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LEGISLATIVE ASSEMBLY.

Tuesday, 12th September, 1922.

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

QUESTIONS AND ANSWERS.

INDIAN JUDGES IN HIGH COURTS.

295. ***Prince Afsar-ul-Mulk Mirza Md. Akram Hussain Bahadur** : Do Government propose to appoint a Muhammadan Barrister Judge in the vacancy caused by the retirement of the Honourable Mr. Justice Woodroffe, Bar.-at-Law, in view of the Resolution moved by the Honourable Mr. Sethna in the Council of State regarding the increase in the number of Indian Judges and the discussion on the subject in the Assembly ?

The Honourable Sir William Vincent : The appointment will be made by His Majesty, and the Government of India are unable to make any announcement as regards the matter at the present time.

VICEREGAL LODGE AND PUBLIC BUILDINGS.

296. ***Rao Bahadur C. S. Subrahmanayam** : Will the Government be pleased to state the aggregate book value up to date of :

- (a) Viceregal Lodge and its appurtenances, quarters for the staff, servants, etc., of His Excellency the Viceroy ;
 - (b) All buildings (Civil) used for public offices ;
 - (c) All buildings (Military) used for public offices ;
 - (d) All buildings used for the residence of Government officials, high and low and menials (Civil) ;
 - (e) All buildings used for the residence of His Excellency the Commander-in-Chief and His Excellency's staff and entourage ;
- situate in Simla ?

Colonel Sir Sydney Crookshank : The aggregate up-to-date book value of the Imperial properties in question in Simla is as follows :

	Rs.
(a) Viceregal Lodge, the staff houses and all other buildings on the Simla Viceregal Estate exclusive of the Retreat at Mashobra which is a rented building ..	37,61,291
(b) Civil buildings owned by Government which are used as offices ..	55,52,594
(c) Military buildings owned by Government which are used as offices ..	18,58,071
(d) Houses owned by Government which are used as residences by Government officials including menials ..	80,59,359
(e) Buildings used for the residence of His Excellency the Commander-in-Chief and his staff and entourage, i.e., the buildings on the Snowdon Estate ..	4,04,162
Total ..	2,05,35,477

EXEMPTIONS FROM COURTS.

297. * **Beohar Raghubir Sinha** : (a) Will the Government be pleased to lay on the table a list of persons exempted from personal appearance in Civil Courts ?

(b) What are the qualifications for admission to such lists ?

(c) Are there any exemptions from appearance in Criminal Courts ?

(d) If not, why not ?

The Honourable Sir William Vincent : The Honourable Member is referred to the answer given by me on 6th September 1922 to unstarred Question No. 52 which was asked by the Honourable Member himself and was in almost identical terms with the present question.

Mr. K. Ahmed : May I ask a supplementary Question, Sir ? What are the privileges of the Members of the House of Commons, and do Government propose to extend similar privileges to Members of the Indian Legislative Assembly ?

Mr. President : I do not think that arises out of this question.

INDIAN HOME MEMBER.

298. * **Beohar Raghubir Sinha** : Has the attention of the Government been drawn to the editorial in the *Leader*, dated 2nd August 1922 (column 3, page 3), touching the appointment of an Indian Home Member whenever vacancy occurs ?

(b) Will the Government be pleased to announce if the post of the Home Member is not reserved exclusively for a non-Indian ?

(c) Do the Government propose to consider the appointment of an Indian for the above post, whenever a vacancy occurs ?

(d) Is it a fact that the Government proposes to appoint a non-Indian as a Law Member whenever vacancy occurs ?

(e) If so, is a qualified Indian not available for the post ?

The Honourable Sir William Vincent : The Government of India have seen the editorial in the *Leader* referred to. Appointments to the Governor General's Executive Council are made by His Majesty the King, and not by the Government of India, who do not make any recommendations on the subject. The Government of India are therefore not in a position to make any statement on the subject.

MUKHTIARS.

299. * **Beohar Raghubir Sinha** : (a) Will the Government be pleased to state the names of the Provinces where the practice of certificated or licensed Mukhtiaris, eligible for practising in Law Courts, is in vogue ?

(b) Will the Government be pleased to state the reasons why some Provinces such as Central Provinces are deprived of the privilege ?

The Honourable Sir William Vincent : (a) The class of Legal Practitioners known as Mukhtiaris exists in Bengal, the United Provinces, the Punjab, Bihar and Orissa, Assam and Delhi. In the Punjab and Delhi the enrolment of Mukhtiaris was, however, discontinued from the 1st December 1913.

(b) Under the provisions of Section 6 of the Legal Practitioners Act, 1879, the power to make rules for the qualifications, admission and certificates of proper persons to be Mukhtars of the subordinate Courts is vested in the High Court, subject in the case of High Courts not established by Letters Patent in the rules being previously approved by the Local Government. The Governor General in Council is, therefore, not directly concerned with the question of the introduction of this class of legal practitioner in provinces in which they are not in existence at present, and the Government of India are unable to make any statement in the matter.

Mr. S. C. Shahani : May I ask a supplementary Question, Sir ? Will the Government be pleased to state if they deem it a privilege for a province to have certificated or licensed Mukhtars ?

The Honourable Sir William Vincent : I am afraid the very wording of the Honourable Member's question shows that he is asking me to express an opinion which form of question is prohibited under the rules.

SLEEPERS ON INDIAN RAILWAYS.

300. ***Rai Bahadur Bakshi Sohan Lal :** (a) Will the Government be pleased to state the yearly number of sleepers consumed by the various Indian Railways since 1910 and of what kinds ?

(b) Will the Government be pleased to state how many sleepers out of the total number consumed by the Railways in India since 1910 were yearly imported from foreign countries, and of what kinds, and at what rates ?

Colonel W. D. Waghorn : In view of the labour involved in collecting the details asked for over a period of 12 years, Government are not prepared to call upon Railway Administrations to furnish this information.

PRICE OF SLEEPERS.

301. ***Rai Bahadur Bakshi Sohan Lal :** Will the Government be pleased to state how the imported sleepers compare with the Indian sleepers with regard to their use and duration on the Railway lines ?

Colonel W. D. Waghorn : There are broadly three varieties of wooden sleepers which have been imported into India, *i.e.*, Creosoted, Baltic Pine with a life of 10 to 12 years, treated Douglas Fir from America which is believed to have a life of about 8 years, and untreated Jharah from Australia which has a life of from 8 to 12 years.

The chief Indian timbers used for sleepers are :

- Deodar with a life of 12 to 15 years.
- Sal with a life of 12 to 15 years.
- Teak with a life of 15 to 20 years.
- Pyingado with a life of about 12 years.

Government has not yet had sufficient experience of treated Chir and Kail to enable any definite opinion to be formed as to how long they will last.

AUSTRALIAN SLEEPERS.

302. ***Rai Bahadur Bakshi Sohan Lal :** (a) Will the Government be pleased to state whether the Jhara sleepers imported from Australia used to cost the N. W. Railway about Rs. 10 each and that they became unserviceable after six to eight years ?

(b) Will the Government be pleased to state the rate at which the Railways in India purchased Deodar and Fir, Chill treated sleepers at the time when Jhara sleepers were imported ?

Colonel W. D. Waghorn : (a) Jharrah sleepers were last imported for the North Western Railway in 1909 at Rs. 5 each f. o. b. Indian Port. Their life averaged from 7 to 11 years.

(b) The price of Deodar in 1909 was Rs. 3-8-0 per sleeper. No Chir or Fir sleepers, treated or untreated, were then used.

DEODAR SLEEPERS.

803. * Rai Bahadur Bakshi Sohan Lal : (a) Will the Government be pleased to state whether it is a fact or not that the Deodar sleepers last for 15 years at least and the Fir and Chill sleepers when treated six to eight years, and are cheaper than the foreign imported sleepers ?

(b) Will the Government be pleased to state if it is a fact or not that the creosoted Fir and Chill sleepers of Indian forests last for the same number of years as the imported sleepers from foreign countries ?

Colonel W. D. Waghorn : (a) and (b). The life of Deodar sleepers in the road is from 12 to 15 years. Government have not sufficient experience of treated Fir and Kail sleepers to form any safe deduction as to their life under traffic.

COST OF INDIAN SLEEPERS.

804. * Rai Bahadur Bakshi Sohan Lal : Will the Government be pleased to state the cost of Deodar and Fir, Chill treated sleepers in India ?

Colonel W. D. Waghorn : The present cost of a broad gauge Deodar sleeper is Rs. 8, and that of Chil and Fir is estimated at from Rs. 5 to Rs. 7 according to the method of treatment.

" SLEEPER REQUIREMENTS OF RAILWAYS.

805. * Rai Bahadur Bakshi Sohan Lal : (a) Will the Government be pleased to state what are the requirements of the various Railways in India of sleepers and of what kinds ?

(b) Will the Government be pleased to state whether it is a fact or not that the requirement of the Railways in future for some years to come would be 40 lacs or more a year ?

Colonel W. D. Waghorn : (a) and (b). The information has been called for from Railways and will be furnished to the Honourable Member.

RAILWAY DEMANDS FOR SLEEPERS.

806. * Rai Bahadur Bakshi Sohan Lal : (a) Will the Government be pleased to state whether the Indian forests can or cannot meet the demand of the Indian Railways for sleepers ?

(b) If the answer be in the affirmative, will the Government be pleased to state the causes which necessitate the import of sleepers from foreign countries ?

Mr. J. Hullah : (a) The Indian forests cannot at present meet the demand of the Indian Railways for sleepers, not for want of sufficient

raw material, but because the treatment of the soft woods, such as Chir and Fir, is not sufficiently advanced to ensure an adequate supply of these sleepers treated in satisfactory manner.

(b) In view of the above reply, this question does not arise.

CANADIAN SLEEPERS.

307. * **Rai Bahadur Bakshi Sohan Lal** : (a) Will the Government be pleased to state whether it is a fact that out of the future requirements of the Indian Railways the Canadian and other foreign firms have secured large orders for the supply of sleepers ?

(b) Will the Government be pleased to state why these orders have been placed with the foreign firms without first calling tenders in India ?

Colonel W. D. Waghorn : The information asked for is not available, but Railway Administrations will be addressed and, on receipt of their replies, the Honourable Member will be advised.

FOREIGN SLEEPERS.

308. * **Rai Bahadur Bakshi Sohan Lal** : Will the Government be pleased to state the rate at which orders for supply of sleepers with the foreign firms have been placed recently, also the cost at which each Railway will get them at their depots ?

Colonel W. D. Waghorn : The information required is not available but Railway Administrations are being requested to report, and a reply will be sent to the Honourable Member in due course.

UNSTARRED QUESTIONS AND ANSWERS.

RAILWAY INCOME.

186. **Rai Bahadur S. P. Bajpai** : Will the Government be pleased to lay on the table a statement in the following form showing the actual income derived by the Railways in India during May, June and July 1922 together with total earnings of the Railways during the corresponding months of the year 1921 ?

By passenger traffic.						By goods traffic.					
1921.			1922.			1921.			1922.		
May.	June.	July.	May.	June.	July.	May.	June.	July.	May.	June.	July.

Colonel W. D. Waghorn : The information asked for by the Honourable Member is being collected and will be furnished direct as soon as ready.

LOSS OF GOODS.

187. **Rai Bahadur S. P. Bajpai** : Will the Government be pleased to lay on the table a comparative statement of compensation granted to companies and individuals for loss of goods during the years 1921 and 1922 ?

Colonel W. D. Waghorn : Accounts are not made up for calendar years and complete information for 1921-22 has not yet been received.

The amounts of compensation paid by railways for goods lost or damaged during the years 1919-20 and 1920-21 were Rs. 71,24,675 and Rs. 1,11,86,306, respectively.

FENCING ON ROHILKUND AND KUMAON RAILWAY.

188. **Rai Bahadur S. P. Bajpai** : (a) Are the Government aware that there is no wire fencing along the R. K. Railway line ?

(b) Will the Government be pleased to take steps to have wire fencing at least along the main line of the R. K. Railway ?

Colonel W. D. Waghorn : (a) Yes.

(b) The whole question of fencing on railways is being considered in consultation with Railway Administrations. Pending a decision on that question, Government do not consider it advisable to call on the Rohilkund and Kumaon Railway Company to incur the heavy expenditure involved.

ROHILKUND AND KUMAON RAILWAY TRAINS.

189. **Rai Bahadur S. P. Bajpai** : (a) Is it a fact that Local trains on the R. K. Railway are not usually provided with light ?

(b) Do the Government propose to advise Railway Authorities to make adequate arrangements for light in the Local trains ?

Colonel W. D. Waghorn : (a) Government have no information on the subject.

(b) The matter is within the competence of the Railway Administration whose attention will be drawn to it.

ACCIDENT ON OUDH AND ROHILKHAND RAILWAY.

190. **Rai Bahadur S. P. Bajpai** : (a) Are the Government aware that on the 25th June 1922 a child about 5 years old was run over by the O. R. Railway train near Maigalganj station on Sitapur-Shahjahanpur Branch at about 3 P.M. ?

(b) Will the Government be pleased to state what action, if any, has been taken against the Guard and the Driver of the train ?

Colonel W. D. Waghorn : (a) Government have no information on the subject.

(b) Under the rules laid down in accordance with the Indian Railways Act this is a matter which will be taken up by the District Magistrate if he considers necessary.

COMMISSIONS IN ROYAL AIR FORCE.

191. **Mr. Ahmad Baksh** : With reference to the reply * given by Sir Godfrey Fell on the 21st September 1921 to Munshi Iswar Saran *re*

* *Vide* page 638 of Volume II, Part I.

Commissions in the Royal Air Force, will the Government be pleased to state the result of inquiry made ?

Mr. E. Burdon : No reply has yet been received from the Secretary of State for India.

FLYING SCHOOLS IN INDIA.

192. Mr. Ahmad Baksh : Will the Government be pleased to state if there are any Flying schools in India where an Indian could learn aviation ? If the answer to the above is in the negative, then will the Government be further pleased to state if they intend to establish a school in India for the training of Indians as airmen ?

Mr. E. Burdon : As pointed out on the 22nd September last, in reply to the Honourable Member's unstarred* Question No. 18, there are no Government aviation schools in India for the training of either Europeans or Indians as airmen. The recommendations of the Air Board in regard to the establishment of schools for civil aviation in India are under the consideration of Government.

THE LAND ACQUISITION (AMENDMENT) BILL.

Mr. J. Ramayya Pantulu Garu (Godavari *cum* Kistna : Non-Muhamadan Rural) : Sir, the House will remember that, in the Delhi Session, I introduced a Bill for amending the Land Acquisition Act. It was subsequently circulated for opinion at my instance and a large body of opinion has been received : I have given notice of a motion to refer the Bill to a Select Committee. I understand, however, that the Government of India contemplate introducing a more comprehensive Bill for the revision of that Act, and it has been suggested to me that it would be more convenient if my Bill, and the Bill which the Government of India contemplate introducing, were to go to the Select Committee together so that the whole question may be considered and settled once for all. If I find that the Government of India are likely to bring in their Bill before very long, I should be quite willing to defer my motion till a later date, say, till November or so.

I am very anxious that this question should be disposed of during the lifetime of the present Assembly, and, if there is any likelihood of the Government coming forward with their proposals at an early date, I should be willing to wait for them. I would ask the Honourable Mr. Sarma when the proposals of the Government may be expected.

The Honourable Mr. B. N. Sarma (Revenue and Agriculture Member) : The position stands thus. The Government are anxious to introduce a Bill on their own account, proposing a measure, so that there may be no evils attendant upon piecemeal legislation. We have circulated for the opinion of Local Governments certain questions which we have formulated. We have not yet received the replies and I may assure the Honourable Member that, as soon as those opinions are received, we propose to utilise the Standing Committee which will be appointed shortly to

* *Vide* pages 836 and 837 of Volume II, Part I.

[Mr. B. N. Sarma.]

the Revenue and Agriculture Department, to place the whole matter before them, take their advice, and draft a Bill and introduce it into this Council. We hope to be able to do it during this Session, and I think the Honourable Member may perhaps make his motion and then the further discussion could be adjourned to some date which will be convenient to both parties.

Mr. J. Ramayya Pantulu Garu : In these circumstances, I am willing to put off my motion till the November Session.

The Honourable Mr. B. N. Sarma : We are perfectly agreeable.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

Lala Girdharilal Agarwala (Agra Division : Non-Muhammadan Rural) : Sir, I beg to move that my Bill further to amend the Code of Civil Procedure popularly known as the Vakalatnama Bill, be referred to a Select Committee.

I have already spoken on this subject twice and I do not propose to tire the Honourable Members by repeating what I have already said. The Bill has been circulated and opinions have been received.

But I feel it my duty to clear up any misconception which might have arisen in the mind of any Honourable Member due to the opposition led by my Honourable friend from Nagpur which has been reflected in certain quarters.

May I be permitted to remind the Honourable Members that with their kind leave, the Bill was introduced by me in this Honourable House on 7th February, 1922, without any opposition from any quarter, as will appear from the proceedings of that day printed at pages 2240-1 of the Assembly Debates, Volume II.

On 28th February, 1922, I moved that my Bill be taken into consideration, but I agreed to the amendment proposed by the Government that the Bill be circulated for eliciting opinion. The proceedings of that day are reported in the Assembly Debates, Volume II, at pages 2629 to 2635. And here I take the opportunity of thanking His Excellency Lord Reading, Governor General, who is himself an eminent Barrister, for granting me previous sanction for introduction of the Bill, without which I could not have come up before this Honourable House. I am no less thankful to the Government of India for taking a sympathetic view of my Bill as is evidenced from the speeches of the Honourable the Law Member on 28th February last.

The leader of the opposition, I mean my Honourable friend from Nagpur, who is himself a Barrister, has expressed his sympathy with the object of my Bill and I am prepared to thank him too in the belief that it is not only lip-sympathy skin deep. We Hindus worship even poisonous snakes and deadly lions. But the Honourable leader of the opposition imagines that the privilege of appearing without a Vakalatnama would deprive the Vakils any knowledge of the names of their clients as if it had deprived him and other Barristers so long and as if the Honourable

and learned Dr. Gour himself felt difficulty in knowing the names of his clients and other particulars of the case, namely, whether the person who paid him a fee was plaintiff or defendant or whether complainant or accused.

In my High Court, Barristers practise only after they are enrolled as Advocates exactly like Vakil-Advocates. With the exception of a Vakalatnama, Barristers and Vakils act, plead and appear for clients exactly in the same way as Barristers do. As a matter of practice, Vakil-Advocates and Barrister-Advocates alike file a slip containing the number of the case, names of parties, name of the Court and the name of the person for whom they appear. A counterfoil copy of that slip is retained in the Advocate's office in the file-book. So my Honourable friend from Nagpur need not fear on that score.

As for the question of terms of the contract of employment entered in the Vakalatnama, experience tells us that Vakalatnamas are usually written on printed forms and only those particulars are filled in which are usually entered in Advocate's slips. The clients scarcely care to know the terms of engagement printed on the forms used for the purpose of preparing a Vakalatnama and it is only a matter of chance what particular conditions are printed on a particular form used. It may be in one out of 1,000 cases in which special conditions are entered into and there is nothing to prevent a special agreement being drawn up between the pleader and the client in any particular case.

