to regulate and control all the Wakf properties including these mosques and that is also fixed for today. Piece-meal legislation is not wholesome: There are two hundred mosques as mentioned in the Archæological Report published in 1916 within the limits of Delhi City and 125 mosques outside the limits of Old Delhi, in New Delhi and outside the limits of Old Delhi, and besides that, other mosques have been built and property gifted for the maintenance of such mosques, since then. I cannot understand why only three mosques were selected,—when there is such a very large number—up till 1916, three hundred and twenty-five.

Kunwar Hajee Ismaiel Ali Khan: May I inform the Honourable Member that under section 16 of the Bill you can include any mosque you like and further more this Bill will be modified in the Joint Select Committee?

Maulvi Muhammad Abdul Ghani: Please have patience. I am coming to that. That cannot be done under the Bill you have moved. Then, there are other mosques which have properties as well and which have equal claims on the representatives of the Muslims to have legislation for the better administration of them. But no care has been taken for their management and control.

The next thing that I want to submit is that the preamble of the Bill says that a provision is going to be made for the administration of three mosques only and in the Statement of Objects and Reasons I find that only two mosques are mentioned. There is no mention of the third mosque. I am simply making these suggestions to draw the attention of the Select Committee to all these points so that they may be able to remedy the defects.

Clause 16 of the Bill says, as my friend has just pointed out to me and I knew it beforehand, that the Chief Commissioner may extend the provisions of this Act to any other mosque or mosques within the Delhi province by a notification in the Gazette. I do not think that without changing the preamble clause 16 will have any effect. Then, a certain provision has been made in clauses 7, 9, 11 and 14 for doing certain things. But if you will compare these things and go through the Bill, you will find that there is no provision to compel those things to be done. There is no penal clause at all. In the absence of any penal clause, the fate of the administration, which will come into existence under this new legislation,

[Maulvi Muhammad Abdul Ghani.]

will be the same, if not worse, that is in existence today. Take, for instance, clause 9 which says :

“The Committee shall take place of and shall supersede the Committee appointed under the Agreement.”

Now, if the Executive Committee do not quit, some provision should be made in the Bill for their removal by certain agencies. In clause 11 of the Bill it is laid down that the rites and ceremonies in these mosques shall be performed according to the *Hanafi* laws.

Kunwar Hajee Ismaiel Ali Khan: On a point of order, Sir. We are not discussing the clauses of the Bill. My simple motion is to refer the Bill to a Joint Committee.

Mr. President (The Honourable Sir Abdur Rahim) : The Chair does not know what the position of the Honourable Member is? Is he opposed to the motion before the House?

Maulvi Muhammad Abdul Ghani: Certainly not, Sir.

Mr. President (The Honourable Sir Abdur Rahim) : In that case, all these suggestions can be considered by the Select Committee.

Maulvi Muhammad Abdul Ghani: I am not discussing the Bill clause by clause. I am only trying to point out the defects.

Mr. M. S. Aney: Why don't you include the name of my Honourable friend, Maulvi Abdul Ghani, in the Select Committee, otherwise he does not get an opportunity of placing all these suggestions before the Select Committee?

Maulvi Muhammad Abdul Ghani: As regards the rites and ceremonies to be performed in the Juma Masjid and the Fatehpuri mosque, it is laid down that the principles of the *Hanafi* laws will be observed. Why should the principles of the *Hanafi* law only be observed? Then, clause 14 says :

“The Committee shall not be empowered to use the property, moveable or immovable for the Masajid Endowments for any purpose other than those intended by the founders of the Masajid.”

Was it the intention of the Emperor Shahjahan that only those Musalmans who follow the *Hanafi* law should offer their prayers in the mosque?

Mr. President (The Honourable Sir Abdur Rahim) : All these suggestions can be considered in the Select Committee. This is not the time for them.

Maulvi Muhammad Abdul Ghani: Then, with regard to clause 15. The Musalman *Wakf* Act of 1923 is already there, but there is no penal clause therein

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member had better not discuss the clauses.

Maulvi Muhammad Abdul Ghani: I only want to point out that the provisions of the Act of 1923 will not do. A self-contained provision should be added. With these words, I move my amendment.

Mr. President (The Honourable Sir Abdur Rahim): Amendment moved:

"That in the motion, for the words 'twelve members' the words 'fourteen members' be substituted."

The Honourable Sir Reginald Maxwell (Home Member): Sir, Government are neutral towards this motion, but I wish to give one word of explanation as regards the meaning of this attitude. Government, in taking up this attitude, do not wish to convey the impression that they are prepared to accept the Bill in its present form. On the contrary, they consider that it will require to be largely re-drafted in the Select Committee and that it will, thereafter, have to be re-circulated. I might add that Government are themselves engaged in collecting information which will be of great use to the Select Committee with a view to examining any different proposals which may emerge after the full data are before them.

Kunwar Hajee Ismaiel Ali Khan: Sir, my difficulty arises in this way. The number of twelve is fixed by the Council of State. If we make any alteration in this number, I am afraid we will have to go back to the Council of State. We have not got enough time and it will be a mere waste of time. I have consulted the Muslim Members and their Parties and Whips and it is with their approval that I have put their names for the Select Committee. However, I am entirely in the hands of the House. Personally, I have no objection, but so far as these technical matters are concerned, I will appeal to my friends not to come in our way and obstruct the easy passage of the Bill.

Mr. Govind V. Deshmukh (Nagpur Division: Non-Muhammadan): Sir, the motion of my Honourable friend, Kanwar Hajee Ismaiel Ali Khan, says: "That this Assembly do concur . . .". So this Assembly can only concur. We cannot make any amendments. If we have merely to agree, then this particular amendment of my Honourable friend, Maulvi Abdul Ghani, would be out of order.

Mr. M. S. Aney: This is subject to further concurrence by the Council of State. It will have to go back to the Council of State.

Kunwar Hajee Ismaiel Ali Khan: Sir, I may point out that I have received no notice of this amendment previously. I received it only just now.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member ought to have objected before.

Maulvi Syed Murtuza Sahib Bahadur (South Madras: Muhammadan): Sir, as has been explained by my Honourable friend, Maulvi Abdul Ghani, he is the author of another Bill which is more comprehensive than the one before us. Therefore, it was quite necessary that he should be on the Committee proposed by my Honourable friend, Kunwar Hajee Ismaiel Ali Khan. I do not find the name of Maulvi Abdul Ghani in the proposed list.

Kunwar Haji Ismaiel Ali Khan: His name was not suggested.

Maulvi Syed Murtuza Sahib Bahadur: His name was suggested by the Whip of the Party, who has already left for Madras. Had he been here, he would have borne me out. The Whip of our Party gave three names to represent our Party. This is a very momentous subject so far as the Muslims are concerned and it is therefore necessary that you should include in the Select Committee the author of another Bill who has got undoubtedly a more comprehensive Bill which covers not only these three mosques but also all the mosques situated within and outside Delhi. As has been rightly pointed out by you, Sir, all these points may be dwelt upon in the Select Committee. But when the author of the more comprehensive Bill is not there, his view point might not receive any consideration. Therefore his name should be added.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member is supporting the amendment.

Maulvi Syed Murtuza Sahib Bahadur: So far as my name is concerned, I am not very keen to be in the Select Committee. My Honourable friend, Maulvi Abdul Ghani, should be on the Committee.

Kunwer Haji Ismaiel Ali Khan: I rise to a point of personal explanation. My Honourable friend, Syed Murtuza Sahib Bahadur, said that the Whip of the Muslim League Party gave me three names to be included in the Select Committee. My position was this. I had to take the representative from each and every Party in the House. The quota of the Muslim League was only two and the names of those two Members were suggested by the Whip of the Muslim League Party and they were taken. The third name was proposed under certain conditions, namely, if the Congress Nationalist Party was not very keen to give a name from their Party, then the third name given by the Muslim League Party would be included in the Select Committee. But the Whip of the Congress Nationalist Party was willing to co-operate with my Bill and so I was absolutely helpless. I could not take the third name from the Muslim League Party.

