

Thursday, 19th July, 1923

THE  
COUNCIL OF STATE DEBATES

(Official Report)

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*(From the 16th to the 28th July 1923)*

THIRD SESSION

OF THE

COUNCIL OF STATE, 1923.



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# COUNCIL OF STATE.

Thursday, the 19th July, 1923.

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

## RESOLUTION *RE* ELECTION TO ADVISORY COMMITTEE FOR PUBLICITY WORK.

The HONOURABLE MR. J. CRERAR (Home Secretary) : Sir, I beg to move :

“ That this Council do proceed to elect, in such manner as the President may direct, two members to the Advisory Committee to assist in the conduct of the publicity work of the Government of India.”

It is, I think, within the knowledge of the House that in 1921 a Committee was constituted by the Government of India to advise them in matters relating to publicity work, and I may add that the Government of India have been much indebted to that Committee for much valuable advice and assistance. The question of the future constitution of the Committee was referred to a sub-committee of the Advisory Committee recently, and they recommended to Government that in future the Committee should consist of nine members to be elected by the Central Legislature, two by the Council of State and seven by the Legislative Assembly ; six other members should be nominated by Government and the Chairman of the Board should also be nominated by Government. The functions of the Committee are principally to advise in regard to all publicity matters, particularly in regard to subjects suitable for publicity and the manner in which that publicity work should be undertaken. They also drew up for the consideration of Government the budget of the Central Bureau of Information. My present purpose, Sir, is limited to asking the House to proceed in such manner as you may direct to the election of two members of their number.

The motion was adopted.

The HONOURABLE MR. J. CRERAR (Home Secretary) : I think it will conduce to the convenience of the House, Sir, if I venture to submit two names of gentlemen who I am certain will commend themselves to the House and who are willing, as I have ascertained, to act in this capacity. They are the Honourable Sir Maneckji Dadabhoj and the Honourable Sir Purshotamdas Thakurdas.

The HONOURABLE THE PRESIDENT : I think opportunity must be given for any other names to be put in. Of course, if no other names are mentioned except these two, no election will be necessary. I propose therefore to give up to 12 o'clock for Members to put in at the table any names of candidates they wish to propose. They must of course, first ascertain that the candidate is willing to serve. After

[The Honourable the President.]

12 o'clock I will take a convenient opportunity to announce to the House what is the result\* of that procedure.

### MOORSHEDABAD (AMENDMENT) BILL.

The HONOURABLE MAJOR G. D. OGILVIE (Political Secretary) : Sir, I beg to move:

“ That the Bill to modify certain provisions of the Indenture confirmed by the Moorsshedabad Act, 1891, as passed by the Legislative Assembly, be taken into consideration.”

The Bill is of a private character and is not a measure of public importance. In the Indenture between the Secretary of State and the Nawab Bahadur of Moorsshedabad, which was validated by Act XV of 1891, there occurs a provision that the Nawab Bahadur may not dispose of any of his scheduled landed property otherwise than by lease or demise for a term not exceeding twenty-one years and under a rent without bonus or salamee. This provision was inserted to safeguard the interests of the estate and the heirs of the Nawab Bahadur for the time being. The Nawab Bahadur has certain scheduled landed property in Calcutta which he wishes to lease out for building sites, but he has failed to secure any offer because no one will take up land on lease for building purposes in Calcutta for so short a period as 21 years. The terms of the Indenture are thus operating to cause loss to the Nawab Bahadur and the estate. It is, therefore, proposed that mention of a time limit should be omitted from the Indenture, and it is also considered unnecessary that any specific reference should be retained to the restriction regarding bonus or salamee. In place of these restrictions it is proposed that the terms and conditions of all leases, etc., shall be subject to approval by the Governor of Bengal in Council who will be in a position to assure himself that no lease contains any thing in any way detrimental to the true interests of the estate and of the heirs of the Nawab Bahadur.

The HONOURABLE THE PRESIDENT : The Question is :

“ That the Bill to modify certain provisions of the Indenture confirmed by the Moorsshedabad Act, 1891, as passed by the Legislative Assembly, be taken into consideration.”

The motion was adopted.

The HONOURABLE THE PRESIDENT : The Question is :

“ That clauses 1 and 2 stand part of the Bill.”

The motion was adopted.

The HONOURABLE THE PRESIDENT : The Question is :

“ That the Preamble stand part of the Bill.”

The motion was adopted.

The HONOURABLE MAJOR G. D. OGILVIE : I move that the Bill, as passed by the Legislative Assembly, be passed.

The HONOURABLE THE PRESIDENT : The Question is :

“ That the Bill to modify certain provisions of the Indenture confirmed by the Moorsshedabad Act, 1891, as passed by the Legislative Assembly, be passed.”

The motion was adopted.

\* For results of election, see page 1639.

## CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

The HONOURABLE MR. J. CRERAR (Home Secretary) : Sir, I beg to move :

“ That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.”

This is a very limited measure and I need add little to the explanation which is contained in the Statement of Objects and Reasons. It is, I think, obvious that the arguments which justified the protection of official salaries to the extent provided by the Act on the old scale, which I may say, was formulated so long ago as 1873, would justify the same measure of protection on the new scale. I do not therefore propose to enter at any great length into the principle of the protection to a certain extent of official salaries. Protection from attachment of certain debtors' assets is, as the House is aware, already in various forms recognised by the Act. For example, tools of artisans, implements of husbandry in the case of agriculturists, and the wages of labourers and domestic servants are absolutely protected. I think that the grounds for doing so are obvious. It is clear that to deprive persons against whom decrees have been obtained of the means of exercising their economic functions in the State would be distinctly detrimental to the State and not in the long run really advantageous to the creditor. However, in the case of a public servant, I desire to point out that the main object is—though I should not at all be indisposed to claim for it if I could a philanthropic object—the main object is the protection of the public interests. It is clear that if a public servant—and that term, I may remind the House, includes not only servants of Government but servants of Municipalities and Railways—is entirely deprived of his means of subsistence, the dangers to public interests involved are very serious indeed. I need hardly specify them. In the first instance, they would be rendered entirely incapable of performing their duties and secondly, the temptations which their serious financial position would subject them to might result in consequences which the House will readily appreciate. The question then before the House is not so much the question of principle involved in the old section, but whether the new scale which we propose is a reasonable scale. With regard to that, I would remind the House that the existing scale was devised so long ago as 1873. Between that period and the passing of the present Code of Civil Procedure in 1908, there was of course an enormous increase in the cost of living, or to put it in another way, a very serious fall in the value of money since 1908—we are, I hope, now somewhat nearer stabilisation—the decrease in the value of money and the increase in the cost of living has been still more pronounced. I do not think therefore, I need add very much more to convince the House that the increased scale—from Rs. 20 to Rs. 40 and from Rs. 40 to Rs. 80—is nothing but reasonable and proper. Sir, I move that the Bill be taken into consideration.

The HONOURABLE THE PRESIDENT : The Question is—

“ That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.”

The motion was adopted.

THE HONOURABLE MR. J. CRERAR : May I at this stage, Sir, move that the Bill be passed ?

THE HONOURABLE THE PRESIDENT : I think so. There are only two clauses to the Bill and I do not propose to put the Bill clause by clause unless any Honourable Member desires it.

THE HONOURABLE MR. J. CRERAR : I move that the Bill, as passed by the Legislative Assembly, be passed.

THE HONOURABLE THE PRESIDENT : The Question is :

“ That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes, as passed by the Legislative Assembly, be passed.”

The motion was adopted.

### INDIAN INCOME-TAX (AMENDMENT) BILL.

THE HONOURABLE MR. A. C. McWATTERS (Finance Secretary) : Sir, I beg to move :

“ That the Bill further to amend the Indian Income-tax Act, 1922, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.”

