28th February, 1922

THE

LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

VOLUME III
PART. I

THIRD SESSION

OF THE

LEGISLATIVE ASSEMBLY, 1922

SIMLA
SUPERINTENDENT, GOVERNMENT CENTRAL PRESS
1922

CONTENTS.

SGPI-21-I-73-30-8-22—95.

LEGISLATIVE ASSEMBLY.

Tuesday, 28th February, 1922.

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

QUESTIONS AND ANSWERS.

DISCRIMINATION BETWEEN INDIANS AND ANGLO-INDIANS ON RAILWAYS.

227. * **Mr. K. Ahmed**: With reference to the reply to Question No. 95 (*a*) and (*b*) and the supplementary question thereto on 24th of January, 1922, will the Government be pleased to give an indication of how long the matters will remain under consideration and what will be their future policy of removing the discriminations between Indians and Anglo-Indians ?

Colonel W. D. Waghorn: The Government are unable at present to add anything to the replies referred to.

Mr. K. Ahmed: A supplementary question with regard to Question No. 227 just answered—(not that it was really answered but that it will be answered later on). May I ask whether the discrimination between Indians and Anglo Indians is one of the causes of the present strike ?

Colonel W. D. Waghorn: I think I have already told the Honourable Member that the cause of the strike was an alleged assault on an Indian.

Mr. K. Ahmed: You admit that, Sir ?

Colonel W. D. Waghorn: I do not admit it.

Mr. K. Ahmed: What is it due to, then ?

Colonel W. D. Waghorn: To an alleged assault.

Mr. K. Ahmed: But there must be some real cause on which we are entitled to be enlightened, I suppose, by the Railway authorities, and may I demand an explanation of what it is due to ?

Colonel W. D. Waghorn: I have nothing further to add.

Mr. K. Ahmed: That is not an answer, Sir. Do Railways exist in India on such anomalies as I have stated or do anomalies exist on Railways ?

Colonel W. D. Waghorn: I am afraid I do not quite understand what the Honourable Member is asking.

Mr. J. P. Cotelingam: It is a puzzle, Sir.

Mr. K. Ahmed: There must be, Sir, some definite answer to be given to my main question already put.

Mr. President: Question No. 228. Mr. Kabeer-ud-Din Ahmed.

INCREASE IN GOODS RATES ON RAILWAYS.

228. * **Mr. K. Ahmed:** Is it a fact that the classification of goods and rates charged on Railways under each classification is to be generally increased from 1st April, 1922 ?

Colonel W. D. Waghorn: The reply is in the affirmative.

AGREEMENT BETWEEN EAST INDIAN RAILWAY AND OUDH AND ROHILKHAND RAILWAY AS TO RATES BETWEEN HOWRAH AND STATIONS ON THE OUDH AND ROHILKHAND RAILWAY.

229. * **Mr. K. Ahmed:** Is the arrangement between the East Indian Railway and the Oudh and Rohilkhand Railway (referred to on page 150 of Mr. Ghose's Monograph on Indian Railway Rates) which required that the rates quoted between Howrah and Aligarh Junction, over the East Indian Railway, would be applicable from stations on the Oudh and Rohilkhand Railway short of Aligarh Junction, under the operation of the differential rule cancelled ?

Colonel W. D. Waghorn: The agreement between the Oudh and Rohilkhand and East Indian Railways referred to is still in force.

ROUTING OF GOODS TRAFFIC ON THE EAST INDIAN RAILWAY.

230. * **Mr. K. Ahmed:** Is not the routing of traffic referred to in item (1), paragraph 10, page 334 of the East Indian Railway Goods Tariff Pamphlet No. I, in force from 1st November, 1921, the same as referred to on page 150 of Mr. Ghose's Monograph and in accordance with the arrangement referred to therein ?

Colonel W. D. Waghorn: The reply is in the affirmative.

DISCUSSIONS IN THE ASSEMBLY ON THE ACWORTH COMMITTEE REPORT.

231. * **Mr. K. Ahmed:** Will the Government be pleased to state if in inviting discussions on the Acworth Committee Report, they will place the official views of the Government of India on that Report before the Assembly, and will the Members of the Assembly be given sufficient time to consider those views before the subject comes for discussion in the House ?

Colonel W. D. Waghorn: The Report of the Acworth Committee was published some months ago and it is always open to a Member to move Resolutions on questions arising out of that Report. Those of the recommendations which involve expenditure or require legislation must, of course, come before the Assembly. Beyond this the Government can say nothing at present except that they propose to establish a Central Advisory Council composed of Members of the Legislature and naturally that they will discuss with this Advisory Council important questions of policy arising out of the Report.

Mr. K. Ahmed: Will the Government be pleased to expedite the matter of placing the Report in this Assembly?

Colonel W. D. Waghorn: Yes, that is being done.

Rao Bahadur C. S. Subrahmanayam: A supplementary question, Sir. Is a fresh Committee going to be appointed to consider the Report?

Colonel W. D. Waghorn: It is proposed to appoint the members of the Finance Committee who have already sat and discussed the financial aspect of the Report.

Rao Bahadur C. S. Subrahmanayam: Would not Government see its way to revise the personnel of that Committee, seeing that this Committee is going to enter upon a wider sphere of work?

Colonel W. D. Waghorn: It is not proposed to form any other Committee. The Assembly will have it in their power to discuss any question in regard to the Report which may be brought up.

SUGGESTED REVISION OF INDIAN RAILWAYS ACT, IX OF 1890, WITH A VIEW TO STATE OWNERSHIP.

232. * **Mr. K. Ahmed:** Is the Indian Railways Act, IX of 1890, which was framed when the trunk lines like the Great Indian Peninsula, Bombay Baroda and Central India, Madras, were company-owned, to be revised so as to give India the full benefit of State ownership of the railways? If so, when?

Colonel W. D. Waghorn: It is probable that the Act will need revision in view of some of the recommendations in the Acworth Committee's Report, but I do not know what the Honourable Member means by his question whether the Act is to be revised in order to give India the full benefit of State ownership of the Railways. I can give no date.

Mr. K. Ahmed: In 1924 and 1925, the contracts of the Company-managed Railways, such as the East Indian Railway and the Great Indian Peninsula Railway, are going to expire. Will the Government, in view of the fact that the Acworth Committee has already observed that they should be State-managed concerns, be pleased to enlighten the Assembly as to whether they are going to do that and not to continue the contracts beyond 1924 and 1925, respectively?

Colonel W. D. Waghorn: The contracts for these lines automatically cease. The question as regards State or company ownership will be taken up by the Advisory Committee and will be referred to this Assembly, if necessary.

Mr. K. Ahmed: Thank you, Sir.

STATE OWNERSHIP OF RAILWAYS IN GERMANY AND BELGIUM.

233. * **Mr. K. Ahmed:** Are the Government aware that the railways of Germany and Belgium are owned and managed by the State?

Colonel W. D. Waghorn: The Government are happy to be able to give the Honourable Member the assurance he requires.

Mr. K. Ahmed: Is it the translation of the Code?

Mr. President: It is Question No. 233.

Mr. K. Ahmed: Is it the German and Belgium Code or the Railway Act?

Colonel W. D. Waghorn: I have nothing to add to the answer I have already given.

GERMAN AND BELGIUM RAILWAY ACTS.

234. * **Mr. K. Ahmed:** Will the Government be pleased to get the German and Belgium Railway Acts, together with their English translations for the benefit of the Indian Government and the Indian public?

Colonel W. D. Waghorn: Inquiries will be made whether English translations of the Acts referred to are procurable. In the meantime, the Honourable Member is referred to the following publications, which are available in the Legislative Department Library:

(*i*) Grierson's collection of Regulations for the German Railways, 1888 and

(*ii*) Todd's Treatise on the Belgian Law containing a complete translation of the entire Code of Commerce and Code of Procedure London, 1905.

Mr. K. Ahmed: Is the Honourable Member quite sure that they will bring home the point at issue for which this question has been put?

Colonel W. D. Waghorn: I do not quite understand what the Honourable Member means by the point at issue.

Mr. K. Ahmed: Will items (*i*) and (*ii*), that is, a description of the title of the books mentioned by the Honourable Member, satisfy the point in issue?

Colonel W. D. Waghorn: That I will leave the Honourable Member to ascertain for himself.

LEASE IN PERPETUITY IN KARACHI.

235. * **Mr. W. M. Hussanally:** (*a*) Is it a fact that the Cantonment Authorities in Karachi have not as yet informed any of the landlords in the Cantonment that the titles to the lands held by them on the original tenure are considered doubtful and asked them if they are willing to execute leases in perpetuity for their original holdings?

(*b*) Will Government be pleased to state what form of lease is referred to as 'lease in perpetuity' and how many such leases have been executed in Karachi.

(*c*) Will a copy of such lease be placed on the table?

Sir Godfrey Fell: (*a*) The Government of India have no information on the subject, but are inquiring. I will inform the Honourable Member of the result.

(*b*) In my reply to the Honourable Member's Question No. 65 on the 10th January, 1922, the expression 'leases in perpetuity' referred to leases in Form B under section 264, Cantonment Code. This is a form of lease for an indefinite term, to be executed in cases of extensions of existing sites, or where it is desired to regularise existing grants.

(*c*) The Honourable Member is referred to Form B, which is reproduced in Schedule VI of the Cantonment Code, 1912.

TRANSFER OF HOUSES IN KARACHI HELD ON ORIGINAL TENURE.

236. * **Mr. W. M. Hussanally:** (*a*) Is it a fact that the landlords of houses in the Cantonment of Karachi, who had bought houses held on the original tenure when applying for transfer of the said houses, were informed that their applications for transfer would be considered only when they agreed to sign leases on Form B? And is it a fact that they did sign the same in order to secure the transfer?

(*b*) If so, will Government be pleased to quote the authority under which leases on Form B were demanded from these landlords; and if any legislation was taken in the matter?

Sir Godfrey Fell: (*a*) and (*b*). The attention of the Honourable Member is invited to the reply given on the 10th January last to his unstarred Question No. 65.

HARDSHIPS OF PROPERTY OWNERS IN KARACHI CANTONMENT UNDER NEW LEASES ON FORM B.

237. * **Mr. W. M. Hussanally:** (*a*) Is it a fact that now existing owners of properties (which were originally held on old tenure) by virtue of rebuilding or on account of acquiring by transfer have been made to sign new leases on Form B and as such are given notices to vacate such houses when required for a military officer?

(*b*) Is it a fact that such action has already been taken in the Karachi Cantonment?

Sir Godfrey Fell: (*a*) In regard to the first part, Government have no information.

In regard to the second part, I would invite the attention of the Honourable Member to the reply given on the 22nd September 1921 to his unstarred Queston No. 17.

(*b*) Government have no information on the subject.

ABSENCE OF NOTICE TO PROPERTY OWNERS IN KARACHI OF THE EFFECT OF NEW LEASES.

238. * **Mr. W. M. Hussanally:** (*a*) Will Government be pleased to state whether the Cantonment Authority in Karachi, before they got owners of houses held on original tenure to execute leases on Form B on account of transfer, sub-division and on rebuilding, informed them before getting fresh leases executed that in consequence of their executing such fresh leases they would forfeit the right of living in such houses by virtue of their

executing fresh leases and that they would not receive any protection from the House Accommodation Act? If not, why not?

