

Tuesday, 24th July, 1923

THE
COUNCIL OF STATE DEBATES

(Official Report)

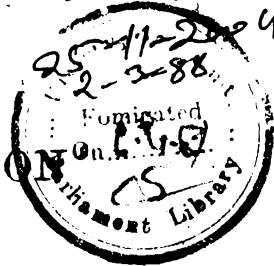
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(From the 16th to the 28th July 1923)

THIRD SESSION

OF THE

COUNCIL OF STATE, 1923.



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COUNCIL OF STATE.

Tuesday, the 24th July, 1923.

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

QUESTIONS AND ANSWERS.

ALLOWANCES TO BISHOP OF RANGOON AND CHAPLAINS.

68. The HONOURABLE MR. S. VEDAMURTI : (a) Will the Government be pleased to state why since October 1922, the Bishop of Rangoon and three Chaplains of the Burma Ecclesiastical Department have been granted Burma allowances ranging from Rs. 105 to Rs. 135, and compensatory local allowance varying from Rs. 185 to Rs. 250 a month ?

(b) Is it not the established practice that compensatory local allowance is given only to those officers who are not allowed free houses or a housing allowance ?

(c) Do the Bishop of Rangoon and the Bishop's Chaplain and the Cantonment Chaplain pay any rent for the Government houses occupied by them ?

(d) If not, why is compensatory local allowance granted to them ?

(e) Is it not a fact that the Bishop of Rangoon and the other Chaplains getting Burma allowance were domiciled in Burma as missionaries before they were appointed Government Chaplains ?

(f) If so, are there any special reasons for allowing them Burma allowance in addition to their salaries which were increased only a year ago ?

The HONOURABLE MR. D. T. CHADWICK : (a) Burma allowance is given to officers of Imperial Services in Burma because the conditions of service in that Province are inferior to those obtaining in India. The climate is, as a rule, trying, and the cost of living is invariably high. Compensatory local allowance is given only to officers stationed in Rangoon to meet personal expenditure necessitated by the special circumstances in which duty is performed in Rangoon.

(b) Officers who occupy quarters free of rent draw only half the compensatory local allowance admissible to officers stationed in Rangoon.

(c) and (d). If the officers referred to by the Honourable Member occupy any Government Houses they pay the usual rent. They are not entitled to rent-free Government quarters.

(e) The chaplains served in the Additional Clergy Society before they were appointed Government chaplains. The Government of India have no information as to the domicile of the Bishop and the chaplains.

(f) The Honourable Member is referred to the reply given to part (a) of his question.

The HONOURABLE MR. S. VEDAMURTI : Will the Honourable Member inform this House, if such allowances are given to other Departments under Imperial control ?

The HONOURABLE MR. D. T. CHADWICK : Burma allowances are given to officers of the Imperial Services serving in Burma.

The HONOURABLE MR. S. VEDAMURTI : Does the Honourable Member include the Post and Telegraph services under Imperial services ?

The HONOURABLE MR. D. T. CHADWICK : I am not in charge of the Post and Telegraph services, Sir.

ALLOWANCES TO MISSIONARIES.

69. The HONOURABLE MR. S. VEDAMURTI : (a) Why are allowances from the public treasury given to ten missionaries of the Additional Clergy Society in Burma, and what is the amount of the allowance in each case ?

(b) Are there any reasons why the allowances granted to missionaries are not shown in the Burma Civil List ?

The HONOURABLE MR. D. T. CHADWICK : (a) Allowances are given in Burma to 10 clergymen of the Additional Clergy Society for religious ministrations either at stations where, owing to temporary exigencies, a clergyman not in the service of Government is appointed to officiate for a chaplain on the regular establishment, or at stations where the services of Government chaplains are required, but are not available. This arrangement, which is in force in other provinces, obviates the necessity for the appointment of the more expensive agency of Government chaplains. The amount of the allowances which may be given ranges up to Rs. 200 a month. The Government of India have no detailed information as to the exact amounts paid in the ten cases in Burma, nor yet as to whether the ten clergymen referred to are or are not missionaries. No allowance is given for missionary work.

(b) The Burma Civil list is prepared under the orders of the Burma Government and the Government of India have no information in the matter.

CULTIVATION AND GINNING OF COTTON AND RAILWAY EXTENSIONS IN BURMA.

70. The HONOURABLE MR. S. VEDAMURTI : (a) Are the Government aware that the cultivation and ginning of cotton in Thayetmyo district are greatly hampered by the absence of any railway communications in the district ?

(b) Has the final objection of the Pyinmana Taungdingy Railway been settled, and will the line be soon continued up to Magwe or Yenangyang ?

(c) Has the Government of India had any communication with the Irrawaddy Flotilla Company on the subject of the Pyinmana-Magwe Railway and, if so, will the Government be pleased to publish the correspondence ?

The HONOURABLE MR. D. T. CHADWICK : (a) Government have no information.

(b) The final objective of the Pyinmana Taungdwingy Railway has not yet been settled and Government are unable to say whether and, if so, when the line will be extended to Magwe or Yenangyaung.

(c) Government have had no such communication.

COMPENSATORY ALLOWANCE TO POST AND TELEGRAPH STAFFS IN RANGOON.

71 The HONOURABLE MR. S. VEDAMURTI : Will the Government be pleased to state whether they have received any representations from the Post and Telegraph staffs in Rangoon regarding the grant of Rangoon compensatory allowance and, if so, how many such representations have been received, and since how long ?

The HONOURABLE MR. A. H. LEY : Twelve memorials from gazetted officers of the Post and Telegraph Department stationed in Rangoon and 51 memorials from time-scale clerks in the Office of the Post Master-General, Burma, were received by Government through the Director-General of Posts and Telegraphs in May 1923. Since then some telegrams have been received from the Postal Associations in Rangoon.

The HONOURABLE MR. S. VEDAMURTI : Will the Honourable Member be pleased to say how many such representations were made in 1921 ?

The HONOURABLE MR. A. H. LEY : I should like to have notice of that question, Sir ; it goes back to rather ancient history.

COMPENSATORY LOCAL ALLOWANCE SCHEME.

72. The HONOURABLE MR. S. VEDAMURTI : (a) Are the Government aware that a compensatory local allowance scheme has been extended by the Government of India to Imperial establishment, such as Ecclesiastical, Marine, Income-tax and Customs Departments in Rangoon, with effect from the 1st of March 1922 on the same scale as sanctioned by the Burma Government ?

(b) Whether the Government are aware that the Post and Telegraph establishment only stationed in Rangoon are not granted this allowance ?

(c) Whether the Government realise that the pay of these men is on All-India and Burma basis and has not been fixed with any reference to the local conditions in Rangoon, such as the abnormally high cost of living and exorbitant rates of house rent ?

The HONOURABLE MR. A. H. LEY : (a) and (b). Only the gazetted officers of Imperial Departments other than the Post and Telegraph Department stationed in Rangoon have been granted the compensatory allowance sanctioned by the Local Government for its own officials, the date of effect being either the 1st January 1922 or the 1st March 1922.

(c) The statement is not correct.

The pay of several cadres of clerks who are on time-scales in Rangoon has, as a matter of fact, been fixed with reference to the conditions prevailing in Rangoon.

The HONOURABLE MR. S. VEDAMURTI : Is it a fact that the actual increase on pre-war pay.....

The HONOURABLE THE PRESIDENT : Is the Honourable Member asking a supplementary question

The HONOURABLE MR. S. VEDAMURTI : Yes, Sir. Is it a fact that the actual increase on pre-war pay including selection grade appointments in the Rangoon Postal Department works out to only 38 per cent. as pointed out by the Postmaster-General and not 100 per cent. as pointed out by the Postal Committee ?

The HONOURABLE MR. A. H. LEY : I should like to have notice of that question, Sir. I have not worked it out mathematically myself.