According to the definition of 'Pleader' given in the Code of Civil Procedure, section 2 (15), 'pleader' means any person entitled to appear and plead for another in Court and includes an Advocate and an Attorney of the High Court.

So far back as 1887, five Honourable Judges of the Allahabad High Court, namely, Honourable Sir John Edge, Chief Justice Straight, Brodhurst, Tyrrell and Mahomed, Justices sitting in Full Bench in the case of Bakhtawar Singh *vs.* Santlal reported in I. L. R. 9 Allahabad page 617, unanimously held, and that view has not yet been dissented from or doubted in any reported case I know of, that for the purposes of the Civil Procedure Code, an Advocate can perform all the duties for a suitor that a Pleader may perform, subject to his exemption in the matter of Vakalatnama, and subject further to any rules the Court may make regarding him.

So far as the question of fee is concerned, I am sure, the English case of Kenedy *vs.* Brown (1862) 32 L. J. C. P. 137 and the Indian case which followed it, namely, Ross Alston *vs.* Pitambar, I. L. R. 25 All. 509 are troubling my Honourable friend from Nagpur. In these cases it was no doubt held that if a Barrister takes fee from a client and does not work for it, he cannot be compelled to refund the money in a Court of law and *vice versa*. But is it a proud privilege? In the case of Queen *vs.* Doutre (1864) 9 A. G. 745, the Privy Council, I understand has discussed Kenedy's case and has doubted its applicability to India where Barristers practise under different conditions. But, then, Barristers are not the only Advocates practising in India. Vakils are also made Advocates and they are then exempted from filing a Vakalatnama. The difficulties which my Honourable friend, Dr. Gour, feels have never been felt in the case of

[Lala Girdharilal Agarwala.]

Vakil-Advocates. I may be permitted to name a few of them besides the Honourable the Law Member himself who enjoyed large practice in my High Court : Honourable Dr. Sir Sundar Lal, Honourable Dr. Satish Chandra Banerji, Pandit Motilal Nehru and Mr. Jogindra Nath Chaudhory. So I submit that the reasoning of the opposition so ably led by my Honourable friend, the learned Dr. Gour is without foundation.

Now remains the question of a small amount of Court-fee paid on Vakalatnamas. During Honourable Dr. Gour's speech when he said that a Vakalatnama bears a stamp, some Honourable Member remarked 'not always' but that remark was laughed out. As a matter of fact Order 33 rule 8 of the Code of Civil Procedure exempts Vakalatnamas from payment of any Court-fee in pauper cases. Then, again, in the case of Barristers and Vakil-Advocates, there is similar loss of court-fee to the Government. I may roughly assume that 50 p.c. of total number of cases go to Barristers and 50 p.c. to Vakils. Out of the Vakil's half share, 25 p.c. go to Vakil-Advocates who are exempt from filing any Vakalatnama. Out of the remaining 25 p.c. in 5 p.c. cases, no stamp is ever paid, either because the party is pauper and exempt from payment of court-fee on Vakalatnamas or because the client engages an Advocate along with a Vakil and does not care to file any Vakalatnama.

Then, again, in any one case, in one Vakalatnama and on payment of one court-fee stamp, any number of Vakils can be engaged by any number of persons arrayed on the same side whose interests are not conflicting.

So the fear of substantial loss of Revenue is more imaginary than real. I have no objection if engagement slips such as are at present filed by Advocates are filed in future by Vakils and all uniformly taxed to bring in more Revenue to the Government.

My Bill has been unanimously supported by the Vakil section of the Bar. The submissions which I have already made cover all the grounds of opposition headed by Honourable Dr. Gour.

I do not want to enter into details at this stage but I want to point out that it has been suggested that either the words 'or Chief Court' should be dropped, or an explanation added that 'High Court' would include the highest court of civil judicature in India so as to include Courts of Judicial Commissioners. I have no objection to any such amendment nor do I object to the re-drafting of the Bill so long as the object in view is served.

The Honourable Sir William Vincent (Home Member) : Sir, I shall not detain the Assembly for any time in discussing the reasons which lead the Government to oppose this motion at this juncture. The Bill was introduced on the 7th of February, and on the 28th of February the Assembly passed a motion for circulation, as far as I remember with the consent of Government. I submit that the intention of this motion was that when the opinions were received, a reasonable opportunity should be given to the Members of this House to examine them with the care which the subject really demands. But what is the position to-day ? Some of these opinions have been received. I believe they have been made into 3 papers to the Bill circulated to Honourable Members of this Assembly.

But we ourselves have not had time to examine thoroughly the opinions received, and one very important opinion, namely, that of the Bombay Government and of the Bombay High Court, has not yet been received in the Home Department. I think that in these circumstances the Assembly would do well to reject this motion. Really there has been no time to examine these papers at all. May I remind Honourable Members too that this Bill materially affects provincial revenues and it is therefore a matter on which the Provincial Governments are entitled to speak with some authority? Moreover those opinions which I have seen are not in favour of the Bill, but Honourable Members can judge this better than I can because the opinions are before them. It is quite true that various associations and individuals have expressed themselves in favour of it but the Local Governments view the loss of revenue in these hard times with some apprehension. I do not however want to discuss the Bill on the merits at all at present. In fact I am precluded from doing so.

There is another ground also on which I oppose this motion, and that is, that the bigger question of an Indian Bar is under separate examination. I believe we have a Bill, or at least notice of a Bill, on the subject already, and surely it would be much better to deal with this question of Vakils' privileges and the Indian Bar generally in one comprehensive debate and not piecemeal as the Honourable Mover suggests. I said just now that Local Governments were opposed to it. I have now got my note. It shows that the Central Provinces, Assam, Burma, Bihar and Orissa, Madras, and the United Provinces Governments—I am not sure if I mentioned Bengal before—are all opposed to the Bill while the Punjab Government supports it with this qualification that they should levy in stamp a thousand rupees or some large sum on the enrolment of a vakil. In Madras, I understand that action has already been taken in the other direction and that Advocates have to furnish a stamped power of attorney, but I speak very much subject to correction.

Rao Bahadur T. Rangachariar (Madras City : Non-Muhammadan Urban) : Not on Vakalatnama. On appearance they have to pay a stamp duty.

The Honourable Sir William Vincent : I thank the Honourable Member for correcting me, I stand corrected but it comes to very nearly the same thing. They pay a stamp duty on appearance. For these two reasons therefore, without expressing any opinion on the merits of this proposal at all, I suggest to the House that they should not accept this motion, because in the first place we really have had no time to examine the opinions received thoroughly, and in fact some opinions have not yet been received, and secondly it is infinitely more desirable that the whole of this question should be taken up in connection with the Bill relating to the Indian Bar.

Mr. P. P. Ginnwala (Burma : Non-European) : Sir, I rise to oppose this motion. When my Honourable friend started his speech, it struck me as if he wanted the House to move a vote of thanks in favour of His Excellency for having given formal sanction to his Bill or that he wanted to record a vote of thanks in favour of the Honourable the Law Member for not having opposed his Bill when he moved that it should be circulated for

[Mr. P. P. Ginwala.]

opinion. Later on he expounded to the House the law as to the respective liabilities of Advocates, Barristers and Pleaders. But though he spoke for a considerable length of time he did not give a single reason upon which this House should accept his motion. When he introduced the Bill he said that the main object of this Bill was to remove a sort of distinction between the members of the Bar and the vakils. That is a very weak ground and I do not think that it should be taken into any serious consideration at all by the House. If my Honourable friend feels this distinction too much, the remedy is very simple. Now that his eminence has been brought to the notice of the Allahabad High Court, he can apply to be enrolled as an advocate. Simpler still, he can go on a year's holiday to England, eat what he can, get on his way and there drink what he likes, attend a few dinners, have a merry time and get called to the Bar and thus get over the difficulty. But apart from that, Sir, I protest against a Bill which interferes with the principle upon which we have all been acting, namely, provincial autonomy. We have all pledged ourselves more or less to secure to the Provinces autonomy at the earliest possible moment. It has been pointed out by all the Local Governments that it would involve a considerable sacrifice of money if this proposal was accepted. They are all opposed, as far as I can see, to its principle. The High Courts also, as far as I can see have all opposed, with the exception of the Punjab High Court which says that if the fee payable for enrolment by vakils was raised from Rs. 500 to Rs. 1,000, they saw no objection to this Bill. The Civil Procedure Code itself authorises the High Courts to make such alterations as they like in this rule. But when the High Courts themselves are opposed to it, I submit it will be going out of our way to compel them by exercising a superior legislative authority to do that which they do not themselves of their own accord wish to do. That, I submit, is a grave and very serious objection to the principle of this Bill. When the High Courts themselves do not want this rule, we should not force them to make it. Opinion has been received from his (the Mover's) own High Court. All the Honourable Judges have not expressed their opinion, but some of them have, and they seem not to be in favour of this Bill. So far as his own High Court is concerned, therefore, it seems to me that the mover comes to this legislative body to get over the opinion of his own High Court and to compel them to do a thing which they do not themselves want, having regard to their own peculiar conditions. The same argument applies to the other High Courts. I submit to the House that a Bill of this kind should not be at all entertained, especially as there are other methods of effecting the change in the rule if conditions in any particular province require such a change to be made, especially in a case like this, where it also means that the provinces have got to pay for respecting the sentiments of my learned friend a considerable amount of money every year,—it has not been exactly estimated but an amount which will run into a few lakhs. It is imperative on us under these circumstances to reject the Bill, and I hope the House will do so.

Dr. H. S. Gour (Nagpur Division : Non-Muhammadan) : Sir, I really do not know why my learned and Honourable friend has made me a target for his speech, especially as on the last occasion when he addressed this House on the subject I expressed my unqualified sympathy but pointed

out a few legal and technical objections in the interests of the same profession to which I claim to have the honour to belong. He has, however, taken my remarks amiss, but if the Honourable Members will peruse the paper book which has been circulated to them embodying the opinions of the Local Governments and the High Courts they will find that with scarcely one or two exceptions all the High Courts have echoed the very reasons I gave on the floor of this House in opposing his measure and to which they have coupled the very substantial objection, namely, loss of provincial revenue. I should have expected that after perusing those opinions my learned friend will address this House to meet the objections of the various High Courts and the Local Governments. (*Lala Girdharilal Agarwala* : "I have done it".) He ejaculates that he has done so. I leave it to the judgment of this House. I pointed out, Sir, on the last occasion that the object of filing a vakalatnama was not merely to extract a large sum of eight annas or two rupees in the case of a vakil, but also to give him a fair return for the money that he paid into the Imperial Exchequer. He was perfectly sure of the name of the employer, of the name of the employee and of the terms and conditions of his employment, and further he was entitled to file an agreement to participate in the profits of the litigation from which we, members of the English Bar, are unfortunately debarred.

The Honourable Dr. T. B. Sapru (Law Member) : I rise to a point of order. Is my Honourable friend entitled to put an absolutely wrong view of law before the House ?

Dr. H. S. Gour : A view of law, the Honourable Member, must be aware, is a matter of opinion. (Laughter.) If my learned friend had agreed with me he would have said it is the soundest view of law, but, because unfortunately I have the misfortune to differ from him, he thinks my view of the law is wrong, because, forsooth, I oppose the motion which has been brought forward by a member of his Bar and my Bar. Now, to resume my argument, I pointed out on the last occasion weighty objections to the introduction of this measure. I have said and I will repeat it, my friend has said nothing to combat those views beyond saying that the barristers as such enjoy certain privileges from which vakils are debarred. In the first place I question whether the appearance of advocates without the necessity of having to file a vakalatnama is a privilege at all, and if it is a privilege my friend will be well justified in bringing forward another Bill to the effect that barristers also should be compelled to file their vakalatnamas in all courts. The fact that certain persons are treated as an exceptional case is no reason whatever for extending that exception, but for removing it. I therefore submit that not a single reason has been assigned for making this radical change which my friend, the Honourable Mover of this Resolution, calls upon this House to endorse and support. The Honourable the Home Member has given some weighty considerations why the motion before the House should be rejected. My Honourable friend, Munshi Iswar Saran, brought forward a Resolution for the creation of an Indian Bar. I am in full sympathy with that Resolution. The Honourable the Law Member is equally in full sympathy with that Resolution. But, if I am not enunciating a wrong view of law, may I ask the Honourable the Law Member to remember that on occasions like this it is a favourite argument with him that we must not have piecemeal legislation which is highly objectionable and on various

[Dr. H. S. Gour.]

occasions his objection on that score has met with success. I ask him whether that argument is not equally applicable to this measure of partial legislation which will place the whole question of the creation of an Indian Bar in a somewhat difficult position. I therefore ask on the mere ground of public policy that this motion should be rejected till the Legislative Department have formulated their views on Munshi Iswar Saran's Resolution and come to a decision whether the creation of an Indian Bar is necessary or not. Therefore, Sir, both in the interests of the vakils,—as well as in the interests of the public at large, on the ground of economy and out of respect to the provinces who will be mulcted in heavy costs by losing the revenue which they make at present from the vakalatnama fees, as on the ground of broad general policy that the question of the Indian Bar must be discussed and taken as a whole, I entirely oppose this motion.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I had not intended to speak on this motion, but after the speech of Dr. Gour in which he has made so many misstatements, I think it is my duty to come forward and to refute them. Sir, when the Honourable the Law Member rose up in his place and pointed out that he was mistaken in saying that a barrister could not sue, instead of gracefully withdrawing and apologising for the mistake he had committed, he began to ridicule the Honourable the Law Member. If Dr. Gour had the patience to study the Indian Law Reports he would find that on the only occasion when this question was really considered by a High Court, the High Court of Madras gave a ruling that a barrister can sue notwithstanding that he has not filed a vakalatnama. Therefore the argument which has been advanced by Dr. Gour that the vakil is in a better position than the barrister in regard to suing for his fees is altogether unfounded.

Dr. H. S. Gour: I rise to a point of order. I am afraid my learned friend on the other side could not have been listening to me. (*Some Honourable Members*: "Is that a point of order?") A misstatement of fact or a misrepresentation of my speech is a point of order. What I pointed out was that a barrister was not entitled to sue for participation in the profits of the litigation in respect of which the vakil can file an agreement in Court and thereafter be entitled to sue and enforce it. (*Some Honourable Members*: "Cannot.")

Mr. T. V. Seshagiri Ayyar: I think Dr. Gour did not say anything like what he has now stated. As a matter of fact, he said that a barrister cannot sue for his fees and I do not know whether any practitioner is entitled to bring a suit for participating in the profits of a litigation. I do not think any court will allow any practitioner, whether a vakil or a barrister or attorney, to bring a suit to participate in the profits of litigation. It is absurd to hear on the floor of this House that a gentleman who has been practising in courts should seriously put forward a statement that anybody, any legal practitioner can bring a suit for participating in the profits of litigation. (*An Honourable Member*: "Absurd.") Absurd. There is no doubt about that. That is one misstatement which the Honourable Member has made.

Another statement which he permitted himself to make is this. He said that it is desirable that a vakil should know the name of the client

and the nature of the authority and so on. Has Dr. Gour ever practised in the mofussil? Has he ever taken instructions from the parties themselves in the mofussil, as barristers do very often, and does he wish to know the name of the party and all the particulars about him before he appears in a mofussil court? If he does not require it in practising in the mofussil court, why should a vakil be asked to file a vakalatnama which gives the description of the party, the description of his name and the nature of the case? That is another mistake which Dr. Gour made and I hope he will have the grace to withdraw that mistake as well. The real point is this. I had no idea of taking part in this debate. You find the real point in the Civil Procedure Code. You find a particular statement to the effect that certain classes of practitioners are exempted from filing their appearance. Why make this invidious distinction between vakils and barristers? There is a section in the Code which says that particular classes of people alone are not bound to file an appearance. Why make this invidious distinction, especially in these days when a vakil has been permitted by law to become Legal Member, when a vakil can become a judge of the High Court and when a vakil can become Advocate General? Is it desirable that he should be subjected to this invidious distinction of being obliged to file his appearance, whereas a barrister is not obliged to do that? That is really the matter which the House has got to decide. It is on those grounds that my friend put forward this motion. It has been said, Sir, that this would be piecemeal legislation. That legislation has nothing whatever to do with this question. The legislation to which the Honourable the Home Member referred is in regard to the question whether vakils and barristers can form one body of practitioners for the whole of India. You have that privilege in the Dominions where there is only one Bar and I believe the object of the Resolution which my friend Munshi Iswar Saran has brought forward is to adopt legislation which would bring in both vakils and barristers under the same category. That has nothing to do with the filing of the vakalatnama by a vakil and not filing of a vakalatnama by a barrister. Dr. Gour has stated that if the object is to erase the distinction, Mr. Agarwala ought to bring forward a Bill for making barristers pay. I do not know if Dr. Gour's intention is to play into the hands of Government by increasing the revenue for the Government. If he is really so magnanimous as to submit himself to the payment of the vakalat fee, he ought to bring forward this Bill and move that the present motion be adjourned for further consideration. That would be a graceful act on his part. But he does not do it. He would oppose the motion and he would ask my friend to bring forward a Bill. The Honourable the Home Member pointed out that he has not been able to get all the opinions and digest the information which has been supplied and he really wants time to consider this matter. If there is a motion that this matter be adjourned for some time, I shall have no objection, but on the merits I strongly support the motion which has been put forward by my friend, Mr. Agarwala.

Munshi Iswar Saran (Cities of the United Provinces : Non-Muhammadan Urban) : Not having gone to England myself and not having had the good fortune of being called to the English Bar I am

[Munshi Iswar Saran.]

feeling extremely grateful to my Honourable friend, Mr. Ginwala, for having told me and the other Members of this Assembly what is required of a man who wishes to be called to the English Bar. "A few dinners, eat what you like, drink what you like, have a merry time and then come back." If that is all that a barrister is required to do I am very pleased that I am not a barrister.

Mr. K. Ahmed (Rajshahi Division : Muhammadan Rural) : He must pass an examination.

Munshi Iswar Saran : My friend, Mr. Kabeer-ud-din Ahmed, with his usual boisterousness, is interjecting remarks which are most refreshing and I shall only ask him to repeat them loudly for the edification of the other members of the House. Sir, Dr. Gour has been good enough to say that a vakil by virtue of the fact that he files a vakalatnama is entitled to participate in the fruits of the litigation. If that were so, the vakils to-day would have beaten in wealth the merchant class of Bombay. If there is a big case which is won by my client and if because I have filed a vakalat I can sue him in court to get a half or even one-fourth of the fruits of that litigation, I should consider myself to be a happy man. I had imagined that Dr. Gour was a lawyer of eminence but now I find that he is a novelist of great promise. He can draw upon his imagination and he does not pause to consider whether the statements that he makes agree with facts or not. Sir, the real fact of the matter is—and I am sorry to say so—that this question is being looked upon as an issue between vakils on one side and barristers on the other. I regret it. I deplore it. Where, Sir, I ask, will be the force and the sincerity in the argument which is advanced here time and again that India should be autonomous and that you must not compel our boys to go to England for examinations and that you must obliterate all distinction between youngmen who are trained here and youngmen who are trained in England. Our constant endeavour, our perpetual appeal, if I may say so, to the members of the "Steel frame" on that side is to do away with the distinction between the indigenous article and the article imported from foreign countries. I ask these gentlemen, "where is this demand now? Why don't you advocate the removal of all distinction between vakils and barristers?"