(*b*) Under what authority were these statutory rights of living in one's own house taken away in this manner and was any legislation taken in the matter?

Sir Godfrey Fell: (*a*) and (*b*). The Government of India have no information. I would, however, point out that no owner can be compelled to execute a fresh lease in Form B; and if he agrees to do so, he must be presumed to be aware of the conditions of the lease before executing it. It cannot, however, be assumed that owners holding houses under old tenure are not liable to be required to vacate their houses.

AUTHORITY ON WHICH HOUSE OWNERS HAVE BEEN DISPOSSESSED IN KARACHI.

239. * **Mr. W. M. Hussanally:** (*a*) Is it a fact that the clauses in the annexure to lease Form B do not in any way lay down that the owner should *vacate* his premises if the same are required for a military officer, but that on the other hand the lease itself grants liberty and license to lessee TO HOLD AND ENJOY the land and ALL BUILDINGS erected thereon?

(*b*) Will Government state what clause of lease Form B, or annexure thereto, authorises the Cantonment Authority to call upon the owner to *vacate* his house when occupied by him?

(*c*) In how many instances have such landlords been made to vacate their houses in Karachi and other cantonments?

(*d*) Will Government order such landlords to be restored in the possession of such houses?

Sir Godfrey Fell: (*a*) and (*b*). Condition VI *et seq* of the lease in Form B gives Government the right to appropriate a house at any time for occupation by any military officer or civil officer.

(*c*) The Government of India have no information and do not consider that it would be in the public interest to spend the large amount of time and labour involved in obtaining a return of instances in which landlords have been made to vacate their houses in Karachi and other cantonments.

(*d*) No.

ILLEGALITY OF LEASES IN FORM B TAKEN ON OLD SITES.

240. * **Mr. W. M. Hussanally:** (*a*) Is it a fact that the Reform Committee have unanimously recommended the cancellation of all leases in Form B taken on old sites as having no force of law?

(*b*) Is it a fact that the said Committee have pronounced such leases as illegal, unfair and unreasonable?

(*c*) Will Government please state if they have issued any orders to the Cantonment Authority in question informing them that such leases are invalid and no action should be taken thereon? If not, do Government propose to issue any such orders?

Sir Godfrey Fell: (*a*) The Cantonment Reforms Committee do not appear to have made any such recommendation.

(*b*) They have expressed the opinion that the instructions contained in paragraphs 25 and 26 of the Cantonment Manual are illegal and bear harshly on house owners in cantonments.

(*c*) The Government of India have not issued any such orders; but they are considering this question.

PROVISION OF NEW OFFICE BUILDINGS FOR WESTERN COMMAND IN KARACHI.

241. * **Mr. W. M. Hussanally:** (*a*) Is it under contemplation to remove the Western Command now stationed at Karachi to another station? If so, to what place, for what reasons and when?

(*b*) If not, is it contemplated to build new offices for the Western Command in Karachi, and, if so, on what site and when?

Sir Godfrey Fell: (*a*) Certain proposals of a purely tentative character for the removal of the headquarters of the Western Command from Karachi have been put forward by the local military authorities. The Government of India have not yet taken them into consideration and are not able, therefore, to make any statement on the subject.

(*b*) If the headquarters are retained at Karachi, it will probably be necessary to erect new offices, but nothing is yet settled about the site nor can it be stated when building will commence.

PURCHASE OF PROPERTIES IN KARACHI CANTONMENT FOR WESTERN COMMAND.

242. * **Mr. W. M. Hussanally:** (*a*) Is it a fact that a few months ago the Army Commander, Western Command, invited proposals from various landlords in Karachi Cantonment regarding purchase of their properties by Government for bungalows for the staff officers attached to the Command?

(*b*) If so, will Government be pleased to state the result of the negotiation and whether the Government propose to acquire the said properties?

Sir Godfrey Fell: (*a*) and (*b*). The Government of India have no information on the subject.

SUGGESTED EXTENSION OF KARACHI CANTONMENT FOR LOCATION OF WESTERN COMMAND.

243. * **Mr. W. M. Hussanally:** (*a*) If the Western Command is to be permanently located at Karachi, is it not a fact that the present cantonment area will require considerable extension?

(*b*) If so, is there any proposal before Government to make over the present depôt lines, the Native Infantry lines, and the Artillery lines to the Civil Department for extension of Civil Lines and Sadar Bazar quarters of the city, and to extend the cantonment beyond European Infantry lines and join it to the Military Aerodrome at Drigh Road?

(*c*) If not, will Government consider that proposal?

Sir Godfrey Fell: (*a*) It is not possible to say whether, in the event contemplated, the cantonment will require expansion as a whole. Some

re-adjustment of civil and military areas will probably be necessary for this and other purposes as explained below.

(*b*) and (*c*). As indicated in my answer to the Honourable Member's question asked on the 19th September, 1921, No. 283, certain proposals are under consideration for the re-adjustment of civil and military areas to provide for the accommodation of the headquarters of the Western Command, if it is decided to retain them at Karachi, and for the expansion of the city. These proposals, however, have not yet reached a stage at which it is possible to give any detailed information regarding them.

UNSTARRED QUESTIONS AND ANSWERS.

COST TO GOVERNMENT RESULTING FROM POLITICAL AGITATION AND RIOTS.

273. **Rai Sahib Lakshmi Narayan Lal:** (1) What has been the direct cost of political agitation since January 1919 – (*a*) how much in 1919, (*b*) how much in 1920 and (*c*) how much in 1921 ?

(2) What is the total cost on account of the riots – (*a*) in the Punjab, (*b*) in Ahmedabad and Viramgaum, (*c*) in Bombay and (*d*) at Malegaon ?

(3) What is the total cost on account of the Moplah rising ?

(4) How much of these costs have been met by the Central Government and how much by each of the provinces concerned ?

The Honourable Sir William Vincent: (1) and (2). The Government have no information.

(3) An endeavour will be made to obtain the figures so far as the Central Government is concerned and they will be supplied to the Honourable Member in due course.

(4) An estimate of the expenditure incurred by the Central Government in dealing with political agitation since January 1919 could only be compiled with very great labour which Government are not prepared to undertake.

THEFTS ON RAILWAYS OF GOODS SENT AT OWNER'S RISK AND UNDER RAILWAY RISK RESPECTIVELY.

274. **Rai Sahib Lakshmi Narayan Lal:** (*a*) How many cases of theft have been reported during the year 1921 regarding goods sent under railway risk, and how many regarding goods sent at owner's risk in East Indian Railway Company, and in how many of these cases the offenders have been brought to book ?

(*b*) Do the officers and servants concerned take greater care and are they more responsible for the safety of the former than that of the latter kind of goods ?

(*c*) How many explanations, if any, have been called from them during the year 1921, regarding the fact of there being proportionately lesser number of thefts of the former kind of goods than those of the latter kind and what actions, if any, have been taken in respect thereof by their superior officers ?

Colonel W. D. Waghorn: (*a*) and (*c*). Extraction of the information required would involve a very great amount of time and labour which, I trust,

the Honourable Member will realise, would be quite incommensurate with the result to be obtained.

(*b*) The answer is in the negative.

POWERS OF THE GOVERNOR GENERAL TO CONVERT 'NON-VOTABLE' TO 'VOTABLE' HEADS OF EXPENDITURE.

Mr. F. McCarthy (Burma : European) : Sir, with your permission, I beg to ask a question of which I have given the Honourable the Finance Member private notice. The question is this :

'With reference to the Resolution of this Assembly on the 26th January last, is the Honourable the Finance Member in a position to inform the House if the Law Officers in England have given their opinion as to the powers of the Governor General under section 67-A of the Government of India Act to direct that 'non-votable' heads of expenditure may be submitted to the vote of the Legislative Assembly ?'

The Honourable Sir Malcolm Hailey (Finance Member) : Sir, we have received by telegram a summary of the opinions of the Law Officers of the Crown. In their view, it is not competent for the Governor General to place on the vote subjects which are by the Statute reserved from that vote.

Mr. P. P. Ginwala (Burma : Non-European) : Have the Law Officers of the Crown stated the grounds on which they have given this opinion, and, if so, will the Honourable the Finance Member tell the House what those grounds are ?

The Honourable Sir Malcolm Hailey : As I have said, we have received only a summary so far, but, in any case, the opinions of the Law Officers of the Crown are given subject to the condition that the actual text of those opinions is not published.

Munshi Iswar Saran (Cities of the United Provinces : Non-Muhammadan Urban) : Does the Government propose to take steps to give effect to the Resolution passed by this House ?

The Honourable Sir Malcolm Hailey : That, Sir, would be a matter for consideration.

Mr. P. P. Ginwala : If the Governor General does not follow the advice of the Law Officers of the Crown, is he subject to any pains and penalties ?

The Honourable Sir Malcolm Hailey : Not, so far as I am aware, under the Act.

Dr. H. S. Gour (Nagpur Division : Non-Muhammadan) : May I ask another supplementary question ? Is the Government of India going to exercise their own discretion in the matter, or are they to abide by the decision or opinion of the Law Officers of the Crown ?

The Honourable Sir Malcolm Hailey : If the Honourable Member will remember the terms of the Act, he will realise that the matter is not in the discretion of the Government of India but in the discretion of the Governor General.

Munshi Iswar Saran: Has the Law Officer of the Crown in India been consulted—the Law Member?

The Honourable Sir Malcolm Hailey: The Law Member is not the Law Officer of the Crown.

Mr. P. P. Ginwala: Who is the Law Officer of the Crown in India?

The Honourable Sir Malcolm Hailey: The Advocate General, Bengal.

Mr. P. P. Ginwala: Has his opinion been taken on this point?

The Honourable Sir Malcolm Hailey: Not so far as I am aware. This is an English Statute.

Mr. P. P. Ginwala: Do I understand that the Law Officers of the Crown in India are unable to interpret an English Statute?

The Honourable Sir Malcolm Hailey: I do not know if the Honourable Member wishes me to suggest any imputation against the ability (*Mr. Ginwala*: 'No imputation') of the Law Officers of the Crown in India, but, since the discretion lies with the Governor General, the Governor General has sought the advice of the Law Officers of the Crown in England.

Dr. H. S. Gour: Will the Honourable the Finance Member inform the House whether he has taken the opinion of so eminent a lawyer as the Law Member of the Governor General in Council, and, if so, will he lay that opinion on the table of the House?

The Honourable Sir Malcolm Hailey: The Honourable Member is probably aware that the opinion of individual Members of the Executive Council are not quoted and are not published.

Dr. H. S. Gour: My question has not been answered. Has the opinion of the Law Member been taken?

The Honourable Sir Malcolm Hailey: I am not prepared to say whether any individual Member of the Executive Council has been consulted on any question. If I were to give that information, it would follow by implication that I should have to say what opinion the Member in question had given.

Mr. P. P. Ginwala: Is it the usual practice of the Government to consult the Law Officers of the Crown in England rather than the Law Officers of the Crown in India with reference to the interpretation of Statutes peculiarly applicable to India?