Mr. President (The Honourable Sir Abdur Rahim): The question is: "That in the motion for the words 'twelve Members' the words 'fourteen Members' be substituted."

The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

"That this Assembly do concur in the Resolution passed in the Council of State recommending that the Bill, to make better provision for the administration of Masajid and the Endowment of the Jama Masjid, Fatehpuri Masjid and Kalan Masjid of Delhi be committed to a Joint Committee of the Council of State and of the Legislative Assembly and that the Joint Committee do consist of fourteen Members."

The motion was adopted.

Kunwer Hajee Ismaiel Ali Khan: Sir, I beg to move:

"That the following Members of the Legislative Assembly be nominated to serve on the Joint Committee to consider and report on the Bill to make better provision for the administration of Masajid and the Endowment of the Jama Masjid, Fatehpuri Masjid and Kalan Masjid of Delhi, namely:

The Honourable Sir Muhammad Zafrullah Khan, Syed Ghulam Bhik Nairan, Maulana Zafar Ali Khan, Sir Abdul Halim Ghuznavi, Sardar Sant Singh, and the Mover."

Mr. M. S. Aney: Sir, I rise to a point of order. This is a motion for the appointment of a Joint Committee. The motion that was adopted by the other House is amended here. Unless the amendment of the motion that has just been adopted by this House is concurred in by the other House, is it possible for this House to proceed with the second motion at all? If the other House fails to concur in the raising of the numbers from twelve to fourteen, any selection of Members that we make on the basis of fourteen will fall through.

Mr. President (The Honourable Sir Abdur Rahim): The Chair quite follows the point of the Honourable Member. But, in order to expedite the business in the other House, it is just as well that the second motion also should be considered by this House. Supposing this second motion also is amended as proposed by Maulvi Abdul Ghani, then it will be for the other House to consider whether they will adopt the amended motion or not. Motion moved :

“That the following Members of the Legislative Assembly be nominated to serve on the Joint Committee to consider and report on the Bill to make better provision for the administration of Masajid and the Endowment of the Jama Masjid, Fatehpuri Masjid and Kalan Masjid of Delhi, namely :

The Honourable Sir Muhammad Zafrullah Khan, Syed Ghulam Bhik Nairang, Maulana Zafar Ali Khan, Sir Abdul Halim Ghuznavi, Sardar Sant Singh, and the Mover.”

Maulvi Muhammad Abdul Ghani: Sir, I move :

“That after the word ‘Mover’ the following be added :

‘Maulvi Syed Murtuza Sahib Bahadur, and the Mover’.”

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member really means before the word “Mover”.

Maulvi Muhammad Abdul Ghani: I mean by the second “Mover” the Mover of the amendment, that is myself.

Mr. President (The Honourable Sir Abdur Rahim): That will be eight then.

The Honourable Sir Muhammad Zafrullah Khan (Leader of the House): The Rule says :

“On a Joint Committee equal numbers of Members of each Chamber must be nominated.”

In the other House it will be six, and in this House it will be eight. This cannot be done.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member's amendment is out of order in the form it is moved.

The Honourable Sir Muhammad Zafrullah Khan: The amendment might be moved in this form :

“That after the name ‘Sardar Sant Singh’ the following be added :

‘Maulvi Syed Murtuza Sahib Bahadur’ ”

Maulvi Syed Murtuza Sahib Bahadur: Sir, I withdraw and propose the name of Maulvi Abdul Ghani.

Mr. President (The Honourable Sir Abdur Rahim): The Chair understands Maulvi Abdul Ghani wants to move the amendment put down in the list that after the words "the Mover" the words "Maulvi Syed Murtuza Sahib Bahadur and the Mover" be added. That will be out of order, because the numbers must be equal. The House has already accepted his amendment that instead of 12 members there should be 14.

Maulvi Muhammad Abdul Ghani: Then, with your permission, I will move that my name be added there.

Kunwar Hajee Ismael Ali Khan: Sir, may I suggest to solve this difficulty that if my Honourable friend, Maulvi Abdul Ghani, withdraws his amendment, and if you will allow me to make a consequential amendment, I will move that after the name of Sardar Sant Singh, the name of Maulvi Muhammad Abdul Ghani be added.

Maulvi Muhammad Abdul Ghani: On that condition I will withdraw my amendment.

Mr. President (The Honourable Sir Abdur Rahim): Then, the motion is:

"That the following Members of the Legislative Assembly be nominated to serve on the Joint Committee to consider and report on the Bill to make better provision for the administration of Masajid and the Endowment of the Jama Masjid, Fatehpuri Masjid and Kalan Masjid of Delhi, namely:

The Honourable Sir Muhammad Zafrullah Khan, Syed Ghulam Bhik Nairang, Maulana Zafar Ali Khan, Sir Abdul Halim Ghuznavi, Sardar Sant Singh, Maulvi Muhammad Abdul Ghani; and the Mover."

The question is that the above motion be adopted.

The motion was adopted.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Qazi Muhammad Ahmad Kazmi (Meerut Division: Muhammadan Rural): Sir, I move:

"That the Bill further to amend the Code of Criminal Procedure, 1898, for a certain purpose, be circulated for the purpose of eliciting opinion thereon by the 15th July, 1941.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

"That the Bill further to amend the Code of Criminal Procedure, 1898, for a certain purpose, be circulated for the purpose of eliciting opinion thereon by the 15th July, 1941.

The motion was adopted.

THE DELHI MUSLIM WAKFS BILL.

Maulvi Muhammad Abdul Ghani (Tirhut Division: Muhammadan): Sir, I move:

"That the Bill to provide for the better administration of Muslim Wakfs in the Province of Delhi be referred to a Select Committee consisting of the Honourable Sir Reginald Maxwell, Syed Ghulam Bhik Nairang, Maulana Zafar Ali Khan,

Mr. Govind V. Deshmukh, Mr. J. D. Boyle, Mr. Husenbhai Abdullahai Laljee, Mr. Saiyid Haider Imam, Khan Bahadur Sir Abdul Hamid and the Mover, with instructions to report by the 31st July, 1941, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

In moving this motion, I have to submit that the Bill deals with the protection, better control and administration of all the wakfs within the province of Delhi. I find that the Honourable the Home Member has given notice of a circulation motion. I do not object to it because after all it is better that the Muslims in whose interest the legislation is sought to be made should have a chance of giving their views. Delhi is a central place and since the advent of Muslim rule innumerable wakfs and charitable institutions were created here, and on different occasions legislation has been passed. But they did not prove useful, particularly in regard to the wakfs of Delhi. When the Muslim Wakf Act of 1933 was passed it remained a dead letter here. When I first came here and saw the mismanagement and the pitiable condition of the wakfs here I thought it proper to draw the attention of the Government of India and have an extension of the Muslim Wakf Act of 1933. But in reply to a question of mine I was given to understand that that Act was not extended to the province of Delhi. We know that lots of litigation have been going on and are still going on and very very large amounts of the public money have been spent and very valuable and considerable time of the courts have been taken in deciding these cases. I, therefore, think that there should be a legislation, self-contained in itself, for the better administration of the wakfs within the province of Delhi. With this view in mind I introduced this Bill.