EXTENSION OF RANGOON COMPENSATORY ALLOWANCE SCHEME TO POSTS AND TELEGRAPHS.

73. The HONOURABLE MR. S. VEDAMURTI : Will the Government be pleased to state whether a strong recommendation for the extension of the Rangoon compensatory allowance scheme to the Post and Telegraph establishment stationed at Rangoon has been made by Mr. Sams, the officiating Director General, Posts and Telegraphs, and, if so, will the Government be pleased to place a copy of such recommendation on the table ?

The HONOURABLE MR. A. H. LEY : A proposal regarding the application of the Rangoon Compensatory Allowance to the Post and Telegraph staff was made by Mr. Sams and the matter is now under the consideration of Government.

Government do not propose to lay a copy of Mr. Sams' proposal on the table.

LOANS FROM POSTAL CO-OPERATIVE CREDIT SOCIETY.

74. The HONOURABLE MR. S. VEDAMURTI : Will the Government be pleased to state how many men belonging to the Post and Telegraph offices in Rangoon have, in consequence of the high cost of living, taken loans from the Postal Co-operative Credit Society ?

The HONOURABLE MR. A. H. LEY : Co-operative Credit Societies are in operation among postal officials in different parts of India, but it is impossible for Government to ascertain the exact causes which prompt each application for a loan.

RETRENCHMENT IN POST AND TELEGRAPH DEPARTMENT.

75. The HONOURABLE MR. S. VEDAMURTI : Will the Government be pleased to state the amount of retrenchment recommended by the Incheape Committee under expenditure in the Post and Telegraph Department ?

The HONOURABLE MR. A. H. LEY : The amount of retrenchment recommended by the Incheape Committee as compared with the Budget Grant for 1922-1923, was Rs. 1,87,97,000 including Rs. 50,70,000 under "Capital outlay not charged to Revenue."

RANGOON COMPENSATORY ALLOWANCE.

76. The HONOURABLE MR. S. VEDAMURTI : Will the Government be pleased to state what the amount of the Rangoon compensatory allowance to the Post and Telegraph establishments in Rangoon will come up to per annum if the same is granted ?

The HONOURABLE MR. A. H. LEY : Rs. 2,71,608.

BILLS LAID ON THE TABLE.

SECRETARY OF THE COUNCIL : Sir, in accordance with Rule 25 of the Indian Legislative Rules, I lay on the table the following Bills which were passed by the Legislative Assembly at its meeting held on the 23rd July 1923 :—

A Bill further to amend the Indian Ports Act, 1908.

A Bill further to amend the Indian Electricity Act, 1910.

A Bill further to amend the Land Acquisition Act, 1894, for certain purposes.

INDIAN SUCCESSION BILL.

The HONOURABLE THE PRESIDENT : I should like to take this opportunity of informing the Council that, if copies are received in time, to allow of their distribution to Members, I propose to ask the leave of the Council on Friday to introduce a Bill to consolidate the law relating to succession.

INDIAN STAMP (AMENDMENT) BILL.

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

“ That the Bill further to amend the Indian Stamp Act, 1899, as passed by the Legislative Assembly, be taken into consideration.”

Sir, this Bill is purely supplementary to much larger measures which have been passed by various Local Governments increasing various stamp duties. The reason why this Bill comes before the Central Legislature is because certain documents were considered to be such that there should be a uniform duty throughout India. The documents to which this Bill refers are certificates of allotment of shares, letters of allotment of shares, letters of credit and proxies. In all of these it is proposed to raise the duty from one anna to two annas. In the case of promissory notes payable on demand, in place of the existing duty of one anna it is proposed to substitute the sliding scale which the House will find in clause 2 (iii). The Bill also improves the wording of the Schedule relating to insurance policies. I do not think I need trouble the House with reference to any of these items, except the stamp duty on promissory notes payable on demand. The Bill has been twice referred to Local Governments and commercial bodies and no controversial point has arisen so far except in connection with the increased stamp duty on promissory notes payable on demand. When the Bill was considered by the Select Committee in the other House, it was proposed to raise the stamp duty on promissory notes payable on demand from one anna to two annas for promissory notes of low value, and for that reason the Select Committee inserted a clause allowing for a period of validation of these documents. The other House arrived at what I may call a compromise ; it reintroduced the one anna stamp duty for promissory notes of low value and it cut out the validating clause. That is the previous history of the measure. The revenue derived from the increase

[Mr. A. C. McWatters.]

will be entirely provincial, and to that extent this House is in the position of a trustee of provincial revenues. I am not able to tell the House the exact amount because no exact record has hitherto been kept of each of these items separately; but it is generally accepted, I think, by all commercial bodies that the increases proposed are not unduly onerous. The only real difficulty arises in giving the users of these notes sufficient warning, so that they may not get into legal difficulties later. That is the Bill which I beg to move be taken into consideration.

The HONOURABLE SIR MANECKJI DADABHOY (Central Provinces, General) : Sir, this Bill seeks to increase the fiscal revenue and we are told that that will help the provinces materially. In view of that fact I am prepared to support this Bill. The legislation is of a simple character and yet it marks a radical change in the practice which has been prevailing for a large number of years in this country. I shall only confine my remarks at present to the question of increased duty required in respect of promissory notes. It is well known to Members of this Council that promissory notes play a very important part in the commercial world, and this practice has not only been confined to the capital towns but has now permeated to many districts and to the interior of the districts. The promissory notes have one great advantage over bonds, inasmuch as they save the preparation of long and abstruse documents, and also it is a very simple method of raising money for a borrower. He only signs a small note agreeing to pay on demand the amount. In fact many Members must have noticed that this practice is very quickly and rapidly superseding the practice of execution of bonds, and that for a very simple and obvious reason. In the case of a bond the plaintiff has not only to prove the execution of the bond but also the payment of consideration, but in the case of a promissory note the plaintiff is only called upon to prove the execution of the bond and where the consideration is denied the onus of proof is on the executant that he did not receive the consideration. The present Bill enhances existing duties to a considerable extent in many directions. The Bill also seeks to introduce the principle of graduation in the matter of duties, and I do not think anybody could reasonably object to it. I think the old duty of one anna was an inadequate duty. When serious attempts have been made to increase the revenue in various other directions, I think this is also an important and suitable direction in which a small increase contemplated by the Bill can be justified and which can be made with safety and without causing much hardship and oppression. My Honourable friend, Mr. McWatters said yesterday in connection with my taxation Resolution that I was against an enhancement of the stamp duty. I am afraid my contention was not understood. I am never opposed to any legitimate enhancement of any duty, and my Honourable friend was evidently under a misapprehension when he made that remark. What I stated was that I wanted a re-adjustment of the stamp duty, and this is a typical Bill which supports my principle and seeks a re-adjustment of the stamp duty. I think this graduated principle making a maximum of 4 annas for one thousand rupees is quite reasonable. I do not think anybody would grudge to pay four annas to Government when he borrows one thousand rupees, and those who

know the history of money lending business will understand that the money lender as a rule takes away much more than the money he actually pays and the promissory note testifies. There is however one defect in the Bill, and that is, as the Bill stands now, it will come into operation immediately, it receives the assent of the Governor General in Council. My Honourable friend, Mr. Lalubhai, has given notice of an amendment, and when the proper time comes I shall speak on it. I want merely to mention at present that this is a defect which ought not to be allowed to remain in this Bill. With these words, I support the Bill.

The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : Sir, I rise to oppose the increase of stamp duty on demand promissory notes. This will greatly affect the trading public, and it will be some years before the people in the rural areas, in particular, will come to know that the stamp duty on demand notes has been increased.

The HONOURABLE THE PRESIDENT : If the Honourable Member is going to confine his remarks to the increase in the stamp duty on promissory notes, perhaps he will reserve his speech till we come to that clause in the detailed consideration of the Bill.