This Bill, Sir, falls into two parts. The first part which is represented by clause 2 is a purely drafting amendment. It is intended to give effect to what was the intention of the Act. It is probable that some words have dropped out, perhaps in printing, and we have been advised that the Act as it stands does not necessarily carry out the intention of the legislators. We desire to make it clear that the profits and gains of a business accruing or arising out of British India to a person resident in British India may be assessed when received in, or brought into, British India. This, as I have said, is the intention of the law at present and is in fact the actual practice. The amendment is simply a drafting amendment in order to provide against any possible evasion.

The second part of the Bill has as its object the provision of a mechanism for bringing under assessment the profits of occasional shipping, that is to say, tramp steamers which come to India from time to time. These steamers are obviously liable to taxation on the profits made in India. It is clearly unfair that these steamers should escape while ordinary shipping is taxed. Commercial opinion has given its unanimous support to this proposal. What the Bill does is to provide the mechanism of assessment. At present these tramp steamers have no agents or representatives in India and it has hitherto been impossible to tax them. The present Bill provides a rough and ready method of calculating the profit. We assume 5 per cent. of the receipts from outward freights and passenger fares to be the actual average profit and assess income-tax on that.

The last clause of the Bill gives the owners and masters of these steamers an opportunity of correcting that assessment if it is unfair. They have the option of having the tax readjusted on actual profits. I may say that this Bill has precedents both in South Africa and Australia. I move that the Bill be taken into consideration.

The motion was adopted.

- Clause 1 was added to the Bill.

The HONOURABLE THE PRESIDENT : Clause 2.

The HONOURABLE SIR S. R. M. ANNAMALAI CHETTIYAR (Madras : Non-Muhammadan) : I should like to know whether there was any instance where the Government found itself in a difficulty to levy tax on an income such as is referred to in clause 2 of the Bill. I went through the reports of the debate in the Assembly when the Bill was under discussion there, and there, too, it has not been clearly explained, and I do not think the Honourable the Finance Secretary has explained it fully here. I should like to know how the Act, as it is, places the matter under dispute and how the change proposed to be made in it places the matter beyond dispute. I think this House will very much wish to hear from the Honourable the Finance Secretary as to what it was that led to the proposed change and I trust he will explain to the House in as clear a manner as possible why the change has been rendered necessary.

The HONOURABLE MR. A. C. McWATTERS : I have great pleasure in giving an explanation. The position has not been challenged under the present Act of 1922, but a similar provision occurs in the Act of 1918 which was amended by the Act of 1922. Under the Act of 1918 this position has actually been challenged in the Punjab High Court. A case arose in which a contractor in the Punjab received large sums of money at Quetta. Baluchistan was then outside the Income-tax Act. He remitted the money to British India and invested it in the Punjab, and was accordingly assessed to income-tax. He challenged this assessment and the Punjab High Court upheld him because they said the wording of the Act was doubtful, and that is why we want the present Act to be secured against any possible doubts.

The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : In this connection I beg to ask the Honourable Mr. McWatters whether any person who makes an income in an Indian State and comes into British India will have to pay income-tax on the income so accrued, and whether he will not be liable to pay tax in both places if any such income-tax law also exists in that particular State.

- The HONOURABLE MR. A. C. McWATTERS : I may say that this amendment has nothing whatever to do with the question of double taxation. That is provided for as regards the United Kingdom in a separate section of the Act, and if it is found necessary to make any other provision regarding double taxation it will be a question of substantive legislation. This clause of the Bill does not affect the matter in any way.

Clause 2 was added to the Bill.

- The HONOURABLE THE PRESIDENT : In putting clause 3 before the Council I will call each of the three substantive sections which are inserted by that clause so that Honourable Members may have an opportunity of speaking on them if they so wish.

Section 44A.

Section 44B.

- • Section 44C.

[The Honourable the President.]

The question is, therefore, that clause 3 stand part of the Bill.

The motion was adopted.

The Preamble was added to the Bill.

THE HONOURABLE MR. A. C. MCWATTERS : I beg to move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

### INDIGO CESS (REPEALING) BILL.

THE HONOURABLE SIR NARASIMHA SARMA (Education, Health and Lands Member) : Sir, I beg to move :

“ That the Bill to repeal the Acts which provide for the levy of a cess on indigo exported from British India, as passed by the Legislative Assembly, be taken into consideration.”

The Statement of Objects and Reasons appended to the Bill clearly explains the reasons why the Government have felt that it is no longer necessary to levy a cess on indigo exported from British India for the purpose of investigating the possibilities of improvement on the botanical or on the chemical side in order to help the industry. A research botanist was engaged for the purpose with the funds raised by Act III of 1918 and a research chemist also was engaged. Their investigations have been brought to a close, and our expert advisers have informed us that there is no longer any necessity for pursuing those investigations except with regard to one matter, namely, the problem of the bacteriological fermentation in the steeping vat and that the Pusa Institute is perfectly capable of discharging that duty. We therefore thought that it was unjustifiable to continue the cess, which is at present Rs. 1½ per cent. I had indicated in January 1923 that the Government were contemplating the repeal of this cess, and that they had no intention of continuing taxation by means of a cess when the revenues of the State could supply funds for the object in view.

I have great pleasure in asking the House to take this Bill into consideration.

The motion was adopted.

THE HONOURABLE SIR NARASIMHA SARMA : Sir, I beg to move that the Bill, as passed by the Legislative Assembly, be passed.

THE HONOURABLE THE PRESIDENT : I do not propose to put the Bill clause by clause, unless any Honourable Member so wishes.

The question is :

“ That the Bill to repeal the Acts which provide for the levy of a cess on indigo exported from British India, as passed by the Legislative Assembly, be passed.”

The motion was adopted.

### INDIAN PAPER CURRENCY (AMENDMENT) BILL.

THE HONOURABLE MR. A. C. MCWATTERS (Finance Secretary) : Sir, I beg to move :

“ That the Bill further to amend the Indian Paper Currency Act, 1923, as passed by the Legislative Assembly, be taken into consideration.”



This Bill, Sir, is one of considerable importance. It falls into two distinct parts, and a fairly full explanation has been given in the Statement of Objects and Reasons. The first and less important part of the Bill is covered by clauses 2 and 3, and is simply a measure of economy. Its object is to reduce the working costs of the Mints by obviating unnecessary recoinage at a time when our stock of silver coin is large—I may say, almost embarrassingly large. The present position is that every year owing to the ordinary wear and tear of circulation something like one crore of rupees are returned from our treasuries to the Mints and are there melted up and recoined. This is an ordinary routine procedure by which, like other countries, we aim at preserving the purity of our coinage, and we have to recoin in order to reimburse the treasuries, since otherwise we should lose that amount of money in our treasury balances. It is not possible for us to take credit in the Reserve for the bullion contained in these uncurrent coins because according to the wording of the Indian Paper Currency Act, as it is at present, we can only place in the Reserve bullion purchased for coinage and it is not possible to say that bullion obtained from these uncurrent coins is strictly bullion purchased for coinage, although the silver has of course been purchased at one time or another. In the second place, the bullion in the reserve has to be valued at its purchase price. It is obviously impossible for us to calculate the purchase price of the silver contained in coins which have been withdrawn from circulation. As the Act stands we have to recoin these coins quickly, so that we may send them again to the Treasuries, which is obviously an uneconomic thing to do. The House will observe that in the Bill we take credit for this bullion at the rate of one rupee for 165 grains Troy of fine silver, which is the amount of fine silver contained in a silver rupee, the rupee being a coin of 180 grains in weight,  $\frac{1}{2}$  fine. That is to say, we make allowance for the loss in weight due to wear and tear and take credit only for the actual number of full weight rupees which will be obtained when the bullion is eventually recoined. This part of the Bill is simply, as I have said, a measure of economy, to reduce the working expenses of the Mints; it is also a measure of administrative convenience, owing to the large stock of silver coin which we hold at present.