We know, Sir, that recently there has been a case going on against the mismanagement of the Fatehpuri mosque. Along with that mosque there are six or seven other mosques controlled by that committee. In 1877 the Fatehpuri mosque was released, as also the Jama mosque. During the Mutiny they were taken possession of by the Government and when the Government released these two mosques and a few others, they managed to see that their administration was on a sound footing, and committees were appointed of Muslims to administer those mosques. But from 1877 up till now none of the mosque committees has ever taken the trouble to submit their accounts either to the District Judge or to the Muslim public. Much agitation has been going on since a very long time. I remember that on the 18th March, 1938, there was a big gathering of above 30,000 Muslims in the Fatehpuri mosque and people assembled on the roads also; they adopted a resolution condemning the existing committee and demanded from the Government a legislation for the better administration of mosques and other *wakf* properties. I find that there is a graveyard called Khwaja Baqui Billah about which nine or ten cases had to run up to the Lahore High Court and decrees were given against the trespassers and the so-called *mutawallis*; and after that the District Judge was compelled to ask the Muslim public to have a committee to manage and supervise the affairs of and take charge of that big graveyard. There are other instances of maladministration of other wakf properties about which innumerable litigations went on. This is the proper time to have a legislation for the administration of wakf properties in Delhi, and I hope the Government will also sympathetically consider the miserable condition in which these wakf properties are and the mismanagement at the hands of *mutawallis*. There is a very big *Idgah* in Delhi, built by Emperor Shahjahan. I find that a few persons have become *mutawallis* during the last three or four years and

[Maulvi Muhammad Abdul Ghani.]

during the period have sold the stones which were contained in the platform round about the *Idgah*, and even underneath the wall was dug up and stones were taken away without any fear that the wall would be injured. I feel that if there is much rain and water deposited in the pit, it will do much injury to the *Idgah* which I think will soon fall down.

There are other buildings, some are under the care of the Archæological Department,—but there are others which are not so cared for. With this view in mind I introduced this Bill, and the provisions of this Bill are very very simple. After great thought I have introduced the element of a nominated President, so that the Muslims on the one hand and the Government on the other may have confidence in the administration of wakf properties here. I know the mentality of some of the interested persons who fight in order to get a place and afterwards mismanage things. In order to avoid such interested persons I have thought proper to have a provision for the Government to nominate two persons, out of whom one will be a legal man and he will be appointed as President. The *majlis* will contain 15 persons out of which two will be nominated, and one will be elected by the *mutawallis* and 12 will be elected by the Members of the Central Legislature. I have also made provision in the Bill for the expenditure of the *majlis* which will control all the wakfs; and for that a maximum contribution of Rs 6-4, on every hundred rupees net income of wakf properties, will be levied. That is the maximum. In this case it is my earnest desire that the Government should also come forward and help these institutions. For instance, in Madras there is a Tribunal called the Hindu Endowments Tribunal—about two thirds of the expenditure is met by the Government and one third is met by the State. I am not making any suggestion about contribution by the Government at the present stage. When the Bill will be before the Select Committee after opinions have been collected, that will be the proper time to move the Government to consider that point, because since the Bill has been introduced, it has been suggested by many Muslims that the Government also owe a duty for the better administration of these Wakfs.

Another important factor in the provisions of this Bill is that there are Wakfs of Shias also here, and I have made provision by which representation will be given to representatives of Shias also so that they may have full confidence in the *Majlis*, and when matters relating to Shia Wakfs are before the *Majlis*, only the representatives of the Shias will have a right to vote, while when matters affecting Sunni rights will be before the Wakfs, only Sunni members will have the right to vote. I have made this provision in order to avoid any kind of suspicion, because some of my Shia friends say that some of the Sunnis do not believe in *Tazia* and other ceremonies, and, therefore, if Sunni members will be elected and will have control over the administration of *Shia* Wakfs, perhaps there might be reason for misunderstanding. I do not wish to dilate much on the provisions of this Bill. They are all in the Bill, and it will be better for the readers to get themselves convinced of the soundness of the provisions and then offer their opinions when the Bill is circulated.

With these few words, I move my motion and hope that Honourable Members of this House as well as the Government will give their whole-hearted support to this measure.

Mr. President (The Honourable Sir Abdur Rahim): Motion moved.

"That the Bill to provide for the better administration of Muslim Wakfs in the Province of Delhi be referred to a Select Committee consisting of the Honourable Sir Reginald Maxwell, Syed Ghulam Bhik Nairang, Maulana Zafar Ali Khan, Mr. Govind V. Deshmukh, Mr. J. D. Boyle, Mr. Husenbhai Abdullabhai Laljee, Mr. Saiyid Haider Imam, Khan Bahadur Sir Abdul Hamid and the Mover, with instructions to report by the 31st July, 1941, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

There are two amendments. One is in the name of Khan Bahadur Piracha and Mr. Nauman, and the other is in the name of the Honourable Sir Reginald Maxwell. Both are for circulating the Bill for eliciting public opinion.

Khan Bahadur Shaikh Fazl-i-Haq Piracha (North West Punjab: Muham-madan): As I find there is a similar amendment by Government to the one which stands in my name I don't wish to move my amendment.

The Honourable Sir Reginald Maxwell (Home Member): Sir I move.

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st August, 1941."

I hope, Sir, that the Honourable the Mover and this House will accept this amendment. This Bill is an important and elaborate measure affecting the religious rites and customs of the Muslims not only of those resident in Delhi, but also in the neighbouring provinces who may be interested in Wakfs in Delhi, and as I have already explained, Government are at present, engaged in collecting data which may be of use in solving the problems which have to be solved before agreed measures for dealing with these Wakfs can be brought into existence. In these circumstances, it would be premature to send this Bill to a Select Committee at the present stage, and I think that circulation would be more desirable. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st August, 1941."

The motion was adopted.

THE PROFESSIONS TAX LIMITATION BILL.

Sir F. E. James (Madras: European): Sir, I beg to move:

"That the Bill to limit to a maximum of Rs. 50 per annum the amount payable in respect of any person by way of tax on professions, trades, callings or employments be taken into consideration."

I think it is only fair to the House that I should explain the reason for this Bill. The House is aware that for many years past there has been levied in the Madras Presidency a tax on professions which is based upon income. I made researches into the origin of this tax. There was a tax as early as 1865 which was levied in the Madras City for police services and the conservancy and improvement of the town. That tax

[Sir F. E. James.]

was based upon a schedule of arts, professions, trades and callings, and I am glad to say that our forefathers were wise in those days, because they limited the maximum payable under this tax, in the case of individuals, to Rs. 50 per annum. I am now trying to get back to those days. Since those days there have of course been amendments to our local laws in the Presidency of Madras, and the present position is that the tax on professions levied by local bodies, municipalities, District Boards is based on income. Liability to the tax is not based upon the practice of a profession or of any art or calling. In fact, even persons who have no occupation at all have to pay, provided they reside or do business in the particular local area concerned. The tax is payable on a person's income; and curiously enough, although the reference in our local laws is to the Income-tax Act, it has been held that in the case of this tax, it is payable also upon agricultural income. In the city of Madras the maximum goes as high as Rs. 1,000 per annum; in the districts the maximum goes to Rs. 550 per annum. There is a difference between the city of Madras and the districts. The difference is this; that in the city the Professions Tax applies to individuals and the Companies Tax to companies. These taxes are upon a different basis. Therefore, as far as this Bill is concerned, it would not affect the existing tax on companies in the Madras city. On the other side, in the districts the Professions Tax applies to individuals and companies alike. Therefore, this Bill, if it becomes law, would, in its application to the Madras Presidency, outside the city of Madras, affect not only the individual but also companies. Recently, a High Court judgment laid down that, if a person exercises a profession in a particular municipal or local board area but does not reside in that area, he pays Professions Tax on the basis of his earnings from that profession; but if a person resides in an area he pays tax not only on the basis of the income which he derives within that area but also on the basis of his total world income.

Now, Sir, under the Government of India Act, 1935, taxes on income fall within the Central or federal legislative sphere; but this tax, being legal on the 31st March, 1937, and the assent of the Governor General in Council having been obtained to the passing of the Provincial Acts under which the tax is levied, this particular tax has been saved by section 143 (2) of the Act read with paragraph 3 of the India and Burma Transitory Provisions Order in Council. There was at one time, I understand, some doubt as to whether, after the passing of the Government of India Act, 1935, the authorities concerned could legally continue to levy this tax, and at one stage the Government of Madras was warned by the Central Government that it might be found that the Madras Professions Tax was illegal under federal conditions and that, therefore, an alternative form of tax, possibly based upon a schedule of professions and fixed rates might be considered.

During all these years we in Madras have maintained a steady agitation against this tax, and, indeed, as early as 1931, there was a resolution of the Associated Chambers of Commerce dealing with the Professions Tax in Madras and a similar tax which was then proposed for Bombay. In his reply to the discussion, the then Finance Member, Sir George Schuster, said that he took note of the resolution which was then passed and what had been said in support of the resolution and would bring it to

the attention of whatever body might be considering the distribution of sources of revenue as between the Central Government, the Provincial Governments and local authorities in future. At a later stage in his speech he said: .