The HONOURABLE MR. LALUBHAI SAMALDAS (Bombay : Non-Muhammadan) : Sir, before I refer to the general principles of the Bill, may I thank the Honourable the Finance Secretary for the courtesy he has shown and which, I believe, was shown to this House for the first time, in supplying us with the opinions of the Local Governments concerned. I hope that a similar procedure will be followed in future and similar courtesy will be extended to us in future, because in the absence of the opinions of the Local Governments and other bodies who are consulted on any Bill, we cannot come to any definite conclusions on any matter on which there is a difference of opinion.

Now, Sir, coming to the Bill itself, I think, as my Honourable friend Sir Maneckji Dadabhoy said, the small increase in the stamp duty is not of such a character that the Bill need be opposed. But I want to ask a question if the Honourable the Finance Secretary will give me information on that point. I want also an assurance on another point. At present, adhesive stamps are allowed up to one anna. If this Bill becomes an Act, stamps of more than one anna will not be allowed. I believe the Finance Department has a right to make rules under this Act. If so, will he give us an assurance—I believe it was given in another place by the Honourable the Finance Member,—that adhesive stamps will be allowed up to 2 or 4 annas.

The other point is with regard to the basis on which the income will be divided between the Central Government and the Provincial Governments. The Honourable the Finance Secretary said that it will be divided on a right and just basis. Can he give us any information as to how much amount is now given to Provincial Governments out of the income from stamp duty, and what is the likely increase to the Provincial Governments by this increase in the stamp duty? I shall be thankful if he can give me that information.

The HONOURABLE MR. A. C. McWATTERS : Sir, with reference to the two questions, or rather one question and the other an assurance

[Mr. A. C. McWatters.]

that has been asked for by the Honourable Mr. Lalubhai Samaldas, I may say that under the stamp rules, it is proposed to make it quite clear that adhesive stamps can be used. This can be done under Rule 13 of the Stamp Rules. It has already been done, I understand, at least in one province by executive instructions, I mean in the United Provinces, and there should be no difficulty with regard to this.

With regard to the second point, this is more difficult. The present arrangement is that where unified postage and revenue stamps are used for revenue purposes, the provinces receive under the Weston settlement a fixed assignment, of which the total amount is, I think, about 19 lakhs a year. This figure was based on the average return from such stamps calculated on the actual revenue for 2 periods of five years with an allowance for normal increase. We have however definitely promised all provinces that we will now work out what the approximate increase in revenue will be from the increase in stamp duty proposed in this Bill and will allocate such increase to the provinces. It will require detailed calculations, and is by far the most difficult point arising out of this Bill.

The motion that the Bill be taken into consideration was adopted.

THE HONOURABLE THE PRESIDENT : Before we proceed to the detailed consideration of the Bill, I would refer to a remark which fell from the Honourable Mr. Lalubhai Samaldas. It caused me great surprise. I am not quite sure if I understood him aright but I thought he said that when a Bill is circulated by the orders of the Legislature the opinions received on the Bill are not circulated to this House.

THE HONOURABLE MR. LALUBHAI SAMALDAS : That is my experience. If a Bill is introduced in another place, the opinions received thereon have not been circulated to us.

THE HONOURABLE THE PRESIDENT : I am certainly quite unaware of this fact. There are two forms of circulation, one by the Government and the other by the orders of the Legislature. If it is a fact that in the case of Bills circulated by orders of the Legislature the opinions received thereon have not been made available to Members of this House, then certainly it is a matter I will look into. I was quite unaware of this.

THE HONOURABLE MR. A. C. MCWATTERS : May I make a statement, Sir? The Honourable Mr. Lalubhai Samaldas attributed to me the credit of having circulated the Bill with the opinions received thereon. May I say that was not I who did this, but the Legislative Department.

THE HONOURABLE THE PRESIDENT : At any rate, I will certainly look into the matter.

The Council will now proceed to the detailed consideration of the Bill.

Clause 1.

THE HONOURABLE SIR MANECKJI DADABHOY : Sir, as I have already mentioned, there is a serious defect in this Bill. As the Bill stands now, it will come into force immediately His Excellency

the Governor General gives his assent to it. I am of opinion that in all fiscal matters or whenever a fiscal Bill, making a very important or radical change is introduced, there should be some time given for the matter to be known fully all over the country. As the Bill stands, if it comes into operation immediately, it will cause a great deal of trade dislocation. There is an unfortunate part about these promissory notes which probably those who are not lawyers will not easily understand. In case of a promissory note, if it is inadequately stamped, the defect cannot be remedied by making it admissible by payment of an enhanced stamp duty or penalty. The whole document becomes nugatory and the lender loses all his money. If the lender has advanced Rs. 5,000 on a promissory note which ought to bear a four-anna stamp duty according to this law, if it bears a one-anna stamp duty, it becomes null and void and his suit will be dismissed by the Court. It cannot be validated by the payment of a penalty in the shape of an enhanced duty. That is what I understand the law to be. I therefore want the measure to be qualified in such a way that it will cause the minimum of dislocation in trade and commerce in the country and in business transactions, and I am of opinion that sufficient time should be allowed to the people to understand the change in law. I therefore move a simple amendment to the following effect :

“ That clause 1 of the Bill be renumbered clause 1 (i) and that, to the sub-clause as so re-numbered, the following sub-clause be added, namely :

‘ 1 (ii). It shall come into force on the 1st day of January 1924 ’.”

I am quite alive, Sir, to the fact that Government will lose a little bit of revenue by postponing the operation of this measure. There is no doubt about it. Fiscal considerations are at present of a very paramount nature. But, at the same time, the other side of the question ought not to be lost sight of by Government. In introducing a fiscal measure, they should see that no oppression and no unnecessary hardship is caused to the commercial community and to men making these transactions. I therefore hope that the necessity for an amendment to this effect will be easily seen by this Council. I am only postponing the operation of this Bill for another five months, which after all is not a very long time, considering the great importance of this measure.

• I beg to move my amendment.

• The HONOURABLE THE PRESIDENT : To the clause under consideration amendment moved :

“ That clause 1 be renumbered clause 1 (i) and that, to the sub-clause as so re-numbered, the following sub-clause be added, namely :

‘ 1 (ii). It shall come into force on the 1st day of January 1924 ’.”

That amendment is now open to discussion in the Council.

• The HONOURABLE SAIYAD RAZA ALI (United Provinces, East : Muhammadan) : Sir, I trust this Council realises the importance of the question that has been raised by the Honourable Sir Maneckji Dadabhoi. The Bill as it stands no doubt will have the force of law as soon as it receives the assent of the Governor General. It is also true that it will be very difficult for all those people who have occasion either to get promissory notes executed or to execute promissory notes to know that a change in the law has been made and to avail themselves of this change

[Saiyad Raza Ali.]

immediately. At the same time, Sir, I do not see any justification why the State should lose a large sum of money simply because those whose duty it is—and it is everybody's duty—to know the law would not care to know it. I do not minimise the inconvenience to which a certain section of the people may be put by this Bill becoming law at once. But I think a better plan would be for this House, instead of agreeing to the amendment moved by the Honourable Sir Maneckji Dadabhoy, to carefully consider and pass the amendment of which notice has been given by the Honourable Mr. Lalubhai Samaldas. In fact, they both relate to the same point and are intended to remove the same inconvenience which has been pointed out by the Honourable Mover of this amendment. I think it would be much better if, without losing a large sum of money in these days of acute financial stringency, we make a provision for the admissibility of those promissory notes which are not properly stamped and enable the Courts to receive them in evidence on payment of the deficiency. That at once would meet the point that has been raised by the Honourable Mover of this amendment. It will, further, have the additional advantage—a very great advantage indeed in these days—of not depriving the State of a large sum of money to which it is legitimately entitled. In view of the forthcoming amendment, notice of which has already been given, I think, Sir, we should not proceed with the amendment of my Honourable friend, or, if he persists in it, in that case I think it will be the duty of this Council to oppose it.