I think that there is a great deal of force in what the Honourable the Home Member has said. If the Government has not received the opinions so far.....

The Honourable Sir William Vincent : The Home Department have not received them and the Honourable Members of this House have not also received them.

Munshi Iswar Saran : There is also this further consideration, namely, that the acceptance of the proposal of my learned friend, Mr. Girdharilal Agarwala, would mean some loss of revenue. On these grounds, my Honourable friend would be well justified, like Mr. Pantulu, to ask his motion to be taken up at a subsequent date.

Sir, only one word more. Dr. Gour says, if you have to file a Vakalatnama and if barristers have not to, why not bring in a Bill

so that barristers may also be called upon to file Vakalatnamas. Let me say, Sir, as a very humble Vakil, that it is not in our line to try to level down things ; we want things to be levelled up, and it will be left to barristers of Dr. Gour's mentality to come to this House with a measure asking us to bring down barristers to the level of vakils, while our attempt will be that the position of vakils should be improved, so that in future there may be no distinction between the two branches of the same profession. I shall therefore ask my Honourable friend to move with the leave of the House and with your leave, Sir, that this question may be taken up at a later date, and to accept the suggestion made by my Honourable friend, Mr. Seshagiri Ayyar.

The Honourable Sir William Vincent : May I make a suggestion to the Honourable Mover, Sir ? We seem to be developing a rather unedifying—if I may say so as an outsider—dispute between Barristers and Vakils. There certainly have been some speeches which led me to think that the debate was taking that line. I may be mistaken. But, in fact, what the Assembly are discussing is not the comparative merits of these eminent lawyers, but the question as to whether a Vakil need file a Vakalatnama which shall be stamped. It does seem to me that some Members are carrying the discussion a little outside the Bill. I want however to suggest to the Honourable Mover that he might withdraw this motion, as the question of an Indian Bar will come up for discussion, I think, in connection with a more general Bill of my Honourable friend, Mr. Rangachariar. Am I correct ?

Rao Bahadur T. Rangachariar : Yes, Sir.

The Honourable Sir William Vincent : On that Bill we shall have a much better opportunity of discussing this question. I hope he will accept the suggestion.

Lala Girdharilal Agarwala : In view of the assurance of the Honourable the Home Member, I am prepared to have this matter put off.

The Honourable Sir William Vincent : I have not given any assurance whatever ; I was not bargaining with my Honourable friend across the floor. I suggested to the Honourable Mover that in view of the fact that Mr. Rangachariar is to introduce a Bill or has given notice of a Bill, he should withdraw the precept motion.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions : Non-Muhammadan Rural) : Sir, I should like the Honourable Mover to withdraw this Bill. I will only mention certain facts with regard to certain statements that have been made. I am in this happy position that I have not got to take any sides in this question. I am not interested in the Vakils' profession, and although nominally I am a barrister, I do not advocate their cause. I shall be very glad to see the Vakils enrolled as advocates. It is not a question of levelling down anybody or levelling up anybody. The barristers practise in the High Courts not *qua* barristers but as advocates, as advocates of the High Court, and the practice which is followed in this country and also all through the Dominions of the British Empire is that a High Court is charged with the duty of saying who shall be enrolled as an advocate and who shall not. An advocate has got to do certain duties ; a Vakil has to do certain other duties ; a solicitor has to do a different kind of duties.

[Mr. J. Chaudhuri.]

Now the Judges designate these different kinds of practitioners and enrol them as such. I of course would object to their duties being divided on hard and fast lines. A Vakil of experience may be enrolled as an Advocate, and I would go further and say that I do not object to a merger of the professions. But that is not the question here. The question here is that in every suit there should be somebody made responsible for the conduct of the suit. The Calcutta practice is that on the Original Side an attorney or the solicitor is made responsible for it,—the barrister is not at all responsible. He goes there and puts the case to the Judges according to the instructions he receives from the solicitor ; he is not at all responsible to the Court for the statements or the conduct of the case. Similarly on the Appellate Side of the Court a Barrister is instructed by a Vakil. The Court has to look to somebody who is in charge of the case. If there is any irregularity, then somebody must be made responsible for such irregularity or for the proper conduct of the case. Now, therefore, there should be some person in the record who should be made responsible for the conduct of the case, and that is why Vakalatnamas are filed, and warrants are filed by the attorneys. So long as the practice remains as it is in the Calcutta High Court, which is the same as obtains in England, that an advocate only pleads and does not act in the case, the Court should have on record somebody who acts in the case. If that is so, then it is necessary that there should be a document to show that such and such a person is responsible for the conduct of the case or for acting in the case. The practice may be different in Allahabad or in the Central Provinces. There the advocates may have to file their memorandum of appearance ; but the practice in Bengal is altogether different ; in the Calcutta High Court the barrister has to do nothing of the kind and the person instructing him has to do it and is held responsible for the case. Now that is the reason why I say that, having regard to the diversity of practice that obtains in the different Presidencies, the learned mover, with whose object I have very deep sympathy, would do well to put off this Bill for the present.

With regard to one statement which I am asked to correct by my Honourable friend, Dr. Gour,—the statement that he made that a Vakil, a pleader, is entitled to sue, I may say there was a misapprehension on both sides. Section 28 of the Legal Practitioners Act says that a pleader who acts in the case can sue for his fee and sue for his expenses.

(An Honourable Member : “ That is what I say.”)

Mr. J. Chaudhuri : My Honourable friend went a little further and said he can enter into an agreement with the parties for sharing in the profits of litigation. That would amount to unprofessional conduct, and there is no law which warrants such a course. So there was a mistake, an error on both sides, and I would ask my Honourable friend the Honourable Lala Girdharilal to withdraw the Bill for the present.

Lala Girdharilal Agarwala : Sir, in view of the opinion of my learned friend, Mr. Chaudhuri, I am prepared to withdraw this for the present, with the leave of the House.

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

THE CIVIL MARRIAGE (AMENDMENT) BILL.

Mr. President : Dr. Gour.

Rao Bahadur T. Rangachariar (Madras City ! Non-Muhammadan Urban) : On a point of order, Sir. My Honourable friend, Sir, is bringing in a motion* which was once rejected by the House on the merits after full discussion only in January last. I do not know, Sir, if an Honourable Member is entitled to bring up a motion over and over again at his choice.

I see, Sir, that the rules are rather deficient in this respect. Paragraph 38 states :
12 noon.

“ When a Bill is introduced, or on some subsequent occasion, the Member in charge may make one of the following motions in regard to his Bill, namely :

- (a) that it be taken into consideration either at once or at some future day, or
- (b) to refer to a Select Committee, or
- (c) to circulate it, etc.”

My Honourable friend having introduced the Bill made the motion under clause (b) of Paragraph 58 last January, and it was rejected by this House. Again, Sir, I draw your attention to the Proviso :

“ Provided that no such motion shall be made until after copies of the Bill have been made available for the use of Members, and that any Member may object to any such motion being made unless copies of the Bill have been made available for three days before the day on which the motion is made.”

It contemplates a cese, Sir, where there is only one motion like that to be made, and that motion having been made, I submit he is not entitled to make the same motion over again. At this rate there is no limit to my Honourable friend bringing up this motion a dozen times. If he can do so a second time, there is nothing to prevent him doing it a dozen times. Also Paragraph 80-A states :

“ On the termination of a Session, Bills which have been introduced shall be carried over to the pending list of business of the next Session :

“ Provided that, if the Member in charge of the Bill makes no motion in regard to the same during two complete Sessions the Bill shall lapse.”

Here, he having made a motion contemplated in Paragraph 68, and that motion having failed, in the absence of a positive rule allowing the motion to be brought again, I submit, Sir, that he is not entitled to bring up the same subject again for discussion.

Mr. President : The Honourable Member seems to have forgotten that we are now in a new Session, and that therefore the Honourable Member from the Central Provinces is entitled to move the motion which was defeated in Delhi last February.

Dr. H. S. Gour (Nagpur Division : Non-Muhammadan) : Sir, I move that :

“ The Bill further to amend Act III of 1872 be referred to a Select Committee consisting of Mr. J. Chaudhuri, Mr. Samarth, Rao Bahadur T. Rangachariar, Munshi

* Motion on paper :

“ That the Bill further to amend Act III of 1872 be referred to a Select Committee.”

[Dr. H. S. Gour.]

Iswar Saran, Chaudhri Shahab-ud-Din, Rai Bahadur S. P. Bajpai, Mr. N. M. Joshi, Colonel Gidney and myself."

and I should like to add the name of Mr. Jamnadas Dwarkadas.

Sir, in moving for the committal of my Bill to a Select Committee I need not reiterate what I said on the last occasion. The matter has now been sufficiently threshed out; the opinions of the Local Governments have been collected, and, judging from the tone of the debate on the last occasion and from the opinions collected from the various Local Governments and High Courts, I find that the supporters and opponents of the Bill might be divided into three classes. We have a body of opinion which is entirely in support of the Bill. We have a second class of opinion in which, while the principle of the Bill is not objected to, certain qualifications and limitations are suggested as necessary. The third group of critics are, I am afraid, uncompromisingly hostile to the Bill.

Now, I wish to take an intermediate course. Honourable Members will remember that when I moved a similar motion on the last occasion, I pointed out to the House that I was prepared that the Bill should be committed to the Select Committee who should be empowered to take into consideration the following five points. The first was the question of collateral succession; the second was the question of adoption; third, the right of residence in the family dwelling house; fourth, the question relating to religious endowment; and lastly, a clause which I was anxious to insert in the interests of my Muhammadan brethren and on which I then spoke as follows:

"As regards my Muhammadan friends I can assure them that if, after the report of the Select Committee, the bulk of the Muhammadan opinion in the country is hostile to inter-marriages between Muhammadans and non-Muhammadans, I am prepared to cut out the term 'Muhammadan' from that Bill and leave the Muhammadans alone."

So that these are the conditions which I still reiterate, and subject to which I beg the House to let me commit my Bill to the Select Committee.

I do not wish, Sir, to take up the time of the House by any longer discussion of the principles. I have no doubt that the House will give me the permission I crave its leave for.

I have only to add that I drew up the names of the members of the Select Committee in somewhat of a hurry. If any Honourable Member desires to serve on the Select Committee I should be most happy to include his name; or if any Honourable Members will suggest the inclusion of other names, I shall be very pleased indeed to add their names. I think I have omitted to mention Mr. Seshagiri Ayyar's name, though it is on my paper, and I would like to add Mr. Darcy Lindsay's name if he will permit me to do so.

Mr. President: The question is:

"That the Bill further to amend Act III of 1872 be referred to a Select Committee consisting of Mr. J. Chaudhuri, Mr. Samarth, Rao Bahadur T. Ranga-chariar, Munshi Iswar Saran, Chaudhri Shahab-ud-Din, Rai Bahadur S. P. Bajpai, Mr. N. M. Joshi, Mr. Jamnadas Dwarkadas, Colonel Gidney and Dr. H. S. Gour."

Dr. H. S. Gour : I have to add the following names. Of course the Law Member is entitled to sit in the Select Committee, because it is a Bill.

The Honourable Sir William Vincent (Home Member) : And the Home Member ?

Dr. H. S. Gour : Yes, and the Home Member certainly. I regard it as a privilege that the Home Member offers to serve on the Committee. I have to add the names of Mr. Seshagiri Ayyar, Mr. Darcy Lindsay and Mr. Latthe.

Mr. K. Ahmed (Rajshahi Division : Muhammadan Rural) : I suggest that the name of Khan Bahadur Sarfaraz Hussain Khan be added.

Mr. President : The question is :

“ That the Bill further to amend Act III of 1872 be referred to a Select Committee consisting of Mr. J. Chaudhuri, Mr. Samarth, Rao Bahadur T. Rangachariar, Munshi Iawar Saran, Chaudhri Shahab-ud-Din, Rai Bahadur S. P. Bajpai, Mr. N. M. Joshi, Mr. Jamnadas Dwarkadas, Mr. Seshagiri Ayyar, Mr. Darcy Lindsay, Mr. Latthe, Lieutenant-Colonel Gidney and Dr. Gour.”

The Honourable Sir William Vincent : Sir, the point of order which was raised by Mr. Rangachariar had already been carefully considered by us before this motion was put into the list. We saw no reason whatever to object to it on that ground. I think I ought to make that clear. As to the merits of the motion, the attitude of the Government on this Bill was fully explained, I think on the 17th of January last when a similar motion was before this House in Delhi, but I will repeat it for the information of those who were not in the Assembly at the time. Official Members of this House other than Members of the Executive Council will speak and vote as they like. Members of Council will remain neutral.

Dr. H. S. Gour : But not hostile.

The Honourable Sir William Vincent : I am never hostile to the Honourable Member. But, I think, the House will admit that the Government cannot be too careful on a Bill of this kind which really affects Hindu society more than it does Government and I am sure that the attitude taken by them will be approved, although individual members may feel strongly on the Bill brought forward by my Honourable friend. There is one further point to which I want to draw attention, and that is that this Bill was debated at very great length in the last Session. The effect of a prolonged debate again to-day will be to deprive other Honourable Members of an opportunity of bringing forward a number of important Bills which are before the House. I am sure that Dr. Gour had that consideration before him when he spoke on the measure so briefly, and I will endeavour to emulate his example and not take the time of this House, because I am very anxious—and other Members are anxious—that we should get on with the other Bills which are before the House.

Mr. W. M. Hussanally (Sind : Muhammadan Rural) : Sir, I rise to oppose this motion. This is a matter, Sir, which was very carefully threshed out at the last Session and was thrown out, and as a Muhammadan I am bound to oppose it once more. But before I do so, I might say that my friend, Dr. Gour, has repeatedly asked me not to oppose this

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motion and I have distinctly told him that my conscience does not permit me to do so. This motion, Sir, affects Muhammadans very prejudicially, and in the face of the fact that there is a very slender Muhammadan opinion in favour of the Bill, I do not think this Legislature would be in order to force upon the Muhammadans of India a law which they cannot view with any favour. According to our religion we are bound by the laws of the Koran, and as I remember my friend, Haji Wajihuddin, who unfortunately is not present here to-day, brought forward quotations from the Koran at the last Session to show that we are bound only to marry from among what we call '*Ahali Kitab*.' We can then only marry a Muhammadan, a Christian or a Jew. Beyond those religions we cannot go. That being so, I beg of this Assembly not to force this law upon the masses of the Muhammadans of India, as they cannot view it with any favour at all. Not only that, but I must warn this Assembly that if they pass this law, so far as the Muhammadans of India are concerned, they will favour riots, quarrels and disputes, which surely this Assembly ought to avoid as much as possible. No Muhammadan who respects the Koran, and who considers himself bound by the terms of the Koran, can view this piece of legislation with any complacency. I do not think that if one gentleman or two or three or half a dozen Muhammadan gentlemen are in favour of such a piece of legislation, this Assembly would be justified in forcing it upon the masses of the country who do not want it. What efforts have been made by the authorities to obtain the opinion of the masses of the Muhammadans of India? Absolutely none. So far as the Select Committee proposed by my friend, Dr. Gour, is concerned, I see that he has only selected two gentlemen from amongst our community, and if I remember aright, both these gentlemen spoke in favour of this measure on the last occasion. He has particularly avoided taking any Member from the Mussalman community into the Select Committee who opposed the measure. Unless Dr. Gour can take us off from this Bill, we, Mussalmans of India, are bound to oppose it, as we don't want any change in our law, nor have we asked for it. So far as I can see this legislation is not favoured even by the Hindu community as a whole, but only by a few who unfortunately have contracted mixed marriages outside their caste and religion and by no one else. I hope, Sir, that under the circumstances the motion will not be passed by this Assembly.

Mr. J. N. Mukherjee (Calcutta Suburbs : Non-Muhammadan Urban) : Sir, I spoke with a certain amount of feeling on the last occasion in January of this year when the Bill came up for discussion. I and perhaps those who are of my way of thinking, and those who take any interest in the progress of legislation in this country, thought that, so far as the life of the present House is concerned, the matter had been discussed on its merits and the House had come to a definite opinion, and it was a surprise to us that the same Bill should at a very, very short notice be placed on the agenda. If the country roused itself on the last occasion and expressed its feelings and if by reason of the present ruling all that counts for nothing and the opinion which the House formed then counts for nothing, I think the country is entitled to express its opinion as emphatically as it did on the last occasion. So far as the country is concerned, the Bill was a dead

Bill, and I for one never dreamt that in this short Session this very important matter, which affects the country at large, would be brought up in the way in which it has been. The country does not know what decision the Government formed before it allowed this Bill to be placed on the List of Business and that the Bill is still alive. If it is a new Session of course the proceedings must be started anew.

However, I say this much with reference to the Bill itself as it is now on the records. We are therefore, Sir, in this position. We are told that we must not go into details over this Bill, as the matter was threshed out in the January Session. There are new Members present here who did not have the opportunity of hearing the discussion on this Bill. We must take it that they are thoroughly cognisant of the pros and cons of this Bill, and, in spite of that fact, we must take the Bill as though it has been introduced once and not as freshly introduced at this Session.

However, Sir, I labour under the same difficulty as my Honourable friend, Mr. Hussanally. I stand here to represent a certain class of the Hindu community—I mean the orthodox class, and it stands to reason that I should lay down emphatically the views of the orthodox community. If I am forbidden to raise the very same questions which were raised on the last occasion, I must simply say that the views are there. It simply affects, as has been said by my Honourable friend, Mr. Hussanally, a very small class. Their liberty is not affected at all by the Act as it stands now—I mean Act III of 1872. That Act allows them to marry just as they like, only they have got to say that they do not belong either to one community or the other—that is to say, they are neither Hindus, Sikhs, Jains nor Parsis. I am quoting from memory. That is all that the law requires.

Now, there cannot be a shadow of doubt that this class of people who want to marry under this Act, III of 1872, have very small regard for the tenets, the special rules and customs of their religion. That being so, the attempt that is now made is that not only do they want to give up all allegiance to their own special tenets and religious rules and customs, but forcibly to bring themselves within the pale of one community or other. If you don't believe in the tenets of a certain religion, why try to force those who do believe in the tenets of that religion to accept you as one of themselves. Here the arbitrariness is not on the side of the people who stick to their own tenets but the arbitrariness is on the part of those people who try to force themselves within the pale of that community.