The second part of the Bill, which is comprised in clause 4, is the more important part. This amendment will, I feel sure, be welcomed by the House. It proposes to increase from 5 crores to 12 crores the amount of emergency currency which can be issued against Bills of Exchange. The House will remember that the origin of this provision in the Paper Currency Act was a recommendation of the Babington Smith Committee. That recommendation was admittedly tentative and experimental. We have now had two years' experience of the working of that provision and it is perfectly clear that it does not go far enough. The limit of 5 crores is undoubtedly small and the conditions prescribed executively under that section, which fix 8 per cent. as the minimum rate of interest to be charged to the Imperial Bank for these loans, are too restrictive. That, I think, is admitted now by everybody. As regards the figure of 12 crores, which we now propose to adopt, it is not necessarily a final figure. We put it forward because at the present time it is probably as much as, if not more than, the Imperial Bank can obtain of the particular class of security required—namely, internal Bills of Exchange and hundis.

[Mr. A. C. McWatters.]

We hope however that gradually their business will develop in such a way that they will be able to obtain a larger quantity of hundis and Bills of Exchange which will be suitable as security for these loans. The mere increase from 5 crores to 12 crores would of course in itself be inoperative unless we altered the prescribed conditions, and therefore in the Statement of Objects and Reasons Government have shown the manner in which they propose at present to modify those conditions ; the first 4 crores of the loan will be available at 6 per cent. interest, the next 4 at 7 and the next four at 8, and the Imperial Bank will be charged interest at bank rate on the amount of the loan outstanding at any time. The object of this arrangement is to enable the loan to be taken earlier and also on a larger scale than in the last two years.

The real reason for these proposals will be known to everyone in this House. Indian trade is notoriously subject to seasonal conditions. At one time there is a shortage of currency, at another time there is a superabundance. This is due to the fact that very large quantities of crops have to be moved at certain seasons of the year and in order to effect this actual cash is needed. Our object is to provide just that amount of currency which is necessary to carry on the trade of the country at any particular time. We do not want to make this currency a permanent addition to the circulating medium ; it is automatically retirable and will not be likely to cause inflation and a rise in prices. With regard to the provisions which will be made executively under this section, there are naturally differences of opinion as to the best arrangement. We have had various suggestions, very useful suggestions, made by different commercial bodies, and I should like to say here that the provisions which Government have indicated in the Statement of Objects and Reasons are not as rigid as the laws of the Medes and Persians. They are liable to further alteration in the light of experience. The matter is one of real importance to Indian trade and even if we do not now attain finality and perfection, I think the House will agree that the measure is on the right lines and should do much to improve the present position.

Sir, I move that the Bill be taken into consideration.

The HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : General) : Sir, I feel that I cannot allow this opportunity to pass without saying a word of appreciation for this very important Bill enunciated by Government. We are exceedingly grateful to our Finance Minister Sir Basil Blackett for feeling the commercial pulse of India and bringing forward so important a Bill at the right and proper time. I only propose to say a few words in connection with the latter part of the Bill, I mean the second part which provides for the raising of emergency currency from 5 to 12 crores. I feel certain that the great commercial communities of Bombay and Calcutta will highly appreciate this great boon which this Bill seeks to confer. We are all aware of the tightness of the money market during the trade period which is generally in the cold weather. That during the busy season stringency has been considerably felt, not only in Bombay but in Madras and Calcutta, and I am of opinion that this legislation has not been brought a day too soon. This measure.

will relieve the seasonal trade of the country from a great dilemma and from a great disability under which it has been labouring for years past. This Bill is rather of a preventive character. The object of it is to anticipate a monetary stringency and to be prepared for it. It is much better that monetary stringency should be anticipated in time and measures provided to reduce the pressure of the tightness of the money market instead of allowing the stringency to occur and then give the relief. That is what this Bill seeks to achieve, and as such it will have the hearty support of the trading communities of India. I think this Bill will afford considerable facilities for making additional currency when there is great trade demand and to meet that trade demand, a measure of this kind is essentially necessary. I therefore have great pleasure in supporting this Bill.

The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : Sir, I also welcome this very useful measure and offer my hearty thanks to the Government for moving in this matter. I fully endorse what my Honourable friend Sir Maneckji has said, and we traders will feel grateful to the Government as this measure will bring down the heavy rate of interest which has been ruling for the last few years and thus revive trade.

The HONOURABLE SIR PURSHOTAMDAS THAKURDAS (Bombay : Nominated Non-official) : Sir, I wish to support this Bill. I do not think the Bill has been introduced a day too soon for the heavy fluctuations in the bank rates during the last few years justified the introduction of a measure like this at least a year or two back. But I cannot, at the same time, overlook the fact that the Honourable the Finance Minister has taken prompt action as soon as the necessity of this was brought to his notice last April by the Indian Merchants' Chamber when he saw them in Bombay. The very fact of the bank rate undergoing such fluctuations as going down from 8 per cent. to 4 per cent. within a short period of six weeks ought to give food for considerable thought, and grave thought at that, as to how these matters should be handled by the Government of India. Yesterday, in the course of a discussion on the Honourable Sardar Jogendra Singh's Resolution regarding helping agriculturists and agriculture, he expressed very great desire that something should be done to devise methods for making money available to agriculturists, cheap and in plenty. This measure is, I am glad to be able to say, one of those that will considerably help the marketing of crops, for, the rise in bank rates unfortunately comes in just when the cultivators' crops are being marketed and the rise goes as far as practically the high water mark of the bank rate for the year at that time. I therefore feel that the measure deserves all the support that this Council can give it.

But I would very much like to impress upon the Finance Department the very great necessity of not resting satisfied with this amendment to section 20 of the Act and the approval it receives now. I would venture to point out to them that they might proceed about this in a more scientific manner than the one that they have pursued so far. I would like to know on what basis the Finance Department have hit upon the figure of 12 crores as being a suitable figure for the conditions in India. The figure named by the Babington Smith Committee was 5 crores and, if I remember correctly, they said they only named that figure as more or less a guess, but would like that figure to be adjusted according to the needs of India.

[Sir Purshotamdas Thakurdas.]

from time to time. Whilst 12 crores is a much bigger figure than 5, I certainly wonder if the Finance Department would not watch the situation and see if the conditions prevailing in India now do not necessitate the figure being raised even to 15 or 20. The Indian Merchants Chamber replying to Government on an inquiry in this connection suggested a somewhat scientific method that was put before their Committee. They suggested that a certain percentage of the total note circulation may be fixed as an emergency currency. I would like to know why that suggestion was rejected by the Finance Department. It is possible that the Finance Department wanted to introduce this measure this session and they had not enough time to examine the suggestion of the Indian Merchants Chamber. If that be so, I certainly hope that, when they have examined this suggestion of the Indian Merchants Chamber, which by the way the Chamber themselves made after going into it minutely, the Finance Department may be able to bring forward another amendment, enlarging that figure, if the inquiry justifies it.

The other point, Sir, is that the Bank rate of interest, justifying the next instalment of emergency currency, varies by one per cent. It is either 6 or 7 or 8. I think the Indian Merchants Chamber in Bombay suggested half per cent. stages. I do not know why we should stick to the one per cent. stages except because it has been the custom in India till now. But, if competition in business gets keener from day to day—and about this there is not the slightest doubt—if India is coming into closer touch with other parts of the world, producing large quantities of raw-materials, it is only right that the Finance Department should not stick to the one per cent. stages, which they have had till now. Half per cent. stages would make money available to the commercial community at a smaller cost than one, and would tend not to contract credit as much as it indeed does when the Bank rate goes up to 8 per cent.

There is one more method that strikes me in this connection. I really wonder if the Finance Department would go into it. Why not fix the maximum at a certain percentage over the rate at which the Government of India may have borrowed the previous year? This year for instance, the Government of India borrowed money in the open market at 5 per cent. free of income-tax. Why should it not be possible to devise some method like this—an elastic method—which need not be binding by legislation, that the maximum rate at which the full 12 crores, we will say, can be available next year would be say one and a half per cent. over the rate at which the Government of India borrowed in India this monsoon. For the next season, the full 12 crores will thus be available at roughly 5 per cent. plus half per cent. for income-tax plus  $1\frac{1}{2}$  per cent., *i.e.*, total of 7 per cent.