The Honourable Sir Malcolm Hailey: I have already pointed out that the discretion in this case lies by Statute with the Governor General, and the Governor General, in the exercise of the discretion, has desired that the Law Officers of the Crown in England should be consulted.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): May I know if the opinion of this Assembly and the debate in this Assembly were placed before the Law Officers of the Crown before their opinion was obtained?

The Honourable Sir Malcolm Hailey: No, Sir. We were asking the Law Officers of the Crown to interpret a Statute and I do not imagine that,

in interpreting the Statute, the opinion of the Assembly would weigh with the Law Officers of the Crown.

Mr. N. M. Samarth: Is it not, Sir, the usual practice to place before the Law Officers of the Crown a precis of the opinions for and against a particular view and ask them for their opinion?

The Honourable Sir Malcolm Hailey: The procedure we followed in this case was to ask the Secretary of State to consult the Law Officers of the Crown. What exact information was placed before them by the Secretary of State I naturally cannot say.

Mr. P. P. Ginwala: Will the Governor General in Council have any objection to consult the Law Officers of the Crown in India on this point, apart from the Governor General?

The Honourable Sir Malcolm Hailey: The opinion of the Governor General in Council is not binding on the Governor General. As I have pointed out to this House, the discretion is the individual discretion of the Governor General and it is he who has sought the opinion of the Law Officers of the Crown in England, and I may point out that he, himself a high legal authority, may perhaps be given the credit of taking the best opinion possible on this question.

Dr. H. S. Gour: Following the usual practice, was the case stated for the opinion of the Law Officers of the Crown?

The Honourable Sir Malcolm Hailey: It was no doubt stated by the Secretary of State.

Dr. H. S. Gour: Is the Honourable Member prepared to assure us that the case was clearly stated to the Law Officers of the Crown?

The Honourable Sir Malcolm Hailey: I imagine that the Law Officers of the Crown would give no decision unless on a case stated. That, I understand, is the usual practice.

Dr. H. S. Gour: Did the Government of India supply any materials for the statement of the case to be submitted to the Law Officers of the Crown?

The Honourable Sir Malcolm Hailey: Yes, they did. They supplied a reference to the Act, a reference to the opinion of the Joint Committee, and, I think, a reference to the history of the case.

Dr. H. S. Gour: Was it pointed out by the Government of India that discussion on all subjects mentioned in section 67 A (3) (*i*) to (*v*) was open to the late Imperial Legislative Council, and that such discussion was ordinarily allowed to the late Imperial Legislative Council, and that if this section was construed in a narrow spirit the effect of the Reform Act would be to curtail the right of this Assembly to discuss matters which were open to discussion by the late Imperial Legislative Council?

The Honourable Sir Malcolm Hailey: No. We did not convey to the Law Officers of the Crown the individual opinions now expressed by Dr. Gour.

Dr. H. S. Gour: Is it not a fact that the late Imperial Legislative Council were free to discuss the matters mentioned in section 67A (3) (*i*) to (*v*)? I ask the Honourable the Finance Member to enlighten the House.

The Honourable Sir Malcolm Hailey: That is possible. But we are now dealing with the question of voting, not discussion.

Dr. H. S. Gour: I am asking whether this power of discussion was not open to the late Imperial Legislative Council, and whether this power was not intimated to the Law Officers of the Crown with a view to draw their attention to the fact that that section could only deal with voting and not with discussion? I take it that the Honourable the Finance Member is not able to reply to this?

The Honourable Sir Malcolm Hailey: I have this reply to give to that, that we are dealing with the Government of India Act, 1919. We are not dealing with any previous Act and its implications on this matter. Naturally we referred only to the Government of India Act.

Dr. H. S. Gour: I think my question has not been replied to. I asked a plain question. Is it not a fact that under the old Act the old Imperial Legislative Council was free to discuss matters mentioned in section 67A (3) (*i*) to (*v*), and is it not a fact that that section could only deal with the power of the Governor General to allow the Assembly to vote upon those items and that the power of discussion could not in any way be curtailed by the present Reform Act?

The Honourable Sir Malcolm Hailey: As regards the former part of the Honourable Member's question, I can reply to it. That is a fact as stated by him. As regards the latter part of the Honourable Member's question, that is a matter of opinion.

Mr. P. P. Ginwala: With reference to an answer given to me just now, will the Honourable the Finance Member say whether his opinion that the Governor General in Council is not competent to advise the Governor General is based on any legal advice or on his own interpretation of the Government of India Act?

The Honourable Sir Malcolm Hailey: If the Honourable Member will read the Act, he would see that the Governor General has separate statutory powers from those of the Governor General in Council. It is the Governor General who has decided to take the advice of the Law Officers of the Crown in England and it seems to me that he has acted perfectly within his discretion in doing so.

Dr. H. S. Gour: May I ask if the Law Officers of the Crown have given any opinion on the two heads—the power of this Assembly to vote, subject to the general directions of the Governor General, and the power of this Assembly to discuss those items.

The Honourable Sir Malcolm Hailey: As soon as we receive the full opinion of the Law Officers of the Crown, I shall be able to give the Honourable Member, no doubt, somewhat more fully the purport of their opinion. At present I have only communicated to him what we have received, namely, a brief telegraphic summary. As the House took a great

interest in the matter, I thought that that communication should be made to it at the earliest possible moment.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): May I ask the Honourable the Finance Member if there is any objection to give us a copy of that telegram?

The Honourable Sir Malcolm Hailey: I cannot communicate to the House telegrams from the Secretary of State without his permission.

Dr. H. S. Gour: Who pays for the opinion of the Law Officers of the Crown? Is it a votable item?

The Honourable Sir Malcolm Hailey: I am afraid I do not know. I will ascertain.

Lala Girdharilal Agarwala (Agra Division: Non-Muhammadan Rural): Has the Government any objection to consult our own Law Member in whom we have full confidence?

The Honourable Sir Malcolm Hailey: I have already pointed out that it is the Governor General who was seeking a legal opinion and not the Government of India.

Mr. N. M. Samarth: May I know who the Law Officers of the Crown are and how many men there are?

The Honourable Sir Malcolm Hailey: The Attorney General and the Solicitor General.

Mr. N. M. Samarth: Thank you.

Dr. H. S. Gour: May I ask whether these two Law Officers of the Crown are conversant with Indian law and procedure?

The Honourable Sir Malcolm Hailey: This is an English Statute and these distinguished lawyers are no doubt the best authorities in England on the interpretation of English Statutes.

Rao Bahadur T. Rangachariar: Is Dr. Gour aware that we engage the Attorney General in Indian cases?

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

Lala Girdharilal Agarwala (Agra Division: Non-Muhammadan Rural): I formally move:

'That the Bill further to amend the Code of Civil Procedure, 1908 (Amendment of rule 4 (3), Order III), be taken into consideration.'

My Bill is a short and simple one. It simply aims at extending to the vakils and certain advocates the privilege of appearing without vakalatnama, which has hitherto been enjoyed by barristers and some advocates. Honourable Members will remember that, when I introduced the Bill on the 7th February, I explained my object briefly. The vakil bar, Honourable Members will be pleased to remember, has been able to produce eminent lawyers of the calibre of Dr. Rash Behari Ghosh, Sir Sunderlal, Sir Bashyam Iyengar,

[Lala Girdharilal Agarwala.]

Mr. Krishnaswami Aiyar, Pandit Ajodhia Nath and many others. It is not very clear on what grounds the privilege of appearing without vakalatnamas should be denied to a body that has produced eminent gentlemen of that kind: I understand that the Honourable the Law Member wants to move an amendment that the Bill be circulated for opinion. I have no objection to that. I simply want to point out that the Bill has already been considered by the Allahabad Vakils' Association to which I and the Law Member both belong. I have received certain opinions from the Oudh Bar Association and from another place, in which they complain that the scope of my Bill is not wide enough to include practitioners of both Courts. I think the Bill as drawn up does cover their case, but if better suggestions are available, I shall be only too glad to comply with them. I, therefore, move that the Bill be taken into consideration.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I entirely sympathise with the object which the Mover of this Resolution has in view, but I wonder if he has carefully examined the scope of the measure and the ultimate effect of his proposal, if accepted by the Assembly. He is probably aware that, according to an ancient practice, the fees which are paid to barristers who appear as advocates at the High Court in this country is *honorarium* and not *merces*, and it follows that they are under no contract of service or employment of any kind towards their clients. They are at liberty to appear or not to appear, and the result is that the client also is at liberty to pay them or not to pay them. If they can exact their fee in advance, that is a moral obligation which every barrister discharges, for he refunds the fee if he is unable to appear or make some suitable provision for appearance on his behalf. But if the fee is not paid and the appearance has been made, no suit will lie for the recovery of the fees and in the Presidency High Courts a barrister is not free to act. He has to be instructed either by a vakil or attorney or solicitor and it is only upon instructions so received that he becomes entitled to appear in Courts. His power to compromise cases there is at least doubtful. It will thus appear that while the barrister may *primâ facie* be said to be clothed with certain privileges, he suffers from a large number of disabilities which will become fastened on to the vakils if they were to assimilate their position to that of a barrister. Let me illustrate to my Honourable friend what I mean. Under the Legal Practitioners Act, Chapter VI, the High Court fixes certain fees and, if any agreement is entered into by a pleader with any person respecting the amount and manner of payment for the whole or any part of any past or future services, he has to comply with the provisions of section 28 of the Legal Practitioners Act, *i.e.*, file the agreement. The subsequent sections 29, 30 and 31 define his rights and liabilities. I know, Sir, a very large number of vakils take advantage of the provisions of section 28 of the Legal Practitioners Act. But, if a vakil was to appear without any written authority, I doubt if he will be free to enter into such agreement as is contemplated by the Legal Practitioners Act. The real object of requiring a vakil to file his vakalatnama is to ascertain three facts, the name of his employer, the nature of his employment, and the powers which his employer gives him. Now, if he is not to file a vakalatnama and to appear in Court as barristers do, the vakil will be deprived of that salutary protection which his power-of-attorney gives him of identifying his employer, of ascertaining his own powers as regards compromise,

settlement of the dispute and the rest, and other matters, such as the employment of another pleader in the name of his employer, which is one of the conditions usually inserted in the vakalatnama, and other matters which the vakil sometimes gets inserted in the vakalatnama. I may point out that these are questions of some importance which I wonder if the Mover of the Resolution has given any thought to.

Lala Girdharilal Agarwala: I have.

Dr. H. S. Gour: He will also find that a barrister, when he is called to the bar, pays a stamp duty of something equivalent to £150, and when he goes to the High Court, he is enrolled as an advocate on payment of Rs. 500. Converting the £150 at the usual rate, he really spends about Rs. 2,750 or thereabouts in stamp duty. A vakil does not spend the same amount. He has to pay Rs. 50 per annum for the renewal of his license. (Cries of 'No, no'.)

The Honourable Dr. T. B. Sapru (Law Member): That is not so.