Therefore, Sir, from all possible points of view, this is a Bill which, affecting as it does the community as a whole, should not be allowed to be discussed on the assumption that the House has accepted the principle of the Bill. If the effect of the Bill were confined within the four corners of the community which wishes to take advantage of the provisions of Act III of 1872, the position would be understood; but this is a small community and with them they take others who are indifferent to these special rules of the Hindus, Jains and Parsis. Sir Jamsetjee Jejeebhoy, who was present on the last occasion, also entered his protest against the Bill because it interferes with the Parsi Marriage Laws. There are members of the Christian community here and it is for them to take this matter into consideration. But so far as my Muhammadan friends are concerned, and so

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far as I myself am concerned, I say here is an attempt on the part of a small class of people to force their opinion upon the others—the great majority—who stick to certain tenets of their own, and to force them to change their social practices, customs and rules. This is really the effect of the Bill. Therefore, Sir, if we allow this Bill to go to Select Committee, we, according to the ruling of the Chair, accept the principle of the Bill. It is only on questions of small detail that the Select Committee will be at liberty to act. Then, Sir, further questions will arise. Will the Select Committee be able to go into those questions of Hindu law, Muhammadan law, Parsi law, or any other law, without consulting the opinion of the communities concerned on those important matters. Of course, as the Chair ruled on one occasion previously, this Assembly has got the power to throw out a Bill at the final stage, as otherwise, to quote the words of the Honourable Speaker, there would be no meaning in the third reading of the Bill. I allow that, but it must be conceded that the position, so far as the present Bill is concerned, is far more complicated, and the difficulties in the way of those who wish to stick to their own tenets will be enhanced considerably, and the result will be that this Assembly which has been convened from all sections of the community for the purpose of coming to a decision on matters of practical administration and of political life, will be called upon to decide questions which affect special communities in a very, very special way.

Now is the Assembly prepared at this stage of their existence to take upon itself the responsibility of deciding such a question as this? No doubt things will change in the future. The country may become homogeneous. Opinion may be more consolidated. The differences between various sections of the community may be eliminated as far as possible, and it may be possible to come to a decision on social questions like the present. But I have great fears that at the present stage, and in the present condition of India, this Bill will again throw the whole country into tumult, and I am inclined to agree with my Honourable friend, Mr. Hussanally, that, for rest and peace, we shall introduce quarrels and disaffection. Not only the Government but this Assembly itself will be discredited in the eyes of the great mass of the people. Sir, that is a question which we ought to take seriously into consideration. New Members will for the first time have to form an opinion on a question like this; but the older Members who have already voted on this Bill will have very little reason to change their opinion. For the sake of those new Members, I just raise this question before them,—that we here represent different communities. My Christian colleagues here, for instance, will probably not like Hindus to legislate upon their tenets and customs or to change their laws. In a mixed Assembly like this we should have the good sense, the intelligence, the solicitude for the feelings of others, to desist from a step of this kind which really serves no useful purpose at all except that it goes to soften feeling in certain quarters, quarters which are confined within very narrow limits now.

Therefore, Sir, I have no hesitation in believing that the House will exercise their common-sense and will not throw the country again into disruption and dissension and discontent.

Mr. Biswa Nath Misra (Orissa Division : Non-Muhammadan) : Sir, I wish to be enlightened on some points, but I believe there is a great misapprehension amongst the Muhammadan as well as the Hindu Members present in this House. I believe many Muhammadan members think that if this Bill were passed there will be marriages between Hindus and Muhammadans which the Muhammadan religion does not allow ; and others perhaps think that there will be marriages between Christian and Muhammadan, and Hindu and Christian and so on. I do not think that is what is aimed at, because the Statement of Objects and Reasons itself uses the expression " A civil marriage law, without reference to race, religion or social distinction ", so that I do not think that any religious principles are involved at all in this kind of marriage. I think a Hindu can marry a Hindu under this Civil Marriage Act. Ordinarily of course Hindus are required to perform their marriages according to Hindu rites ; they have to call the priest, they have to spend so much money on the marriage occasion and they have to feed so many people ; they have to pay so much dowry and do this and that. We have heard of all these evils ; at any rate these marriages are so very costly that sometimes many do not marry. I have known many instances of families of Rajas where, owing to the prohibitive expenses, many girls and daughters have remained unmarried ; we have heard of instances in Bengal of several girls committing suicide by burning themselves with kerosine oil because their parents were not able to pay the dowry demanded by the husband or bridegroom. I think if this Bill is passed into law it will enable the contracting parties to contract marriages under this Act without making any declaration. The Act of 1872 made it compulsory that the contracting parties should make a declaration that they are not Hindus, Muhammadans, Jains, Buddhists and so on ; under that Act these declarations were necessary. Even a Brahmin who wanted to marry a Brahmin girl must go to a priest to get the marriage performed. Now, if this Bill is passed into law a Brahmin can marry a Brahmin girl without undergoing all those ceremonies and formalities that are required now according to the Hindu rites, and the marriage will be a valid one. This is not of course compulsory ; it will not make every Hindu go and make a declaration when he wishes to marry a Hindu girl, or a Muhammadan when he wishes to marry a Muhammadan ; it will simply enable those who are willing to contract a marriage in this form to do so without undergoing a prohibitive cost ; for instance a Muhammadan must have a Kazi and must perform the marriage in the presence of their vakils and so on, and they have to pay so much dowry to the girl ; there may be persons who might wish to get the marriage performed without paying the dowry to the girl and the girl might be willing ; but according to the Muhammadan form of marriage dowry must be paid, either a prompt dowry or a deferred dowry. I think, therefore, if some Hindus are really sincere in wishing to perform marriages, they may, by allowing this Bill to be passed, avoid those pernicious customs which really tell very heavily against those who perform marriages in the present state of Hindu and Muhammadan society ; so that I do not think there is room for any misapprehension on the part of Hindu or Muhammadan members, that, if this law were passed, Muhammadans might not like it and there might be riots and so on. A Muhammadan can marry a Muhammadan girl under this Act without in any way affecting the religious feelings or the religion of Muhammadans. I see no reason at all for any such misapprehension. I do not see any reason

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either why it should affect the Hindus. A Brahmin can marry a Brahmin girl under this Act and I do not think that it affects the Hindu religion in the least. On the other hand I think that if this Bill were passed it would be pleasing and welcome to many. The Bill is not compulsory ; it is simply permissive. Those who wish to contract marriages under this Act will have some relief.

I need not make a long speech at this stage, but I wish to do away with misapprehensions that may exist in the minds of members ; because I think Dr. Gour really intends that a Hindu should marry a Hindu girl and a Muhammadan should marry a Muhammadan girl in this form and I do not think therefore there should be any objection to it and I hope the House will approve of it.

Maulvi Miyan Asjadullah (Bhagalpore Division : Muhammadan) : (The Honourable Member spoke in the Vernacular*).

Mr. Khagendra Nath Mitra (Bengal : Nominated Official) : Sir, I rise to oppose this motion, though my remarks, unlike those of the previous speaker, will be very brief. In January last Dr. Gour's Bill was defeated and the country breathed a sigh of relief. The motion was for all intents and purposes dead, but Dr. Gour does not seem to be in a hurry to bury it.

Sir, I do not know how many times he will be allowed to make his Bruce-like attempts, but I think that the House will reject this motion. When he brought it forward this time again, I thought that he had assurance of support from those Honourable Members who opposed it on the last occasion, but I find that the volume of opposition this time is no less.

(A Voice : " Wait and see.")

My Honourable friend, Mr. Iswar Saran, characterised Dr. Gour as a novelist of great promise. I think I have some little experience in that line and I can say with confidence that the novelists of this country will bless Dr. Gour for bringing forward the motion. If love marriages are freely allowed and if people are free to contract marriages just as they like, then the task of the novelists in this country will be very easy indeed.

But, Sir, coming to the point, what is he drawing upon ? He says in the Statement of Objects and Reasons that there is a Civil Marriage law in Europe. Is it imitation—and imitation not of a very enlightened kind either—that prompts him to bring forward this measure against the consensus of opinion expressed in the press and on the platform ? Sir, had it been a constitutional measure, I, as a layman, would have refrained from saying anything about it. But, behind this measure which he seeks to introduce, there is the larger question of social reform. Dr. Gour may be an eminent lawyer—he may be a great legislator—for ought I know—but he has still to produce his credentials if he wants to pose as a social reformer. He has no qualifications, so far as I know, to sympathise with the Hindu point of view, or to sympathise with the Muhammadan point of view,—which alone can entitle him to propose a reform of this far-reaching kind. The Muhammadans are opposed to it : the Hindus are opposed to it ; but still he persists in bringing forward this Civil Marriage Bill.

* The original speech together with an English translation will be printed in a later issue of these Debates.

Sir, I venture to think that social reform is very good but it can only be practical when the masses can be made to move forward with the spirit of the reform that you seek to introduce.

In the present case, the masses are not enlightened enough to move forward with the spirit of the Bill and so, I suppose, his appeal to the growing spirit of the sentiment of nationality in India is bound to prove futile. Undoubtedly, the spirit of nationalism is growing in India, but in what direction? Not in the direction of scattering the religious beliefs of the people to the winds but in the direction of awakening our self-consciousness—the self-consciousness of every individual community in this country. And I do not think that it would be prudent by any legislation of this kind to break the barriers that separate the communities of India on religious grounds because the religious traditions—the religious instincts, the social customs are the bed-rock on which the social life of the people rests and to seek to do violence to that will be to go against the spirit of nationalism which is gradually but steadily growing in this country.

With these words, Sir, I beg to oppose the motion.

Mr. A. C. Chatterjee (Industries Secretary) : Sir, I crave the indulgence of the House for intervening in this debate. I do so because, Sir, I feel that the Honourable Member, in introducing the Bill, has particular reference to persons situated as I am and I think that the House should have some knowledge of the difficulties that are placed in the way of people situated like myself or my family and children by the existing law.

Sir, my Honourable friend, Mr. Mukherjee and my Honourable friend, Mr. Mitra, belong to the same community as myself. But, simply because I do not see eye to eye with them on every point of ritual or about dogmatic belief, is it right, is it proper that I should be compelled, or my children should be compelled, to say or to declare on solemn affirmation that they are not Hindus? I think, Sir, the Honourable Mr. Mukherjee has painted quite a wrong picture of the whole situation. I am not trying to interfere with his tenets. He is, on the other hand, trying to interfere with my beliefs. Sir, is it right that he should force me to declare that I am not a Hindu, when I do not think that Mr. Mukherjee or any lawyer or any learned man can point to anything in the Hindu Shastras which declares that I must marry my children or that I must marry myself exactly according to the ritual or according to the caste rules that have become the custom of the country?

Sir, Dissenters in every part of the world have been given by now a certain amount of latitude in these respects. The Christian community do not call the Protestants or the Seventh Day Adventists non-Christians because they do not believe in every little doctrine that the original Christians believed in. The Mussalmans do not call the Wahabis non-Mussalmans because they differ to a certain extent from the accepted doctrines of their two great communities—Shiahs and Sunnis. Why should it be absolutely necessary for me to go and declare myself a non-Hindu if I do not want to follow exactly the same procedure that Mr. Mukherjee does or that Mr. Mitra does?

Sir, Mr. Mitra considers that Dr. Gour is not a social reformer. I think that Dr. Gour is a social reformer because he has had the boldness

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and courage to try and ameliorate the difficulties under which people like myself suffer. I do not, Sir, see eye to eye with Mr. Mitra on many social customs. A great many things that he has done or he probably does, I would condemn and abhor. That is no reason, Sir, why I should compel Mr. Mitra to follow exactly my ideas and customs in every matter. There is no reason why Mr. Mitra should try to force his ideas on me. I think, Sir, the real point is whether people in this country should have a certain amount of liberty in these days. As a matter of fact, if my daughter or my son wanted to marry not exactly according to the caste rules, but to a certain extent departing from the same, he or she can easily go to England and do the same and the marriage would be considered legal in this country. (*A Voice* : "Baroda.") Why should we be forced to leave our own country for a purpose like this ? Again, I repeat, why should I be compelled to declare that I am not a Hindu ? It really does a great deal of injustice to me. I think no one is justified in putting such pressure on any one in these days.

Sir, we are very anxious to be considered a nation. We are very anxious to be considered as being in the van-guard of civilisation. But, when it comes to giving small liberties like this to the individual, we put all kinds of obstacles in the way. A country does not rise merely by political progress. A country rises by giving liberty to the individual, by social progress, by material progress, by industrial progress. I have given the matter very careful consideration. I do not think that this measure will do the slightest harm to the orthodox Hindu community. Mr. Mukherjee refuses to dine with me now. He will continue to refuse to dine with me even after the Bill is passed. But there are hundreds of others who would like me to declare that I am a Hindu, would like me to continue to be a Hindu ; they would be hurt if I was to declare that I was not a Hindu.

I think, Sir, in justice to people like myself, to the younger generation who are not trammelled by the considerations which bind down people like Mr. Mitra, in justice to future generations, in justice to the growing nationhood of this country, this Bill should be allowed to go through.

Mr. Jamnadas Dwarkadas (Bombay City : Non-Muhammadan

1 P.M.

Urban) : Sir, I cannot allow myself merely to accord a silent support to the motion introduced by my Honourable friend, Dr. Gour. My Honourable friend, Mr. Mitra, asked if Dr. Gour had any credentials of being a social reformer. What greater credentials do you want than to have the boldness to introduce such a legislation of social reform ? I think Dr. Gour has established his credentials as a social reformer by introducing this measure. Now, Sir, it would appear from the horrid pictures that have been painted by my Honourable friends here that if this legislation was sanctioned by this country, the country would be in a very hopeless condition and that there would be riots and uproars and that the Government of the country might find itself in difficulties. Why should that result ever accrue if

this legislation was sanctioned? I want to ask my Honourable friends who have suggested that these results will come about whether the legislation that Dr. Gour suggests, is sanctioned, is going to compel any one of those members of the orthodox communities to whom they refer to enter into marriage by taking advantage of this Act. It does not interfere with their liberties, but it does safeguard the interests of those who in obedience to the voice of their conscience cannot denounce their faith and yet would like to marry persons whom the custom of the country at present do not permit them to marry. Take an instance. Castes as at present existing have never been, I think, sanctioned by religion. According to Manu, only four castes originally existed. These castes have now divided themselves into various sub-castes and again sub-castes, and the custom as at present prevailing prevents a man belonging to one caste from marrying a person belonging to another caste unless he takes advantage of the Civil Marriage Act and says that he is not a Hindu. What would be the result if a Kshatriya for instance wanted to marry a Brahmin girl? Although they are Hindus, both of them would have solemnly to affirm that they are prepared to renounce Hinduism. Is that right? Is that justice? Is it a thing which any decent society ought to countenance? Although I am a Hindu, if I want to marry a Hindu girl who does not belong to my caste, both of us cannot do that until we denounce our faith which we cannot in all conscience do. So, Sir, I support this motion of Dr. Gour on the highest ground of liberty of conscience, which I think is greater than any other consideration that can ever exist. I may be socially ostracised by the whole of my community, but I do not think that if I do not agree with the customs of the country, I should be called upon to renounce my faith and should go and tell a lie solemnly affirming on oath that I do not believe in Hinduism while my faith in Hinduism is as strong, if not stronger than that of those who pretend to belong to the orthodox community. I think it is an injustice which no country which aims at progress can countenance for a minute. It is an injustice which no country except one which is in a very primitive stage can even for a moment recognise. Therefore, Sir, I think we shall all be doing our duty not only to future generations, not only to the cause of nationhood, but to the one fundamental consideration, the consideration of the liberty of conscience, if we sanction the legislation demanded by Dr. Gour. I have therefore great pleasure in supporting Dr. Gour's motion.

Chaudhri Shahab-ud-Din (East Central Punjab : Muhammadan) : Sir, the critics of Muhammadan law have always levelled this criticism against that law that while the world is progressing, Muhammadan law is stationary. The criticism, I must admit, is very well-founded. Muhammadan law is stationary indeed in the sense that mainly it is not man-made law. It is God-made law, and as such can be changed by God himself, man cannot change it. The institution of marriage according to Muhammadan law is regulated by the Koran. No man-made legislation can change it. The proposed piece of legislation clearly intends to over-ride the Koranic injunction, as I will presently point out. The last speaker has tried to emphasise the fact that no one is forced to marry according to the proposed law if it is passed finally. True. Ostensibly it is so. But let us read between the lines and interpret the

[Chaudhri Shahab-ud-Din.]

proposed legislation and see what its effect in practice would be. The fourth clause says :

"In the Second Schedule to the said Act for the words 'I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion' where they occur in both places, the following words shall be substituted, namely : 'I intend marriage under the provisions of the Civil Marriage Act'."

One thing is quite clear, and that is, that under the law as it stands at present, one who wants to marry in accordance with the provisions of Act III of 1872, has to declare that he is not a Muhammadan or Hindu, etc. But the proposed legislation prescribes that he will have to say simply : "I intend marriage under the provisions of the Civil Marriage Act." That would mean that a Muhammadan without renouncing his own religion will be at liberty under this law to marry any woman he likes. I think that would be a very very serious trespass upon the Koranic text of the Muhammadan law and, therefore, no legislation should be attempted in that direction. As regards the question whether the Muhammadan law is really so fixed and conservative, I think there can be no two opinions. I am not a preacher of religion, nor do I pretend or profess to be a theologian ; yet I know this common place principle of Muhammadan law that a Mussalman husband can marry only a Mussalman, a Christian or a Jew. Restrictions are indeed so severe that it is doubted by some people whether Shias and Sunnis can intermarry. I shall have no quarrel with any one who wants to take advantage of this legislation. He can renounce his own religion and then marry under this law ; or he might embrace another religion which is open to every one.

Religion depends upon belief or acceptance. It is open to Mr. Dwarkadas to renounce his religion in the way he likes (Hear, hear), and it is open to me to renounce my religion any moment I like, and then I shall be at liberty to contract a marriage according to this law or according to the law of the religion which I may embrace. But so long as I profess to be a Muhammadan, surely the Indian Legislature should not directly or indirectly commit, I should say, a trespass upon my religious principles. Therefore, unless Dr. Gour expressly excludes Muhammadans from the operation of the proposed legislation, surely no Muhammadan in India professing to be a Muhammadan can lend his support to this piece of legislation. (Hear, hear.) As regards the accusation that Khan Bahadur Sarfaraz Hussain Khan had supported this piece of legislation on the last occasion in January 1922, I think he did not. He used rather loose language in supporting the Bill, still he clearly stated that as a religious man he could not support it. He concluded his speech by saying :

"I do not, therefore, from a purely Muhammadan religious point of view, see how these marriages can be allowed as contemplated in the Bill."

Surely he did not support the Bill ; and the only other Member who spoke on the Bill was Haji Wajihuddin. Only two Muhammadan members spoke. One, of course, supported the Bill only from the secular point of view, but in the same breath proceeded to say that from the religious point of view he was unable to support it. The other very strenuously and strongly opposed the Bill. So, I should be very clearly understood on this point and there should be no misapprehension, that

so far as the Mussalmans of India are concerned, if this piece of legislation is passed into law as it stands, that would be a serious encroachment upon our religious principles, and, therefore, not only members of this House but also the Government, according to the pledges and principles on which the British Government exists in India, should refrain from supporting it. With these words I oppose the Bill as it stands.

Mr. P. P. Ginzala (Burma : Non-European) : I move that the question be now put.