“Undoubtedly, this particular case does require looking into. Speaking for myself, I am glad the point has been raised at this meeting to-day, and as I have already said, we will see that this discussion is brought to the attention of the authority considering the system of taxation in the India of the future.”

Representations were made at the time of the consideration of the Government of India Act before the Joint Parliamentary Committee. In the meantime, not very long ago, the United Provinces Government introduced an Employment Tax Bill. I do not want to go into details, and to cut the story short, I would only say that one of the results of that was that the Governor General suggested, that the matter should be clarified by parliamentary enactment. Notice was given of a Bill in Parliament. Shortly after that Bill was introduced in the British Parliament, I put certain questions to the Honourable the Finance Member. Although he was not very anxious to be drawn, with the kind help of my Honourable friend, Mr. Aney, we did elicit two facts; first, that the Government of India had not been consulted on the amending Bill which was then before Parliament but that the Governor General had been consulted; and secondly, that if the Government of India felt that there was a widespread demand for legislation at the Centre with regard to the Professions Tax in Madras, then the Government of India would be prepared to examine the question. A very cautious reply, but the condition attached to it, namely, “a widespread demand”, has certainly been fulfilled subsequently as far as my own province is concerned.

Now, in course of time, the India and Burma Miscellaneous Amendments Act, 1940, was passed through all its stages. What is the effect of clause 142A which was added to the Government of India Act by that Bill? The chief purpose of this part of the Bill was to clarify Parliament's intentions regarding item 46 (taxes on professions, trades, callings and employments), in the Provincial Legislative List in Schedule 7 of the Government of India Act, 1935. The new section 142A which was inserted in the Government of India Act, 1935, by that Bill, while continuing the right of the provinces to impose Profession Tax, limited the incidence of that tax to a maximum of Rs. 50 per annum in respect of any one person. Unfortunately for Madras, and possibly one or two other provinces as well, that section also contained a proviso which exempted from the limit imposed by the main body of the Section those Provincial Profession Taxes which had existed prior to 31st March, 1939. And as the Madras Profession Tax on its present basis had been in existence for a long time before that date, the new section introduced by the 1940 Bill did not apply to it, and, therefore, the tax continues to be levied lawfully at the old rates.

Now, Sir, in moving the second reading of that Bill, the Secretary of State in the House of Lords said:

“The Bill proposes to place beyond dispute the distinction which it was always intended should be drawn between taxes on incomes on one hand and taxes on professions, trades, callings and employments on the other.”

“Taxes on income, other than agricultural income, were a federal source of revenue, whereas taxes on professions, trades, callings and employments were a provincial

[Sir F. E. James.]

source of revenue. It was never intended that taxes under these provincial leads should be so imposed as to constitute an income-tax and so trespass upon the central field of revenue."

Lord Zetland went on to say that:

"The main purpose in view when these headings were included in the Provincial List was to keep alive a right which Provincial Governments had exercised in the past, empowering local authorities such as municipalities and district boards to levy rates for local purposes which were commonly described as taxes on professions, circumstances and property. It was of course characteristic of these taxes that their incidence upon the individual tax-payer was a very small one. Experience had shown, however, that it was possible to levy taxes under these heads which in fact were nothing less than income-tax in disguise; for, some little time ago, the legislature of the United Provinces enacted a taxing Bill under the head 'Employments Tax' which was in fact nothing more than an income-tax. It was to be imposed upon the incomes of all those who derived their income from employment as a substantial graduated tax, which, in respect of a large part of the incomes concerned, would have amounted to as much as 10 per cent. It was quite clear that this would have constituted a serious invasion of one or more important sources of revenue assigned to the Federal Government; and it was equally clear that, if it were to be permitted on a large scale, it would have the effect of upsetting seriously the balance between Federal and Provincial fields of taxation."

Those were the observations of Lord Zetland in introducing the Bill and every word that he applied to the Employments Tax Bill of the United Provinces could have been applied with equal justice to the Professions Tax which is now levied under provincial legislation in the Madras Presidency. The Madras Tax is nothing less than an income-tax in disguise. It is different from the United Provinces tax in this—that in the United Provinces they proposed to impose a tax upon all those who derive their income from employment; in Madras the tax is derived from the incomes of all, whether they are in employment or not. It is really a surcharge on income-tax, and in some cases it amounts to 25 per cent. of the income-tax which is imposed by the Central Government.

Now, Sir, the House may ask why is it that we have brought a Bill before the Central Legislature. Well, there are various reasons for that, but I will mention only three. The first reason is that in the proviso to section 142A (2) of the Government of India Act, it is laid down that in the case of those provinces where there was on a certain date already a tax on professions in force greater in incidence than the Rs. 50 that should remain, unless at any time other provision is to be made by a law of the Federal Legislature. So that this Legislature is the competent authority to deal with this matter as far as those provinces are concerned to which the main body of this section does not at present apply. Secondly, in Madras, we are now operating with an administration under section 93 of the Government of India Act and although it is true that the Governor may enact legislation, the operation of such legislation is limited to two years. In the third place, it appears to us that other provinces than Madras may be affected and that, therefore, we should promote a Bill on an all-India basis and ask the Central Legislature to pass it.

Now, Sir, the Bill itself is quite a brief one. The Bill merely seeks to give effect to the demand that the Professions Tax levied by municipalities and local boards under provincial legislation, based solely on income, should be subject throughout British India to the maximum of Rs. 50 per annum, and extends the limit laid down in sub-section (1) of section 142A of the Government of India Act, 1935, to all these provinces

to which owing to the proviso of that section that limit does not apply. We feel that although we are dealing first of all with a Madras problem there is need for uniformity throughout India on the matter.

Now, Sir, what would be the effect of this Bill on the finances of the provinces? As far as Madras is concerned, it is difficult to give a precise figure. The total income accruing to local bodies from the levy of this tax amounts to about 12 lakhs of rupees per annum. Not all this income will be affected by the passing of my Bill but a substantial part of it would, and either the local bodies would have to be subsidised by the Provincial Governments to make good the loss or they would have to look for other sources of revenue. I would like to make it clear that the Bill before the House would not affect the existing taxes on companies in the Madras City. As far as other provinces are concerned, it is possible that this Bill may also affect some of them. In Bengal, there is already a Provincial Employments Tax but the amount of it is fixed at Rs. 30 per annum. So, that comes within the scope of the limit laid down now by the Government of India Act. Then, in the Bengal Municipalities and in the Calcutta Municipalities, there are what are described as licence taxes on individuals and on companies. It is open to doubt whether these will be affected by the Bill but it is obviously wise that the Bill should be circulated for public opinion so that the Governments concerned can examine the provisions of the Bill and see if and to what extent their revenues might be affected. I understand that representation have been received from the Government of the Central Provinces and there are certain taxes there which, it is held, might be affected by the passing of this Bill. Sir, it is true that this Bill raises the general issues which were referred to in the debate in the House of Lords on the introduction of the amending Bill to the Government of India Act. We feel there is a need for clarification. There is also the burden on the individual in Madras. Now that the income-tax surcharge is 33 1/3 per cent., this tax which is now paid by individuals is a real burden, and it must be remembered that the Profession Tax is not allowable as a deduction for computing the taxable income of any assessee.