With these suggestions, I am very glad to be able to give my full approval to this measure and I wish particularly, Sir, to express my appreciation of the very prompt manner in which the Finance Department have amended section 20 of the Act by this Bill.

The HONOURABLE SIR S. M. ANNAMALAI CHETTIYAR (Madras : Non-Muhammadan) : Sir, I wish to give my hearty support to this Bill.

and I beg to associate myself with all that has been said by my friend, Sir Maneckji Dadabhoy.

The HONOURABLE MR. A. C. MCWATTERS (Finance Secretary) : Sir, I am glad to find that this Bill has been so warmly welcomed in this House. With reference to the remarks which have fallen from my Honourable friend, Sir Purshotamdas Thakurdas, I should like to emphasise once again, that the figure of 12 crores was partly selected because we know that at the present moment it is, if not more than, at any rate equal to the maximum which the Imperial Bank can possibly obtain of the right kind of security. But it is not necessarily a final figure and we are perfectly prepared to consider a further increase, if desirable and if further security of the right kind can be found. The same thing applies to the prescribed conditions. As I said, they are not as rigid as the laws of the Medes and Persians and we are ready and willing to consider any suggestions that may be made in the light of further experience.

One suggestion which was made by the Honourable Member is of very considerable interest, that we should fix the maximum rate of interest at one and a half per cent. above the Government's borrowing rate for the year. It is a new suggestion which I should like to examine.

I don't think I need say any more, Sir. I am glad to find the Bill so warmly welcomed.

The HONOURABLE THE PRESIDENT : The question is :

“ That the Bill further to amend the Indian Paper Currency Act, 1923, as passed by the Legislative Assembly, be taken into consideration.”

The motion was adopted.

Clauses 1, 2, 3, 4 and the Preamble were added to the Bill.

The HONOURABLE MR. A. C. MCWATTERS : Sir, I beg to move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

#### EXCLUSION FROM INHERITANCE BILL.

The HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : General) : Sir, I beg to move :

“ That the Bill to amend the Hindu Law relating to exclusion from inheritances of certain classes of heirs, and to remove certain doubts, as passed by the Legislative Assembly, be taken into consideration.”

Sir, it may perhaps seem somewhat anomalous that I, a Parsee, should sponsor this Bill in Council. I responded to the request of the author of this Bill to see it through in this Council because I felt that this Bill proceeds thoroughly on humanitarian principles,—principles which will be acceptable to all in the present age of progressive and civilised state of Hindu society. I do not propose to make any long speech, but will briefly explain the real object of this Bill. This Bill is a measure of a very simple character to remove certain disqualifications set forth in the text of Manu the great Hindu Law-Giver, which excluded succession to property in cases of congenital deformities, in cases where a man is born a eunuch, in

[Sir Maneckji Dadabhoy.]

cases of impotency, and also in cases where a person born in Hindu religion abdicates his religion and becomes a convert to any other religion. It will help one to understand this Bill if I draw the attention of the Council to the original text of Manu. The text says :—“ An impotent person and an outcaste are excluded from a share of the heritage and so are the deaf and dumb and blind ”. This original text of the great law-giver Manu has been amplified by other commentators such as Yajnavalka and certain incurable diseases were included in the text. Some doubt also was raised whether the provisions regarding exclusion applied to all classes of deformities or only referred to congenital ones. I may also tell Honourable Members that there has been a series of High Court decisions from time to time making serious inroads on the original text of the great law-giver. In fact, I may also remind the Council that the British Government as far back as 1850 thought it necessary to take a very definite step in the matter, and deviated from the doctrine preached by Manu in the matter of religious conversion. Honourable Members will remember that what is known as the Caste Disabilities Removal Act (XXI of 1850) has laid down that no man will lose his right of succession to property by the mere reason of his conversion to any other religion. This Bill, therefore, seeks only to make a further alteration in the law or a further deviation, I may say, from the text of Manu, and it legalises, or rather it codifies the ~~law~~ law which has grown up in this connection and which has caused considerable doubt among Hindu lawyers as well as among Judges who are called upon to administer the Hindu law. The immediate cause of this Bill may be traced to the recent decisions of the Madras High Court. In a decision reported in I. L. R. 43, Madras, one of the reformed Judges, Justice Sadasiva Aiyar, said that any rule which excluded from inheritance these unfortunate persons had become obsolete by time by reason of the disappearance of that rule in the present age. This doctrine was challenged and doubted in a subsequent ruling reported in I. L. R. 44 Madras, and the Chief Justice of Madras and another Judge later on in a Full Bench case (I. L. R. 45 Mad) over-ruled the decision of Justice Sadasiva Aiyar, and said :

“ A Law does not cease to be operative because it is out of keeping with the times. A Law does not become obsolete because it is an anachronism, or because it is antiquated, or because the reason why it became originally the law would be no reason for its introduction of such a law at the present time. To hold the contrary would be an entire misunderstanding of the meaning of the legal maxim *cessat ratio cessat lex* (that is, where the reason ceases, the law ceases) which is relied upon in support of the contrary opinion.”

It was this decision apparently which made the author of the Bill, Mr. Seshagiri Ayyar, introduce his Bill in the lower House.

I shall now briefly explain to the Council the provisions of this Bill. I feel it necessary to bring to the notice of Honourable Members that this Bill as it has emerged out of the Select Committee is considerably different from the original Bill. It has been substantially modified by the Select Committee. In the original Bill the author wanted cases of congenital deformity—that is, where a man is a born idiot or lunatic—also to be brought within the operation of this Bill. He said they should not be excluded from succession to the property. But the Select Committee have,

excluded from inheritance some congenital cases, that is, where a man is a born idiot or lunatic. The present Bill says that :

“ No person governed by Hindu Law, other than a person who is and has been from birth a lunatic or idiot, shall be excluded from inheritance or from any right or share in joint-family property by reason only of any disease, deformity or physical or mental defect.”

This provision will enable even men born deaf, dumb or blind to succeed to property to which heretofore they were precluded from succeeding. Honourable Members of Council will see, therefore, that this Bill is founded on natural justice and equity, and on principles of humanity. It is not possible for any Englishman, or even for any other class or race to contemplate that his issue who is born blind, dumb or deaf should be altogether excluded from succession to property by reason of such disabilities which were really not due to his fault. The Hindu Law proceeded unfortunately upon a fiction that succession to property depended upon what the Hindus called efficacy to give oblations ; or in other words, under the Hindu Law only a man who can make the five sacrifices ordained by his religion could succeed to property. That was really the foundation of the rule. Now, Honourable Members.....

The HONOURABLE THE PRESIDENT : The Honourable Member should address the Chair.

The HONOURABLE SIR MANECKJI DADABHOY : Now, Sir, this provision will set at rest this difficulty in the matter.

12 NOON.

I may assure the Council that this provision which the law now seeks to enact does not offend Hindu religion in any way. It is not opposed to the sacramental law of the Hindus as I understand it. This law, as I have pointed out to you, Sir, is based on natural justice and equity, and it is only right and proper that these unfortunate people, born blind, born deaf and dumb, born with incurable disease, should be protected and not thrown to the mercy of other people. If any class of people needs protection under the present civilised state of affairs it is this unfortunate class who need the strong arm of law to safeguard and preserve their interests. The law of Manu, it is true, in ancient times, made this rule, but I will give you a reason and explanation for that rule. In those times, in the times of Manu, apparently, there were not so many safeguards for the protection of the property of these disqualified persons. We have now on our Statute-book the Law of Trusts. We have got now, the Court of Wards Act, and we have got other provisions, salutary and effective provisions of law. The original idea was that when a person is born blind, deaf or dumb he would not be in a position to look after his property. Therefore he should be disinherited and excluded and his son or his other heirs should succeed him. That was apparently the reason. Now, that reason altogether disappears. The machinery of our Courts is sufficient to give effective protection to these unfortunates. It is also said that if this legislation is passed the property may fall into the hands of scheming and designing coparceners who would defraud disqualified persons of their possessions and take hold of them. But I submit there is very little cause for apprehension on that score. As I have pointed out, the existing machinery is quite sufficient to protect

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these disqualified men. I will not detain the Council any longer. I have only one word to say why sub-clause (3) of clause 1 has been inserted. It provides "It should not apply to any person governed by the Dayabhaga School of Hindu Law." The explanation why the Dayabhaga School of Hindu Law has been excluded from this Act is because that School of Law is more liberal in the interpretation of the original texts and more generous in the disposition of property than other Schools of Hindu Law. There is nothing like the strict coparcenary rule which prevails in the Mitakshara School of law. It gives full and liberal powers of disposition; dispositions *inter vivos* as well as testamentary are extensively resorted to. That is why the Dayabhaga School of Hindu Law has been excepted from the provisions of this Bill.