Dr. H. S. Gour: I stand corrected. He has to spend Rs. 500 upon enrolment as a vakil, and that is all that he has to spend upon his enrolment. In all future engagements in Court he has to file his vakalatnama upon which he affixes a stamp duty of Rs. 2 in the High Court. (*A Voice*: 'Not always'.) It is two rupees. (*A Voice*: 'Yes'). Some of my friends say: 'Not always'; sometimes. I suppose they do not affix any stamp at all. (Laughter.) That is by the way. Well, I submit that these are all questions which are interlocked and interlinked; and, when the motion of the Honourable the Law Member goes before the public, not only members of the Vakils Association but members of the Bar throughout the country, including the Bar Libraries in Calcutta, Bombay and Madras, will, I hope, be consulted, with due advertance to the remarks I have made.

The Honourable Dr. T. B. Sapru: Sir, when my friend, Mr. Girdharilal Agarwala, moved his Bill, I thought it was a very innocent little Bill which could be disposed of by a reference to Local Governments or to the High Courts without raising any such questions as have been raised this morning by my friend, Dr. Gour. Well, I am quite sure, my vakil friends in this House appreciate his solicitude for the welfare of that branch of the profession. But I wonder if they will not, when they carefully think over his speech, say: 'Save us from a friend like Dr. Gour'. Well, Dr. Gour has referred to the immunity which barristers, members of the English Bar, enjoy from being sued for negligence, and also to what he called the disability which they suffer from as regards their fee. Any student who knows the history of the growth of the Bar will be able to tell him—and I am sure he knows it—that it is a relic of a very ancient tradition in England, due probably to the early clerical associations of the English Bar, and probably also traceable to the early history of the English Bar in Rome. But probably Dr. Gour will not be prepared to contradict me when I say that even in India, at least one Court,—and I am not sure whether another Court also—has definitely ruled that there is no reason why that rule of English practice, for which there may be very good reasons in England, should be followed blindly in India. Well, therefore, the question of the advantages and disadvantages of the privileges and the disabilities, which attach to his branch of the profession are to my mind absolutely irrelevant to the Bill which

[Dr. T. B. Sapru.]

has now been introduced by Mr. Girdharilal Agarwala. Anyhow, so far as the consideration of this Bill is concerned, I certainly think that it raises a question of great importance, affecting as it does one branch of the profession; and although, frankly speaking, I am in full sympathy with Mr. Girdharilal Agarwala's proposal, I do not commit myself to the drafting of that Bill, because I feel that there is considerable room for improvement in the drafting of this Bill. I also feel that, when you raise a question of this character, the importance of which can only be appreciated by professional men and not by outsiders, it is very desirable that those who are directly affected by it and those who are competent to express an opinion should be invited to express their opinions; and it was for that reason that I decided to give notice of the amendment which stands in my name, with the object that the opinions of the High Courts, the Bar Libraries, the Vakils' Associations and the profession as a whole may be invited on this particular subject. Speaking for myself, I have no reason to doubt that it will receive the unanimous support of that branch of the profession in the interest of which Mr. Girdharilal Agarwala has moved this Bill. Speaking again quite frankly, I should not feel surprised if that branch of the profession of which Dr. Gour is such an ardent champion, with all the instinct of monopoly offers opposition to this Bill. But I have no doubt whatsoever that the Judges of the High Courts, who are absolutely impartial persons in these matters and will hold the scales even between the one branch of the profession and the other branch of the profession, will be most competent to express unbiassed and impartial opinion on this matter.

It also certainly affects Provincial revenues, and, therefore, it is very necessary that the Local Governments should also have a chance of expressing their opinions. I have no doubt whatsoever that many Members of this Assembly who are not already committed to any strong opinion one way or the other will welcome a reference to the Local Governments and to the High Courts; and, as nothing will be lost by waiting for a few months, I hope that the amendment which I have the honour to move, namely:

'That the Bill be circulated for the purpose of eliciting opinion thereon'

will commend itself to the House. I have nothing more to say.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadan Urban): Sir, I wish to support the amendment which has been moved by my Honourable friend, the Law Member. On behalf of the Vakil Bar, I wish to offer our thanks to Dr. Gour for having drawn our attention to the great dangers we are courting in accepting the motion of my friend, Mr. Girdharilal Agarwala. If Mr. Agarwala's motion be accepted, we shall then *not* know the name of our employer; we shall then *not* know the nature of our employment; we shall then *not* know the scope of our employment. Misguided, really, humanity is,—and more particularly the vakil humanity. (*A Voice*: 'No, no'.) My Honourable friend, Mr. Bray, says: 'No, no'; he would never have said this if he were a member of the English Bar. May I ask Dr. Gour, Sir, if he has ever taken into consideration why a vakil, who has never been to England, who has never been called to the English Bar, on being made an advocate by the High Court, is not required to file a vakalatnama at all? How that vakil, by simply being made an advocate by the mere order of

the High Court, knows the name of the employer, the scope of his employment and the nature of his employment, I do not know. Sir, the truth is this. Dr. Gour, on behalf of the English Bar, wishes to retain this privilege in his hands. He had not the courage--and rightly—to say that the vakils were not entitled or qualified to enjoy this privilege. A few names of distinguished vakils have been mentioned by my friend, Mr. Agarwala; those names can easily be multiplied and there is absolutely no reason whatsoever, either in principle or in practice, why this distinction should be maintained between the two branches of the same profession. Let me tell Dr. Gour and I hope he will not look upon it as a challenge, but even if he does I do not mind—that this as well as other distinctions will soon cease to exist.

Mr. P. P. Ginwala (Burma : Non-European) : Sir, I oppose alike the motion moved by my Honourable friend opposite, as well as the amendment moved by the Honourable the Law Member. But my opposition is not based on any such mercenary grounds as those on which my Honourable friend, Dr. Gour, has based his. Nor do I base my opposition on the ground that my learned friends of the other profession are exposed to those great perils from which the members of my profession are free. I put it on quite different grounds. We stand here, and we always proclaim from the housetops that we stand, for provincial autonomy in all respects, and we cry for decentralization in every branch of the administration. But when we come to deal with the High Courts in the various provinces, this motion is brought forward to interfere with the powers which they already possess under the Code of Civil Procedure to legislate for themselves in respect of themselves or in respect of Courts subordinate to them. For, if you refer to Part X of the Code of Civil Procedure, you will find that every High Court has the power to modify the rules, which are contained in Schedule I of the Civil Procedure Code, and this is one of the rules and is included in that Schedule. If, therefore, any High Court is of the opinion that, with reference to itself, this rule ought to be changed, there is nothing to prevent that High Court from changing that rule. No ground has been made out, so far as I can see, for the initiation of this all-India Legislation in this Assembly. Every province through its High Court can legislate for itself. That, Sir, is the ground on which I oppose this motion. The Honourable the Law Member proposes that the opinions of Local Governments be invited. Why should we invite those opinions from the Local Governments? The Local Governments can themselves advise the local High Courts, and those Courts can then give such effect to this Resolution as they in their wisdom think that they ought to give. It would be a pity that this Assembly should interfere with any powers entrusted to the provinces, whether they be in respect of the Local Government or of the High Court. If my contention is wrong, then this House will be of course perfectly entitled to legislate for all India.

Further, you will see, Sir, that in clause 2, my learned friend wants to legislate for Bombay. What right has he to legislate for Bombay? The Bombay High Court is the best judge for considering whether a change of this description is required with reference to that Presidency. But if he wants the United Provinces High Court to alter the rules, the best course for him is to take action under Part X of the Civil Procedure Code and to suggest such modifications as he thinks ought to be made in the law.

On these grounds, Sir, I oppose both the main motion and the amendment.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division : Muhammadan : Sir, this is entirely a legal matter and it is difficult for a lay man to give an opinion on it. But as it is a very important question, having far-reaching consequences, I beg to support the amendment moved by the Honourable Dr. Sapru. The barristers may plead their own cause, and so may the vakils. But as this Assembly consists of journalists, zamindars and others as well, and as this is a very important question and refers to the Provinces and the High Courts also. I would ask the House to support the amendment moved by the Honourable the Law Member, proposing that the Local Governments and High Courts be consulted before this motion is accepted by this House.

The Honourable Dr. T. B Sapru : Sir, if I intervene now it is only because of one legal difficulty—or so-called legal difficulty—which has been raised by my friend opposite. Now, when I studied this Bill, that question, I confess, was present to my mind. In the first place, I am not prepared to concede that the question is beyond doubt as to whether the High Courts have in this respect the power to make rules which would be inconsistent with the provisions of Order 4, Rule 3. Section 122 of the Code of Civil Procedure says :

'The High Courts established under the Indian High Courts Act, 1861, may, from time to time, after previous publication, make rules . . . . .'

Now comes the important phrase :

'. . . regulating their own procedure and the procedure of the civil courts subject to their superintendence, and may by such rules annul, alter or add to any of the rules in the First Schedule.'

It is certainly arguable, and I do not wish to put it higher than that, whether the statutory requirement that a vakil shall present a vakalatnama is such that it can be covered by this word 'procedure'.

Secondly, my Honourable friend opposite has not considered one very serious difficulty which will arise if each High Court frames rules in that behalf. A man practising in the Madras High Court may not require a vakalatnama under the rules of the High Court there ; but he has a right also to appear under section 4 of the Legal Practitioners Act, in a subordinate court, say, in the United Provinces, and the High Court of the United Provinces may not have passed a rule to that effect ; then what is his position ? Is he to be guided by the rules of practice of his own Court or the rules of practice of the Court in the United Provinces . . . . ?

Munshi Iswar Saran : With permission, he can practise in another Court.

The Honourable Dr. T. B. Sapru : As my Honourable friend reminds me, with the permission of the High Court, my friend, Mr. Rangachariar, can appear in the Allahabad High Court. Therefore, in the interests of uniformity of practice, it is absolutely necessary to my mind that whatever be the decision arrived at in regard to this matter, it must be a decision which will cover all India. Piecemeal legislation of this character or piecemeal making of rules by various High Courts must, I submit with all respect, be deprecated strongly. Therefore, whatever be the decision of this House, I will respectfully submit to the House that it should not allow itself to be affected by the point that has been raised by my friend opposite.

Mr. President : The original question was :

'That the Bill further to amend the Code of Civil Procedure, 1908 (Amendment of Rule 4 (3), Order III), be taken into consideration.'

Since which an amendment has been moved :

'That the Bill be circulated for the purpose of eliciting opinion thereon.'

Lala Girdharilal Agarwala : Sir, I accept the amendment.

Mr. President : The question is that that amendment be made.

The motion was adopted.

THE LAND ACQUISITION (AMENDMENT) BILL.

J. Ramayya Pantulu Garu (Godavari *cum* Kistna : Non-Muhammadan Rural) : Sir, I beg to move :

'That the Bill further to amend the Land Acquisition Act, 1894 (*which I introduced in this Assembly on 31st January*), be circulated for the purpose of eliciting opinion thereon.'

The motion was adopted.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Maulvi Abul Kasem (Dacca Division : Muhammadan Rural) : Sir, I beg to move :

'That the Bill further to amend the Code of Criminal Procedure, 1898 (*Amendment of Section 4*), be circulated for the purpose of eliciting opinion thereon.'