The Honourable the Finance Member has on the Order Paper a motion for circulation and, naturally, I am prepared to accept it. Financial readjustments will be necessary in Madras and the Madras Government will have an opportunity to consider the matter during the next few months. Here I should like to say that, perhaps of all the Provinces, Madras at the moment is better able to deal with a Bill of this description because of the happy position in which it has been placed by its taxation policy in the past and by the prudent and careful trusteeship of its finances. Honourable Members will perhaps be surprised to learn that Madras has an actual surplus of nearly a crore of rupees, and that a large percentage of that has been placed in a revenue reserve for expenditure purposes in the future. The Madras Government can hardly say that they cannot afford to consider the question of a readjustment in the burden of taxation. In Bengal there may be legal difficulties and those can be considered during the recess. Sir, I think I can claim that this Bill has behind it, as far as Madras is concerned, widespread support. Various commercial and professional bodies, both Indian and European, have sent me letters and telegrams supporting the Bill. I believe the Honourable the Finance Member has received some of them. I, therefore, do hope that the House will agree to the circulation of this measure for the purpose of eliciting

[Sir F. E. James.]

public opinion, so that the views of Provincial Governments may be obtained. My last word would be to acknowledge with grateful thanks the help which my Honourable friend, Sir George Spence, has given in advising me as to the drafting of this Bill. I know that the giving of such advice is normally not within the scope of his official duties, but everyone in the House will agree with me whom I say that Sir George Spence is a friend to every Member who is in difficulties about the drafting of Bills and that on his judgment all can rely. I also thank the Government of India for their willingness to have the Bill circulated for eliciting public opinion. All I have now to do is to invite the co-operation of this House in removing what we feel, in Madras in particular, to be both an anomaly and an injustice. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim): Motion moved:

“That the Bill to limit to a maximum of Rs. 50 per annum the amount payable in respect of any person by way of tax on professions, trades, callings or employments be taken into consideration.”

The Honourable Sir Jeremy Raisman. (Finance Member): Sir, I move:

“That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st of August, 1941.”

Sir, as my friend, Sir Frederick James has himself indicated, the adoption of a measure of this kind would necessitate the survey of a number of existing taxes and the taking of action to replace those taxes by alternative sources of revenue, and on that ground alone, it is desirable that time should be given to all the Provincial Governments and the local bodies affected to consider the possible effect of this measure and to state their views upon it. As regards the general object of Sir F. E. James' Bill it is no secret that the Government of India have for many years been discouraging this type of tax which does, unfortunately, find a place in the finances of local bodies. I myself have taken a part in pointing out to Provincial Governments that they were erecting a superstructure of local or provincial taxation on a foundation which was, to say the least, of very doubtful validity and that at any moment it was liable to be upset by rulings in courts of law, and that in any case it was, on general principles, highly objectionable that the field of income-tax jurisdiction should be invaded in this surreptitious way by various what I can only call squatters, for the whole field of our income-tax jurisdiction was being squatted upon by various kinds of authorities. As regards the principle of this measure, it would be impossible for me to oppose or object to it. What happened was that, for the reasons indicated by Sir F. E. James, the matter had reached a stage at which it became absolutely essential to demarcate in the most unambiguous manner the boundaries of Central and Provincial jurisdiction on this subject. Parliament did so by means of legalizing to a certain extent these taxes, because they were in existence; they legalized them up to a certain height, so to speak. In regard to taxes which exceeded that height, Parliament was unable to take action which might have drastic, widespread effects, and so they left that situation to be dealt with by the Central Legislature of this country if and when it felt that the matter should be so regulated.

That, Sir, is the general position and I have nothing to add, except that the Government of India, in this matter, must take care that no sudden or drastic change may be made which will leave a number of local bodies or other authorities with a large part of their revenue gone before they have had time to adjust themselves to such a change, and it is exceedingly important that all the interests affected should have good time to consider the matter and that this House should see the opinions which are formed upon the measure before they decide to enact it. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim): Amendment moved.

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st of August, 1941."

Lieut.-Colonel Sir Henry Gidney (Nominated Non-Official): Sir, on behalf of my Party I support the Bill

An Honourable Member: Maiden speech.

Lieut.-Colonel Sir Henry Gidney: and I support it for many reasons. As one who has suffered from such a Professional Tax myself in Calcutta I realise now that this suffering was a very light one when compared to what is demanded in Madras. I, therefore, agree with Sir F. E. James that this tax is nothing but an unfair encroachment on income-tax which is a revenue of the Central Government; indeed I would say it is stealing a march on it. The position has been admirably explained by my friend, Sir F. E. James, and, if such a tax is to continue the desire expressed for uniformity must be apparent to everyone in this House. I do not think it is right for one Provincial Government to levy such a singularly excessive tax—call it "Employment Tax" or "Profession Tax" as compared with other Local Governments and since this is taken as a form of revenue, then it is certainly, in my opinion, encroaching rather dangerously on the line demarking Central from Provincial Revenues and this should be stopped by the Central Government. I submit the only way this can be stopped is by the Central Legislature interfering in this matter. I am, therefore, glad to know that the Finance Member has agreed to the circulation of this Bill for it is a very long delayed and a very necessary piece of legislation. Sir, I support the Bill.

Mr. M. S. Aney (Berar: Non-Muhammadan): Sir, as the motion for circulation of this Bill has already been moved, I may also say something in support of it. There is much force in the arguments which my Honourable friend Sir Frederick James had advanced as regards the inequitable way in which use has been made of the powers vested in the Provincial Governments as regards the imposition of taxes on professions and callings. But it is to be borne in mind that the Bill, as it stands, purports to legislate upon matters which affect the resources to some extent of the Provincial Government and it is a pity that the measure is being introduced at a time when some of the Provincial Governments which are responsible for creating a situation of this kind are not being run by the people and are solely run by the Governors. That is also a matter which is rather to be deplored. Anyhow, under these circumstances, it would not have been proper for this House to rush with this measure here. As the Honourable the Finance Member himself has

[Mr. M. S. Aney.]

tabled a motion for circulation, I believe there will be time enough for the public to express their opinion, and on the strength of the opinions received we shall be in a position to regulate the Bill in such a way as to leave little room for a conflict of the resources between the Provincial Governments and the Government of India hereafter in this matter. With these observations, I support the motion for circulation.

Maulvi Syed Murtuza Sahib Bahadur (South Madras: Muhammadan): Mr. President, I whole-heartedly support the motion before the House made by my Honourable friend, Sir Frederick James. So far as our unfortunate province is concerned, we are paying four taxes, two taxes to the Municipalities and the District Boards, and the other two to the Government. So far as the house-owners are concerned, they have to pay the House-tax as well as the professional tax to the Municipalities, and then we have to pay two taxes to Government, that is, the land tax and the income-tax. So, there is no other province throughout India which pays four taxes.

Dr. P. N. Banerjea (Calcutta Suburbs: Non-Muhammadan): in Bengal we pay more.

Maulvi Syed Murtuza Sahib Bahadur: Bengal and Bombay are richer provinces than Madras. Sir, the remarks made by the Honourable the Finance Member are not encouraging though they are not discouraging too. He said, the Government would not object to this being considered. But, at the same time, they have to consult the Local Governments. It is quite true that in such an important matter as this they have to consult the Local Governments. At the same time, they should give us some favourable gesture in connection with this Bill, so that the Local Governments may be guided thereby. The Central Government should always be in a position to guide the Local Governments. I may add that so far as the Madrasis are concerned they should feel thankful to our Honourable friend, Sir Frederick James, for having brought this Bill before the House, and the House will, I hope, whole-heartedly support it.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st of August, 1941."

The motion was adopted.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

Dr. P. N. Banerjea (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I beg to move:

"That the Bill to simplify the procedure in appeal to the Federal Court be taken into consideration."

This Bill is a short and simple one. It does not seek to amend or alter in any way the substantive law of the country. All that it seeks to do is to make it possible to substitute a simple procedure for a complex and dilatory procedure in regard to appeals which come from the High Courts to the Federal Court.

It is known to Members of this House that the Federal Court was established a few years ago under the provisions of the Government of India Act, 1935. Now, Chapter IX of this Act lays down the law relating to the working of this Court, but the procedure relating to appeals which come from the High Courts to the Federal Court is governed by Section 111-A and Order XLV, Rule 17, of the Civil Procedure Code. These were added to the Civil Procedure Code by the Adaptation of Laws Orders in Council in 1937. Now the question is,—was it right to make this adaptation in the present case? The object of the Adaptation Laws Orders in Council was to bring “the provisions of the law into accord with the provisions of the Constitution Act and, in particular, in accord with the provisions which are constituted under different names, governments and authorities, in India.” According to this Adaptation Laws Order the Government of India has been re-named as the Central Government, but that does not apply to the Federal Court. The Federal Court did not exist before under a separate name. It is a new creation. Therefore, this Adaptation of Laws Orders should not have been made applicable to the procedure of a Federal Court.