The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : Sir, I rise to support the amendment which has been moved by Sir Maneckji Dadabhoy. My reason for the support has already been explained by Sir Maneckji and the only thing which I can add is that in the present state of stringency in the money market it is not advisable to dislocate the present arrangements of the borrowers. Therefore it will be quite proper that this Act should come into force at the time which has been proposed by the Honourable Member.

The HONOURABLE SIR S. M. ANNAMALAI CHETTIYAR (Madras : Non-Muhammadan) : Sir, may I ask if this is an amendment to the amendments which have been proposed by the Honourable Mr. Lalubhai Samaldas and myself ?

The HONOURABLE THE PRESIDENT : No. Your amendment will come up in due course.

The HONOURABLE MR. A. C. MCWATTERS (Finance Secretary) : Sir, I find some difficulty with regard to the amendment moved by the Honourable Sir Maneckji Dadabhoy. I am not quite certain whether he realises what the effect would be. If we introduce an amendment at this stage the Bill will have to be referred back to the other House, and I fear it may not be passed at all this session.

The HONOURABLE SIR MANECKJI DADABHOY : That is not our fault.

The HONOURABLE MR. A. C. MCWATTERS : No, it is not the fault of this House at all. But it is a practical difficulty the result of which may

be not merely to postpone the operation of the Bill to the 1st of January, which is the specific motion before the House, but to postpone it a good deal later than that. I sympathise a good deal with the object which the Honourable Member has in view, and I think it is quite fair that the users of promissory notes exceeding Rs. 250 in value who are affected by the proposed increase should have some notice of the change in duty though the date suggested, 1st January 1924, is, I think, too late. The House will observe that it does not affect the people who use low value notes whom we particularly want to safeguard. People who use higher value notes will understand the change in duty better. But all the same, I do think that it is fair to them that there should be some notice and therefore, while for the reason given, I do not feel able to accept the Honourable Member's amendment, I am prepared to give the House an assurance that, as the Bill does not come into force until it receives the assent of the Governor General, arrangements will be made that the Bill should not come into active force until the 1st of October.

THE HONOURABLE THE PRESIDENT : I should be interested to know how the Honourable Member proposes to secure that.

THE HONOURABLE MR. A. C. MCWATTERS : I shall use my best effort—that is the most I can promise—with the Governor General in asking for his assent to be delayed for a reasonable period.

THE HONOURABLE THE PRESIDENT : That is what I wished to elicit.

THE HONOURABLE SIR BINODE MITTER (West Bengal : Non-Muhammadan) : Sir, if I were sure that the amendment which stands in the name of the Honourable Mr. Samaldas would be passed, probably I would not have said anything just now, but one is never sure as to what is going to happen to an amendment which probably so far as I can gather from what has fallen just now will be opposed by the Government. That being so, I support the amendment of the Honourable Sir Maneckji Dadabhoy. Now the Honourable Saiyad Raza Ali said that it is the duty of everybody to know the law of the country. It is perfectly true that there is the old maxim that everybody must know the law of the land at his peril, but there never was a bigger fiction than that. Lawyers of great eminence very often themselves find suddenly that the law has been changed,—for instance, in England in the words of Mr. Augustine Birrell, the law is changed “in the silent hours of the midnight.” It takes some little time before people become familiar with the changes in the Statute-book. Now with regard to this promissory note, one added terror is that there is a graduated scale. Supposing a man were to lend, say, Rs. 50,000 and honestly believing that the old Statute law remains in force, he fixes a one anna stamp. He then suddenly finds that the law has been changed sometime before. Well he loses the whole of the amount because the law is, that if the loan is created by the note itself, he cannot fall back upon any original consideration for the simple reason that there was none. Therefore the question of penalty is a question of great importance. Mr. McWatters has not informed us, nor is he in a position to inform us, as to what the probable loss to the revenues of the Local Governments will be if the operation of the Bill is postponed till the 1st January. That being so, we cannot assume necessarily that the amount will be much. On the other hand, it is a question of great moment that some time should be given to

[Sir Binod Mitter.]

the country to get itself familiarised with the change that is introduced by this amendment of the Stamp Act. Supposing the Act comes into force on the 1st October, is it to be assumed necessarily that all *bona fide* lenders will come to know of it on the 2nd? Yet large numbers of notes bearing date the 2nd will become inoperative as the mistake will not be relieved by the infliction of any penalty. That being so, I support this amendment.

The HONOURABLE SIR PURSHOTAMDAS THAKURDAS (Bombay : Nominated Non-Official) : Sir, I wish to support the amendment. I think the necessity for an amendment of this nature has been made out from the remarks made by the Honourable the Finance Secretary himself. He admits that there is a good deal in the point raised by the Honourable Sir Maneckji Dadabhoy, and he gives an assurance to the House that he will use his best influence to the end that His Excellency the Viceroy may not give his assent to this Bill till some time early in October. But in case, Sir, the Provincial Governments who would know of this House passing this Bill press the Government of India and ask for His Excellency's immediate consent or approval of it, I really wonder if the Finance Department would be able to carry out the undertaking they give in this House. I therefore think that bearing in mind the not over-affluent condition of some of the Provincial Governments, this House cannot take, and should not take, any risk of such an obvious nature. If unfortunately the Bill has had to be brought to this House quite at the fag end of the session of these two Houses, surely the responsibility for it should not lie with the non-officials of this House, and I think this House would be quite justified in passing what they think is a very necessary protection to the people who would be affected by the change in the Act. I therefore, Sir, have much pleasure in supporting the Honourable Sir Maneckji's amendment.

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI (Law Member) : Sir, it is unnecessary for me to recapitulate the arguments which have already been given by my Honourable friend, Saiyad Raza Ali, as well as by the Honourable Mr. McWatters in opposing the amendment now before the House. What I wish to point out is this that in so far as my experience goes, and I believe that it must be the experience of most of the Members of this Honourable House, promissory notes are in vogue mostly in commercial circles, and I am sure my Honourable friend opposite will admit that commercial circles are very vigilant in the protection of their own interests, as well as in the acquisition of knowledge of what the law of the country is. In so far as these circles are concerned, I feel sure that the assurance given by the Honourable Mr. McWatters will adequately safeguard their interests and that a period of two months would be quite ample for them to come to know that the duty in the case of promissory notes above Rs. 250 has been raised in the manner provided in this Bill. That being so, I respectfully submit to the House that the argument placed before us by the Honourable Saiyad Raza Ali really derives considerable strength, considerable force, and if that Act were to go beyond the 1st October, the result will be that Provincial Governments will lose a great deal of the enhanced revenue which their enactment proposes to give them.

The HONOURABLE SIR MANECKJI DADABHOY : May I ask why the Bill was not introduced earlier in the Legislative Assembly and sufficient time given to us for its consideration ?

- The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI : If I may venture to say so, I am personally not concerned with the question which has been put by the Honourable Sir Maneckji. What I wish to emphasise is this—we hear complaints in all Provinces, not only from the Provincial Legislative Councils but also from the public, that the transferred half of the Provincial revenues does not obtain sufficient funds with which to undertake the expansion of educational, sanitary and other measures. Well, here the Government of India propose to introduce into this House a measure calculated to give to the Provincial Governments increased funds, and those Honourable Members who are interested in business of one kind or another and are affected or possibly will be affected by this change in the law, come forward to oppose the measure or at any rate to postpone it for some time, and thus seek to deprive the Provincial Governments of the funds which they are in such need of in order to undertake educational, sanitary and other developments.

- The HONOURABLE MR. LALUBHAI SAMALDAS (Bombay : Non-Muhammadan) : Sir, the Leader of the House said that commercial circles easily get themselves acquainted with changes in the law. I do not know what he really meant by commercial circles. There are commercial circles and commercial circles. There is the village money lender, there is the taluk money lender who advances Rs. 500 or Rs. 1,000, and there are rich agriculturists who are money lenders themselves. But the commercial circles to which I believe the Honourable the Leader of the House referred are those who are sitting here and taking part in this debate. We of course do not want this exemption. We know very well what the law is. But we want to protect the other classes of people, and that is why we ask for the acceptance of the amendment moved by my Honourable friend Sir Maneckji Dadabhoi.