Dr. H. S. Gour (Nagpur Division : Non-Muhammadan) : Sir, I oppose this Resolution and I give my reasons for doing so. The Honourable Mover of the Resolution is under some misapprehension in introducing his Bill, worded as it is in clause 2. He wants an amendment of the definition of the word 'pleader', which after the amendment suggested by him would read as follows :

''Pleader' used with reference to any proceeding in any Court means a pleader authorised under any law for the time being in force to practise in such Court and which includes an advocate, a vakil, an attorney of a High Court and a mukhtar so authorised.'

His intention in asking this House to adopt his Resolution is to place mukhtars on the same footing as advocates, vakils and attorneys of a High Court. Now, Sir, it is a well-known fact that mukhtars possess a very much lower qualification than either advocates, vakils or attorneys. If my information is correct, persons who have passed the entrance examination of any University are entitled to appear for this mukhtar's examination and some of the High Courts have discontinued the examination for mukhtarships, finding that they have got a sufficient number of vakils to practise in the Courts subordinate thereto. It is a question whether we should not do away with this institution of mukhtars altogether. Mukhtars and revenue agents were created at a time when English education in this country was meagre, and the Government was naturally anxious to provide some legal assistance, though it was not of a very high order. But the establishment of the Universities in this country has entirely altered the situation. The law

[Dr. H. S. Gour.]

graduates are multiplying every year and in increasing numbers, and we know, as a matter of fact, that in district headquarters and tahsils there are more vakils than the work that is offered to them, the result being that the vakils all over the country are in excessive numbers and if we continue to allow the institution of mukhtars and revenue agents, their efficiency, which depends upon remunerative employment by their clients, would greatly suffer, and I do not wonder that it has already suffered. I therefore ask this House to consider the question of policy as to whether they are in favour of continuing this class of legal practitioners or placing an embargo upon that class. By accepting this Bill they would be committing themselves to the principle of allowing recruitment of mukhtars in future. If my information is correct, the present number of mukhtars in the United Provinces is 3,000 and the same number we have in Bihar and about 2,000 in Bengal. Now, I do not wish in the slightest degree to prejudically injure the existing mukhtars, who are entitled to practise in the subordinate Courts. Their chief grievance is not that the mukhtar's examination should continue or that the Government should not take action to abolish mukhtars, but that their existing rights should be safeguarded and their appearance in Court should not depend upon the sanction of the Courts concerned. They complain that under the existing law they have to obtain the permission of the Court to appear before it and that detracts from their independence. It also creates a certain amount of uncertainty in their employment, because neither they nor their clients are sure whether the Court concerned will give the mukhtar the necessary permission to appear before it. If that be the sole object—and I understand it is the sole object—of the Mukhtars' Association, then I submit that this Bill does not serve that purpose. An amendment, a small Mukhtars' Bill, drafted *ad hoc* would entirely suppo t the purpose which the Mukhtars' Association have in view. But, I submit, that if this Bill becomes law, it will entirely obliterate the distinction that exists at present between advocates, vakils, pleaders and mukhtars and for this reason. Under the Code of Criminal Procedure, every accused is of right entitled to be defended by a pleader, and section 4 clause (*r*) of the Criminal Procedure Code, as intended to be amended by the Bill of the Honourable Mover, would define a pleader to include a mukhtar. The position that would arise would then be something like this. Every mukhtar is a pleader within the meaning of the Code of Criminal Procedure. Every accused has a right to be defended by a pleader. Therefore every accused has a right to be defended by a mukhtar, and, as the Code of Criminal Procedure extends to the whole of British India, it follows that a mukhtar of the United Provinces would be entitled to appear throughout British India by reason of the fact that he is designated a pleader and a pleader has a right to defend every accused. Well, is that what the mukhtars desire? I think not. A mukhtar of the United Provinces at present has no right to appear in Bihar. A Bihar mukhtar has no right to appear in Bengal or the United Provinces. There are no mukhtars either in the Central Provinces, Bombay, and, if I mistake not, in Madras This is an institution which is solely confined to the United Provinces, Bihar and Bengal. There are no mukhtars in the Central Provinces (*A Voice*: 'None in Madras') and there are no mukhtars in Madras. I submit, Sir, the effect of this would thus enlarge the rights of the mukhtars and place them on the higher pedestal of a pleader enabling and entitling them to practise in all the Courts by

reason of the special provisions of the Code of Criminal Procedure. That, I submit, is not the intention of the author of this Bill, and yet, whether he wishes it or not, that will be its ultimate result. I therefore think that, while I am in full sympathy with the preservation of the existing rights of the mukhtars already enrolled, I do not think these rights should be enlarged or that we should create a loophole for the enlargement of their rights by the amendment of this clause in the Code of Criminal Procedure.

12 Noon.

The Honourable Sir William Vincent (Home Member) : Sir, I wish to place very shortly, before this Assembly, the views of the Government on this Bill. There are so many competent lawyers in this Assembly, so many men who are better qualified, I dare say, than I am to deal with this matter, that I will not detain the Assembly for any length of time.

The position in regard to mukhtars in the provinces with which I am acquainted, is that they usually appear without any interference or permission, in criminal Courts—Magistrates' Courts—but only in some places are they allowed to appear before Sessions Courts. They certainly do not appear before the lowest Civil Courts. (*A Voice* : 'That has not been the practice'.) They do not appear before Revenue Courts ; and I am not sure whether they are entitled to appear outside districts within which they are enrolled. At present therefore they have very restricted privileges. I mention this because when he introduced the present measure, the Honourable Mover said that there was nothing really in the Bill. It was merely legalising the existing practice. Now, the last speaker, Dr. Gour, showed conclusively that that is not an accurate view ; and in fact the acceptance of the principle of this Bill would involve a material change in the existing law and in the existing practice ; and it is for this Assembly to consider whether that change is justified or not.

There is a good deal to be said on both sides. In my experience, I have known many very excellent mukhtars, men who could defend cases or prosecute cases quite as well and better than many junior pleaders, and even than some senior pleaders. On the other hand, it cannot be denied that there is a tendency amongst some of this class of mukhtars to descend to methods which prejudice the repute of the legal profession. I don't think this is very general, but there are such practitioners. You can see them about any mofussil Court, many of them out at heels, seeking for any kind of business, and often I am afraid touting for it, some even attempting to extract money out of the pleaders who are employed by their clients. At the same time, I feel that it would be a great mistake to restrict the operations of these mukhtars, for they are in truth and have well been called 'the poor man's lawyer'. (Hear hear.) When a man is up before a Magistrate's Court on a minor charge, he wants and seeks legal assistance, and often cannot afford to retain the services of a pleader. On the whole, I hope the opinion of this Assembly will be in favour of circulating this Bill for opinion, so that its provisions may be examined in greater detail than is possible here and now. In his view, the Government will not oppose the motion but leave it to the many eminent authorities in the Assembly to consider what line should be adopted.

J. Ramayya Pantulu Garu (Godavari *cum* Kistna : Non-Muhammadan Rural) : Sir, I beg to support the motion to publish this Bill for the

[J. Ramayya Pantulu Garu.]

purpose of eliciting public opinion. In my part of the country, the Madras Presidency, we have not got this class of mukhtars. Their work is generally done by a class of men whom we call 'private pleaders'. They do not hold any license or patta for practising. They practise with the permission of the Court before whom they appear, a permission which is given in each particular case. This system is, no doubt, doing some good in the case of poor people. The regular vakils or pleaders are generally attached to Civil Courts, but there are some Criminal Courts especially Courts of Second and Third Class Magistrates, which are located in places where there are no Civil Courts. In such cases, the parties have to get their pleaders from a distance, and that puts them to expense. As a class, the accused in criminal cases are poor people and they cannot afford to get well-paid pleaders from a distance. It is, therefore, the practice there for Magistrates of the Second and Third Class, especially to permit these private vakils to appear in cases. I think that the mukhtars in the provinces where they exist now should be permitted to practise only in the Court of Second and Third Class Magistrates. As a rule, First Class Magistrates Courts are located in places where Civil Courts are also located, and qualified pleaders are generally available to appear in those Courts. My opinion therefore is that mukhtars should be restricted to Second and Third Class Magistrates' Courts. The Bill, as drafted, extends, I understand, the privileges of the mukhtar class, which they are enjoying at present, but this should not be done. But these points can be gone into at a later stage, *i.e.*, when the Bill is referred to Select Committee, or when it comes for detailed consideration in this House. In the meantime, I support the motion that the Bill be circulated for public opinion.

Munshi Mahadeo Prasad (Benares and Gorakhpur Divisions: Non-Muhammadan Rural : Sir, I don't think that there is any danger in accepting the motion of Maulvi Abul Kasem. Mukhtars are a class of lawyers who are allowed to practise after passing an examination held by the High Courts, under their powers granted by their Letters Patent, and they give certificates which are renewed every year, which certificates define their powers to practise in the Courts, of the district. So any apprehension which has been raised by my learned friend, Dr. Gour, will not apply to the cases of these mukhtars. Further, when we have got the opinions of the persons concerned, also the opinions from the districts, as well as the opinions from the Bar Libraries and Mukhtars' Associations in different districts, we shall be able to consider the utility of this Bill. At present, it seems to me to be premature to oppose the Bill and not to send it round for eliciting the opinions of the Local Governments. I therefore beg to support the motion of Maulvi Abul Kasem on this point.

Khan Bahadur Maulvi Amjad Ali (Assam : Muhammadan) : Sir, in supporting the motion of my Honourable friend, I beg to submit a few remarks in this connection.

Sir, in my own province, I find that mukhtars appear not only before the Criminal Courts but sometimes they appear before the Court of Sessions, and they also sometimes appear before the Civil Courts. But in Civil Courts, in the districts which are permanently settled, mukhtars have no right to plead, but they can only appear. My friend, the Honourable Dr. Gour, has made certain observations which call for a reply. He is of opinion that the mukhtars being

of low education, are not entitled to be placed on the same footing as pleaders, barristers, vakils and so forth. Sir, there are mukhtars who are abler people sometimes than the pleaders. Not only that. They are abler than the barristers and vakils sometimes. It is not a matter of hearsay that mukhtars are sometimes found better than the vakils or barristers, but that is my personal experience. They are said to be ill-educated and therefore not entitled to the removal of the restriction, namely, their appearance before the Court being dependent on the sweet will of the presiding officer. This reason of the Honourable Dr. Gour, I think, does not hold water. Sir, barristers used to come from England before, not after passing even the Entrance or the Matriculation examination but after having read only up to second or third or sometimes fourth class.

Mr. Pyari Lal (Meerut Division : Non-Muhammadan Rural) : I rise to a point of order, Sir. This is not a discussion about the education of barristers. The question is a very simple one, namely, whether mukhtars should be allowed to appear in Criminal Courts with or without permission. We are not here for dissertation on the education of barristers.

Khan Bahadur Maulvi Amjad Ali : In the beginning of the observations made by my Honourable friend, Dr. Gour, he said : 'These people do not receive liberal education. Sometimes they pass the Entrance examination and they h ld a certificate.' This was the beginning of his remarks. In reply to that, Sir, I say with an amount of emphasis that the barrister – some barristers, I do not say all barristers having read only up to the second class, or sometimes third class or sometimes fourth class. (*A Voice* : 'Is it so now?') 'not now—used to go to England having money enough at their command and to pass the examination and come to India as barristers. Sir, there are some mukhtars in my country who can challenge any barrister—any junior barrister – in the matter of conducting a prosecution or defence. I submit that the reason advanced by my friend, Dr. Gour, in opposing the motion does not command itself to any consideration, and therefore I submit that the mukhtars are entitled to the removal of the restriction which is imposed on them, namely, that they cannot appear without the distinct permission of the Court concerned, to plead a case. I, therefore, Sir, . . .