The HONOURABLE SIR S. M. ANNAMALAI CHETTIYAR (Madras : Non-Muhammadan) : The other day the House passed the Special Marriage Bill in a mood of joy. That was a piece of social legislation and the Bill itself was permissive in character, and it was no wonder that it was passed, and passed with acclamation. I wish I could say the same of the Bill now before the House, but unfortunately, I could not. The author of the Bill is an *ex*-Judge of the High Court of Madras and I have a great respect for him. That, however, should not blind me to what I consider to be the shortcomings of the Bill. Sir, it is highly doubtful if the remedy which the author of the Bill has proposed would secure the end he has in view. I am yet to come across a family where our less favoured brethren are treated with want of kindness. On the other hand, I know of many instances where because they are helpless affection and attention are lavished on them which no amount of money can ever secure them. I am really afraid of the possibility there is under the Bill of a grave abuse of the benefits which the Bill tries to secure, by designing persons. Again, Sir, legal opinion in the country is sharply divided on the question. Mr. Rangachariar, I am sure Honourable Members here know him very well, is as good a lawyer as the author of the Bill himself, and the House will permit me to read.....

The HONOURABLE THE PRESIDENT : I hope the Honourable Member will not read the speech.

The HONOURABLE SIR S. M. ANNAMALAI CHETTIYAR : Sir, a glance at the reports of the debates in the Assembly on this question will show how vehemently Mr. Rangachariar and other Members there have opposed the Bill. Mr. Seshagiri Ayyar says it is beneficial. Mr. Rangachariar says it is not only not beneficial but also very injurious. Sir, men of eminence and position have not been consulted on this very important question. They have not been asked to express their opinion in the matter. Men of position who can speak with authority in matters of this kind, at least in the districts of Madras, have not been consulted. Mr. Justice Kumarasawmi Sastri, one of the eminent Judges in the Madras High Court, when the Bill was referred for his opinion, said :

"My own view has always been that in matters affecting the religious sentiment of the people it is impolitic for a few to impose their ideas on the vast majority of the public. The circumstances under which the present Legislative Councils were elected hardly makes it as representative as one would wish. Several eminent men did not stand owing to ideas about non-co-operation, and it is likely that before long better



and saner views will prevail. I would suggest that consideration of the Bills be postponed. Better conditions are likely to prevail at the next elections and there will be also more time to elicit the views of the vast majority of the people. In the present disturbed state of the country it is not politic to give room for the cry that religion is in danger owing to the new reform scheme."

This is the opinion of the Madras Vakils' Association :

"Resolved that in the opinion of the Association Mr. Seshagiri Ayyar's Bill, styled the Exclusion from Inheritance Bill, is in its present form unnecessary but this Association suggests that it may be referred to the General Committee to suggest the revision of the Hindu Law."

The Bombay Government says :

"In the opinion of this Government such measures which affect the intimate personal and sectional interests of particular communities can be more fairly and effectually debated in the Provincial Councils. These Councils are more closely in contact with the phases of public opinion which are most entitled to be consulted and the communities concerned are more fully and perhaps effectually represented in them. It is therefore expedient that these measures should be left to the Provincial Councils and they should be opposed by Government in the Legislative Assembly without prejudice to their intrinsic merits."

Well, Sir, while there is such a divergence of opinion in the country it would have been better if the line of least resistance had been followed and more support got for the measure. This is not a crying evil that calls for immediate relief. One is, again, at a loss to understand why the author should have excluded Bengal from the operation of this Act. In the Statement of Objects and Reasons he says he was afraid of the opposition from that province. What is good to the Hindus of Madras and the United Provinces must be equally good to their brethren in Bengal. If the author had been quite sure of the support of the other provinces, he could well have defied Bengal, however strong its resistance may be. Either he ought to have included Bengal and made the measure an all-India one, or he should have left it to the Provincial Councils which with their knowledge of local customs could, if and when necessary, bring in Bills more acceptable to the people. I think, Sir, that the Bill is neither opportune nor of immediate necessity, nor is it such as to be acceptable to all sections of the people of all the provinces. With these words I oppose the Bill.

The HONOURABLE MR. J. CRERAR (Home Secretary) : My purpose in intervening in this debate is solely to state in the briefest words the attitude of Government towards this measure. It is, I think, fair to say from the nature of the measure and it is indeed apparent from the course of the debate in this House that it is a highly contentious one. It affects in a very particular degree the interests of a very great community and one of the most important questions which this House will have to decide is whether the principle embodied in this Bill does commend itself to the great and most important body of opinion in the community directly concerned. That question the Government propose to leave entirely to the discretion of the Legislature to decide. Official Members in this Council will therefore take no part in the debate.

The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : I rise strongly to oppose this Bill which I think forms one of a series of Bills intended to wreck the old Hindu religious laws. It seems to me that the author of this Bill could not get any Hindu Member of this Council to introduce this Bill here. My friend the Honour-

[Raj Bahadur Lala Ram Saran Das.]

able Sir Maneckji has I am very sorry to observe said in his introductory speech that he wants to set right the errors of Manu law.

The HONOURABLE SIR MANECKJI DADABHOY : I never said anything of that sort.

The HONOURABLE LALA RAM SARAN DAS : I am glad that he has removed this misunderstanding. Another reason he gave when he introduced the Bill was that it does not suit the present civilised and advanced state of Hindu society. Is that right ?

The HONOURABLE SIR MANECKJI DADABHOY : Perfectly ?

The HONOURABLE LALA RAM SARAN DAS : To judge our sacred laws by the criterion whether it suits the present so-called reformed members of our society or not is an anomaly. In case we allow such like things to be done there will be no end to it. There are a number of things in religions which, from our own standpoint, we consider not suitable and in case we go on like this, slowly but surely all our religious laws will be broken one by one and disintegrated altogether. With due deference to the Honourable Mover I must say that he has no right whatsoever to criticise the Hindu laws. He has cited from a judgment of the Madras High Court where he says that this section of Manu has been antiquated and is obsolete. I cannot really understand how an antiquated law can become obsolete. Should we then remove all the old laws and bring new laws to suit the present day reformed society ? This is a very objectionable state of affairs, and I must say that Government ought to see that such like measures ought not to be allowed to be introduced in the Councils, which aim at the breaking of the Hindu Law. Sir Annamalai Chettiyar has said that the Marriage Bill introduced yesterday was a social Bill. I even then threw out a note of warning that it was not a social Bill but a religious Bill, and the thin end of the wedge which was meant to wreck our religious Ordinances. In case, Sir, we amend all the Hindu laws to suit the present state of affairs of society, it is better for the mover to introduce a Bill here to repeal all these laws or some of these so-called Reformed Councillors might introduce Bills which might suit their up-to-date requirements.

With these remarks, Sir, I very strongly oppose the consideration of the Bill.