- The other reason for my support is the same as was given expression to by the Honourable Sir Binode Mitter. If the Government are really anxious to have this increased income why cannot they give us an assurance that they will accept the amendment which I have given notice of moving ? Unless they give an assurance of that kind it will be seen that the people whom my Honourable friend, Sir Maneckji wants to protect will not get the protection that they need. The only way in which they can get protection is by accepting the amendment which I am moving and to which I shall refer later on ; but unless this assurance is given the same argument is likely to be brought forward that was brought forward in the other place. I think it is much better that the House should accept this amendment of Sir Maneckji Dadabhoi's and carry it against the Government.

The HONOURABLE LIEUT. RAO BAHADUR CHAUDHRI LAL CHAND (Punjab : Nominated Non-Official) : Sir, to me it seems that the amendment is merely sentimental. It has been argued that there will be many people who on the second day of October, having executed promissory notes, will find that there has been a change in the law, and

[Lieut. Chaudhri Lal Chand.]

consequently many transactions will be void. May I ask those Honourable friends whether there is any guarantee that on the second of January 1924 there will not be such cases? Even on the second of January 1925 there will be people who will not know of the change in the law. As the villager has been introduced, I may point out to them that it will be some time after the change has been in force that they will come to know of it, whenever you may begin. Government has promised to give us two months' time. I think that is sufficient and therefore I oppose the amendment.

THE HONOURABLE THE PRESIDENT : Before I put this amendment to the House, I really must draw the attention of the Council, and more particularly the Honourable the Leader of the House and the Honourable Member in charge of the Bill, to Standing Order 51 which I will read to the Council. That Standing Order runs as follows :

“When a Bill has been passed by both Chambers a copy thereof shall in all cases be submitted to the Governor General by the Secretary.”

Secretary here means the Secretary to this Council. It is not therefore in the power of the Executive Government to delay the submission of a Bill. The Secretary in these matters acts under my orders, and if he were to keep with him a Bill which has been passed by both Chambers for months, he would have to answer to me very directly.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI : May I with your permission, Sir, make one observation in connection with the remark which has just fallen from the Chair? It is quite true that it is the duty of the Secretary under your orders to submit a Bill, after it has passed through the two Houses, to His Excellency the Governor General. It rests with His Excellency the Governor General to give his assent at any date he may think fit.

THE HONOURABLE THE PRESIDENT : That of course is obvious. What I said was that the submission of a Bill could not be delayed. I was not dealing with the time at which His Excellency the Governor General gives his assent.

The amendment* was put and the Council divided :

AYES—13.

Acharyya Chandhuri, Maharaja S. K. Avyengar, Mr. K. V. R. Bahram Khan, Nawab Sir. Chettivar, Sir S. M. Annamalai. Dadabhoj, Sir Maneekji. Harnam Singh, Raja Sir.	Lalubhai Samaldas, Mr. Maricair, Sir Ahmedthamby. Mitter, Sir Benode. Naidu, Mr. V. R. Purshotamdas Thakurdas, Sir. Ram Saran Das, Mr. Vedamurti, Mr. S.
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* That clause 1 of the Bill be re-numbered clause f (i)* and that to that sub-clause as so re-numbered the following sub-clause be added, namely :

“ 1 (ii). It shall come into force on the 1st day of January 1924.”

NOES—19.

Amin-ul-Islam, Mr.
 Barron, Mr. C. A.
 Berthoud, Mr. E. H.
 Chadwick, Mr. D. T.
 Crerar, Mr. J.
 Lal Chand, Lieut.
 Ley, Mr. A. H.
 MacWatt, Major-General B. C.
 McWatters, Mr. A. C.

Muhammad Hussain, Mr. Ali Bakshi.
 Ogilvie, Major G. D.
 Rawlinson, H. E. Lord.
 Raza Ali, Mr.
 Sarma, Sir Narasimha.
 Shafi, Dr. Mian Sir Muhammad.
 Shepherd, Mr. W. C.
 Tek Chand, Mr.
 Zahir-ud-din, Mr.

Zulfiqar Ali Khan, Sir.

The Amendment was negatived.

Clause 1 was added to the Bill.

The HONOURABLE MR. LALUBHAI SAMALDAS : Sir, I beg to move that after clause 1 of the Bill the following new clause be added, namely :

“ 2. In Chapter VIII, and before section 73 of the Indian Stamp Act, 1899, (hereinafter referred to as the said Act), the following section shall be inserted, namely :

‘ 72A. Where any promissory note... ’ ”

May I make a slight verbal alteration, Sir ?

The HONOURABLE THE PRESIDENT : Yes, certainly.

The HONOURABLE MR. LALUBHAI SAMALDAS :

“ 72A. Where any promissory note for an amount exceeding Rs. 250 which is payable on demand is executed in British India after the thirty-first day of July, 1923, and before the first day of August, 1924, and is stamped with a stamp of the value, or with stamps of a total value, of one anna only, but is otherwise duly stamped :

- (i) the provisions of section 32 of proviso (a) to section 35 and of sections 40 and 41 shall be applicable in respect of such promissory note, notwithstanding anything to the contrary contained in any of the said sections ; and
- (ii) no person shall be liable to any penalty under section 62 in respect of such promissory note by reason only of the fact that it bears a stamp of the value, or stamps of a total value, of one anna only.”

Sir, in moving this amendment, I would ask the indulgence of the House, to quote from the unanimous opinion of the Select Committee on this Bill. The Committee in their Report say :

“ We are impressed by the volume of opinion to the effect that such an enhancement might not only be unpopular, but might also involve hardship for certain illiterate sections of the population who deal largely in promissory notes and are accustomed to use them to a large extent as currency. These opinions are based on the fact that under proviso (a) to section 35 of the Indian Stamp Act, 1899, a promissory note which is not duly stamped cannot be received in evidence for any purpose or in any circumstances. Whilst, therefore, we are by a majority of opinion that the enhancement of the stamp duty on promissory notes is justifiable, we are at the same time of opinion that the rigour of the above quoted opinion should be relaxed, at least temporarily. We do not recommend a permanent relaxation, because it appears that the exception which is made in the case of promissory notes to the rule that documents not duly stamped may be received in evidence on payment of a penalty is a provision of very long standing both in the English and the Indian law, and that to do away permanently with this provision would lead to evasion of payment of duty on a large scale. We have, therefore, amended the Bill so as to provide that promissory notes payable on demand which have been executed in British India during the year following the date on which the Bill may be expected to become law, and on which a duty of one anna only has been paid, shall be exempted from this liability. A similar concession appears to us logically necessary in regard to the provisions of sections 32, 40 and 41. We have for similar reasons provided that no penalty shall be incurred under section 62 of the Act for the execution of such a promissory note as is described above.”

The HONOURABLE SIR MANECKJI DADABHOY : Whose opinion are you reading, Sir.

The HONOURABLE MR. LALUBHAI SAMALDAS : Sir, it is the opinion of the Select Committee, and the Report is signed by the Honourable Sir Basil Blackett, the Honourable Mr. Innes, Sir Henry Stanyon, Babu Ujagar Singh Bedi and Rao Bahadur Subramanayam. They were the Members of the Select Committee, and the Report is unanimous except for a Minute of Dissent, but that minute does not affect the opinion that I have quoted. The Bill as amended by the Select Committee contained a similar provision under clause 2. That provision was omitted in the Assembly. I was told by some Members of the Assembly that they were so pleased with the concession made by the Honourable the Finance Member by inserting a graduated scale of fees keeping one anna for Rs. 250, two annas up to Rs. 1,000 and four annas above that sum, that they did not quite realise what they were doing and how they were voting when this clause was put before them. That is the opinion expressed to me by friends in the other House. I know what the Government view is. Government think that having made a concession that promissory notes for Rs. 250 will still be under one anna stamp they thought that it was unnecessary to retain this clause. Sir, there is a large number of transactions going on amongst people, who although they belong to the commercial circles, are not quite literate or are half literate, and they will go on using this one anna stamp for some time to come, and as my friend Lieutenant Chaudhury Lalchand said, it will be some time before people in the villages will come to know that there has been an alteration in the stamp duty. It is to give them relief if a promissory note is not properly stamped that I have moved this amendment. I hope therefore the amendment will receive the support of the House.