Dr. H. S. Gour : I do not propose to take many minutes in my reply. So far as my Muhammadan friends are concerned, I may point out to them that if they desired, I could have cut out the word "Muhammadan" from the Bill, but I am precluded from doing so at this stage. (*Chaudhri Shahab-ud-Din* : "That would not meet our requirements.") If the Select Committee finds that the consensus of Muhammadan opinion is against the Bill I am most anxious to meet their wishes. As regards the other opponents of the Bill I do not wish, Sir, to reply to my orthodox friends, Mr. Mukherjee, and Mr. Mitra, because I think my friend, Mr. Chatterjee, has amply replied to their objections. I may point out to my Honourable friends who may have any misgivings on the subject that the Bill is a purely optional Bill. Nobody is bound to marry under the Bill when it is passed into law unless he likes. As my Honourable friend, Mr. Jannadas Dwarkadas, has summed up the case in one word, it ensures liberty of conscience. Marriages under Act III of 1872 do take place. Yet in 1911 when a question on that point was put to the Government, the Government said that something like 1,100 and odd marriages had taken place under Act III of 1872. But that Act provides that any person marrying thereunder shall have to sign a declaration and that declaration, I fear, is signed by many members under a mental reservation. What I wish Honourable Members to realise is, as my friend Mr. Wali Muhammad Hussanally pointed out, there is a small community which desires that there must be a measure. Can my Honourable friends deny the small communities the rights and privileges which they claim? This House is not merely to legislate for themselves but also to look after the interests of small minorities, small communities and it is on that ground, if on no higher ground, that I ask you to support this motion. I have already pointed out, and I think it is supererogatory on my part to repeat it, that I am anxious that all points of view should be represented in the Select Committee, that any changes suggested or proposed shall be considered by the Select Committee. I do not wish that the Select Committee should be a packed body as representative of any one view. My Honourable friend, Mr. Wali Muhammad Hussanally, says that I asked him not to oppose the measure. That is only a half statement. I coupled that statement by saying that "if you have any opposition to offer, come into the Select Committee and be a member thereof and we shall most anxiously listen to you and if it is possible, accommodate ourselves to your views. We shall change the Bill and if I find that your fellow co-religionists oppose the measure we shall take you out of it." That is an undertaking which I gave on the last occasion, I give it again and I invite my Honourable friend, Mr. Wali Muhammad Hussanally, to allow his name to be added to the list which I have read out as a member of the

[Dr. H. S. Gour.]

Select Committee. Sir, I feel confident that this House will not deny bare justice for which Mr. Chatterjee has pleaded and for which I plead.

Mr. President : The question is :

“ That the Bill further to amend Act III of 1872 be referred to a Select Committee consisting of Mr. J. Chaudhuri, Mr. Samarth, Rao Bahadur Tiruvenkata Rangachariar, Munshi Iswar Saran, Chaudhri Shahab-ud-Din, Rai Bahadur Sankata Prasad Bajpai, Mr. N. M. Joshi, Mr. Latthe, Mr. Darcy Lindsay, Mr. Jamnadas Dwarkadas, Mr. Seshagiri Ayyar, Colonel Gidney and Dr. H. S. Gour.”

The Assembly then divided as follows :

AYES—34.

Abdul Majid, Shaikh.
Abdulla, Mr. S. M.
Ahmed, Mr. K.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bradley-Birt, Mr. F. B.
Bridge, Mr. G.
Chatterjee, Mr. A. C.
Chaudhuri, Mr. J.
Das, Babu B. S.
Gajjan Singh, Sardar Bahadur.
Gidney, Lieut.-Col. H. A. J.
Ginwala, Mr. P. P.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Hudson, Mr. W. F.
Iswar Saran, Munshi.

Jamnadas Dwarkadas, Mr.
Joshi, Mr. N. M.
Kamat, Mr. B. S.
Latthe, Mr. A. B.
Lindsay, Mr. Darcy.
Misra, Mr. B. N.
Misra, Mr. P. L.
Mudaliar, Mr. S.
Nag, Mr. G. C.
Percival, Mr. P. E.
Reddi, Mr. M. K.
Shahani, Mr. S. C.
Sinha, Babu L. P.
Sinha, Poohar Raghobir.
Subrahmanayam, Mr. C. S.
Visbindas, Mr. H.
Way, Mr. T. A. H.

NOES—38.

Abdul Quadir, Maulvi.
Abdul Rahim Khan, Mr.
Abdul Rahman, Munshi.
Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Asad Ali, Mir.
Asjad-ul-lah, Maulvi Miyan.
Bajpai, Mr. S. P.
Barua, Mr. D. C.
Bhargava, Pandit J. L.
Dalal, Sardar B. A.
Ghose, Mr. S. C.
Hajeebhoy, Mr. Mahomed.
Hussanally, Mr. W. M.
Jatkar, Mr. B. H. R.
Mahadeo Prasad, Munshi.
Majumdar, Mr. J. N.

Mitter, Mr. K. N.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Mukherjee, Mr. T. P.
Nand Lal, Dr.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Shahab-ud-Din, Chaudhri.
Singh, Babu B. P.
Sinha, Babu Adit Prasad.
Sinha, Babu Ambika Prasad.
Sohan Lal, Bakshi.
Srinivasa Rao, Mr. P. V.
Venkatapatiraju, Mr. B.

The motion was adopted.

THE CRIMINAL TRIBES (AMENDMENT) BILL.

The Honourable Sir William Vincent (Home Member) : May I inform the House that, to-day's business not having been finished, the Select Committee meeting on the Criminal Tribes Act will not be held to-day at 2-30 p.m. as previously announced.

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

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

THE ADOPTION (REGISTRATION) BILL.

Dr. H. S. Gour (Nagpur Division : Non-Muhammadian) : Sir, I move that the Bill to prescribe a registered instrument as necessary for a valid adoption be referred to a Select Committee consisting of Mr. N. M. Joshi, Mr. K. C. Neogy, Mr. J. Chaudhuri and the Mover, to which must be added the Honourable the Law Member and the Honourable the Home Member. Sir, this is a very small measure intended to provide for evidence of adoption. When introducing the Bill, I stated its main provisions. Since then, public opinions have been consulted, and while the opinions are divided on the subject, it has been suggested in certain quarters that the Bill might be limited to cases of adoption affecting property. I am quite prepared to make that amendment ; and any other amendments that Honourable Members may suggest will be considered by the Select Committee. I therefore move, Sir, that the Bill be committed to the Select Committee ; and I may add that if any Honourable Members desire to serve on the Select Committee, I shall be very pleased to add their names.

Mr. President : The question is :

“ That the Bill to prescribe a registered instrument as necessary for a valid adoption be referred to a Select Committee consisting of Mr. N. M. Joshi, Mr. K. C. Neogy, Mr. J. Chaudhuri and Dr. Gour.”

The Honourable Dr. T. B. Sapru (Law Member) : Sir, I do not wish to take the time of the House unnecessarily long, but there are just one or two observations which I would like to make with regard to this Bill. The necessity for my intervention arises because I feel that the position of the Government ought to be explained before any discussion takes place. This Bill was referred, not at the instance of the Legislature, but by an executive order of the Government of India to Local Governments. A large number of opinions have been collected on the subject, and I believe those opinions have been read by most of the Honourable Members of this House. I think my friend, Dr. Gour, is right in saying that public opinion is divided, and I would only supplement that remark by saying that there is a considerable divergence of opinion among persons who are best entitled to express an opinion on a question of this character. For instance, leaving aside for the time being Local Governments, and confining our attention to the opinion of Judges, and particularly to the opinions of Indian Judges, we find that in every single Court you find Hindu Judges ranged against each other on this question. I do not think that this was unexpected ; and my lawyer friends in this House will readily acknowledge that this is one of those questions on which there may be a legitimate difference of opinion. Now I need hardly tell Dr. Gour that so far as social legislation is concerned, I am an out and out supporter of it, and if I was a private individual and not holding the office that I have the honour to hold, I would not hesitate to express my opinion independently on social legislation. But I will beg the House to remember that on an important question like this it is impossible to expect the Government to take a partisan attitude. There are among Judges of High Courts men who have put in service for

[Dr. T. B. Sapru.]

20 or 25 years who say that this Bill is of doubtful utility ; there are others who say that this Bill will be found in actual practice to be useful. Well, it is for that reason that the Government have decided to adopt an attitude of neutrality, and it will leave the decision entirely in the hands of the House ; but perhaps the House will allow me the opportunity of making just a few observations, which I hope will not be taken amiss considering that they proceed from a lawyer.

What ultimately is the object of Dr. Gour's Bill ? The object of Dr. Gour's Bill is that there should be a greater amount of certainty in deciding questions of fact which very often arise in cases of adoption. Now, what are the questions which are usually raised in cases of adoption ? A party to a suit of adoption may deny the fact of adoption ; that is one plea. He may also deny the plea of adoption and deny the authority to adopt, as in the case of a Hindu widow. He may then do both, that is to say, deny the factum of adoption and deny the authority. Then again, he may accept or deny the factum of adoption and in addition plead the incompetence of the person who is adopting. Lastly, he may do any one or all of these things and in addition plead that the person adopted was not eligible for adoption. Now, these are the various pleas raised in adoption cases. It is quite obvious that a Bill of this character only touches one of the several difficulties which arise in adoption cases. Even in regard to this difficulty which Dr. Gour intends to remove by this Bill, it must be borne in mind that it would be extremely difficult to provide for a deed of adoption being executed in cases which are known as death-bed adoptions. Again, I will beg the House to remember that while it may be very easy for deeds of adoption to be registered at the headquarters of districts, it may not be so easy to get them registered in rural areas, unless we develop the agency of registration to a very large extent, and that is a matter really for Provincial Governments to take up. I am one of those men who strongly feel that the time has come when our registration system in India should be considerably developed, if we want to put down unnecessary litigation and frivolous pleas which are not un-often raised in courts of law. But it seems to me that until that has been done, a Bill of this character may, so far from removing certain difficulties, create hardship in certain cases. On the other hand I am quite alive to the importance of this Bill and I feel that in cases relating to big estates and rajes, there should be no difficulty in securing deeds of adoption.

I have, I hope, attempted to put both sides of the question fairly without taking sides one way or the other. But I have done so only in the hope that before the Assembly records its vote on the motion of Dr. Gour it will realize its full responsibility in regard to it, more particularly when you find that trained lawyers and experienced Judges—Hindu Judges I will repeat—are themselves not agreed on it. It is for this reason that I say that the only legitimate position that the Government could take is the one I have indicated, namely, one of neutrality.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor : Non-Muhammadan Rural) : Sir, I oppose this motion of Dr. Gour. In addition to what has fallen from the Honourable the Law Member, I beg to submit a few considerations which will convince the House that this Bill, if passed, would work great hardship. It would

not prevent frivolous pleas and unnecessary litigation ; it will add to certain other troublesome phases of litigation.

Now, one of the objections which has been raised by some of the Judges who have been consulted in this matter is that in adoption, while no doubt it is a secular matter, there is also a religious aspect, the Hindu idea of perpetuating the family and providing for a son to perform the funeral ceremonies and other things. Well, it has been already pointed out by the Honourable the Law Member that in remote tracts where adoptions may be made just prior to the death of a person—and in a great many cases adoption is deferred till the last days of a man—it would be a great hardship to deprive this large number of people of the right which they now possess of taking a boy in adoption in accordance with the ceremonies which are prescribed in their community.

There is another aspect of the matter which seems to me a little more important and serious. At present under the Hindu Law a properly conducted adoption is one in which the proper ceremonies have been performed and the child or boy adopted is not within the prohibited degrees of relationship. The moment the ceremonies are completely conducted they confer a status upon the boy. That is the present state of the law. Like marriage, it creates a new status for a boy who comes within the qualification. Now, by this Bill—this simple and short Bill—as my Honourable friend Dr. Gour styles it, you deprive not only the adopted person of the status and the rights which are at present conferred by Hindu law but also those desiring to adopt. That seems to me to be an important matter which ought to be taken into account. It so happens that among the opinions obtained are those of European Civilian Judges, who naturally feel that their work as Judges would be lightened if this law is passed. That is a common notion which most of such Judges hold, they appear to be bothered by the number of witnesses and the recapitulation of the ceremonies attendant on adoption, and they conclude that there is probably a lot of hard swearing, etc. Well, other Judges have combated that attitude and say that there has never been any difficulty in settling these questions of adoption. But Judges are trained men who are there to weigh evidence ; they have to do so in far more important cases, and they cannot plead that in these particular cases they find it difficult to decide because there is a mass of conflicting oral evidence. That may be the attitude of laymen not trained to dissect evidence and to construe it in a logical and judicial light. That is the only point on which some of the European Judges have based their conclusions ; they think that by the passing of this Act a good deal of trouble will be saved and litigation reduced. But from our experience of Statutes we know that when you make a stringent provision in one direction, the ingenuity of litigants or their advisers discovers other sources and other kinds of pleas which practically whittle away the particular provision which has been enacted.

I need not remind my lawyer friends in this Assembly of the Statute of frauds, and how much fraud that Statute is responsible for during the last few centuries. Every lawyer who has ever cared to consider the developments arising from that Statute knows that. As regards the opinions which have been received, divided is not the word

[Rao Bahadur C. S. Subrahmanayam.]

which I would use in regard to the volume of opinion which has been received. The Madras Government is against the Bill. The Chief Justice and two or three Indian Judges of the Madras High Court are against it and 3 or 4 Judges are for it on the ground that I have mentioned. The Madras Government says "The Governor in Council is opposed to the Bill on the following grounds." Bombay says the same. The United Provinces Government is not for it, and eminent men, lawyers and others conversant with this matter are opposed to it. The High Court is against it. It would be interesting to refer to the remarks of the Judges of the High Court :

"The passing of the Bill will be attended by all sorts of hard cases, in every one of which public opinion will be overwhelmingly against the decision pronounced by the Court. All these troubles we are invited to bring upon ourselves in order that all our courts of law may find it a little easier to decide what is after all the plain issue of a case. The game is not worth the candle."

In Burma this question does not arise, because the Hindu population is very small. They say quite conveniently as we sometimes happen to do here : 'It does not affect us. You may do what you like.'

The United Provinces Government are against it, but say 'that they think that some good might arise out of it.'

They are in favour of it.

Dr. H. S. Gour : They say that the Governor in Council is inclined to favour the Bill.

Rao Bahadur C. S. Subrahmanayam : They add "At the same time this Government recognise that such a measure could not be carried without very considerable opposition on religious grounds and feel that it would be inexpedient at the present juncture to push forward social legislation that is liable to be misinterpreted and misrepresented to a superstitious majority. This measure does not appear to be one of any great urgency, and accordingly the view of this Government is that for the reasons mentioned the Bill should not receive the support of Government." That is the view of the United Provinces Government.

The Punjab Government say that "in the opinion of His Excellency the Governor in Council the attitude of Government should be one of strict neutrality." But the Chief Justice of the Punjab says that he is against it.

Now, Central Provinces is the province of my learned friend and probably they did not want to go back upon the old saying that a prophet is not honoured in his own country, and therefore they give it a sort of conditional support. They say :

"His Excellency the Governor in Council is satisfied that the advantages of the Bill are obvious."

They finish with these words :

"The Governor in Council is in sympathy with the Bill, but he considers that in view of the several backward tracts in the country, it would be better if the Bill empowered Local Government to exempt the law from operation into backward tracts."

Now, on that opinion I think the whole of my learned friend's motion is based. He brings that as an all India question. There is a considerable body of opinion against it, and even the Government that thinks

that on theoretical grounds it may be good says that they must follow up the Bill by a series of exemptions, otherwise the Bill would not be a salutary measure.

I do not think I need quote the other opinions, *viz.*, those of Baluchistan, the North-West Frontier Province, Ajmer-Merwara, etc. I should like to read from the opinions of the Bengal High Court a few sentences, which I am adopting as my argument to save time.

“ Dr. Gour affirms that his Bill does not affect the personal law of the Hindus but this other legislators of the legal profession deny. It seems to the Honourable the Chief Justice and Judges that the Bill under consideration may have that effect (the effect of affecting the personal law of the Hindus). A proposal for its circulation was rejected by the Legislative Assembly. Apart from this their Lordships are not satisfied that the proposed Bill is either necessary or desirable. As pointed out in the debates in Council, there are other transactions which can be effected without registration, notably wills, and there are circumstances also which make such a Bill undesirable.”

In regard to wills, the House knows that except in the province of Bengal and in the Presidency towns, in all other places a will could be made on an ordinary piece of plain paper and a very large estate might thereby be disposed of without registration. (*Rao Bahadur T. Rangachariar* : “ Even without paper.”) In fact all the legal opinion, judicial opinion, and even Government opinion, the majority of it, is against it. Such of it as is in favour is conditional and only extends sympathy to the Bill. As regards public opinion we see that there will be very far reaching evil effects on a very large number of people to whom adoption is a thing of value. Then, looking at it from the general point of view there is no necessity for this and no one else has said that any evil has arisen from the existing system and that it should be amended. Lastly, I say it affects the status of Hindus, apart from its religious aspect, and therefore, a Bill like this should not be assented to.

Mr. T. A. H. Way (United Provinces : Nominated Official) : Sir, the Honourable the Law Member has referred to the danger that hardship may be caused in rural areas if registration of adoption is made compulsory, unless we considerably develop our registration system. The development of the registration system, Sir, means increase in the number of Sub-Registrars offices and in the present state of provincial revenues, I am afraid Provincial Governments will not be prepared to do that. As a matter of fact in the United Provinces at present the Local Government are considering the reduction of the number of Sub-Registrars offices as a measure of retrenchment. I do not know what is happening in other provinces. I think it is very probable that a similar measure may be considered there.

But, Sir, I think if this Bill is referred to a Select Committee this point should be seriously considered by that Committee.

3 P.M.

Mr. Harchandrai Vishindas (Sind : Non-Muhammadan Rural) : Sir, I also rise to oppose the Bill and my reasons are these,—I think in this country it is very dangerous to overlegislate. Legislation should be entered upon only when a strong case is made out : otherwise the *status quo* should be allowed to continue. Now the reason why registration is made compulsory in respect of certain transactions, such as gifts, mortgages and

[Mr. Harchandrai Vishindas.]

sales, is to safeguard against any chance of fabrication or forgery. Now I submit that such a danger does not exist in the case of adoption. Adoption is always done with due ceremonies in the presence of a number of people who are invited. Regular ceremonies of giving and taking are performed and a priest officiates over these ceremonies, and I do not think in that case there is any chance of any forgery being perpetrated or any fabrication being attempted. As I heard somebody say in a side remark, even an oral adoption is valid. Well, if an oral adoption is valid, supposing the parties do not choose to enter into any documents, what will be the consequence? We know that adoption in several cases excites opposition on the part of those whose interests are against that adoption, and serious litigation is the consequence. The party who are in favour of the adoption are put to a lot of difficulties in producing evidence on all the points that have been touched upon by the Honourable the Law Member, namely, the factum of adoption, the validity of adoption, the authority given and so on. When an adopting party has got so many difficulties to contend with, I think it would be extremely unfair to impose on them one more difficulty, namely, to have the adoption evidenced by a registered document.