The HONOURABLE SIR PURSHOTAMDAS THAKURDAS (Bombay : Nominated Non-official) : Sir, I rise to speak on this occasion not because the Bill as it is submitted to this House in the slightest degree affects either me or my community or my part of India ; but if there is any substantial difference of opinion in this House regarding the desirability of any Bill trying to modify existing Hindu law or existing Hindu customs based on Hindu law, I cannot help feeling that such modification should be thoroughly gone into before a measure of this nature can meet with the approval of this House. From what I have been able to gather from my Honourable friend, Sir Annamalai Chettiyar, whose community is most affected by this Bill, I cannot give my support to this Bill, and the mildest action that can be taken, if the Honourable Mover of the Bill sees his way

to agree, would be to adjourn further consideration of this Bill. If he must press for this reading, I am afraid that I, as one who is not interested either way, would have to vote neither way.

The HONOURABLE THE PRESIDENT : Does the Honourable Member move that as an amendment ?

The HONOURABLE SIR PURSHOTAMDAS THAKURDAS : I throw it out, Sir, for the consideration of the Honourable Mover of the Bill.

The HONOURABLE THE PRESIDENT : The Honourable Member cannot throw it out for consideration for the mover cannot give effect to it in that form. He must place it before the House.

The HONOURABLE SIR PURSHOTAMDAS THAKURDAS : In that case I would move :

“ That further consideration of this Bill be adjourned till the next session.”

The HONOURABLE THE PRESIDENT : To the motion under consideration an amendment moved :

“ That further consideration of this Bill be adjourned till the next session.”

That motion is now open to discussion.

The HONOURABLE SIR ANNAMALAI CHETTIYAR : Sir, I oppose the amendment.

The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Sir, I too oppose the amendment, because I don't think that it will serve any useful purpose. The Bill, as it is proposed, is a direct violation of the religious law and should be discussed and disposed of.

The HONOURABLE SIR MANECKJI DADABHOY : Sir, I am not personally interested in this measure.

The HONOURABLE THE PRESIDENT : The Honourable Member has brought it before the House.

The HONOURABLE SIR MANECKJI DADABHOY : I am interested in it as I have pointed out in the course of my speech, from the humanitarian point of view. If it is the general wish of this Council that the consideration of the question be postponed I shall certainly not come in the way of the Council. I think that the Honourable Members of this Council have a perfect right to demand the full discussion and the full investigation which they desire, and I would be the last person to come in their way in a matter of this kind. If the sense of the Council is to that effect, I am quite prepared to accept the proposal for postponement.

The HONOURABLE MR. LALUBHAI SAMALDAS (Bombay : Non-Muhammadan) : Sir, I rise to support the amendment. The Bill, as my Honourable friend, Sir Maneckji Dadabhoy said, was passed after a great deal of discussion and heated discussion in the other place. There was strong opposition to it and it was passed on the last day, at the fag end of the session. It is necessary, therefore, Sir, that this Bill, which is of an important character, the principle of which I may say I entirely approve of, it is necessary that a Bill of this character, which introduces a

[Mr. Lalubhai Samaldas.]

change in Hindu law, should be very carefully considered by the Members of this House. If the amendment for adjournment if carried necessary amendments could be moved as there will be ample time to do so. Therefore, I strongly support the amendment moved.

The HONOURABLE MR. J. CRERAR (Home Secretary) : I should like to say, on behalf of the Government, that the Government would have no objection whatever, subject always to their attitude of perfect neutrality, to the course proposed by the Honourable Mover of the amendment.

The HONOURABLE THE PRESIDENT : The question is :

“ That further consideration of this Bill be postponed till the next session.”

The motion was adopted.

#### CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

The HONOURABLE MR. LALUBHAI SAMALDAS (Bombay : Non-Muhammadan) : Sir, I beg to move :

“ That the Bill further to amend the Code of Civil Procedure, 1908, as passed by the Legislative Assembly, be taken into consideration.”

Sir, the Bill that I am now submitting for the consideration of this House is not of a contentious nature, so far as I understand. It is a small, harmless, innocuous Bill and I hope it will meet with the unanimous support of the whole House. The Bill was introduced in the Legislative Assembly in the September session. It was referred to a Select Committee by a large majority. Then the Select Committee considered it very carefully. The Committee consisted of the Honourable the Home Member, the Mover of the Bill, Mr. Samarth, an eminent Hindu lawyer, Sir Campbell Rhodes, representing the English community, and Mr. K. Ahmed, representing the Muhammadan community. The Bill was thoroughly gone into and certain amendments were made in view of the objections raised to the Bill either in the Assembly or in the opinions received from the various provinces. The Bill, as it is now before the Council, is a simple one and asks that sentence to jail for not carrying out the order of a Court for the restitution of conjugal rights should be abolished. It is a human measure, Sir, and a humane measure also. That system does not exist in England, where it was done away with so far back as 1884, and we are merely following the civilised countries in doing away with this custom in India. I hope, Sir, the measure will be unanimously carried.

The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : Sir, I rise to oppose this Bill. This is a Bill, Sir, which will add to immorality and will encourage immorality. We are exceedingly sorry to observe, Sir, that, during the last 20 years, our morality, and particularly the morality of women, has very considerably gone down and any measure which tends to give encouragement to women in this connection will be rather a risky measure. Hindu marriage is not a contract and is unbreakable.

The HONOURABLE SIR MANECKJI DADABHOY (Central Provinces General) : Sir, I warmly support this Bill. I think this is a necessary and an essential change. I can hardly realise that in the present age one would advocate the policy of sending a woman to jail merely because she

to agree, would be to adjourn further consideration of this Bill. If he must press for this reading, I am afraid that I, as one who is not interested either way, would have to vote neither way.

The HONOURABLE THE PRESIDENT : Does the Honourable Member move that as an amendment ?

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The HONOURABLE THE PRESIDENT : To the motion under consideration an amendment moved :

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That motion is now open to discussion.

The HONOURABLE SIR ANNAMALAI CHETTIYAR : Sir, I oppose the amendment.

The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Sir, I too oppose the amendment, because I don't think that it will serve any useful purpose. The Bill, as it is proposed, is a direct violation of the religious law and should be discussed and disposed of.

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The HONOURABLE SIR MANECKJI DADABHOY (Central Provinces General) : Sir, I warmly support this Bill. I think this is a necessary and an essential change. I can hardly realise that in the present age one would advocate the policy of sending a woman to jail merely because she

refuses to live with her husband. She may have very grave reasons for not allowing conjugal rights to her husband and to direct her into jail, I submit, is an inhuman procedure. I submit that the existing provision of law is a blot on the Civil Procedure Code. Even in England in similar cases by the Matrimonial Causes Bill, the punishment of imprisonment for a woman who refuses to submit to the restitution of conjugal rights has been abolished, and I do not see why in this country it should at all be maintained and enforced.

My Honourable friend says if this Bill is passed it will lead to immorality. I am surprised at this statement. How will that lead to immorality? A Hindu has permission by his Scriptures to marry more than one wife. That does not lead to immorality. But the argument is that to prevent a woman from being sent to jail, to grant her an exemption from being sent to jail, would lead to immorality. It is a somewhat novel and most curious argument and I am sure this Council will not endorse it for a moment. Just imagine what would be the fate of the woman? Women in this country should no longer be treated as personal chattels and goods. Think of the intolerable position in which she would be placed, the cruelty that she would suffer from a husband who has resorted to this provision of the law and brought her against her will to his home. I say it is a humanitarian measure and every Member of this Council should warmly support it.

The HONOURABLE MR. J. CRERAR (Home Secretary) : Mr. President, I rise again to explain very briefly the attitude of Government in regard to this Bill. Government have very carefully considered the course of the debate in the other place, and have come to this conclusion, namely, one of neutrality on the part of Members of the Governor General's Council. Other Official Members will be free to speak and vote as they like.

\*The HONOURABLE NAWAB SIR BAHRAM KHAN (Punjab : Nominated Non-official) : Sir, I oppose this Bill on the ground that it concerns religion and, if passed, will operate over the whole of India. I can speak from experience that in some of the provinces, e.g., Punjab, Sind, Baluchistan and, probably, the North-West Frontier Province, there are certain customs in vogue in the matter of inheritance among the Hindu and Muslim communities which are against Muhammadan Law and *Dharam Shastras*, and which being a matter of custom alone are taking the colour of religion. I am afraid that, if this Bill is passed into law, it will spread discontent in some provinces. In the circumstances, I oppose this motion.