Dr. H. S. Gour : I have conceded that, but the point is how best to secure that purpose.

Khan Bahadur Maulvi Amjad Ali : You have given a very good certificate to barristers although you know that there are barristers who do not earn anything. I therefore submit, Sir, that the motion for circulating the Bill for eliciting opinion thereon should be accepted.

Chaudhri Shahab-ud-Din (East Central Punjab : Muhammadan) : Sir, the Bill on the very face of it appears to be a very salutary one. What it requires is a very simple change in the existing procedure Under the law as it stands at present, a mukhtar can appear before a Criminal Court —of course I mean an inferior Court and not a superior Court —but with the permission of the Court and not without such permission. What the Bill aims at is that he may be made quite independent of the permission of the Court, and that he, like a pleader or barrister, may be given power to appear as of right to defend an accused person who may care to avail himself of his legal acumen. I do

[Chaudhri Shahab-ud-Din.]

not see where the question of superior qualifications comes in. As Sir William Vincent, the Honourable the Home Member, has very rightly pointed out, legal intellect ought to be made use of by people who care to pay for it wherever they can get it. In the mofussil, people cannot engage big barristers, like Dr. Gour or big pleaders, who charge very high fees, but there is no reason why they should not engage mukhtars, who are available on the spot. In the mofussil, some magistrates and judges presiding over Criminal Courts are autocrats of the worst type and when these mukhtars are at their mercy for appearance in Courts, surely they cannot discharge their duties as independently and as freely as it is desirable in the interests of justice that they should. This is the change, I believe, the Honourable Maulvi Abul Kasem wants to introduce. It is not only a very wholesome and salutary, but a most desirable change. It is not only desirable but highly necessary in the interests of justice that legal practitioners in certain matters should give their advice and assistance to the Courts quite independently and that even for their very appearance, that is, for securing the privilege of giving that assistance, they should not depend upon the permission or sanction of the Court. This change, in my opinion, is such a harmless and at the same time a necessary change that this Assembly should certainly support it. The Bill in my opinion should be circulated for opinion to Local Governments and the legal profession, and considered after those opinions are received. With these words I support the Bill.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, it is the right of every accused to be defended by any person in whom he has confidence. The only limitation that could be placed to this right should be that a person whom the accused wants to employ for his defence is fully qualified and can put up his defence properly. Only such a man should be allowed to intervene and defend the accused. That could be the only limitation to allowing any person to defend any accused. Sir, I fail to understand my friend, Dr. Gour, when he wants such a right to be reserved for barristers and vakils only. Why should it be the monopoly only of the vakils or the barristers to defend the accused in Criminal Courts? Have not the mukhtars got similar intelligence to defend them? When ordinary man without any legal training or test could be appointed as Honorary Magistrates to sit in judgment over the accused, I fail to understand why should no other man be allowed to defend the accused before Criminal Courts?

As I have said, the only objection that could be raised would be the want of capacity in such persons. But the High Courts in the Provinces where mukhtars are allowed to practise have made rules and prescribed tests, and persons desiring to work as mukhtars have got to undergo a certain examination and have to qualify themselves before they can be allowed to practise as mukhtars. Once they have satisfied those tests, there is no reason why they should not be freely allowed to appear before a Criminal Court and defend an accused. If you like, you may make those tests stiffer than they are at present, but there should not be any obstacles placed in the way of the mukhtars appearing freely and indiscriminately before the Criminal Courts. After they have satisfied the tests, they should not be thrown at the mercy of every magistrate to permit or disallow the mukhtar to practise in his Court. Mofeover, what is the motion before the House? The

Honourable Mover simply asks that the Bill may be sent for eliciting public opinion, and there can be no harm in sending this Bill for public opinion and for finding out the feelings of he public and the Courts in the different provinces. I, therefore, wholeheartedly support the motion that the Bill be circulated for opinion.

Mr. Pyari Lal: I may say from practical experience as a magistrate of some years standing that this provision of law that a mukhtar must obtain permission before he practises in any Court is more honoured in the breach than the observance (Hear, hear.) I have not known a single case within the last thirty years both as a legal practitioner and as a magistrate, where such permission has been refused. It is only in very rare cases that the presiding officer of the Court exercises that right of disallowance. As observed by the Honourable Sir William Vincent there are mukhtars and mukhtars. Some are very able men, no doubt but others are deficient in their qualifications, and some are of a very objectionable character and it is only in the case of these objectionable characters that the magistrates have ever exercised that right. So the matter, after all, is a very simple one, whether they should be allowed to practise as a matter of course or subject to the permission of the presiding officer. Therefore, I think that the whole question may be sent for public opinion as desired by the Honourable Mover and it may then be decided. I am in favour of the motion that the Bill be circulated for eliciting public opinion.

Mr. T. A. H. Way (United Provinces: Nominated Official): I rise to support this Bill, because mukhtars have been rightly described as the poor man's lawyer, and I consider that they should have the right of appearing, because very often in mofussil Courts mukhtars are the only form of legal advice and assistance which a poor man can get at a reasonable cost. (Hear, hear.) In first class Magistrates' Courts at the headquarters of the district, there is no danger that a man who is reasonably competent will be refused leave to appear for an accused because he is a mukhtar, but in mofussil Courts, such as Tahsildars' and Honorary Magistrates' Courts, there is some danger that the Court may be influenced by some personal consideration, and, in spite of the mukhtar being a competent man, may, for some other reason, quite apart from his competence, refuse him permission. Therefore, I consider that the mukhtar should have the right to appear without asking the permission of the Court.

Maulvi Abul Kasem: When I made my simple motion, I never anticipated that it would be followed by such an interesting debate as that which we have all heard this afternoon. Sir, the only objection raised has been by a distinguished lawyer, one of the foremost leaders of the English Bar, Dr. Gour, but, from the nature of the support given to this motion and the principle of the Bill by the other distinguished lawyers belonging to other sections of the legal profession, I have no doubt about its success in the long run. I do not think I will be justified in wasting the time of the House by giving a detailed reply to Dr. Gour's objections, as they have been already dealt with. Dr. Gour's main objection is that this Bill, as at present drafted, places the mukhtars in the same category as pleaders and he was good enough to say that it was not my intention, or at any rate it was not the intention of the Mukhtars' Association to ask for this change. I beg to submit, with due deference to Dr. Gour, that it was exactly my intention to place them

[Maulvi Abul Kasem.]

in the same category as pleaders, so far as the Criminal Courts were concerned. There is absolutely no reason why there should be any artificial distinction placed between one class of lawyers and another. It has been said that these mukhtars are all lawyers of inferior quality. The matter was quite irrelevant, but it has been introduced not only by Dr. Gour but by the Honourable the Leader of the House and they said that mukhtars are not allowed in certain cases to appear and they have to pass a very simple examination. But if you only go back a few years, you will find that the members of the English Bar had to pass no examination worth the name. and they believed themselves to be on the highest ladder of the legal profession. If examination or legal ability is to be the sole test I think the graduates of the Indian Universities in law should have a preferential claim to the members of the English Bar because they have to pass a very stiff examination. But that is altogether a different matter. I only submit that, if there is any defect in the wording of the Bill, it may be corrected at a later stage. I want justice to be done; and, what is more, the mukhtar is not only the poor man's lawyer, but for the money's worth we get better work from the mukhtar than from the pleaders and barristers practising in our Courts. (Laughter.) With these few words, I hope that the House will agree with this motion and that it will support me right through in the later stages of this Bill.

Mr. President: The question is:

'That the Bill further to amend the Code of Criminal Procedure, 1898 (*Amendment of section 4*) be circulated for the purpose of eliciting opinion thereon.'

The motion was adopted.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, I beg leave to introduce:

'A Bill further to provide adequate safeguard against the indiscriminate use of sections 107 and 144 of the Code of Criminal Procedure, 1898, in dealing with political agitation.'

I need hardly remind the Honourable Members of this House of the sections, for they have become notorious since February last. There has been an infection of cases under these sections ever since February last all over the count y, and even the lay public have become painfully aware of the existence of these sections. We in the profession, had to be aware of these sections when they were applied to the ordinary cases of disputes leading to a breach of the peace or to bad characters. When we had a discussion in March last about the attitude of the Government in respect of the political movement in the country whether they should embark upon using the extraordinary laws of the land, we, of this Assembly, had no objection to their using the ordinary law of the land and said so accordingly. When I was making a reference to that subject, the Honourable the Law Member interjected a remark whether I considered section 144 as an extraordinary law of the land. I replied: 'It has been the law of the country all along', but I seldom anticipated that that assent of mine would have led to the most extraordinary use of these two sections within the last one year. Public meetings have been suppressed and public speakers have been prohibited from speaking and every province has resorted to the use of those sections in a most extraordinary manner so that one wonders whether there was any reason

at all for the appointment of a Rowlatt Committee or for the Report of a Rowlatt Committee or for the enactment of a Rowlatt Act If the Government of this country had these twin weapons in their hands all along, if they could have effectively used them as they are now using them in dealing with agitation in this country, what was the necessity for those repressive laws which the Honourable the Home Member took credit the other day for repealing in this House, because these sections were not used for these purposes, although these sections have been in existence from 1861 or thereabouts. This is a novel method of using these sections. Strictly speaking, I am not prepared to say that it is an illegal use of those sections in dealing either with public meetings or with public speakers. The language is so wide that it is capable of the construction that they can be used for such purposes, provided the circumstances contemplated in these two sections exist. That is why my proposal before this House does not take the shape, as Honourable Members would wish, of prohibiting the use of these sections either in dealing with political meetings or public meetings or public speakers. I wish to preserve the power of the Government and the power of the magistracy to deal even with public speakers and even with public meetings, if the necessity for it arises and if the circumstances which are enumerated in those sections really exist, but, at the same time, having regard to the tendency of the magistracy to misuse and abuse powers which are granted to them, especially when those powers are not liable to be controlled or appealed against; in their ardour for preserving the law-abiding subjects from the non-law-abiding subjects and preserving themselves, in some cases they are apt to abuse these sections. There have been instances, and glaring instances, of abuse of these sections. Section 107, as Honourable Members are aware, is intended for securing the keeping of the peace. It says :

'Whenever a Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year.'

and clause (3) thereof says that the magistrate has the power to issue a warrant for the arrest of the person against whom he initiates proceedings under that section. Now there is a case where a Government was contemplating taking proceedings for prosecuting a public man under certain sections of the Penal Code. That gentleman happened to be travelling from Calcutta to Madras. For some reason or other, the warrant for his arrest was not available or was delayed or was being delayed. The man was actually in the train and the District Magistrate at the District Headquarters, which is an intervening station, issued a warrant for his arrest initiating proceedings under section 107, as if this man travelling by train from Howrah to Madras was going to commit a breach of the peace in Waltair. It may have been a beneficent use. We are not concerned with that. I stated that in their anxiety, over-anxiety, when they dream of non-co-operators anywhere and everywhere and when they see the hand of the non-co-operator all over, the magistracy in their zeal to protect the law-abiding citizens are apt to err and they have erred. Nobody can justify the use of that section in a case like that. Or again, take another instance where a Congress Committee hoists the Congress flag on its premises

[Rao Bahadur T. Rangachariar.]

and the magistrate walks along the street and gives the order under section 144 to pull down that flag. Who are the persons who are likely to commit a breach of the peace? Is it the magistrate who is going to commit a breach of the peace or are the law-abiding citizens going to commit a breach of the peace? Or again, take the case of a temperance worker, even if he be a non-co-operator. He goes to an auction sale where a toddy shop is being sold. He goes there to induce the bidders to desist from bidding. Section 144 is being used there. Now, who is going to commit the breach of the peace? Is it the law-abiding citizen who is bidding for the auction or is it the excise officer, who is holding the auction, who is going to commit a breach of the peace? I say, the object may be good, but you cannot do wrong to do good. You cannot justify wrong by saying: 'Oh, look at the result of it.' I think Government, as custodians of the law, and we in this Legislature, as persons responsible for the law, ought to see that wrong use is not made of the sections which are enacted in this House or which were enacted by our predecessors. I do not think it is necessary for me to dilate further, as I have stated already that I only want to provide a safeguard against the indiscriminate use of these sections in cases where one may suppose they were not intended to be used.