I suppose the reply of Dr. Gour to my argument regarding a nuncupative adoption will be that, according to his Bill all adoption should be in writing. Well, that is also imposing a restriction which will be opposed to Hindu law. Then, my chief objection is this, that if Dr. Gour's Bill is passed into law the result will be that if a man has observed all the ceremonies and all the procedure that is laid down by Hindu law for making a valid adoption, still if that adoption is not registered it shall not be valid—which, I say, would be a great outrage upon Hindu law and Hindu society. A man can easily say—"Well, I am going to perform all the ceremonies and do everything enjoined by Hindu law, and after that I defy any one to say that my adoption is not valid. I say, therefore, Sir, that this provision would be a great offence to Hindu law, and for that reason it should not be adopted.

But there is another thing. If Dr. Gour were able to point to a crop of cases, to a number of proceedings in which the evidence of adoption has been fabricated or false adoptions have been put forward in the courts so as to be a danger to society or give rise to false cases, then a case might be made out for his Bill. But as far as I understand—and I speak subject to correction—no such case has been even quoted by Dr. Gour as having happened during recent memory. That being the case, I am against over-legislation and this Bill would be merely a piece of gratuitous legislation for which there is no occasion. I therefore recommend the House to throw out the Bill.

Munshi Mahadeo Prasad (Benares and Gorakhpur Divisions : Non-Muhammadan Rural) : Sir, I oppose the motion of Dr. Gour to refer this Bill to a Select Committee. The ceremonies of Hindu Law as enjoined by the Shastras are such that by the giving and taking ceremony, with some other ceremonies accompanying them, the adoptee becomes to all intents and purposes the son of the man who has adopted him. You remember, Sir, that when the Bill of Dr. Gour with regard to Civil Marriage was in contemplation in January last, you ruled, at the instance

and at the request of Rao Bahadur Rangachariar, that if the House sends a Bill to Select Committee, it commits itself to the principle underlying such Bill. Now, Sir, let us see what is the principle which underlies the Bill in question.

Section 3 of the Bill says .

“No adoption by any person is valid unless it is evidenced by a registered instrument executed by the person making the adoption or some other person duly empowered in that behalf and attested by at least two witnesses.”

Now, Sir, this is the clause which has to be taken into consideration. Are we prepared to lose sight of the principles of Hindu Law, on one side, the mandate of the Shastras on one side, and forcible registration on the other ? I submit that this is an invasion of the sacred principles of Hindu Law by Dr. Gour based on two rulings which he has quoted in his Statement of Objects and Reasons. Further, I would submit for the consideration of this House that if it is desired that India should be a land of records only then, why should we not pass a law that all marriages in India should be registered, and that unless a marriage is registered, no amount of ceremonies will make it valid. I submit for the consideration of this House that the proposal of my Honourable friend, Dr. Gour, should be rejected.

Mr. K. Ahmed (Rajahahi Division : Muhammadan Rural): Sir, I move that the question be now put.

Dr. H. S. Gour : Sir, I do not wish to prolong the discussion on this Bill. I recognise to the full the force of the remarks made by the Honourable the Law Member that there are divided opinions ; but the opinions are divided more on the details of the Bill than on its underlying principles. My Honourable friend the Law Member will himself admit that registration is a salutary check upon fabrication and fraud. At the same time I recognise that there are circumstances in which an adoption might take place the registration of which might be difficult if not impossible. I would have added a number of amendments to suit the requirements of various objectors, but I feel that this is not the stage at which I can profitably do so. In these circumstances I propose to re-draft this Bill and re-submit it to this House later on. Meanwhile I solicit permission of the House to withdraw my motion.

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

THE EXCLUSION FROM INHERITANCE BILL.

Mr. T. V. Seshagiri Ayyar (Madras : Nominated Non-Official): Sir, I rise to make the motion which stands in my name :

“That the Bill to amend the Hindu law relating to exclusion from inheritance of certain classes of heirs and to remove certain doubts be referred to a Select Committee consisting of the Honourable the Law Member, the Honourable the Home Member, Messrs Subrahmanayam, Rangachariar, and Venkatapatiraju, Dr. Gour, Lala Girdharilal Agarwala, Mr. Harchandrai Vishindas, Sir D. P. Sarvadhikary, Mr. Majumdar and myself.”

Sir, when this Bill was introduced by me, I made a long speech and after that, Sir, I wrote a memorandum which was circulated, along with my Bill, to a large number of lawyers and Judges in this country. The opinions that have been received in respect of this Bill, If I may say so,

[Mr. T. V. Seahagiri Ayyar.]

have been very favourable. I think about 80 per cent. of the opinions is in favour of this Bill being passed into law. I will not go into details, Sir, but I should like to point out the nature of the opinions which have been received.

So far as Madras is concerned the Judges and lawyers are wholeheartedly in favour of it. The only person who may be said to have not given his assent to the Bill is the Vakil Association. The Committee of the Vakils Association say that they are in sympathy with my Bill but they think it necessary to refer it to a joint committee. The Joint Committee has not given any opinion and that opinion has not been sent up.

So far as Bombay is concerned the Judges say that it does not affect them. I cannot understand how the present Bill does not affect the Bombay Presidency. So far as Sind is concerned the Judges are entirely in favour of it and the Bar Association is also in favour of it. In Bengal the Government have not sent their opinion, and the opinion of individual Judges is divided. What the Judges say is this, that they are of the same opinion as in respect of the Bill for the codification of Hindu Law, and they want that opinion to be taken in this matter. I have not been able to get that opinion—I have mislaid it and I do not know what the opinions of individual Judges are. As regards many other provinces all the Indian Judges and a large number of the European Judges including a Chief Justice are in favour of it. The Allahabad Vakils' Association is in favour of it, and the majority of the people consulted give their opinion in favour of the Bill. In Burma the Judges are in favour and they say "We think that this is a right measure." In Bihar the Government is entirely in favour of it and the others are of the same opinion. In the Central Provinces, the Government is in favour of it and the Judges and the Judicial Commissioner are in favour of it. The Assam Government are neutral, because they say theirs is the Dayabhaga system and this Bill does not affect the Dayabhaga system. Coorg, Ajmer-Merwara, Baluchistan, every one of these Governments is in favour of the Bill, excepting the North-West Frontier Province Government, and they say they are against it. From the summary which I have been able to give, the House will find that almost 90 per cent. of the persons consulted are in favour of the Bill and I think I may say that the principle of humanity requires that the principle underlying this Bill should be accepted and I think, therefore, that the Bill should be accepted by the House. I do not think it is necessary. I move that the Bill be referred to a Select Committee consisting of the Members already mentioned by me.

Mr. President : The question is :

"That the Bill to amend the law relating to exclusion from inheritance of certain classes of heirs and to remove certain doubts be referred to a Select Committee consisting of Mr. J. Chaudhuri, Rao Bahadur C. S. Subrahmanayam, Rao Bahadur T. Rangachariar, Mr. B. Venkatapatiraju, Dr. Gour, Lala Girdharilal Agarwala, Mr. Harchandral Vishindas, Sir D. P. Sarvadhikary, Rai Bahadur Jadunath Majumdar and the Mover."

Mr. T. V. Seahagiri Ayyar : And the Law Member and the Home Member also—I mentioned them.

Mr. President : They come in automatically.

The Honourable Sir William Vincent (Home Member) : Sir, the Bill has been circulated for opinion and I must say that the opinions differ very greatly as to its merits. I should not like the House therefore to accept entirely what Mr. Seshagiri Ayyar, who is naturally in favour of a Bill which he has promoted, has said of the general trend of opinion on the subject. Members, I am quite sure, will not, however, take either my statement or his, but they will, if they have not already done so, examine the opinions for themselves.....

Rao Bahadur T. Rangachariar (Madras City : Non-Muhammadan Urban) : We have not got them.

The Honourable Sir William Vincent : If they have not got them, then certainly they ought to see them before this motion is accepted. I have just now noted down a few opinions against the Bill—I do not want to cite all of them before the Assembly. One is the Karachi Bar Association, the committee of which body say that they are not in favour of the Bill as it stands. Again the Secretary to the Bengal Government writes to say that there is a strong difference of opinion on the Bill among members of the Hindu community including the Hindu Member and Minister of Government. I find that the Incorporated Law Society of Calcutta which I imagine is a body of some weight is opposed to this Bill ; and I could go on citing other opinions of equal weight to you. I do not suggest for one moment that the opinions are one-sided for there are many opinions in favour of the Bill ; indeed the divergence of opinion is so great that it is extremely difficult for an outsider to say which way the weight of opinion lies. Probably if you counted opinions as you count heads, the Honourable Member would be right in saying that he has the support of the majority ; but I am not sure that that is a very sound way of weighing legal opinion in a matter of this kind. There is, however, one matter upon which the opinions of Local Governments are pretty unanimous and that is that the Government should not interfere in this matter, that it is a matter which should really be left for Hindu opinion to decide and for the Hindu Members of the Assembly.

But, I want to say a word or two on some of the points that have been raised in the opinions because they seem to me of importance. It is said, for instance, that this law, seemingly so harsh to unfortunate and afflicted persons, is in its application not nearly so severe as is made out. For instance, I am told—I have not verified it from the actual decision—that in Madras the High Court have materially alleviated by their decisions the severity of this rule of Hindu law ; and for this reason certain authorities suggest that no amendment of the law is necessary. There is of course great danger under our system of procedure that principles of Hindu law become crystallised to an extent which, I believe, was not the case under previous Governments in this country. Our courts have necessarily taken a somewhat rigid view of the principles of Hindu law and the provisions have not perhaps changed with changing social conditions as fast as might be desired. This rigidity is however also no doubt partly due to the very conservative character of orthodox Hindus. But in this particular matter I understand that the courts have so mitigated the harshness of the rules as to avoid substantial injustice where they could. I think I may refer safely as an instance to the case of

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blind persons. I believe there is a decision—an authoritative decision—of the Madras High Court mitigating this rule of Hindu law in regard to them ; it is also pointed out that although persons afflicted with the diseases which are mentioned in the Bill are deprived of their share of inheritance they are not under any system of law deprived of maintenance, and it is suggested that this is all that is necessary. I do not support it ; I do not want to express any opinion on the point—I am only putting before you the argument of others that this is really all that is necessary. The argument has also been raised that persons who suffer from certain permanent and incurable diseases, particularly mental diseases, ought not to succeed to a full share of the property. In these circumstances I want the Assembly clearly to understand what will be the effect of the acceptance of this motion. It means that they will definitely accept the principle of the Bill which makes an important change in the Hindu Law of inheritance. Whether it is right or not to interfere piece-meal with this great structure of Hindu Law is a matter for Hindus to judge rather than for me. But it is a point that should be considered. I was under the impression that Honourable Members had had an opportunity of seeing all the opinions expressed on this Bill. If I am mistaken in that then I really think that members will be wise, as I said before, neither to take what Mr. Seshagiri Ayyar has said nor what I say, but to study the matter at first hand and examine the original opinions in order that they may see for themselves how far this great change in Hindu Law has met with the approval of the Hindu community.

I should be glad to know if members have received copies of the opinions or not. (Cries of 'No, no'.)

Mr. J. N. Mukherjee (Calcutta Suburbs : Non-Muhammadan Urban) : I at least have not received even a single opinion.

The Honourable Sir William Vincent : I suppose the motion was not made for circulation, and the circulation was actually effected by executive order. In these circumstances, I think probably the Honourable Member would be wise to postpone his motion.

Mr. T. V. Seshagiri Ayyar : As a matter of fact, I wrote to the Honourable the Home Member this morning asking for information. I had no information up till now that it had not been circulated to Honourable Members. I therefore move, Sir, that leave be given to me to defer this motion till November next, say till the Bill has been circulated.

The Honourable Sir William Vincent : I did not know myself that the papers had not been circulated.

Mr. President : The question is that this debate be adjourned till a date to be announced hereafter.

The motion was adopted.

THE INDIAN CONTRACT (AMENDMENT) BILL.

Dr. H. S. Gour (Nagpur Division : Non-Muhammadan) : Sir, I move :

“That the Bill to amend the Indian Contract Act, 1872, be referred to a Select Committee consisting of Mr. Samarth, Mr. P. L. Misra, Mr. Muhammad Yamin Khan, Mr. Seshagiri Ayyar and myself.”

As Honourable Members will probably remember, when introducing this Bill, I pointed out that in certain provinces there is a practice, almost an abuse of the ordinary practice, of purchasing and trafficking in litigation. In England this practice is punishable as a crime under the name of Champerty and Maintenance. In India there is no law corresponding to the English law of Champerty and Maintenance which amounts to the aiding and abetting of litigation. The abuse to which this practice leads is subordination of evidence by persons who are interested in the result of that litigation and secondly the trafficking in litigation or in property the litigation by purchasing for comparatively inadequate price large and valuable estates. Opinions of the various public bodies and of the Local Governments were invited and I am sure Honourable Members are in possession (Cries of 'No, no') of the printed paper book containing these opinions. They will find that out of 15 communications received by the Legislative Department from the various Governments, no less than 7 are in favour of the Bill. These 7 are the United Provinces, Burma, Bihar and Orissa, Coorg, Delhi, Baluchistan and Ajmer-Merwara. (Laughter.) Five are against it.

Rao Bahadur T. Rangachariar (Madras City : Non-Muhammadan Urban) : What do the major provinces say ?

Dr. H. S. Gour : I do not know what my friend means by saying major provinces, whether a province is 20 or 21 years old ? I thought that after Reforms the distinction between the minor and major provinces had been completely wiped out. Well, Sir, five are against it. The first comes my friend Mr. Rangachariar's province, Madras.

Then Bombay, Bengal and the Punjab. They are against me. Assam is also against me. Two are neutral, namely, the Central Provinces and one other province. Now, Honourable Members will find that in the provinces which are against this Bill, they say that traffic in litigation does not exist to a very large extent. But this, as my Honourable friend, the Law Member, will testify to, is a practice very much prevalent in the United Provinces. And what is the opinion of the United Provinces Government ? If Honourable Members will turn to page 22 of the collected opinions, they will find that the Secretary to the United Provinces Government, after formal acknowledgment of the letter from the Home Department, writes :

"It will be observed from the opinions forwarded that there is almost complete unanimity in favour of legislation to effect the object Dr. Gour has in view."

Very strong evidence that, and well justified.

"I am to say that with this view this Government are in complete agreement. The practice of speculative litigation is far too common and it is eminently desirable to check it as far as possible."

Now, Sir, if I had no other opinion except this of the large province of the United Provinces, I should feel fortified in bringing this Bill before the House.

Rao Bahadur T. Rangachariar : Will you please read the next sentence ?

Dr. H. S. Gour : My Honourable friend can read it for himself. I should feel fortified in attempting to redress a grievance of which that

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province complains. And I think that province in this respect does not stand alone. As I pointed out, there are other provinces (*A Voice* : 'Baluchistan' ?) like Burma (Laughter) where the abuse exists and where the Local Government has counselled enactment of the nature now before this House. Says the Burma report :

"As regards the Bill itself, the Honourable Judges of the Chief Court of Lower Burma and the Judicial Commissioner, Upper Burma, agree with it, but the Rangoon Bar Association thinks it unnecessary and the Government Advocate, Burma, thinks it goes too far. If it really does bar advancing funds on the security of the plaintiff property in an honest manner, His Honour is of opinion that it certainly does go too far, and does not express accurately the existing law as applied in India.

The Lieutenant Governor is disposed to agree with a Bill which would check the financing of litigation to support doubtful claims if this can be effected without rendering it more difficult than at present for genuine claims by poor persons to be financed. Sir Reginald Craddock, therefore, suggests that the Bill may be so modified as to make it a complete and accurate codification of the present law as expounded by English and Indian Judges."

I take this opinion to mean that the Governor or Lieutenant Governor of Burma endorses the principle but suggests certain alterations in its details. And, as soon as I received copies of these opinions, I examined them and I sent in an amendment to the Legislative Department.

I saw that the hardship which some of the Governments complained of was a real hardship, and I propose when this Bill goes to the Select Committee to move for the insertion of the following proviso to safeguard against the *bonâ fide* advancing of money and funds for the purpose of litigation. The proviso which I propose would read as follows :

"Provided further that nothing in this section shall preclude a person supplying the funds from recovering the same together with interest thereon at a reasonable rate." So that, this is a complete answer to the criticisms on the details of the Bill which have been received from the provinces.

Then, Sir, there are other provinces which provoke the irascibility of my learned friends—I do not know why—but which are strongly in favour of my Bill. These are the provinces of Coorg, Delhi, Baluchistan and Ajmer-Merwara. Coorg writes :

"The Chief Commissioner considers that the principle underlying the Bill is unobjectionable and the law might be amended in the manner suggested."

The Honourable Sir William Vincent (Home Member): Read on, please.

Dr. H. S. Gour :

"At the same time the proposed amendment does not go much beyond section 23 of the Indian Contract Act and he is inclined to doubt whether it will check the evil it attacks."

In other words, he wants the provision to be made more drastic. He says :

"That can only be satisfactorily met by penal legislation."

In Baluchistan, the Honourable the Agent to the Governor General writes :

"Although no cases have come before the courts showing the existence of Champerty and Maintenance, there is no reason to think that having regard to the extent of the judicial proceedings which are instituted here, Baluchistan is any freer from these practices than elsewhere, but no information on the subject is readily available."

Now, these are wise words as Honourable Members will remember that the aiders and abettors of litigation take care to see that the transfers effected in their favour are kept as secret as possible, because they are afraid that if once it came to be known to the courts that they are the virtual litigants the evidence that they tender is viewed with suspicion, and consequently, so far as possible, they remain behind the screens.

Then, Sir, the Chief Commissioner of Ajmer-Merwara says :

“ I am of opinion that the Bill is suitable.”

I have thus, Sir, dealt with the opinions of the 7 provinces in favour of the Bill. I now briefly turn to the opinions hostile to the Bill. First of all, we have that ancient province of Madras where reformers and reforms are not much tolerated. The Madras Government letter says :

“ His Excellency the Governor in Council is of opinion that the evils of Champerty and Maintenance, which the Bill seeks to remove, are not so common in this presidency as to warrant legislative interference.”

Now, I claim that this opinion is non-committal.

It says :

“ We are not aware of the evil of Champerty and Maintenance being common in Madras and therefore we are not in a position to endorse the Bill.”

I suggest, Sir, that this does not amount to a vote against the Bill. (Rao Bahadur T. Rangachariar : Continue “ Moreover ”). Moreover—what moreover ? There is no “ moreover ”. It goes on to say :

“ Under the circumstances now obtaining as to the cost of litigation and tenures of property such a wide provision as that contemplated in the Bill is likely to prevent *bona fide* claimants from obtaining pecuniary assistance to pursue their just claims.”

That, of course, as I have pointed out at the very commencement of my speech, I have dealt with in the proviso which I propose to insert if this Bill goes to the Select Committee, that every person advancing funds for the purpose of assisting a party in his *bona fide* claim to litigate a title is entitled to reimbursement and to receive interest by way of compensation. The proviso that I have suggested therefore meets that criticism which is directed against the provisions of the Bill, and it is for that reason, Sir, that I did not think it necessary to read that sentence. (Rao Bahadur T. Rangachariar : “ You have not read the sentence.”)