The HONOURABLE SIR S. M. ANNAMALAI CHETTIYAR (Madras : Non-Muhammadan) : Sir, I have also given notice of an amendment almost identical to the one moved by my Honourable friend Mr. Lalubhai Samaldas. The Honourable Mr. Lalubhai Samaldas has explained to the House the hardships which will be caused to the people by the proposed enhancement of the duty on Promissory Notes. I do not think, Sir, that I shall be justified in taking up the time of the House by reiterating the reasons for this amendment. I therefore give my hearty support to it, of course with one reservation, that the period of protection should be extended to two years instead of one year.

The HONOURABLE THE PRESIDENT : I do not think I need read this amendment to the House again as it is identical to the one moved by the Honourable Mr. Lalubhai Samaldas, except that the Honourable Sir Annamalai Chettiyar substitutes the year 1925 for the year 1924. The motion before the House is that after clause 1 of the Bill, the following new clause be added :

“ 2. In Chapter VIII, and before section 73 of the Indian Stamp Act, 1899, (hereinafter referred to as the said Act), the following section shall be inserted, namely :

“ 72A. Where any promissory note for an amount exceeding Rs. 250 which is payable on demand is executed in British India after the thirty-first day of July, 1923, and before the first day of August 1924, and is stamped with a stamp of the

value, or with stamps of a total value, of one anna only, but if otherwise duly stamped :

- (i) the provisions of section 32 of proviso (a) to section 35 and of sections 40 and 41 shall be applicable in respect of such promissory note, notwithstanding anything to the contrary contained in any of the said sections ; and
- (ii) no person shall be liable to any penalty under section 62 in respect of such promissory note by reason only of the fact that it bears a stamp of the value, or stamps of a total value, of one anna only .”

That is the proposal of the Honourable Mr. Lalubhai Samaldas. That is also the proposal of the Honourable Sir Annamalai Chettiyar, except that the Honourable Sir Annamalai Chettiyar substitutes the year 1925 for the year 1924.

The HONOURABLE MR. A. C. McWATERS (Finance Secretary) : I think that the Honourable Mr. Lalubhai Samaldas has really himself given the answer to his own amendment by giving the history of what happened in the other House, at any rate a version of what happened in the other House. Honourable Members who have read the opinions of the Local Governments will see that in several cases this particular point was taken with reference to the use of stamps in connection with small value promissory notes. People in villages will be unlikely to hear of the possible change in the law, and it is with reference particularly to them that the Select Committee put in this clause.

When the debate took place in the other House, the users of small value promissory notes were safeguarded by the provision that the rate of two annas should be replaced by one anna. Therefore, it was thought unnecessary to retain the validating clause. That is the actual history of what occurred.

My objection to the proposal is partly one of legal principle. Clause 35 of the Stamp Act is based on the principle in law which has obtained not only here but in England for a hundred years, if we trace it back. That is to say, promissory notes, both those payable on demand and other promissory notes, are not given the advantage of this subsequent validation. There is no exception to that principle in the English law or any other law, so far as I know. This amendment introduces an entirely new legal principle. It is also objectionable, I think, because it might cause a considerable loss of revenue. It invites people during this period not to stamp their promissory notes. And this new provision of law will not merely operate during one year or two years, but any note executed during that period, if produced in court at any time afterwards, will be subject to this different legal principle. I think that the amendment is a clumsy one and the object of it is really met by the proposal which we hope to be able to give effect to, to have the operation of the Act delayed till the 1st of October.

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI (Law Member) : Sir, my Honourable friend, Mr. McWatters, has explained to the House the position of Government in so far as the merits of this question are concerned. I propose to invite the attention of Honourable Members to three points with reference to the amendment as proposed by the Honourable Mr. Lalubhai Samaldas. It seems to me, Sir, that the amendment,

[Sir Muhammad Shafi.]

or rather the incorporation of the new section as proposed by him, would in the first place be entirely out of place. In the second place, from the draftsman's point of view, the proposed section is very badly drafted, and, in the third place, its incorporation in the Act as proposed is opposed to canons of sound legislation.

Now, Honourable Members are aware that the duties imposed by the Indian Stamp Act are given in the various Schedules annexed to the Act. Chapter 7 of the Act deals with criminal offences and procedure, while Chapter 8, in which my Honourable friend seeks to incorporate the new section, deals only with supplemental provisions, makes provision for miscellaneous contingencies. Now, I venture to submit that this proposed sub-section would be entirely out of place in Chapter 8. If my Honourable friend wanted to make a change in either the duty or in connection with matters which arise out of the non-payment of that duty, Chapter 8 is not the Chapter where the proposed sub-section can properly be introduced. It would be entirely out of place in that Chapter.

Then, Sir, coming to the actual drafting of the proposed new section, this is how my Honourable friend's proposal runs :

“ Where any promissory note.....”

(I understand he has now introduced the words “ exceeding Rs. 250 in value.”)

“ payable on demand is executed in British India after the thirty-first day of July, 1923, and before the first day of August, 1924, and is stamped with a stamp of the value, or with stamps of a total value, of one anna only, but is otherwise duly stamped.”

Now, I have tried to understand what is the meaning of those words, “ *but is otherwise duly stamped.*” I confess I fail to understand them. My Honourable friend has not, in his speech, explained those words and I do not know what the Honourable gentleman who framed the new section had in view. It seems to me that, if a Promissory Note exceeding Rs. 250 in value is stamped with a one anna stamp, then it is not duly stamped in accordance with the provisions of the new Act, and “ *is otherwise duly stamped* ” would then be entirely meaningless.

Then, what my Honourable friend has ignored is this, that section 35 of the Act runs as follows :

“ No instrument chargeable with a duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be entered by the Registrar or authenticated by any such person or by any public officer, unless such instrument is duly stamped.”

“ Provided that.....”

[and this clause (a) in the proviso is the main clause with which we are concerned] :

“ any such instrument, not being an instrument chargeable with a duty of one anna or half an anna only, or a Bill of Exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is charged or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty....., and so on.”

What this clause (a) in the proviso clearly lays down is this, that a Bill of Exchange or promissory note cannot be brought within the purview of clause (a) and cannot be admitted in evidence upon the deficiency being paid as provided for. That is to say, they are entirely inadmissible in evidence unless properly stamped. My Honourable friend's new section, on the other hand, says that :

"Where a promissory note, exceeding Rs. 250 in value, payable on demand is executed within certain dates, and is stamped with a stamp of the value, or with stamps of a total value of one anna only, but is otherwise duly stamped, then the provisions of section 35, among other sections named, shall be applicable in respect of such promissory note, notwithstanding anything to the contrary contained in any of the said sections...."

Now, if you compare the two sections, you will see that the incorporation of this new section in the Act will result in this, that there will be two absolutely inconsistent provisions of law in one and the same Statute. My Honourable friend might have asked for an amendment of section 35 so as to omit the words "promissory note" from that section. He might have asked for an amendment of section 35 so as to obtain the object he has in view, but to retain a section in a Statute which makes these Promissory Notes absolutely inadmissible and then at the same time to seek to incorporate in the same Statute a provision absolutely inconsistent with the said provision is opposed to canons of sound legislation.

I submit that the remedy as actually proposed by my Honourable friend will lay the Statute open to the objection of inconsistency and is not the right remedy to be adopted.