As these cases are not appealable cases—in fact orders under section 144 are not even reviseable under the revisionary powers of the High Court, as Honourable Members are aware, my motion is therefore a modest measure, in that I provide that, when these sections are used against public speakers or for preventing public meetings or in cases like that, I provide that a report should be made at once within a week to the High Court stating the circumstances under which the order was passed; and I give power to the High Court to revise that order, directly they are satisfied that the order was made for purposes not contemplated by the section. There can, I think, be no reasonable objection to such a course. These being powers which are to be exercised on the spot, I leave the power in the hands of the Magistrate to exercise those powers, but the knowledge that his proceedings are liable to review *suo motu* by the highest Court in the land will make him pause and be careful and will lead to the right use of these sections. Even if the High Courts do not interfere, the fact that there is such a power, that action under these sections will be overlooked by the High Court, will lead to his being careful. I do not want to hamper the Executive just at present by suggesting that these sections should not be used at all for these purposes. While my proviso implies that these sections may be used in such cases, I substitute a safeguard against the abuse and misuse of these sections. That is the object of this Bill and I, therefore, Sir, ask leave to introduce the Bill.

The Honourable Sir William Vincent (Home Member): Sir, I fancy many Members of this Assembly, if they have examined this Bill in any detail, will find themselves in some difficulty; I know that the minds of many have been exercised over the use of section 144—some people say 'misuse'; it is no part of my duty here to-day to defend it, although, as a matter of fact, it is the use of section 144 which has in many places rendered it possible to avoid the application of the more drastic provisions of the Seditious Meetings Act. I know, however, that there are many Members who take a different view on this point. But in any case, I submit that the method

which the Honourable Member has chosen of remedying what he believes to be an evil is one of the worst that could possibly have been selected and here I ask the attention of the House to the provisions of the Bill as drafted. The operative portion is contained in clause 2 :

'In all cases when action is taken under this section against political agitators or public speakers or for dealing with or suppressing political agitation and public meetings.'

Those are the first words in the clause. Now what is a 'political agitator', or can any Member of this Assembly tell me how to define 'political agitation'? Any question may become political ; a question relating to religion, a question relating to race, a question relating to cow killing, a question relating to marriage or to education,—anything becomes political once feeling is roused about it. And how is any Magistrate or High Court going to say whether a man is a political agitator or not? Then, Sir, the last part of this clause lays down the procedure, which the Honourable Member proposes, to remedy what he calls an evil, namely, a reference to the High Court to confirm or set aside every order of the Magistrate under section 144 or section 107 in the particular case to which he refers. Does any Member of the Assembly think that the High Courts will welcome this additional duty? Is it not a part of the duty of the Executive authorities to maintain law and order, and are they not the only people who have the necessary information to deal with this? Let us consider for a moment the actual practice in regard to orders under section 144? A Magistrate receives information, say, that a Muhammadan is going to kill a cow in a certain house. Hindus object and an order is issued prohibiting the slaughter. The matter at once becomes an acute political question. What is the material on which action is taken? A police report; information received orally from a village, something seen by the Magistrate with his own eyes ; but there is no evidence recorded in such case, no evidence is possible. On what material then is the High Court going to act in revision? Would not the Bill place the High Court in an impossible position if they are to deal satisfactorily with a matter of this kind?

Sir, when the Honourable Member goes on to say that section 107 has also been abused, then I join issue with him at once. It may be that, in an individual case, a warrant was issued without justification. I have not got the facts of that case and I am not going to discuss the action of the authorities, but, generally speaking, section 107 has not ever been used to a great extent so far as I am aware. Section 108 has been used a great deal, but I am not aware that there is any general complaint in this country that section 107 of the Code of Criminal Procedure has been misused for purposes of suppressing political agitation.

Rao Bahadur T. Rangachariar : It has been in Madras.

The Honourable Sir William Vincent : Well, if it has been misused, every man affected has a right now to go down to the High Court and get any improper order revised. What is the real cause of difficulty in these cases? It is that those to whom facilities are afforded for going to the Courts will not use them ; they will not appear before any Court or defend themselves, or seek remedies provided to prevent injustice. Is there any reason why, in cases of that kind, it should be incumbent on the Magistrate to send every case to the High Court?

[Sir William Vincent.]

Now let me turn to section 144. There are, in point of fact already two methods by which improper orders under that section can be challenged. One has been tried successfully, I think, in a Court in Oudh,—I am not quite certain of the locality, but I think it was in Oudh. (*A Voice:* 'Yes'.) There an order under section 144 was challenged on the ground that it did not properly come within the provisions of that section and was set aside as *ultra vires*. I believe the same practice is followed in some other High Courts, but I am not sure of this. Similarly, any man who likes to challenge an order under section 144 can question the legality of that order if he is prosecuted for violating it. But the real fact is that those who have been prosecuted are unwilling to put in any defence at all.

Sir, in conclusion, may I say that, if it is proposed to restrict the use of section 144 in the manner proposed, I believe the results would be really dangerous to the public peace. I know I have been accused of thinking too much of law and order. I believe however that a time is shortly coming when this Assembly will take a different view of the importance of this question, but that is another story. The Honourable Member has assumed also that section 144 can only legitimately be used in cases of a breach of the peace.

That is not so. Section 144 may be used for many purposes. Lawyers in this Assembly must be perfectly well aware of the fact that it can be and often used to prevent obstruction, annoyance, injury or risk of obstruction, annoyance or injury or danger to human life or health. The disturbance of the public tranquillity is only one of the many objects for which section 144 may be used. But the point that I wish to emphasise now is that, whether the section has been misused or not, the proposals in this Bill are such that they cannot be conscientiously supported by any Member of this Assembly. If the Honourable Member had thought of some more suitable method of dealing with this particular difficulty, the position might have been different.

Mr. President: The question is:

'That leave be given to introduce a Bill further to provide adequate safeguard against the indiscriminate use of sections 107 and 144 of the Code of Criminal Procedure, 1898, in dealing with political agitation.'

The Assembly then divided as follows:

AYES—28.

Abdul Quadir, Maulvi.	Jatkar, Mr. B. H. R.
Abdul Rahim Khan, Mr.	Mahadeo Prasad, Munshi.
Abul Kasem, Maulvi.	Manmohandas Ramji, Mr.
Agarwala, Lala G. L.	Man Singh, Bhai.
Agnihotri, Mr. K. B. L.	Misra, Mr. P. L.
Ahmed, Mr. K.	Mudaliar, Mr. S.
Asjad-ul-lah, Maulvi Miyan.	Neogy, Mr. K. C.
Ayyangar, Mr. M. G. M.	Rangachariar, Mr. T.
Bhargava, Pandit J. L.	Reddi, Mr. M. K.
Chaudhuri, Mr. J.	Schamnad, Mr. Mahmood.
Ginwala, Mr. P. P.	Shahani, Mr. S. C.
Gour, Dr. H. S.	Sohan Lal, Bakshi.
Gulab Singh, Sardar.	Subrahmanayam, Mr. C. S.
Iswar Saran, Munshi.	Subzposh, Mr. S. M. Z. A.

NOES—37.

Akram Hussain, Prince A. M. M.	Muhammad Hussain, Mr. T.
Amjad Ali, Maulvi.	Muhammad Ismail, Mr. S.
Bagde, Mr. K. G.	Nabi Hadi, Mr. S. M.
Bradley-Birt, Mr. F. B.	Nayar, Mr. K. M.
Bridge, Mr. G.	Percival, Mr. P. E.
Bryant, Mr. J. F.	Pyari Lal, Mr.
Carter, Sir Frank.	Ramayya Pantulu, Mr. J.
Cotelingam, Mr. J. P.	Rao, Mr. C. Krishnaswami.
Crookshank, Sir Sydney.	Renouf, Mr. W. C.
Dentith, Mr. A. W.	Samarth, Mr. N. M.
Faridoonji, Mr. R.	Sapru, the Honourable Dr. T. B.
Gajjan Singh, Sardar Bahadur.	Sarfaraz Hussain Khan, Mr.
Habibullah, Nawab Khwaja.	Sarvadhikary, Sir Deva Prasad.
Hullah, Mr. J.	Shahab-ud-Din, Chaudhri.
Kabraji, Mr. J. K. N.	Singh, Babu B. P.
Kamat, Mr. B. S.	Sinha, Babu Ambika Prasad.
Keith, Mr. W. J.	Vincent, the Honourable Sir William.
Lindsay, Mr. Darcy.	Way, Mr. T. A. H.
McCarthy, Mr. F.	

The motion was negatived.

THE HINDU COPARCENER'S LIABILITY BILL.

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

'A Bill to define the liability of a Hindu Coparcener.'

It is not intended to define anything beyond the liability of a Hindu Coparcener for the debts incurred by the manager of the father. There has been a very sharp conflict of cases upon this subject. That conflict existed before their Lordships of the Privy Council decided what is now known as Sahu Ram's case, 39 Allahabad, page 437. In deciding that case their Lordships pointed out that there was a certain conflict of decisions in the various Courts in India, and therefore they thought it well that the point should be settled. And then they proceeded to enunciate what they considered to be the right rule on the subject of the antecedent debt of the father.

After the decision of that case, a further conflict between the various High Courts in India has arisen, and while the Madras and Patna High Courts have, in considered full Bench cases, decided that Sahu Ram's case was never intended to over-rule the pre-existing law, the Courts in Allahabad and Oudh have taken a different view and literally followed the dictum of Lord Shaw as reported in that judgment. It is absolutely necessary, Sir, that we should be clear as to what is the law applicable to Hindu coparcenery families. People have to deal with Hindu families, advance money, take by way of security mortgages of coparcenery estate and the public are entitled to know with a degree of certainty as to what is the law applicable to coparcenery families. It is the intention of my Bill to define their liability. I have also taken advantage of the existence of this necessity to add certain provisions which are of an ancillary character. These will be found sufficiently explained in the notes on clauses appended to the Bill. I do not propose to go into greater detail on the subject of each clause, because I do

1 P. M.

[Dr. H. S. Gour.]

not think that at this stage I should be justified in doing so. I ask for leave to introduce my Bill.