“ Moreover, the existing law on the subject is, in the opinion of His Excellency in Council, adequate to meet any evils that may now exist.”

I entirely and emphatically join issue on this statement of the law. (Rao Bahadur T. Rangachariar : “ It says ‘ The Bill as framed is objectionable ’.”) That is a detail, and can be remedied in the Select Committee.

Then we deal with the Bombay Government. I have categorised the Bombay Government as opposed to the Bill, but the reasons they give for opposing the Bill really go to support my Bill. Let me read them to you. They say :

“ The Governor in Council is of opinion that it would be a hardship on a person entitled to property and having no means except the property itself if he was precluded from entering into an agreement to assign any part of the subject of litigation in consideration of funds being supplied to him. Their Lordships of the Privy Council say in 4 I. A. page 28 as follow :

‘ A fair agreement to supply funds to carry on a suit in consideration of having a share of the property if recovered ought not to be regarded as being *per se* opposed to public policy ’.”

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I may point out to Honourable Members that their Lordships of the Privy Council had prefaced their remarks that there is nothing in India corresponding to the law of Champerty and Maintenance, and my lawyer friends of this House will remember that their Lordships were dealing with the case which they intended to dispose of under the then and now existing provisions of law, namely, section 23 of the Indian Contract Act which makes contracts which are against public policy voidable in law, and consequently they were addressing themselves to the Statutory provisions of section 23 of the Contract Act.

"Indeed cases may easily be supposed in which it would be in furtherance of right and justice and necessary to resist oppression that a suitor who had a just title to property and no means except the property itself should be assisted in this manner. In cases in which such agreements are extortionate and unconscionable effect ought not to be given to them."

The Governor in Council agrees with the opinion of the High Court that the principles laid down in this case are adequate to deal with the evil in so far as it exists.

This is a recognition of two facts, one a salutary fact and the other a fallacious conclusion. The fact is that the evil is there and in cases of traffic in litigation the evil can be met by the courts interfering and condemning the contracts as opposed to public policy.

But Honourable Members will remember that judicial opinion changes from time to time and has not the same binding effect as an Act of the Legislature. Cases are explained away, distinguished and over-ruled and if the Bombay Government rely upon the dicta of their Lordships of the Privy Council they rely upon a broken reed. Their Lordships of the Privy Council may reconsider their opinion at any time, and what is most important for the Honourable Members to remember is this: They were not laying down the law which it is our peculiar privilege to lay down. Their Lordships of the Privy Council have indicated that trafficking in litigation is an evil, but where there is a *bona fide* advance of money for the purpose of helping a needy litigant he should be reimbursed. I have provided for it in the proviso which I have just read out to the House. I therefore also claim the vote of the Bombay Government and I hope the Bombay Presidency representative in this House will vote in support of my motion. I next pass on to my friend's province of Bengal. He is anxious to hear what his own province has got to say. He will hear it. Their opinion is printed at page 17. In paragraph 2 the Secretary to the Government of Bengal says as follows:

"In reply I am to state that in the opinion of His Excellency in Council the amendment does not appear to be either necessary or desirable. The general opinion of the local bodies and Judges consulted is that Champerty and Maintenance are not prevalent in Bengal."

The Bengal Government, as you will see, says that they do not suffer from this evil and that therefore they do not want legislation. That is not an opinion hostile to the Bill. They add:

"The proposal has not found support except from some of the District Judges. As regards the merits it appears that the latest ruling of the Privy Council only goes so far as to say that a sale will not be set aside merely on the ground that it has been made in order to provide funds for litigation. Section 23 of the Contract Act and Section 6 of the Transfer of Property Act already provide as to what contracts

and transfer shall be void on the ground of public policy and His Excellency in Council thinks that the existing law as interpreted by the Privy Council is sufficient to void contracts and transfers which are owing to their gambling nature contrary to public policy."

Now, Sir, after reading that opinion I exclaim, "Would somebody tell me what is public policy." If I bring forward a motion here defining what is public policy and whether a contract is against public policy, I am perfectly certain that not two Honourable Members of this House will agree. I think it is Lord Haldane who speaking in the Privy Council remarked that the present domain of law is to be clear and that nothing should be left to public policy what can be clearly enacted in the Statute Law. Public policy means nothing more and nothing less than the individual opinion of the court concerned. If I do not like a thing I condemn it on the ground that it is opposed to public policy. If I like it I say it is not opposed to public policy.

Are the Honourable Members prepared to leave the law at that? Are they prepared to leave the gambling in litigation in this country to the sole judgment of the presiding Judge of the civil Tribunal? I therefore submit, Sir, that the opinion given by the Government of Bengal loses sight of the main fact upon which my Bill is founded, namely, to ensure the certainty of law and to publish to the world at large as to how far gambling litigation would be condemned by the Legislature. I do not think, Sir, that a judicial opinion, however weighty, can ever take the place of an enactment of the Indian Legislature, and I therefore submit that the Government of Bengal, so far as their remarks are relevant, are not opposed to the measure I ask this House to accept. I therefore submit that the Bengal Government are in the fortunate position of having seen no gamblers in litigation of which a numerous tribe inhabits their neighbouring province of the United Provinces, and where the Governor in Council has, in the Minute from which I have read out just now, pointed out the great evil of gambling in litigation from which impecunious claimants to valuable estates suffer. I have now, Sir, dealt with all these so-called major provinces. I do not know whether my friends from the Punjab would like to hear what their own province thinks of this Bill; but to satisfy their curiosity.....

Dr. Nand Lal (West Punjab : Non-Muhammadan) : We know that the Punjab is opposed.

Dr. H. S. Gour : I will read from page 30. His Excellency the Governor in Council merely forwards the opinions of the Judges of the High Court, with which he concurs, and the first opinion is the opinion of the Legal Remembrancer of the Punjab. He says, "I have the honour to say that during my whole term of office as District and Sessions Judge I have never heard of such an agreement." That is a concrete answer to what I have been saying, that in Madras and in Bengal and possibly in the Punjab this evil is not so rampant as it is in the province of the Honourable the Law Member. Then he goes on to say :

"It is true that much fostering of litigation is popularly ascribed to Patwari and to Pleaders' touts, but I do not think that in the process of instigating litigation there are many agreements made to give the instigator a share in the proceeds of litigation. I see, however, no objection to the proposed legislation."

[Dr. H. S. Gour.]

This, again, is a province which returns a clean bill of health ; it says, " I have got no sick man in my province, therefore no cure is necessary." I do not think, Sir, that this province can therefore be used in support of the rejection of this motion, and I can only say that you are far more fortunately situated than the provinces that suffer from this evil.

In the Central Provinces the evidence as regards the extent of the evils of Champerty and Maintenance is vague and it would appear that the practice is not frequent. So that, all the provinces that do not support the measure are provinces in which this evil is not rampant ; the provinces that support the measure are provinces in which this evil exists, and I therefore submit, it is the duty of this House to provide against that evil. It does not matter whether that evil is local or provincial. We have to modify the Indian Contract Act. It cannot be modified by the local Legislatures and therefore it is the duty of this House to support the measure I have the honour to bring forward to-day.

I think, Sir, there cannot be two opinions upon the evil practice of making money out of another man's misfortune. It is a fact, and a fact too well-known in the United Provinces and in other provinces, that large estates are transferred to the *bania* or the banker in return for the cost of litigation ; and, as I have pointed out, long and protracted litigation is the result, in which evidence is concocted, witnesses are suborned and the Courts are hoodwinked by persons who remain all the time behind the scenes. In England, as I have said before, this evil is punishable. One province says, your Bill does not go far enough ; I am not prepared to go to the extreme length of counselling this House to embody the English provisions of Champerty and Maintenance so as to make them punishable as offences ; nor am I in favour of asking this House to condemn the person who has advanced money for the purpose of litigation to lose his where-withal. I have already made provision that he shall get a fair return for the money which he has advanced, and that is all that he can reasonably expect. I submit he is not entitled to his pound of flesh and it is against that evil that this Bill is directed. I feel, Sir, that this House will concur in the motion which I have brought forward.

The Honourable Sir William Vincent : Sir, I almost feel after the proceedings of to-day that it would be better if the Assembly allotted a special series of days to Dr. Gour for his Bills for we have had little time to do anything except to discuss his Bills to-day. As to the Bill before us, I sympathise a great deal with the object that he has in view, and I sympathise with him in his difficulties also. But I cannot take the same view of the manner in which he has sought to explain away patent facts against him. He has not however really succeeded in convincing any Member of this House, nor was he really putting before them a very fair or accurate presentment of the opinions received. Now, the question of Champerty and Maintenance, the latter of which terms is a general term really applicable to the promotion of litigation in which one has no interest of one's own and the former of which has been described by Judges as a bargain to assist in recovering property in return for a share of the proceeds of the action is one of very great importance. It undoubtedly prevails in many parts

of the country and it is a great and crying evil. I agree entirely with what has fallen from Dr. Gour on this subject. I have been told by my Honourable colleague, Dr. Sapru that in Oudh it is also particularly prevalent. There are others here who can speak on that point. In Bihar it is a perfect scandal. In my own experience I can say that I have seen many cases brought forward in which persons in possession of property under perfectly good title were put to most unfair expenditure and harassment by speculative litigation fostered by persons who have entered into contracts with claimants, but I do not say for a moment these persons were all lawyers or even that they usually belonged to the profession. I can speak with some knowledge on this subject. I do not believe that any Subordinate Judge who has worked in Bihar would deny what I have said. So impressed was I with this evil some years ago when I was in the Legislative Department, that I tried to work out and formulate some means by which this evil might be mitigated. I was unsuccessful. Fortunately my failure to succeed was not made quite as public as that of the Honourable Member on this occasion. It is a very very difficult subject to deal with. I mention this only to show that I really have every desire to secure the object that the Mover has in view. As to this Bill, however, we have consulted Local Governments (Honourable Members have been supplied very recently with copies of the opinions received), there is no question about it that the general body of opinion is entirely adverse to this Bill. You cannot get over this fact. I should be more pleased if I saw some hope of evolving from this measure satisfactory machinery for preventing this evil. But I cannot do it. I am not going to take the line adopted by my Honourable colleague, Dr. Gour, and suggest that there is really nothing in these opinions against it and that there is a great deal of weight in the opinion of those who favour it. I do not think that the Assembly can accept such a presentation of the facts, for when you come to examine the opinions, you will find that the Governments of Madras, Bombay, Bengal, the Punjab, the Central Provinces and Assam are all opposed to this measure as unnecessary or ineffective. My Honourable colleague did not read all the opinions. For instance he did not read the opinion of the Central Provinces Government, his own province. That Local Government say that it would be most unfair to deprive a poor litigant of chances of raising funds to establish a good title in the courts, that it is doubtful if the Bill would be of any practical effect and that it would be most unwise to change the Indian law which has been in vogue for the last 50 years. The Bombay and Lahore High Courts and the Judicial Commissioners of the Central Provinces are also opposed to the Bill. I think the Calcutta High Court is against it too, but I am not sure. The Madras High Court is divided. Many of the Judges support it and that is really the best opinion in his favour that the Honourable Mover could have quoted, though he did not do so. The Burma Government support it on the understanding that the Bill is so modified as to make it a complete and accurate codification of the present law, which it is not at present. Admittedly

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not. Sir, my Honourable friend laid great stress on the support of the Government of the United Provinces. I really wondered at his doing so, because if he had studied the

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correspondence more carefully, or if he had remembered that we had studied it, he would have seen that there is very little in the opinion to help him. In conclusion, after referring to various criticisms, that Government say :

“ I am to say that this Government, while holding the opinion that legislation is desirable, are inclined to agree with the criticisms on the Bill as it now stands but would recommend that it should either be opposed as not likely to fulfil its object or amended in such a way as to ensure that it would do so.”

The Bihar and Orissa Government do support the Bill but the Chief Justice of the High Court doubts if the Bill disposes of the questions involved, and the other High Court Judges are somewhat divided in opinion,—one Indian Judge, Sir Jwala Pershad, saying that the Bill will not effect what is desired.

Further, Sir, the enactments of the Indian Legislature at present are not entirely destitute of some provisions which deal with this question of proper agreements by lawyers. I may refer, for instance, to section 136 of the Transfer of Property Act. I am quite aware that only deals with actionable claims ; but it is of some use. I do not say it meets all the requirements of the case, again is it quite right to neglect the effect of section 23 of the Contract Act which has been interpreted as covering a champertous agreement, which is found to be against public policy. Then there is the very well-known case of *Bhagawat Dayal Singh versus Devi Dayal Sahu*.

I am quite prepared to admit however that the law does not go far enough at present and if the Honourable Member had moved a Resolution asking the Government to examine this matter themselves, I should have been prepared myself to ask the Council to consider it favourably because I agree that this evil is one which in the good name of the legal profession in this country ought to be checked. At the same time it is by no means confined to the profession and is in many places more marked amongst other classes. But what I maintain at the same time is that this Bill which the Honourable Member has thought fit to introduce is really not the proper way of meeting the difficulty, and I believe the opinions of the Local Governments which I have cited support me in the view that I have taken. The Honourable Mover is a very severe critic of Government Bills. To have him on a Select Committee is almost an education for a Member of the Legislative Department, but I have seldom seen a Bill the drafting of which has met with more criticism than the present one. Why, the Honourable Mover himself, before it has even gone to Select Committee, has to suggest an amendment to his own Bill ; and really when you come to examine the drafting of a Bill which has been moved by a lawyer of his eminence and knowledge, I must say that I feel the Legislative Department, in spite of the criticisms which it so often meets from the Honourable Member, could have turned out a better bit of work than this and something which would have been more likely to meet public opinion and to be really useful.

Sir, I have now put before the House the facts about this Bill, and I have only to add that in view of the opinions of the Local Governments it will be the duty of Government to oppose this measure,

though I for myself should have been quite glad to consider the question of considering in general the evil to which I have referred and of ascertaining what possible means for meeting it could have been devised.

Dr. Nand Lal : Sir, there is no use in mincing matters ; the fact remains that this evil exists in some quarters, but the character of the evil is not of a very virulent type which may require and call upon the Legislature to legislate. When we go into the opinions, which have been circulated, we are driven to this conclusion that it is not the time for this sort of legislation to be hurled upon the people of this country. First of all let us see what the Bill of my friend, Dr. Gour, means. I think the proviso, embodied in the Bill, practically negatives the very provision of which he himself feels so very proud. The section 30-A says :

“ An agreement whereby a person promises to give information or supply funds for the maintenance of litigation and actively assist in the recovery of property in consideration of receiving a share of such property or of the proceeds of such litigation is void.”

Now let us examine the wording of the proviso :

“ Provided that nothing herein contained shall affect a *bona fide* agreement to purchase any property, if the purchaser did not intend to secure an undue advantage for himself out of the proceeds of litigation in which a title to such property was in dispute.”

If my way of construing both the section and the proviso is correct, then I am forced to this conclusion, that the proviso, as already submitted, takes the life out of the provisions, in the section, on which my learned friend, Dr. Gour, has been harping so much. Sir, the Legislature is naturally called upon to stamp out the evil and to eradicate it where it is rampant. But no case has been made out that this evil has assumed that form except in the United Provinces, and therefore, as this evil exists in that province only, there is no strong case that this Legislature may be forced to countenance the view which has been incorporated in this Bill. To my mind, in the circumstances, it is derogatory of the generality of the character of the people to support this measure. Therefore, with these few remarks, I stand to oppose the measure which ought to be negatived without any further discussion.

Mr. B. S. Kamat (Bombay Central Division : Non-Muhammadan Rural) : I move that the question be now put.

The original motion* was negatived.

THE MARRIED WOMEN'S PROPERTY (AMENDMENT) BILL.

Mr. B. S. Kamat (Bombay Central Division : Non-Muhammadan Rural) : Sir, I beg to move :

“ That the Bill further to amend the Married Women's Property Act, 1874, be referred to a Select Committee consisting of Mr. Seshagiri Ayyar, Mr. Darcy Lindsay, Mr. K. C. Neogy, Munshi Iswar Saran, Mr. Muhammed Yamin Khan, Bhai Man Singh and myself with also the *ex-officio* Members.”

I need not remind the House that when this Bill was introduced in March last, the principle thereof was not very much contested. The object of the Bill is to make section 6 of the Married Women's Property Act

* Vide page 448 of these Debates.

[Mr. B. S. Kamat.]

applicable to Hindus, Muhammadans, Jains, Sikhs, etc., in respect of Insurance Policies effected by Hindu or Muhammadan husbands in favour of their wives. The law as it stands at present is involved in doubt. There are conflicting decisions of two or three High Courts on the subject. The Madras High Court has held that section 6 of this Act does apply to Hindus, Muhammadans, etc., equally well, whereas the Bombay and Calcutta High Courts have held different views. My Bill does not seek to introduce any new principle at all. It only tries to remove the doubts and to confirm the view which has been held by the Madras High Court. It is based on equity, in this sense that if a Hindu or Muhammadan husband effects a Policy in favour of his wife, that Policy-money should be absolutely the property of the wife and it should be entirely for the benefit of the wife without any interference from creditors or any members of a joint Hindu family. I believe this principle will be accepted as very beneficial in the case of the communities to which I wish this Act should apply.

Sir, since the Bill was introduced in March last, the Honourable the Home Member was good enough to circulate it for opinion to the different Local Governments and High Courts, and I am glad to say that, so far, the opinions received have been on the whole favourable to the principle involved in the Bill. I do not wish to detain the House at this late hour, but to mention only a few opinions that have been received, I might say that, taking for instance, Madras, they are in favour of the principle of the Bill. It must be noted that while circulating this Bill for opinion, both my Bill and a similar Bill standing in the name of Mr. Seshagiri Ayyar were circulated together, and therefore in many cases the opinions expressed have been on both the Bills. The Madras Government are in favour of the principle contained in Mr. Seshagiri Ayyar's Bill which of course is also identical to the Bill I have in view. The Chief Justice of the Madras High Court says :

" I approve of Mr. Kamat's Bill and so much of Mr. Seshagiri Ayyar's as is intended to set at rest doubts which have arisen and led to a conflict of judicial opinion."

Similarly, some eminent Hindu Judges of the Madras High Court have expressed the same opinion, for instance, Justices Krishnan and Venkatasubba Rao. Then again, the Advocate General, Madras, also says as follows :

" I am of opinion that the amendment proposed by Mr. Kamat to section 6 is both necessary and expedient....."

Further on, so far as the Central Provinces Government is concerned, they also say :

" That the Bills have been welcomed by all those consulted and that His Excellency the Governor in Council sees no objection in accepting the Bills."

Similarly, the Government of Assam is also in favour of this Bill. There is, however, one hostile opinion expressed from Assam, I believe, by the Deputy Commissioner of Goalpara. He says :

" Those who are against Mr. Kamat's Bill are of opinion that so far as Hindus are concerned, the existing provisions and principles of Hindu Law are quite enough and fresh legislation as proposed is unnecessary. They are also of opinion that if

Mr. Kamat's Bill is passed into law, unscrupulous husbands may give away all benefits arising out of insurance policies to their wives and thus their creditors may be deprived of their just dues."