The HONOURABLE SIR BINODE MITTER (West Bengal : Non-Muhammadan) : Sir, I did not intend to take any part in this debate at first, but I have changed my mind, and I cannot give my silent vote to this important measure. I accord to this measure my heartiest support. I think, Sir, the days when a woman used to be handed over in execution of a decree for restitution of conjugal rights are long past. Then the courts passed decrees for restitution of conjugal rights and in default of compliance with the decree the wife was liable to imprisonment. Imprisonment for disobeying a decree for restitution of conjugal rights, I venture to say, is totally unsuitable to the modern conditions of social

[Sir Binode Mitter.]

life and is but a relic of mediæval barbarism. I for my part would hail with joy the passing of this measure, because it marks a step forward to the realisation of the dignity of womanhood.

The HONOURABLE MR. LALUBHAI SAMALDAS (Bombay : Non-Muhammadan) : Sir, I am very grateful to my two eminent lawyer friends, the Honourable Sir Maneckji Dadabhoy and the Honourable Sir Binode Mitter, for the very cordial support which they have extended to this Bill. My friend the Honourable Rai Bahadur Lala Ram Saran Das has not this time raised the question of religion in danger but has opposed the measure on the ground that it will lead to immorality. Is morality really in danger on account of it, or is it otherwise ? I will give an instance, Sir, to show what hardships the existing section is likely to work. It is an incident which happened in the early eighties, when I was studying in the Elphinstone College. A young lady called Rukhmabai was sent to jail under the existing Act. That case created a great sensation in my Presidency. The Principal of the College, Principal Wordsworth, led the agitation for the repeal of the section, and the agitation led to her release by a compromise of the case with the husband. That lady went to America, studied for medicine, and is now a Doctor of Medicine, and has been doing splendid service in Surat and thereafter, I believe, in Rajkote. Her life would have been shattered if she had been kept in jail for six months. Are we going to send young girls who are sometimes married very early, to jail ? Some of them are married at the age of 8 or 10 to old men of sixty. Are we going to stand all this at the present time. My Honourable friend Sir Bahram Khan said—if I understood him aright—that this might lead to bloodshed. I don't think it would be so bad as that even in his province. But, speaking of the whole of India, we will be doing a very great injustice to the women of this country if this Bill is not passed in the form in which it has been introduced, and I hope that the Bill will receive the unanimous support of this House.

The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : May I say one word, Sir ?

The HONOURABLE THE PRESIDENT : If it is an explanation.

The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Yes, Sir. What I said was that the Hindu marriage is not a contract and so it came under religious laws.

The HONOURABLE THE PRESIDENT : The question is :

“ That the Bill further to amend the Code of Civil Procedure, 1908, as passed by the Legislative Assembly, be taken into consideration.”

The Council then divided :

AYES—16.

Acharyya Chaudhuri, Maharaja S. K.	McWatters, Mr. A. C.
Berthoud, Mr. E. H.	Mitter, Sir Binode.
Dadabhoy, Sir Maneckji.	Muhammad Hussain, Mr. Ali Baksh.
Harnam Singh, Raja Sir.	Ogilvie, Major G. D.
Lal Chand, Lieut.	Purshotamdas Thakurdas, Sir.
Lalubhai Samaldas, Mr.	Shepherd, Mr. W. C.
Ley, Mr. A. H.	Tak Chand, Mr.
MacWatt, Major-General B. C.	Vedamurti, Mr. S.



NOES—6.

Amin-ul-Islam, Mr.  
Bahram Khan, Nawab Sir.  
Barron, Mr. C. A.

Ram Saran Das, Mr.  
Zahir-ud-dip, Mr.  
Zulfiqar Ali Khan, Sir.

The motion was adopted.

The HONOURABLE THE PRESIDENT : The Council will now proceed to the detailed consideration of the Bill.

The question is :

- “ That clauses 1 and 2 and the Preamble stand part of the Bill.”

The motion was adopted.

The HONOURABLE MR. LALUBHAI SAMALDAS : I move :

“ That the Bill, as passed by the Legislative Assembly, be passed.”

I have only one word to say. Great credit is due to Dr. Gour for having successfully piloted this Bill also in the Assembly, which will be of great benefit to the whole of India. I hope that the motion will be carried by a large majority.

The motion was adopted.

### HINDU LAW OF INHERITANCE (AMENDMENT) BILL.

The HONOURABLE SIR MANECKJI DADABHOY : I beg to move :

“ That the Bill to alter the order in which certain heirs of a deceased Hindu dying intestate are entitled to succeed to his estate, as passed by the Legislative Assembly, be taken into consideration.”

Sir, I have agreed to sponsor this Bill in this Council for an entirely different reason to the first because I believe, and firmly believe, that proximity to the intestate and not religious efficacy should be the order of succession. This Bill is a simple one and it enables certain female members to inherit before agnates of the seventh degree. I will try and explain this Bill very briefly so that laymen may be able to follow. This Bill wants a son's daughter, daughter's daughter, a sister, and a sister's son to get precedence in succession over other reversioners. The Hindu law of inheritance in the case of *bandhus* laid down two important principles. One is that the order of succession should be regulated in such a way that firstly *atma bandhus*, that is, the man's own lineal descendants should succeed. Then come *pitri bandhus*, that is, father's descendants in the absence of the *atma bandhus*, and thirdly, come *matri bandhus*, that is, mother's descendants, in the absence of the first two classes. Now, you will see the propriety of this ancient rule of Hindu law. It is natural that one's own descendants should have priority over his father's descendants and the mother's descendants should be postponed to the father's descendants. The other principle in connection with *bandhus* succession is that the class of *bandhus* should not go beyond the third degree. Now, the lawyers in this Council will know that even under the Mitakshara law succession of *bandhus* is very obscure. The Mitakshara law does give and prescribe a clear order of succession, and our High Court Judges and Hindu lawyers are agreed that the text writers on this subject and even the precedents do not help us in the interpretation of the subject. They have held that the order in which *bandhus* are enumerated is only illustrative and not exhaustive and that the grounds of

[Sir Maneckji Dadabhoi.]

preference which the Mitakshara law dictates is proximity and not religious efficacy. This small Bill seeks only to give a man's son's daughter, his daughter's daughter, his sister and his sister's son preference over distant reversioners, and after that it seeks not to make any new alteration. It seeks to follow the Bombay practice. In Bombay, a son's daughter, a daughter's daughter, a sister and a sister's son obtain priority and come in order of succession before other reversioners, and this Bill seeks to put the law in Madras and the United Provinces in conformity with the Bombay school of law. I do not for a moment disguise the fact that this law makes a very radical change in the Hindu system of succession so far as the United Provinces and Madras are concerned. I have only explained the reasons for this change. It is for Honourable Members to decide for themselves, particularly for the Hindu Members, whether they will agree to this radical change or not. I have explained the situation. From my personal point of view I may say it appeals to me, that relations who are more proximately connected, who bear closer consanguinity to the owner, ought to succeed in preference to distant and remoter relations. That is the ordinary law which will appeal to Englishmen and Parsees. Whether or not it will commend itself to my Hindu friends, it is for them to decide.

I therefore beg to move that the Bill, as passed by the Legislative Assembly, be taken into consideration.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI (Law Member) : Sir, the Bill now before the House proposes to introduce a change in the Hindu law of inheritance, and in consequence, very naturally, the position of Government with regard to it is one of strict neutrality—Official Members will observe that strict neutrality both in the discussion and in the voting. It is, however, necessary for me to point out that my Honourable and learned friend, Sir Maneckji Dadabhoi, was not quite right in his description of the Hindu law of inheritance as it obtains at present. The order of succession as it obtains at present is lineal descendants first, *sapindas* or agnates next and *bandhus* or persons related through females last of all. My Honourable friend's description of the law is somewhat incorrect.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : I rise to oppose this measure on the same ground on which I opposed the previous one introduced by the Honourable Mover. In this measure also a Hindu Member of this House has not been obtained by the author to introduce this measure. This is another step in the series of Hindu law-breaking campaigns and I cannot see any reason why such measures are encouraged here. This is a measure which very greatly affects all the Hindu communities, and particularly those who have some status in life because a westernised idea is being introduced in this new Bill that instead of the *Bandhus* succeeding, the daughter's son or sister's son who according to Hindu law and society belong to different families must come in and inherit in precedence to one's own closest male like relatives. I would very strongly request this House to throw out the motion for the consideration of this Bill.