The motion was adopted.

Dr. H. S. Gour: Sir, I now introduce the Bill.

THE MARRIED WOMEN'S PROPERTY (AMENDMENT) BILL.

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

'A Bill further to amend the Married Women's Property Act, 1874.'

The object of this amending Bill is to remove certain doubts which have arisen regarding the interpretation of certain sections of the Married Women's Property Act affecting payment of insurance money in the case of insurance effected by a man for the benefit of his wife or wife and children so far as it relates to Hindus, Muhammadans, Sikhs, Jains and Buddhists. Section 6 of the Married Women's Property Act deals with the question of insurance policies and that section provides that, when a man effects any policy of insurance for the benefit of his wife, or wife and children, and so expresses his desire on the face of that policy, the amount of that policy shall be an amount absolutely beyond the control of the husband, or the creditors of the husband, and shall not form part of his estate; in other words, the amount of the insurance will be specifically ear-marked for the benefit of the wife or wife and children as the case may be. That is a section of the Married Women's Property Act which gives absolute protection to the wives. There is another section of the Married Women's Property Act, section No. 2, which excludes according to the interpretation of some people, the operation of the Married Women's Property Act so far as widows or relations of Hindus, Muhammadans, etc., are concerned. The result of different interpretations is that there has been a conflict of High Court decisions in the three Presidencies of Bombay, Madras and Calcutta. In Bombay the Bombay High Court has held that the Married Women's Property Act does not apply to insurances effected by Hindus, Muhammadans, etc. The case which bears on this subject is Shankar *versus* Umabai, 1913, I. L. R., 37, Bom. 471. There, it was held that the Married Women's Property Act does not apply to Hindus. The facts were these A Hindu husband effected an insurance specifically for the benefit of his wife and so expressed his desire by an assignment on the policy. After his death, one of his creditors came in the way and claimed that the benefit of the Married Women's Property Act could not be given to the widow of a Hindu inasmuch as under the Hindu joint family system, insurance came under earnings, that insurance money could not be treated as a trust in the hands of the insurance company for the benefit solely of the wife, but it formed part of the general estate of the Hindu. After the wife had gone to the High Court for a declaration in her favour, the ruling of the Bombay High Court has been that the Act does not apply to Hindu widows. This is so far as Bombay. I now come to a ruling of the Madras High Court. Then again there is a similar case, Balamba *versus* Krishnayya (I. L. R. 37, Madras 483) decided about the same time, 1914. In that case, the Madras High Court has held entirely the opposite view

regarding the interpretation of section 2 and section 6 of the Married Women's Property Act. In the Madras case of the same nature, it was, I think, either the wife or the daughter who claimed that the provision made by the Hindu husband was specifically for her benefit, that the amount of the Policy of insurance was a trust in the hands of the insurance company and no creditor had any right whatsoever to interfere in that particular Policy money so far as her interest was concerned. This case went up through all the stages of appeal, first appeal, second appeal, and so on; as there was a difference of opinion, I believe, amongst the judges of the High Court, ultimately, the case went before the full Bench. The full Bench, after very close study of the case and the facts bearing on the case, and after perhaps very learned arguments on both sides, came to the conclusion that section 2, which, according to some Courts, excludes Hindus from the operation of Married Women's Property Act, was not so exclusive, with the result that the Madras High Court has held that the Married Women's Property Act does give protection to women, and does apply even to Hindu widows. In the Calcutta High Court, on the other hand, the view of the Bombay High Court prevails, so that between the Bombay High Court, the Madras High Court and the Calcutta High Court, we have entirely two different states of things. In Bombay, insurance companies find it extremely difficult to hand over the insurance money to the claimant in contested claims. Fortunately, owing to the legal acumen and ingenuity of our law-interpreters in the South, the Madras High Court has given a ruling in favour of Hindu widows. This is the state of things which I wish to remedy by this amending Bill. I think it will be admitted, firstly, that there should be a uniformity of law so far as the payment of insurance money is concerned in Bombay, Madras and Calcutta, and that there should be no impediment in the way of insurance companies on this point.

Secondly, I believe that it will also be admitted that it is but just and equitable that Hindu widows or widows of Hindus, Muhammadans and others should have a clear claim to the provision made by their husbands specifically for them without any interference from Creditors or Co-parceners. I might mention that in the olden days, when the framers of Hindu Law framed their law, there were no Insurance Companies; but now that we have Insurance Companies, it is only just and proper that Hindu widows should be protected from creditors in the same manner as other women are protected under the Married Women's Property Act. It is, therefore, proposed to amend that Act by a simple clause like this :

'Notwithstanding anything contained in section 2, this section shall apply, and shall be deemed to have always applied, to Hindus, Muhammadans, Budhists, Sikhs and Jains.'

I might only mention that the Madras High Court has given a favourable ruling in this connection after having examined that section very carefully, and the stand they have taken with regard to it is that, under certain wording of section 2 of the Married Women's Property Act, although it is supposed to be an excluding section, the important words therein are 'married woman.'

The clause there reads :

'Nothing contained in the Married Women's Property Act applies to any *married woman* who, at the time of her marriage, professes the Hindu religion . . .'

The section, it is contended, does apply, as the insurance was effected by *men* not by *women*. On these grounds, I wish the House to give me leave to

[Mr. B. S. Kamat.]
amend the Married Women's Property Act according to the decision of the Madras High Court, and so make the benefits of insurance policies applicable to all communities.

The motion was adopted.

Mr. B. S. Kamat: I beg to introduce the Bill.

THE INDIAN PENAL CODE (AMENDMENT) BILL.

Rai Bahadur Bakshi Sohan Lal (Jullundur Division : Non-Muhammadan) : Sir, I beg to move for leave to introduce :

'A Bill further to amend the Indian Penal Code (*amendment of section 375*).'

A copy of the Bill, together with a Statement of Objects and Reasons, is laid on the table of the Honourable Members of this Assembly, and I need not repeat the same or advance any lengthy arguments in support of this Bill or of the amendment which is meant to raise, in the case of the offence of rape, as defined in section 375, the age of consent of the female from 12 to 14 years.

According to *Sushrut*, the well-known book of the medical science in the Ayurveda, and other books on that subject, the physical faculties of a female do not fully develop for consummation until she completes sixteen years of age. The very high rate of fatality amongst the high classes in this country of newly-born children and of young married wives is due to sexual intercourse and pregnancy of the girl before she reaches the age of puberty or full development of her physical organs. The result of such consummation before bodily development not only weakens the health of the girl but often produces children who are weak and sickly, and in a large number of cases cannot resist any illness of an ordinary type, or any inclemency of weather or climate. Thus some of them die immediately after birth or during their infancy. If they live at all, they are always in need of medical attendance, medical advice or medical treatment, to linger on their lives; or in other words they are born more to minister to the medical profession than themselves and their families or their country. Neither can they be good soldiers nor good civilians, neither good outdoor workers nor good indoor workers; neither can they be fit to attack an enemy nor defend themselves against attacks of an enemy, or against the raid of thieves or dacoits. In a few words, his birth is very often the cause of ruining the health, strength and prosperity of his parents without resulting in a corresponding benefit to society. The husband, in the majority of cases, becomes confined to his room for the purpose of arranging or superintending the nursing and medical treatment of his young wife or of his children, if any, and has very often to absent himself from his professional duties, and eventually has to arrange for his re-marriage several times during his lifetime, on account of the successive deaths of his young wives or on account of his wife bearing children who are not long-lived.

Under these conditions, I respectfully recommend to the House to grant me leave to introduce this Bill in the Assembly.

The Honourable Sir William Vincent (Home Member): The Government have no intention of opposing this motion, but the Bill is of so important a character that I think Members of the House ought to be fully cognisant of the effect of the measure before they accede to the present proposal At present the offence of rape is when the girl is a consenting party, confined to the case of sexual connection with a girl under twelve years of age. Intercourse with a girl under that age is rape, whether she consents or not and this applies also in the case of married girls. Many of us, my friend Sir Deva Prasad amongst them, will remember what an outcry there was when the Age of Consent Bill was passed in 1891. We were told that the foundations of the Hindu religion were shaken by the action of the Government. If that was so then, it seems to me that the Honourable Mover is about still further to shake them in seeking to raise the age of consent, not only in the case of unmarried girls, but of married girls also, to 14 years Further this Bill is in some respects more severe even than the English law; but I will deal with that point later. I understand that in many parts of the country it is the custom that consummation of marriage takes place as soon as the wife attains puberty.

I speak very much subject to correction in a matter of this kind. It is also a fact, I believe, that some girls do attain puberty before they are 14 years of age. (*An Honourable Member*: 'Very often.') I have comparatively little knowledge of the subject, but I will take the Honourable Member's word for it. If so, there may be some difficulty about this custom of early consummation of marriage. There is some danger in the amendment now proposed of the exception to section 375 of the Indian Penal Code interfering with this custom to which I have referred. Sir, I am not aware how far custom in this matter has changed since 1892, when the Bill was passed, or how far the public would welcome such an advance as is now contemplated. I remember that Sir Romesh Chandra Mitter, speaking in 1891 on the Age of Consent Bill, said:

'It seems to me that legislation upon subjects like these must wait until public opinion is sufficiently educated.'

Members of this Assembly are possibly in a better position than I am to judge whether public opinion is at present sufficiently educated to welcome a radical change of this character.

There is another point to which I referred just now when I said that the Bill prescribes a more severe penalty for intercourse with girls of a certain age than is provided by the English law. I think I am right in saying that, under the English law, although it is always a penal offence to have connection with a girl under 16 years of age, yet after 13 years of age the punishment awarded is much smaller than it is in the case of girls under 13 years of age. I believe that intercourse with a girl under 13 years of age, even with her own consent, is felony and intercourse with a girl over 13 years of age but under 16 years of age is a misdemeanour punishable with two years' rigorous imprisonment, or something of the kind. This is also a matter which this House will have to consider later—that is however a matter of detail but the question will also arise whether it is necessary to punish a man for having intercourse with his wife even if she is under the age of 14 with a sentence of transportation for life or ten years' rigorous imprisonment which is the maximum now provided. That is what the Bill proposes to do.

[Sir William Vincent.]

Sir, the Bill is not one that affects the English community very much, because in very few cases amongst us do girls marry at such a young age. But the facts I have mentioned are matters which I thought I ought to place before the Assembly for careful consideration, so that they might realise what the Bill means. My own personal view is—though this is a matter for the Assembly to decide—that Members might do well to allow this motion for leave to introduce, and wait until the motion for circulation comes on when the points which I have adverted to here—and they are very important—can be debated more fully.

Mr. President: The question is:

'That leave be given to introduce a Bill further to amend the Indian Penal Code (*Amendment of section 375*).'

The motion was adopted.

Rai Bahadur Bakshi Sohan Lal: Sir, I beg to introduce the Bill.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 1st March, 1922.