This is the opinion of the Deputy Commissioner, and I put this against the opinion of the Government of Assam as a whole.

Then again so far as the Punjab Government is concerned, they are in favour of the principle of the Bill. They say that "the Bill adequately meets a difficulty which is constantly arising and places the law on a clear footing." Mr. Justice Shadi Lal approves of the principle of my Bill. Similarly, the other eminent Judges of the Punjab High Court, like Mr. Justice Scott-Smith, Mr. Justice Abdul Raoof, and Mr. Justice Campbell have no objection to the Bill.

Then again, the Government of Bengal also clearly signified that they were in favour of the Bill. There are no opinions received from the Government of Bombay as far as I can see from these papers. The Government of Burma leave it to the communities concerned, but I believe the Bar Association of Burma is in favour of the principle of the Bill. On the whole, therefore, as I say, to put it very fairly, the Bill has received very favourable consideration from both the Judges and the Local Governments themselves, and I hope the House will have no objection to send it to the Select Committee which I have made.

I move that the Bill be referred to the Select Committee.

The Honourable Sir William Vincent (Home Member) : Sir, the Bill has received almost universal approval from all Local Governments concerned and the Government will certainly not oppose the present motion.

The motion was adopted.

Dr. H. S. Gour : May I, Sir, point out that I had just momentarily gone out to consult the Honourable the Home Member about my Bill and evidently my name was called. In fact, I was invited there and was discussing the provisions of my own Bill. And I beg that I may be permitted to move my own Bill.

Mr. President : I must call the next item. I called the Honourable Member's name and the House is my witness that I waited to see if he would appear.

THE ILLEGITIMATE SONS RIGHTS BILL.

M. K. Reddi Garu (South Arcot *cum* Chingleput : Non-Muhammadan Rural) : Sir, I beg leave to introduce a Bill, to amend the Hindu Law of Succession, as regards illegitimate sons ; and in this Assembly, which consists of many eminent lawyers, it will be impertinence in a layman like myself, to dwell at length on the legal aspect of the question. But in introducing this Bill, I shall not deviate from the usual practice of saying a few words, about the necessity for the measure, and I shall briefly refer to the position of the illegitimate son in the Hindu Jurisprudence.

[M. K. Reddi Garu.]

In primitive days, when, in Hindu Society, marital relations seemed to have been loose, and twelve kinds of sons, most of them now obsolete, were recognised, the illegitimate son had right of inheritance among all the four classes, Brahmana, Kahatriya, Vaisya and Sudra, and as civilization advanced and the family tie grew more rigorous, the illegitimate son appears to have been discarded among the regenerate classes, and his rights were recognised only in the case of the fourth or Sudra class, who had not perhaps then as much advanced as the other classes. Sir Colley Harman Scotland, Chief Justice of Madras, alluded to this in the Talarnanpotta case (1 M. H. C. Reports, page 478). In those days it appears, that marriage was not recognised among the Sudras, and in *Brahma Purana*, it was said that there can be no marriage among Sudras. They seem to have been in a state of perpetual serfdom, when they cannot claim anything as their own and a man was not even allowed to claim a woman as his wife. That period of indiscriminate cohabitation among the Sudras, if ever there was one, as depicted in the ancient books, has long disappeared, and at the present day when the status of serfdom is no longer existent, and members of the communities which are not, according to the current nomenclature, classed among the first three classes, hold position and status in society, which are in no way inferior to that of the three regenerate classes, and among whom the family relationship and ideas of morality are as strict and advanced as among the other classes, there is absolutely no reason why the rule of inheritance as regards the illegitimate sons should continue when the *raison d'être* of the rule has disappeared. The eminent Hindu Jurist and lawyer—Jogendra Chandra Ghose—in his treatise on Hindu Law says : “ That old degraded status of Sudras has passed away and the Judges even if they have to administer the law of the Smritis should construe it strictly. There should not be two rules in such cases—one for the higher classes and another for the Sudras. The rule of morality should be considered as equally applicable to all classes ; and *Sudras should not be held by modern courts as governed by a lower Code* ”. The matter has been put briefly and tersely and I trust further words of mine are not needed to emphasize the position. A learned Judge of the Madras High Court and now a member of this Honourable House,—you all know whom I refer to—Mr. Seshagiri Ayyar has discussed this matter in a judgment of his and observes “ It is open to question whether, having regard to the advancement of the class known as Sudras, the law which owes its conception to these ideas, should still be allowed to prevail. The point has never been raised, whether they are not obsolete ”, and I believe I am justified in calling upon the Members of this House to declare that ancient and invidious provision of law *obsolete*, which at the present day Judicial Tribunals may perhaps be unable to do.

The right of the illegitimate son or *Dasiputra* is based on a text which has been differently interpreted by the various High Courts. *Dasiputra* literally means, son of a female slave. Now that slavery has been abolished by Act V of 1843, there cannot be any slave, much less the son of a slave. My friend Dr. Gour in his Hindu Code says, that a *Dasiputra* as such has ceased to exist ; and this seems to have been the view adopted by the Calcutta High Court till the recent Full Bench decision in 48 Cal. 643 which takes a different view. The other High Courts have interpreted the word,

to mean the son of a *continuously* kept Sudra woman, and there has yet been another difference between the Bombay High Court on the one hand and Allahabad and Madras High Courts on the other as to the limitations of a Sudra woman. The latter have held that she should be an *unmarried* woman, whereas the Bombay High Court has held that the illegitimate son of a widow is entitled to inherit, and left the question open whether the illegitimate son of a woman whose legally married husband is yet alive, is entitled to inherit or not. What view the Calcutta High Court may hereafter take on the question, whether the woman should be unmarried, it would be difficult for us to predicate, and the Punjab High Court has been, I think, too young to develop the illegitimate son and by the measure which I trust, this House will pass, it will have no opportunity for any activities in that direction.

There has been conflict also as to the share the illegitimate son takes. According to the texts, he is to take half of a legitimate son's share and this has been differently interpreted as meaning half of what he would take if he were a legitimate son, and also, as half of what his legitimate brother takes. Thus it will be seen that the illegitimate son has been the cause of discord between the various High Courts as to who he is and what his rights are : when as a matter of fact the *Dasiputra* or the illegitimate son of the Hindu Jurisprudence has long ceased to exist. This non-existent entity shall *not* be a cause of disharmony in law or in families and the sooner the Honourable Members of this House make up their minds to do away with him the better.

Let us now consider what exactly are the rights of an illegitimate son. According to the text as interpreted by judicial decisions, he cannot claim a share against his father. He takes by his father's choice and it is open to the father to disinherit his illegitimate son. He has no claim against the collaterals of the father, *i.e.*, if the father was a member of a joint Hindu family consisting of himself and his undivided brothers. After the death of the father the illegitimate son cannot claim a share as against the brothers. It is only in case, when the father was divided from his collaterals and died without disinheriting his illegitimate son, that he can claim any right to inheritance.

Sir, any attempt to abrogate this *meagre right* which has been recognised, *only* in case of one community cannot be said to be reactionary. This illegitimate son seems to be peculiar to the Hindu Jurisprudence. No other civilised system gives him a place, and even consanguinity or blood relationship is denied to him. It cannot be said, that there were not illegitimate children among nations inhabiting the other parts of the world; or even in India they were confined only to the Hindus and that their Mussalman brethern, had no illegitimate children at all.

In every primitive society, nay, even in the most advanced society there were, and always will be a number of illegitimate children, but codes of law which came into existence when a society was fairly well-advanced, discarded him altogether when *more ancient* Hindu Code gave him a place. And the time is come to bring up the *Hindu Code* to a level of moral equality with other systems of law.

I have attempted to lay briefly before you the considerations which influenced me to introduce this measure. And I am perfectly sure that

[M. K. Reddi Garu.]

other Honourable Members of this House will be able to advance more striking and cogent reasons in support of this Bill. I am sure, Sir, that this Bill ought to appeal to the lawyer and the layman alike. And I solicit the cordial support of all the members of this Assembly to enable me to carry this measure through, and remove a stain in the Hindu Jurisprudence, which will thereafter treat all castes alike and on a footing of equality.

The motion was adopted.

M. K. Reddi Garu : I introduce the Bill, Sir.

THE LEGAL PRACTITIONERS (AMENDMENT) BILL.

Mr. K. C. Neogy (Dacca Division : Non-Muhammadan Rural) : Sir, I beg to move for leave to introduce a Bill to amend the Legal Practitioners Act, 1879.

The distinctions between Barristers, enrolled as Advocates, and Vakils, practising in the different Indian High Courts, in the matter of professional rights and privileges, have long been the subject of adverse comment.

Whatever the initial reasons for inequalities based on differences in law, procedure and language in vogue in the highest Courts in the early days of British rule in India, there can no longer be any justification for their continuance, particularly in view of our insistent demand for the recognition of indigenous talent in every other branch of life. The injustice of the position is known to have struck some of the distinguished legal and educational authorities in England also, who have favoured the suggestion for the establishment of a self-contained Indian Bar, on the lines of Colonial Bars, to which Barristers and Indian-trained pleaders would be admitted on equal terms. This very idea was mooted in the Legislative Assembly in February 1921, in a Resolution moved by Munshi Iswar Saran. The present Bill does not, however, seek to give effect to the ambitious scheme put forward in that connection. It may be looked upon as a tentative measure which, while retaining Advocates and Vakils as two distinct classes, only seek to remove the principal disabilities of the latter. It will enable Vakils to practise in all matters in the Original Side of those High Courts in which they are not so authorised at present. It will also do away with the practice under which Advocates take precedence over Vakils, irrespective of their length of practice at the Bar.

Sir, I want to make it clear that my intention is to place the Vakils in the same position as Advocates, for all practical purposes, I know the privileges of Advocates are not the same in all the High Courts. In the matter of the power to act, or to take instructions from the client, for instance, the practice varies. In the High Courts of Madras, Allahabad, the United Provinces, the Punjab, and Bihar and Orissa, I think the Advocates take instructions direct from their clients. In Calcutta and Bombay they have an intermediate agency in the Vakil or Solicitor for dealing with the clients. I have no desire to disturb the particular

practice that prevails on the Original Side in the different High Courts in this matter ; that is to say, Vakils will share with the Advocates all the existing privileges and disabilities on the Original Side. I have not the intention, for instance, to take away the privilege of acting belonging to the Vakil who also pleads on the Original Side in Madras, nor to make the Vakil in Calcutta independent of the Solicitor while appearing on the Original Side of the High Court. I may mention that the Solicitors and Pleaders can get themselves enrolled as Vakils under the existing rules on certain conditions. Therefore, when you place the Vakil in the same position as the Advocate, there will be nothing to prevent a Solicitor or Pleader attaining that position by enrolling himself as a Vakil, if he so chooses. There need, therefore, be no sense of inferiority troubling any Indian Vakil, Pleader or Solicitor when compared to an Advocate, nor need they be labouring under any special disability. And these are, I think, the main objects which those who advocate the establishment of a self-contained and independent Bar, have in view.

Now, Sir, with regard to the question of pre-audience, I may mention that the Calcutta High Court has very recently decided to do away with the existing invidiousness as between Advocates and Vakils while appearing on the Appellate Side, thus practically anticipating the provision to that effect in the Bill, to a certain extent.

The distinctions which this Bill aims at removing owe their existence either to rules framed by the High Courts under their Letters Patent, or otherwise, or to rules of practice recognised by them. The reforms which the Bill has in view could, therefore, be brought about by the High Courts themselves. As matters stand, however, the privileges and disabilities of the Vakils are not the same in all the High Courts ; and much as uniformity is desirable in these matters, there is no machinery other than legislation which can secure it. Moreover, it can be claimed that the present Bill is the reflex of strong public opinion in a matter of some national importance, which the Legislature more than any other authority is bound to take into account.

Whatever the High Courts may do, this House cannot, I submit, refuse to carry out the popular wish in a matter of great interest to the public. I may mention in this connection that in 1915 the Corporation of Calcutta appointed a special Committee consisting of Mr. James Wyness, a well-known business man in Calcutta, Raja Reshee Case Law, an eminent business man and landowner in Calcutta, Sir Hariram Goenka, a distinguished Marwari merchant and Rai Radha Charan Pal Bahadur, another eminent citizen of Calcutta, none of them being a Vakil or a Barrister. This special Committee recommended that :

“ Vakils and Solicitors should be allowed under certain conditions to act and plead in the same way as Barristers on the Original Side, thus leaving to the litigant the opportunity of selecting a cheap method of obtaining justice,”

and the Calcutta Corporation adopted this recommendation by a majority of 23 to 4 votes. In the same year the Bengal National Chamber of Commerce, the foremost Indian commercial organisation in Calcutta, made the very same recommendation. Then again, I find that the Conference of Vakils and Pleaders of Bengal and Assam, which was held in Calcutta in February 1921, passed the following Resolutions :

[Mr. K. C. Neogy.]

"That this Conference is of opinion that in view of the immense progress that has been made in this country in legal education and the eminence achieved by Vakils and Pleaders in the profession as well as on the Bench, it is time that an independent and self-contained Indian Bar should be established in India, which shall not recognise any special privilege in favour of members of the English Bar as such.

That this Conference is of opinion that pending the establishment of a self-contained Indian Bar the existing law and rules should be so altered that persons who are eligible to practise on the Appellate Side shall be entitled to practise on the Original Side of the Calcutta High Court, and that Vakils and Barristers as such shall be placed on a footing of perfect equality."

Sir, it will be seen therefore that I have sought to give effect to this Resolution in this Bill of mine. Now, Sir, this House is committed to the principle of Indianisation of all the services in India and I invite this House in this Bill to Indianise the Bar in the truest sense of the expression.

Barely 24 hours ago, this House committed itself to the principle that as far as possible Indian youths should not be required to go outside India to receive training to enable them to enter any service under Government. And I want the House to stick to that principle in regard to the Bar. We have resented, and rightly resented, that the European element in the Indian Civil Service should consider themselves the steel frame of the administration. The Honourable the Home Member referred to Sheffield steel and Jamshedpur steel in that connection. I may remind the House that so far as the present Bar in India is concerned, there is hardly any Sheffield steel at all; and the only question is whether you will give honest Jamshedpur steel equal chance, with Jamshedpur with a thin English veneer. Sir, I move my motion.

Dr. H. S. Gour (Nagpur Division : Non-Muhammadan) : On behalf of the members of the Calcutta Bar in this House and outside I have the very unpleasant duty of opposing this motion. At this late hour I shall categorise my point very briefly. In the first place I wish to place it before the House whether it is within the jurisdiction of the Indian Legislature to pass a measure of the kind proposed. Honourable Members will find if they turn to their Manual pages 52 and 53 section 65 of the Government of India Act printed. It says :

"The Indian Legislature has power to make laws for all persons, for all courts and for all places and things within British India. Then comes the proviso :
 "Provided that the Indian Legislature has not, unless expressly authorised by Act of Parliament, power to make any law repealing or affecting any Act of Parliament passed after the year 1860 extending to British India."

Now Honourable Members will remember that the Letters Patent of the Calcutta High Court which give the Calcutta High Court the sole jurisdiction of enrolling Vakils and Advocates and defining their power of appearance is contained in the Letters Patent of 1865, which is 24 and 25, Vict., Chapter 104. It is an Act of Parliament. The position, then, is this. The power of the Calcutta High Court to determine the class of legal practitioners who shall appear before them on the Original Side is safeguarded by an Act of Parliament, and the Government of India Act lays down that the Indian Legislature has not the power, except under the conditions provided in the proviso, to do anything which will affect an Act of Parliament.

Mr. T. V. Seshagiri Ayyar (Madras : Nominated Non-Official) : In section 44 of the Letters Patent.

The Honourable Sir William Vincent (Home Member) : The provisions are not in the Government of India Act, but in the Letters Patent of the Court and the Letters Patent are subject to legislation in India.

Dr. H. S. Gour : I see. Now the next point is the Letters Patent of the Calcutta High Court, and my friend does not wish this House to alter the Letters Patent. What he wants now to do is to alter or amend the Legal Practitioners Act, an Act of the Indian Legislature, without altering the Letters Patent. That is the position in which my friend is landed. Now, Sir, that is the first point. The second point is the expediency of legislation. Honourable Members will remember that they have been invited on several occasions to consent to piecemeal legislation securing the levelling up, as my friend Munshi Iswar Saran would say, of the Vakils to the level of the members of the English Bar. I submit this is another attempt in the direction of piecemeal legislation. We are all anxious to see an Indian Bar created, and I venture to think that this question must come up with the question of the creation of an Indian Bar. Thirdly, I ask Honourable Members of this House to give me indulgence for a few moments when I point out the distinction between the Advocates and Vakils of the Calcutta High Court. It is perfectly true that Advocates have the sole right of appearance and audience on the Original Side of the Calcutta High Court, but my friend Mr. Neogy knows that the Calcutta High Court has the power, and has in fact made rules allowing Vakils to appear in cases involving questions of Hindu and Muhammadan law.

Rao Bahadur T. Rangachariar (Madras City : Non-Muhammadan Urban) : When ?

Dr. H. S. Gour : They have. Honourable Members will also remember that the distinction between the Calcutta Advocates and Vakils is indeed a real one. Since 1911 no Barrister, as such, is entitled to enrol as an Advocate of the Calcutta High Court ; he must be either a graduate of law, or must have served one year's apprenticeship after he is called to the Bar.

Honourable Members will see that this satisfied a much higher standard than what is obtainable in the case of Vakils. If the Vakils of the Calcutta High Court have any grievance at all, it has been pointed out this morning, that they can get themselves called to the English Bar after one year's attendance at the Inns of Court and passing the necessary examination. But apart from their appearance, apart from their being called to the Bar, there is absolutely nothing to prevent the Calcutta High Court from making rules for the raising of Vakils to the dignity of Advocates. Such rules have been made by the High Courts of Bombay and Madras. Vakils are made Advocates and then they have the same rights and privileges.....

Rao Bahadur T. Rangachariar : That is a mistake ; in Madras Vakils are not made Advocates.

Dr. H. S. Gour : The qualification is higher. Any Vakil who has passed the M. L. examination can be raised to this status of a Barrister, and as soon as they are enrolled as Advocates they are.....

Mr. President : The Honourable Member is entitled to discuss general principles, but he is not entitled to waste the time of the House on details.

Dr. H. S. Gour : The details which I am dealing with, Sir, are intended for the purpose.....

Mr. President : The Honourable Member's intentions are not in issue here. The Rules and the Standing Orders lay down that on the introduction of a Bill nothing but the bare principle of the Bill is to be discussed.

Dr. H. S. Gour : Very well, Sir. I therefore submit that my Honourable friend the mover of this motion has no real grievance, and he should wait a few months, when I am perfectly certain that there will be a motion in this House for the creation of an Indian Bar and a movement forward in that direction.

Mr. President : The question is :

“That leave be given to introduce a Bill to amend the Legal Practitioners Act, 1879.”

The motion was adopted.

Mr. K. C. Neogy : Sir, I beg to introduce the Bill.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 13th September, 1922.