Whether this adaptation is *ultra vires* or *intra vires*, I will not discuss. It is not necessary for me to discuss that at the present moment. But I should like to take up the substance of the question. The effect of this adaptation has been to apply the procedure which is applicable in respect of appeals from the High Court to the Privy Council to the appeals from the High Court to the Federal Court. Now, there is no justification for this. The Privy Council is situated at a distance of six thousand miles and when the sections of the Civil Procedure Code, which relate to appeals to the Privy Council were framed, the communications between England and India were far more difficult than they are at the present day. So, a certain amount of spade work was necessary to be done in the High Courts before an appeal could go before the Privy Council. But the situation is entirely different in connection with appeals to the Federal Court. The Federal Court is situated at a very short distance from the different High Courts and, at the present moment, appeals could be placed before the Federal Court without any spade work being done in the various High Courts. This sort of spade work that is being done in the High Courts takes a great deal of time. In the first place appeals can be taken up to the Federal Court after a certificate has been granted by the High Court.

Now, this is according to the Government of India Act. But after a certificate has been granted, the estimate of the amount of costs that has to be paid, the preparation of the paper book, the giving of security and so forth—all these things take a great deal of time. Different periods of limitation are fixed under the rules with regard to each of these items. The result is that the procedure with regard to appeals has become very dilatory. We are all familiar with the procedure of appeals to the Privy Council which every body knows is dilatory and very complex. But it is not necessary to make the procedure so complex and dilatory in the case of appeals to the Federal Court. I, therefore, submit, that there is no necessity for retaining this Adaptation Order. Section 111A which was added by the Adaptation of Order and Order XLV Rule 17 should go. It seems to me that this adaptation was made at a time when the Federal Court had not come into existence and the object was a temporary one. The object was to help the starting of work by the Federal Court. But now that the

[Dr. P. N. Banerjee.]

Federal Court has been in existence for a number of years and it has had time to frame its own rules, these impediments should not be in the way.

In this connection I should like to urge before the House the view which has been taken of this procedure by no less a person than Sir Maurice Gwyer, the Chief Justice of the Federal Court. He observed some time ago that the Court should be in a position to control from first to last the conduct of appeals which might be brought before it. I may also be permitted to quote the opinion of Sir Shah Sulaiman, whose sudden and premature death we all mourn and whose passing away has made our country poorer than before. Sir Shah Sulaiman said in the case of *Lakshmiser versus Kesar Lal*: "In my order dated the 5th March, 1940, I had said there was no absolute necessity to make the whole of Order XLV of the Civil Procedure Code applicable to the Federal Court appeals even where the only ground taken were a constitutional one." He observed further: "I would now go further and say that it is not necessary in other cases", and he concluded his remarks with these words: "It is most unfortunate that appellants who have the statutory right to come up to the Federal Court under section 205 of the Act and quite independently of section 109 of the Civil Procedure Code should be hampered by the rules laid down in Order XLV, Civil Procedure Code, which had been meant for different classes of appeals altogether".

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member can continue his speech after Lunch.

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. Deputy President (Mr. Akhil Chandra Datta) in the Chair.

Dr. P. N. Banerjee: Sir, when House rose for Lunch I was urging that it was not desirable to invoke the Adaptation of Laws and Orders in Council and to add section 111-A and O. 45, R. 17 of the Civil Procedure Code. I quoted in support of my view the opinions of Sir Maurice Gwyer and Sir Shah Sulaiman. I wish now to mention to the House the power which has been given by the Government of India Act to the Federal Court to make its own rules regarding procedure. Section 214 of the Government of India Act runs thus:

"The Federal Court may, from time to time, with the approval of the Governor General in his discretion, make rules of court for regulating generally the practice and procedure of the court, including rules as to the persons practising before the court, as to the time within which appeals to the court are to be entered, as to the costs of and incidental to any proceedings in the court and as to the fees to be charged in respect of proceedings therein, etc."

Thus, the Federal Court has been given power, subject to the sanction of the Governor General in Council, to make its own rules. Therefore, Sir, I urge that if we repeal section 111-A of the Civil Procedure Code and O. 45, R. 17, automatically the power which is vested in the Federal Court to make its own rules will prevail. Now, a difficulty has been pointed out to me by some of my friends. Section 111-A of the Civil Procedure Code applies the provisions relating to appeals from High Courts to the

Privy Council contained in sections 109, 110 and 111. It has been pointed out to me that if section 111-A is repealed altogether the High Court will require some rules or some enactments in order to govern its power to give a certificate for appeals to the Federal Court. Then, again, it may be urged that it will not do if the whole of Order 45 is omitted. I want to omit rule 17 and this rule makes applicable to the Federal Court Rules 1 to 16 which are now applicable to the Privy Council. Here, again, some rules will be needed. I appreciate the validity of this contention; but as this Bill is going before a Select Committee—under the amendment of which notice has been given by my Honourable friend, the Home Member,—these difficulties may be removed. Perhaps it may be found necessary to retain some parts of sections 109, 110 and 111 and also some parts of the rules under Order 45. But those are details. What I really want is that the present position is very anomalous. There is no analogy between appeals from High Courts to the Privy Council and appeals from the High Courts to the Federal Court. The procedure is cumbrous, complex and dilatory and a simplified procedure is needed.

In this connection, I should like to point out that my Bill does not seek to extend the jurisdiction of the Federal Court in the least. It keeps the jurisdiction as it at present exists. Unless an extended jurisdiction is given to the Federal Court by an Act of this legislature it cannot be extended. I do not seek to extend the power and jurisdiction of the Federal Court. What I want now is that the Federal Court should exercise those powers which have been given to it by Chapter IX of the Government of India Act. Sir, my object, as I said at the beginning, is to simplify the procedure relating to appeals to the Federal Court. This Bill is a short measure and if there are any difficulties in it they may be removed at the Select Committee stage. Sir, I move.

Mr. Deputy President (Mr. Akhil Chandra Datta) : Motion moved :

“That the Bill to simplify the procedure in appeal to the Federal Court be taken into consideration.”

The Honourable Sir Reginald Maxwell (Home Member) : Sir, I move :

“That the Bill be referred to a Select Committee consisting of Sir George Spence, Mr. Gopalswami, Mr. Muhammad Muazzam Sahib Bahadur, Syed Ghulam Bhik Nairang, Nawabzada Liaqat, Ali Khan, Mr. Muhammad Azhar Ali, Mr. M. S. Aney, Dr. P. N. Banerjee, Sardar Sant Singh, Mr. P. J. Griffiths, Rao Sahib N. Sivaraj and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five and that the Committee be authorised to meet in Simla.”

I need say little in support of this motion. Government regard this measure as rightly conceived and are prepared to support it. They have already done their best to expedite it by consulting Provincial Governments executively rather than waiting for a motion of circulation to be passed in this House. As a result of the discussions since the Bill was introduced, a certain number of drafting points have arisen, which would better be dealt with in a Select Committee and the Honourable the Mover himself has pointed out that there are such matters which a Select Committee would be a more convenient means of considering. I hope, therefore, that the proposal to refer the Bill to a select Committee will be accepted.

Mr. Deputy President (Mr. Akhil Chandra Datta): Amendmnet moved:

"That the Bill be referred to a Select Committee consisting of Sir George Spence, Mr. Gopalswami, Mr. Muhammad Muazzam Sahib Bahadur, Syed Ghulam Bhik Nairang, Nawabzada Liaqat, Ali Khan, Mr. Muhammad Azhar Ali, Mr. M. S. Aney, Dr. P. N. Banerjea, Sardar Sant Singh, Mr. P. J. Griffiths, Rao Sahib N. Sivaraaj and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five and that the Committee be authorised to meet in Simla."