The HONOURABLE MR. LALUBHAI SAMALDAS : Sir, may I rise to give a personal explanation ?

The HONOURABLE THE PRESIDENT : There is no right of reply on an amendment.

The HONOURABLE MR. LALUBHAI SAMALDAS : No, Sir, just a personal explanation. I am sorry to have evoked such a censure from my Honourable friend.

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI : No, no. I assure my Honourable friend there was nothing in the nature of a censure.

The HONOURABLE THE PRESIDENT : Perhaps the Honourable Member will allow Mr. Samaldas to make his explanation.

The HONOURABLE MR. LALUBHAI SAMALDAS : The censure, if any, should fall on his own Secretary, because I have taken the amendment verbatim from the Bill as presented to the Assembly by the Select Committee on which there were many eminent lawyers, and drafted by the draftsman of the Government of India. If there is any fault the fault is not mine.

The HONOURABLE SAIYAD RAZA ALI (United Provinces, East: Muhammadan) : Sir, the Honourable Mr. Lalubhai Samaldas does not require to be defended by anybody. I am sure he feels strong enough to defend himself and he has thoroughly vindicated the language of his amendment. Now, shortly stated, Sir, the position of the Government

[Sriyad Naza Ali.]

about which we had some considerable doubt when the Honourable Sir Maneckji Dadabhoj's amendment was under discussion seems to be this. In the first place, they take their stand on the fact that if at this late hour in the day any amendments are incorporated into the Bill by the Council of State it must naturally go back to the other House for consideration, and for certain reasons of which I am not exactly aware Government it seems are not prepared to face that angry Chamber. Now, Sir, if it is a question of convenience, then it stands on a different footing; but if the Government benches take their stand on the law by which both this Council and the other Chamber are governed, then I submit that the position of Government is untenable. If my Honourable friend on behalf of Government will refer to paragraph 90 which corresponds to rule 33 of the Manual of Business of this Council he will find: "When a Bill which has been amended in the other Chamber is returned to the originating Chamber copies of the Bill shall be laid on the table at the next following meeting of that Chamber." The succeeding paragraph says:—"After an amended Bill has been laid on the table any Member acting on behalf of Government in the case of a Government Bill, or, in any other case, any Member after giving three days' notice or with the consent of the President without notice, may move that the amendments be taken into consideration."

The practical effect of these rules is that if any amendments are made in this Bill by this Council they can be laid before the other House not to-morrow, because to-morrow is not a working day, but the day following, and it will be open to any Government Member or to any Member within three days to move for the consideration of the amendments made by this Council. In this Council we know, Sir, that on important occasions you, in the exercise of your powers as President, are indulgent towards us. I have no reason to doubt that the same indulgence will be shown to the Members of Government and other Members by the President of the other House, so that it is open to the other House to go into the whole question on the 27th at the latest. That being so, I entirely fail to see why, in season and out of season, this plea should be trotted across the floor of this Council and advantage should be sought to be taken of this plea and the bogey of the other House brought forward before us. I for one entirely refuse to be frightened by that bogey. We strictly stand on our rights. There is absolutely no reason why if there is any amendment which is consonant with reason, which is required by commonsense, which is also in the public interests,—I entirely fail to see why we should set our face against it, merely because it will have to go back to the other House. With great respect to the Honourable Member who advanced this plea, I submit that as the Government unfortunately are too prone to take advantage of this plea it is high time that we should decide this question once for all.

Now, coming, Sir, to the next point I am entirely conscious of the force of certain contentions put forward by the Honourable the Law Member. It is true enough that the Honourable Mr. Lalubhai is not responsible for the draft which is before this Council. I must admit that though I have had no considerable experience of drafting, yet belonging to the legal profession I can see that the amendment is not very happily

worded. I am afraid I cannot agree with the Honourable the Law Member when he says that it is a hopelessly bad draft. If the Honourable the Law Member will look at certain drafts, notice of which is given by the Government of India, he will find that the measure of which the Honourable Mr. Lalubhai is in charge by no means compares unfavourably with those drafts. But I must admit that it is capable of improvement. One of the points made by the Honourable the Law Member related to the effect of section 35 of the Stamp Act. His point, so far as I could gather, was that section 35 does not make promissory notes which are not properly stamped admissible, though provision is made by that section for certain documents of certain descriptions being admitted even though they are insufficiently stamped. Now, his point was that if the provisions of section 35 are made applicable under Mr. Lalubhai Samaldas's amendment, in that case it will not be open to the Court, having regard to the provisions of that section, to admit these documents on payment of the deficiency. I must confess, Sir, that is an argument which cannot be lightly disposed of.

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI : If my Honourable friend will permit me, may I, Sir, make the position a little clear ? That is no doubt what I said, but what I at the same time pointed out was that there will be in the same Statute two sections absolutely inconsistent with each other. According to section 35 action mentioned therein can be taken in cases of certain instruments but not in the case of promissory notes, while the proposed section lays down that the action specified in section 35 may be taken in respect of promissory notes in order to make them admissible, so that the two sections will be absolutely inconsistent with each other and they will be in one and the same Statute.

The HONOURABLE SAIYAD RAZA ALI : Sir, as I was just pointing out, I admit the force of the contention of the Honourable Member. If it is the sense of this Council that Mr. Lalubhai's amendment raises a point that is worthy of consideration and that in view of the fact that the Honourable Sir Maneckji Dadabhoj's amendment has already been defeated, it is time that this should go on our Statute-book, then I believe a way out of the difficulty can easily be found by taking up this clause after lunch. The only difficulty, Sir, is about section 35 which finds a mention in this amendment. So far as sections 32, 40, 41 and 62 of the Stamp Act are concerned, I consider that there is no difficulty and this reference is necessary as it is impossible to give the benefit of this amendment to the people whom it affects unless you specifically mention these sections. No objection can be taken to these sections being mentioned and I believe no objection is taken by the Honourable Member. His objection is that the amendment comes at a place where it has no business to come in ; he thinks that section 35 relates to the admissibility of evidence and here though this amendment is intended to serve the same purpose yet it comes just after the sections which relate to penalties. Well, I for one am prepared to disregard that small point ; a better place would have been perhaps section 35 or just after section 35. However, that is not a very serious point. But the other point, I believe, we have got to meet and for this reason I would suggest that if the Government benches want to take advantage of this technical difficulty, it is open to them to do so and to press this to a division. On the other hand, if they realise the force of the contentions that

[Saiyad Raza Ali.]

have been raised on this side, then I think the best thing would be, with your permission, Sir, to consider clause 2, after taking clause 3 and the preamble of the Bill into consideration. I believe that would meet the points of view of this side and of the Government Benches.