## NOES—6.

Amin-ul-Islam, Mr.  
Bāhrān, Khān, Nawab Sir.  
Barron, Mr. C. A.

Rām Sāran Dās, Mr.  
Zahir-ud-din, Mr.  
Zulfiqar Ali Khan, Sir.

The motion was adopted.

The HONOURABLE THE PRESIDENT : The Council will now proceed to the detailed consideration of the Bill.

The question is :

“ That clauses 1 and 2 and the Preamble stand part of the Bill.”

The motion was adopted.

The HONOURABLE MR. DALUBHAI SAMALDAS : I move :

“ That the Bill, as passed by the Legislative Assembly, be passed.”

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The motion was adopted.

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[Sir Maneckji Dadabhoy.]

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The HONOURABLE SIR S. R. M. ANNAMALAI CHETTIYAR (Madras Non-Muhammadian) : I also oppose this Bill. What I said in regard to the other Bill applies with even greater force to this Bill. That Bill proposed the conferment of a right, now non-existing, on certain persons but this Bill proposes taking away from certain persons certain rights to which they are entitled at present and giving them to other persons. Therefore it is a much more serious matter than the previous one. This Bill applies to the Presidency of Madras and to the United Provinces alone. Competent opinions from these two provinces are decidedly against the introduction of this Bill, and I hope the House will very kindly permit me to read some of the opinions from these two provinces which the Bill affects and which must have the greatest weight in helping the House to come to a conclusion. I have already read the opinion of the Madras Bar Association and Mr. Justice Kumaraswami Sastri. This is the opinion of the United Provinces Government.

"It will be seen on the first Bill opinions are to some extent divided, while the opinion of the High Court and Judicial Commissioner's Court is unanimously opposed to the second Bill. There is a feeling that in both cases it might be unwise to interfere with existing Hindu law and that in these provinces Hindu public feeling would be opposed to the change proposed in the second Bill."

This is the opinion of Pandit Kanhaiya Lal, M.A., LL.B., Judicial Commissioner of Oudh :

"Even in regard to daughters and daughter's sons the custom recorded in most instances is in favour of exclusion and any alteration of the line of descent by giving preference to the sister or sister's son or to the female line over collaterals or paternal kinsman would be unwelcome and disturbing to the idea of the people."

I do not want to detain the House any more. I would urge the House to consider whether we are justified in passing this Bill against the clearly expressed opinions from these two provinces which the Bill affects.

The HONOURABLE SIR BINODE MITTER (West Bengal: Non-Muhammadian) : Whilst this Bill meets with my personal sympathy, it involves questions of great consequence and moment to the Hindu society. I notice this Bill excludes all provinces except United Provinces and Madras. I do not know why that is so. Probably the Honourable Mover will be able to explain. I do think that in a matter of such vast importance, in a matter which involves the rights of so many people it would have been better if we had more time to consider the provisions of this Bill more carefully. The Assembly had considerable time at their disposal. They had a Select Committee. They had the advantage of reading the opinions of the various Local Governments, the High Courts, the Bar Associations and other bodies, and I believe I am right in saying that the Assembly was once adjourned for that purpose.

Whilst, on the other hand, this Bill, so far as I know, was circulated amongst us only on Monday night. Speaking for myself, no doubt that is my own fault. I saw it for the first time only on Wednesday morning. If this Bill is taken into consideration I shall have to ask the indulgence of the Honourable the President to permit me to have certain amendments because I think that the drafting of this Bill apart from the principle involved in it requires careful consideration.

The HONOURABLE SIR PURSHOTAMDAS THAKURDAS (Bombay : Nominated Non-Official) : Sir, I again rise to move that further consideration of this Bill may be adjourned. I move that amendment for specific reasons. We have heard from my Honourable friends, Sir Annamalai Chettiyar, and Rai Bahadur Lala Ram Saran Das, their opposition to the Bill. An eminent lawyer of the standing of my Honourable friend, Sir Binode Mitter, has pointed out as far as I have followed him how the Bill is defective. I fully appreciate the annoyance which Honourable Members like my friends, Sir Annamalai Chettiyar and Lala Ram Saran Das, must feel at any further procrastination in the direction of rejection of the Bill. I know that they would like to throw out these Bills and show the Members who hold other opinions in the other House or here that they will not have anything to do with such measures. But I feel, Sir, that, as a Revising Chamber, which this House is, it is our duty to treat Bills and other subjects that may be passed by the other House with more deference and with more consideration to that House. I would not differ from my Honourable friends here, for whose opinion I have the highest respect, if, when the Bills come up for consideration next session, they still stick to their views, and I may vote with them then ; but I urge and I submit to them that they need not be upset by any suggestion to postpone the consideration of this Bill in order that they may think over the subject and in order further that the Honourable Member who may be responsible for these Bills in the other House may have time to see them and to convince them, if they are open to conviction, or if the case on the other side is good. I, therefore, Sir, again urge them not to be impatient, for after all there is no intention on the part of any body, least of all on my part, to force on the Hindu community anything about which there may be substantial difference of opinion. With these words, Sir, and backed as I am with what the Honourable Sir Binode Mitter has said, I think this House would do well to postpone further consideration of this Bill until the next session.

The HONOURABLE THE PRESIDENT : To the motion under consideration an amendment moved :

“ That the further consideration of this Bill be postponed till the next Session.”

That is now under discussion.

The HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : General) : Sir, I fully appreciate the contentions of my distinguished friend, Sir Binode Mitter, and also Sir Purshotamdas Thakurdas, that in the matter of a Bill like this which makes momentous changes, they should have every possible opportunity of considering the matter most carefully. In fact, in my speech I made it absolutely clear that I did not wish to disguise the fact that the Bill made very radical changes, and I said it was left to the Hindu Members to decide for themselves what attitude they should take up. As it seems to me to be the general desire of the House to postpone the further consideration of this Bill, I cordially agree to the proposal.

The HONOURABLE THE PRESIDENT : The question is :

“ That the further consideration of this Bill be postponed till the next Session.”

The motion was adopted.

## ELECTION TO PUBLICITY COMMITTEE.

• The HONOURABLE THE PRESIDENT : With reference to the election to the Publicity Committee, I have received the name of another gentleman, the Honourable Lieutenant Lal Chand. In the circumstances, it will be necessary for the election to take place. I propose to leave the Chair and I would ask the Honourable the Leader of the House to preside over the election which will be held in my absence. I propose that the election should be on the ordinary lines of direct voting.

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• The HONOURABLE THE PRESIDENT : I left the Chair for the purpose of enabling the House to go on with the election which is of course not part of the Council proceedings proper and therefore I invited my Honourable friend to preside. I have to thank you, Sir, (to the Honourable Dr. Mian Sir Muhammad Shafi) for presiding. I adjourn the Council till 11 O'Clock on Monday, the 23rd July.

The Council then adjourned till Eleven of the Clock on Monday, the 23rd July 1923.

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(The Honourable Dr. Mian Sir Muhammad Shafi then took the Chair and the election proceeded.)

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI : The result of the election is as follows :

The Honourable Sir Purshotamdas Thakurdas .. ..	17
The Honourable Sir Maneckji Dadabhoy .. ..	17
The Honourable Lieutenant Rao Bahadur Chaudhuri Lal Chand	14

The Honourable Sir Purshotamdas Thakurdas and the Honourable Sir Maneckji Dadabhoy are declared as elected.

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