Sir Syed Raza Ali (Cities of the United Provinces: Muhammadan Urban): Sir, I have just a few observations to make on this Bill, as also on the Home Member's motion that the Bill be referred to a Select Committee. Fortunately the Bill before the House does not raise the extremely complicated question as to whether it is desirable or not to extend the jurisdiction of the Federal Court. Very rightly, Dr. Banerjea, who is well acquainted with the intricacies of the problem has made it quite clear that his main purpose is to do away with section 111 (a) of the Code of Civil Procedure, as also Order 45, rule 17 of the same Code, in relation to the procedure applicable to those appeals which come up before the Federal Court under the provisions of section 205 of the Government of India Act. I think that is a desire with which every Member of this House who knows the difficulties of the problem will have very considerable sympathy. I do not think I need repeat the arguments which were carefully gone into by Dr. Banerjea. Suffice it to say that the position today as put before the House by Dr. Banerjea is that in all those cases where a certificate is given by a High Court under section 205 of the Government of India Act, 1935, the cumbrous procedure relating to appeals to the Judicial Committee of the Privy Council from the judgments of the High Court or any other court of final jurisdiction is applicable. This is objectionable on two grounds: first, the procedure is dilatory, secondly it is unnecessarily expensive. For instance, as he hinted, there is no reason why the provisions relating to the printing of the paper book for the use of the Privy Council should apply when the appeal lies to the Federal Court. The thing can be done at much less expense and more expeditiously in the case of all those appeals which are to be heard by the Federal Court. So that, so far as the desire to simplify the procedure without introducing any question of principle as to the jurisdiction at present exercised by the Federal Court is concerned, I think every member of the legal profession would be in sympathy with Dr. Banerjea's motion.

While giving my support to this part of the motion, let me make it quite clear that about the extension of the jurisdiction of the Federal Court, as envisaged in section 206 of the Government of India Act of 1935, there is considerable difference of opinion. The question was ventilated very carefully in this House on the 17th February, 1925, when a Resolution recommending the establishment of a Supreme Court in India to hear appeals from the High Courts was moved in this House by Sir Hari Singh Gour. Those who have had occasion to read that debate know that it produced a very heated discussion in which a number of distinguished lawyers, including the leader of the then Swaraj Party, Pandit Motilal Nehru, took part. The weight of opinion on that occasion was that it would not promote the cause of justice if the jurisdiction that at present vested in the Judicial Committee of the Privy Council was taken away and conferred on a Supreme Court established in India. I must say that

so far as I can judge the main ground on which that opposition was based was this

Mr. Deputy President (Mr. Akhil Chandra Datta): But we are not concerned with that question now.

Sir Syed Raza Ali: Fortunately we are not. I just want to make it quite clear that my support to this motion does not mean that I stand committed to the second proposition also, namely, the extension of the Federal Court's jurisdiction. In this House sometimes apprehensions are aroused which for the time being are unnecessary.

I well remember that our innocent motion for the recognition of communal unions by the Government was opposed on the ground that today we wanted recognition of communal unions but tomorrow we might ask for the extension of the same principle to trade unions. On that analogy I just wanted to make my point quite clear, though this House will remember there was no mention whatever about the recognition of trade unions by the Government in the motion which was discussed two days ago. Similarly, I hope that the motion moved by my friend is not the thin end of the wedge, if I may say so, and by accepting it this House is far, far from committing itself to giving its blessing to any proposal to extend the jurisdiction of the Federal Court. I make it quite clear, because at times misunderstandings do arise as to what we meant on a particular occasion

Dr. P. N. Banerjea: I made that clear.

Sir Syed Raza Ali: I must say that you also made the position quite clear. It is in that light that I rise to support this motion for reference to Select Committee where all the *pros and cons* of the question can be carefully gone into and the Bill can be carefully revised and improved upon. Sir, it is in this light, and subject to the remarks I have made, that I support the motion.

Mr. Lalchand Navalrai (Sind : Non-Muhammadan Rural): Sir, to me this measure does not seem to be so simple. I have no objection to giving certain powers to the Federal Court in regard to practice and procedure, and its powers may be extended thus far and no further. But as the Bill is framed, I feel that certain legal complications will arise. The Bill says: "Powers be given to the Federal Court under section 214 of the Government of India Act". Now, the Federal Court has got those powers, but we have to look to section 214 to see what exact powers it has got, and consistently with those powers we can give them more powers, but nothing more. Section 214 says: "The Federal Court may from time to time with the approval of the Governor General in his discretion make rules for the court for regulating generally the practice and procedure of the court"—I lay particular stress on the words "practice and procedure", and I ask the Honourable Member to give his attention to that. The latter part of section 214 read with the context of the whole section will also show that those rules are said to include rules as to the persons practising before the court, as to the time within which appeals to the court are to be entered, as to the costs incidental to the procedure in the court, as to fees to be charged in respect of the proceedings and so forth. Therefore, it is quite clear that we can give power to the Federal Court to make any rules they like with regard to practice and procedure.

[Mr. Lalchand Navalrai.]

Now, what does this Bill seek to do? It wants two things. It is said that section 111A of the Code of Civil Procedure, 1908, hereinafter referred to as the said Code is hereby repealed. Now, my friend, Dr. Banerjee, wants that section 111A should be deleted, and that rule 17 of Order 45 in the First Schedule to the said Code be also repealed. I leave out first of all the question of procedure with regard to Order 45, rule 17, because that is a provision which relates to practice and procedure. But so far as section 111 is concerned, it has reference to sections which are substantive law, and if we are going to delete section 111A, then we should also delete sections 109 and 110 and 111; in other words, if we delete 111A, then it will be necessary even for the Federal Court to be guided by a certain law, and that law is contained in sections 109 to 111. Therefore, the first point is whether we can delegate power to the Federal Court to make law as contained in sections 109 to 111. No, because that is the power of the Legislature. The Legislature has made this substantive law in the C. P. C. and the procedure is contained in the orders and rules. So far as the orders and rules are concerned, we can give some power to the Federal Court, but so far as the substantive law is concerned, we will be giving away our own powers to the Federal Court; in fact, they will be usurping our powers which we cannot allow to do.

Now, Sir, after this point was brought to his notice, my friend, the mover of the Bill himself admitted that there are certain portions of sections 109 to 111 which will be necessary for the use of the Federal Court, and therefore to delete 111A completely would not be necessary at all. On the contrary they should be retained, and that will not interfere with the procedure which will be amended. The main object of this Bill is to remove the dilatoriness and difficulties that exist in the present procedure when appeals are made to the Privy Council under Order 45, Rule 17. Therefore, section 111A should remain as it is. In other words, I would say there is no necessity for removing rule 111A, because it is a necessary section for giving powers of section 109 or as much of section 109 to 111 as may be applicable to the Federal Court. It will not do any harm at all. On the contrary, it will mean retaining the substantive law which we have made. These sections will remain and will be applicable to the Federal Court also. Therefore, I submit that this portion of the amendment which is asked for should not be allowed. If done, the difficulty will arise, if we take away section 111A. Therefore, so far as the Federal Court is concerned, the Bill itself wants that the Federal Court should make its own practice and procedure. But if section 111A is repealed it may be assumed that the Federal Court has power even to make the substantive law similar to contained in section 111—I think I have made my point quite clear, that so far as the substantive law is concerned, we cannot delegate powers to anybody, and these sections should be retained because the Federal Court is working under them. If you are going to take away section 111A completely, you are taking away section 109 to 111 also. The substantive law is different. If tomorrow section 106 is made applicable, what will happen? The pecuniary jurisdiction of Federal Court is shown in section 106, but not the other provisions. Therefore, section 111A should not be deleted at all. It is not necessary for the aims and objects which my Honourable friend has, namely, to remove the dilatory procedure and those provisions which are detrimental to the interests of the appellants.

Coming to order 45, rule 17, I submit that the Code of Civil Procedure is so divided that the substantive law has been put in the first portion, and then they have made the orders and rules. That shows the difference between the sections and the procedure and practice contained in the orders and rules. Order 45 is also divided into two portions. One is up to rule 6, and these rules apply to the High Court before giving a certificate for the appeal being lodged, and the rest deal with the question of security and other things, which come into play after the certificate has been given. What my Honourable friend wants is that in the High Court there is dilatoriness, there are so many difficulties there, so much time is wasted, and that the Federal Court should be allowed to simplify their procedure and frame certain simple rules for the purpose. The sole complaint of the Bill is with regard to that. From that point of view I shall have no objection if the Select Committee may consider it and find out which portions should be retained and which portions of order 45 should be deleted. In other words, the Bill would emerge from the Select Committee like this. Clause 2 of the Bill would be deleted, and as regards clause 3, only those portions of order 45, rule 17, should be retained as far as they relate to the stage after the certificate has been given. With these observations I resume my seat.

Pandit Lakshmi Kanta Maitra (Presidency Division: Non-Muhammadan Rural): Mr. Deputy President, if I intervene in the debate at this stage, it is not for the purpose of making a speech to elaborate the points that arise in connection with this Bill but only to remove a misapprehension that has been caused by the speech of my Honourable friend, Sir Syed Raza Ali. My Honourable friend referred to the debate of the Legislative Assembly in the year 1925 relating to the subject of the establishment of a Supreme Court in this country. In that connection he referred to the opposition of the then Leader of the Opposition, Pandit Motilal Nehru, and also drew attention to the general feeling of opposition to the provision of a Supreme Court in India. But the present Bill has got nothing to do with the establishment of a Supreme Court or the extension of the appellate powers of the Federal Court. We had a resolution tabled to that effect, which was in my name, but it could not be reached yesterday. The present Bill is only to simplify the procedure in appeals to the Federal Court. Be that as it may, I desire to draw the attention of the House to the fact that in the debate referred to by my Honourable friend, Sir Syed Raza Ali, his esteemed Leader, Mr. M. A. Jinnah, while eulogising the Judicial Committee of the Privy Council, observed as follows with regard to a particular class of its judgments. I will give one quotation only, which I am sure will give a clear indication of the position he took up at that time. Mr. Jinnah said that he refused to believe that the establishment of a Supreme Court in this country was going to lower the prestige of the Provincial High Courts. I may quote Mr. Jinnah's own words:

"How is it going to lower the prestige of the provincial High Courts? Then, you find in the Privy Council, for which I have great respect, although I have no hesitation in saying that the Privy Council have on several occasions absolutely murdered Hindu law, and slaughtered Muhammadan law—with regard to Common law, the English law, of which they are the masters, undoubtedly they command the greatest respect of every practitioner and of every Judge in this country."

So, my Honourable friend's esteemed Leader, Mr. Muhammad Ali Jinnah, had something very different to say from what he himself said just now on the principle underlying this Bill. The present Bill does not

[Pandit Lakshmi Kanta Maitra.]

deal with the question of extending the powers of the Federal Court but only proposes to clarify the procedure with regard to appeals. Sir, I hope my friend will realise from this that even his own Leader was in favour of a much larger measure, of a much more comprehensive measure than that which is sought in this Bill.

Sir Syed Raza Ali: Will my Honourable friend go through the rest of his speech?

Pandit Lakshmi Kanta Maitra: I have read through the whole of it and I have not found that Mr. Jinnah has contradicted himself any where in this speech. He might have said something different elsewhere. My Honourable friend is in a better position to know that, as he knows his Leader better than I do. So far as it appears from the proceedings of the debate, I take it at its face value. Sir, I support this motion.

Dr. Sir Ziauddin Ahmad (United Provinces Southern Divisions: Muhammadan Rural): I would like to add the name of Sir Syed Raza Ali to this Committee.

The Honourable Sir Reginald Maxwell: I accept that.

Dr. P. N. Banerjea: In view of the statement made by the Honourable the Home Member, I accept his amendment.

Mr. Deputy President (Mr. Akhil Chandra Datta): An amendment has been moved that the name of Sir Syed Raza Ali be included in the Select Committee. The question is:

"The question is that the Bill be referred to a Select Committee consisting of Sir George Spence, Mr. Gopaldaswami, Mr. Muhammad Muazzam Sahib Bahadur, Syed Ghulam Bhik Nairang, Nawabzada Liaqat Ali Khan, Mr. Muhammad Azhar Ali, Mr. M. S. Aney, Dr. P. N. Banerjea, Sardar Sant Singh, Mr. P. J. Griffiths, Rao Sahib N. Sivaraj, Sir Syed Raza Ali and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five and that the Committee be authorised to meet in Simla."

The motion was adopted.

THE INDIAN EVIDENCE (AMENDMENT) BILL.

Qazi Muhammad Ahmad Kazmi (Meerut Division, Muhammadan Rural): Sir, I am not moving my motion No. 15 but shall move No. 16.

Sir I move:

"That the Bill further to amend the Indian Evidence Act, 1872, for certain purposes, be circulated for the purpose of eliciting opinion thereon by the 1st August, 1941."

This Bill is intended to provide for a provision in the Indian Evidence Act which will prove of great benefit to litigants and the absence of which has proved a great handicap to them, owing to a decision of the Privy Council.

Under section 90, certain presumptions can be made in respect of documents more than 30 years old, provided they came from proper custody. The presumption was formerly held applicable to copies of the documents also. The Allahabad and other High Courts have held that if an original document more than 30 years old is missing and a copy of it comes from proper custody, according to the provisions of the Indian Evidence Act, the copy is admissible in evidence and that the same presumption of genuineness shall attach to it as attaches to the original document. But in Privy Council case, on a strict interpretation of section 90 of the Indian Evidence Act, Their Lordships came to the conclusion,—and rightly so, because so far as the present wording is concerned, it does not contemplate a copy, but only the original document,—that the presumption would not apply to the copies. Only if the original document is produced, it will be taken to be genuine.

Now, Sir, in actual practice, when a document of more than 30 years old is brought before the Court, it is very difficult to prove whether it is an original document or a copy, because it is very difficult to do so after a period of 30 years—not only 30 years, it may be 50 or 100 years and so on. It is very difficult to find the executant. He may be dead. It will be very difficult to find the attesting witnesses, they may be dead. It is on account of this difficulty that the Legislature provided that in such cases the document shall be considered a genuine document. In the case of copies, it becomes still more difficult, because, in the case of the original document, the signature of the attesting witnesses is there, and, after a period of 30 years, though the executant and the attesting witnesses may be dead, there may yet be some persons who may be able to recognise their signatures and say that these are the signatures of such and such persons. In the case of copies, the difficulty becomes all the greater, because there are no original signatures of either of the persons. It can also be argued on the other side that it will also be possible for people to prepare some fictitious documents, keep them on, and, after a period of 30 years, not to produce the original documents, but only the copies. Suppose I get a sale deed of the fort executed in my favour, keep the document with me for a period of 30 or 40 years, produce a copy and say that it comes from proper custody, and, therefore, it must be taken as genuine. The difficulty would be very great in these days when very ingenious persons have come into existence due to the ingenious laws of this country. But any way the difficulty is there, and, instead of making the presumption generally as it was the case up till now, the suggestion I have made is that a provision should be made in favour of the copies of registered documents. In the case of registered documents, there will be much less danger of any kind of fraud and there seems to be no way out of the difficulty. It is for that reason that I have introduced this Bill and I hope the House will accept the motion for circulation at the present stage.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is :

“That the Bill further to amend the Indian Evidence Act, 1872, for certain purposes, be circulated for the purpose of eliciting opinion thereon by the 1st August, 1941.”

The motion was adopted.

THE INDIAN SUCCESSION (AMENDMENT) BILL.

Dr. F. X. DeSouza (Nominated Non-Official): Sir, I beg to move for leave to introduce a Bill further to amend the Indian Succession Act, 1925.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is:

“That leave be granted to introduce a Bill further to amend the Indian Succession Act, 1925.”

The motion was adopted.

Dr. F. X. DeSouza: Sir, I introduce the Bill.

The Assembly then adjourned Till Eleven of the Clock on Friday, the 28th March, 1941.