The HONOURABLE SIR BINODE MITTER (West Bengal : Non-Muhammadan) : Sir, I support this amendment and in doing so I do not wish to occupy the time of the House at any great length. I have already explained my reasons for supporting Sir Maneckji's amendment. I still hold to the view that it does take time for the people who will be chiefly affected by this amendment to realise the exact changes that have been introduced by this new Bill. The Honourable the Law Member said that it affects generally or rather principally the commercial community. With great respect to so high an authority I must say that I do not agree with him. I have some experience of the commercial law in Calcutta, and I can tell him that the ordinary methods followed by the commercial community in borrowing money are two-fold : the Marwaris who do a large and brisk trade generally use Hundis ; these Hundis are generally payable at a certain distant date. Then again you have got the Bills of Exchange ; they are also used to a large extent, particularly in regard to foreign goods. Promissory notes, I do not say, are not used ; I do not say that ; but it would not be quite correct to say at least in Calcutta, which is one of the principal centres of trade and commerce, that promissory notes are chiefly used by the commercial community. There are a large number of people who lend money on promissory notes ; they are neither commercial people nor traders. Then, again, as has been pointed out only a few minutes ago, there are commercial men and commercial men. There are big traders, there are small traders. So that, I feel confident that this Bill will in a large number of cases work grievous injustice. That being so, we apply our minds to the next question. It has been very forcibly pointed out that if we adopt this amendment we really go back upon one of those sound principles which are embodied in section 35. That is true to a great extent. But then when we are dealing with anomalous provisions we cannot lay too great a stress upon this principle. So far as I am aware promissory notes everywhere generally have one fixed stamp, at least up till now. It is the graduated scale of which I am more afraid ; one anna, two annas and four annas. Therefore, although we may be departing from those salutary principles which are involved in section 25, my plea for asking you to depart from the principles embodied in section 35 is that it will be for a short time. Then, it has been pointed out that it may mean serious loss of revenues because the Bills or promissory notes may come up before the courts not merely up till 1924, but for two or three years after that. As against that, we have got two considerations. We are really discussing this question without proper data. The Honourable Mr. McWatters has not informed us up till now what the probable loss of revenue may be ; he has not told us what the increase in revenue will be. Then, in the next place, you cannot get a note in simply by putting in the requisite stamp ; you have got to pay the penalty. Therefore, in cases where it does come up before courts, the Government will get the penalty. That will to a certain extent minimise the apprehensions of the loss of revenue. Then, Sir, we cannot altogether ignore the unanimous

report of the Select Committee which was signed by men of great eminence. What the exact compromise was I have not been able to follow. But the Select Committee seems to have given the weight of its authority to this amendment by subscribing to it. It was not frightened by the fact that there may be a departure from the principle involved in section 35. It was not frightened by the fact that there may be a loss of revenue. Then what is it that makes us hesitate about the amendment? We do not quite see how the introduction of this graduated scale really affects the question. It has been pointed out, no doubt, that with regard to promissory notes for small amounts like 250 one anna stamp will suffice; but when you deal with promissory notes it is not always 250; we have not been told what the percentage of them is, whether the greater portion of the promissory notes is not over 250 rupees in value; we have had no information on that subject. In these circumstances, Sir, I venture to support the Amendment. No doubt, there are faults of drafting, but it has been pointed out that the drafting was done by a department which justly enjoys a high reputation for draftsmanship. Its traditions are great, and therefore for the moment I cannot set about criticising it, particularly having regard to the fact that we really got an opportunity of considering this amendment only this morning, and most of us have had the disadvantage of not being able to procure a copy of the Stamp Act on account of shortness of time.

The HONOURABLE THE PRESIDENT : Does the Honourable Member (The Honourable Mr. McWatters) wish to say anything?

The HONOURABLE MR. A. C. McWATTERS (Finance Secretary) : I do not wish to say anything, Sir, except with reference to some of the remarks which fell from the Honourable Saiyad Raza Ali. I was most careful when discussing this amendment to discuss it on its merits. I did not bring up the question as to what might happen if the Bill were returned to the other House. I still maintain that the object of this amendment is really met by the fact that when the other House discussed the question it reduced the stamp duty on promissory notes of small value from 2 to one anna. I also cannot agree with my Honourable friend Sir Binode Mitter that if Government obtains a penalty for a certain number of notes which come before a Court it will in any way compensate for the possible evasion of duty by a large number of people. It is a very small percentage of promissory notes which ever comes before the law courts. Therefore, Sir, both on the ground that this amendment would, I think, involve loss of Government revenue and that it is wrong in legal principle, I oppose the amendment. I do not think therefore it is really necessary in view of the change made in the rate of the duty on the lower value of promissory notes. I hope the House will oppose the amendment.

The HONOURABLE THE PRESIDENT : I should like to draw the attention of the House to section 68 of the Government of India Act as I understood the Honourable Member again to say that he wished to defer the operation of the Act till the 1st October by delaying the date of assent.

The HONOURABLE MR. A. C. McWATTERS : I think I said "we hoped."

The HONOURABLE THE PRESIDENT : I will read to the House section 68.

“ When a Bill has been passed by both Chambers of the Indian Legislature, the Governor General may declare that he assents to the Bill, or that he withholds assent from the Bill, or that he reserves the Bill for the signification of His Majesty's pleasure thereon.”

“ In view of the terms of this section, I am not aware how the Honourable Member proposes to use his influence with the Governor General to postpone the operation of the law.

The question is that after clause 1, the following new clause be added, namely :

“ 2. In Chapter VIII, and before section 73 of the Indian Stamp Act, 1899, (hereinafter referred to as the said Act), the following section shall be inserted, namely :

“ 72A. Where any promissory note for an amount exceeding Rs. 250 which is payable on demand is executed in British India after the thirty-first day of July, 1923, and before the first day of August, 1924, and is stamped with a stamp of the value, or with stamps of a total value, of one anna only, but is otherwise duly stamped :

- (i) the provisions of section 32 of proviso (a) to section 35 and of sections 40 and 41 shall be applicable in respect of such promissory note, notwithstanding anything to the contrary contained in any of the said sections ; and
- (ii) no person shall be liable to any penalty under section 62 in respect of such promissory note by reason only of the fact that it bears a stamp of the value, or stamps of a total value, of one anna only.”

To that clause there is an amendment by the Honourable Sir Annamalai Chettiyar that for the year “ 1924 ” the year “ 1925 ” be substituted. The House will vote first on the amendment to this clause.

The question therefore is that in the clause I have just read to the House, the year 1925 be substituted for the year 1924.

The motion was negatived.

The HONOURABLE THE PRESIDENT : Then the question is that the clause I have read be inserted.

The Council divided :

AYES—12.

Acharyya Chaudhuri, Maharaja S. K.
Ayyangar, Mr. K. V. E.
Chettiyar, Sir S. M. Annamalai.
Harnam Singh, Raja Sir.
Lalbhair Samaldas, Mr.
Maricair, Sir Ahmedthamby.

Mitter, Sir Benode.
Naidu, Mr. V. R.
Purshotamdas Thakurdas, Sir.
Ram Saran Das, Mr.
Raza Ali, Mr.
Vedamurti, Mr. S.

NOES—17.

Amin-ul-Islam, Mr.
Bahram Khan, Nawab Sir.
Barroon, Mr. C. A.
Berthoud, Mr. E. H.
Chadwick, Mr. D. T.
Crear, Mr. J.
Lal Chand, Lieut.
Ley, Mr. A. H.

MacWatt, Major-General R. C.
McWatters, Mr. A. C.
Muhammad Hussain, Mr. Ali Baksh.
Sarma, Sir Narasimha.
Shaf, Dr. Mian Sir Muhammad.
Shepherd, Mr. W. C.
Tek Chand, Mr.
Zahir-ud-din, Mr.

Zulfqar Ali Khan, Sir.

The Amendment was negatived.

The HONOURABLE SIR ANNAMALAI CHETTIYAR (Madras : Non-Muhammadan) : Sir, the amendment that I wish to move is this, that in sub-clauses (iii) (a) (i) and (ii) of clause 2 of the Bill, for the figures " 250 " the figures " 500 " be substituted.

Sir, at the outset I may say that I am moving this amendment in the interests of the small traders and agriculturists. Generally speaking, these people have not much capital of their own, and they have to borrow for the purpose of running their trades and for their agricultural operations. It is not the money-lender alone that is lending out moneys in villages. If the agriculturist has saved something and if he is in a position to lend, then very often he helps his neighbour in need. Assistance from one trader to another is also a common occurrence in villages. Sir, all this borrowing is done on promissory notes as they are the ordinary means of such transactions. These people are now asked under the Bill to pay the enhanced duty where formerly they were paying one anna. This will cause them great inconvenience. The Government also have recognised the hardships they will be subjected to by the enhancement of the duty and they have agreed to levy a duty of one anna only on promissory notes whose value does not exceed Rs. 250. We are indeed grateful to the Government for this step. I feel at the same time they have not gone far enough. I ask them to take a step further. If they would not go up to Rs. 1,000 or Rs. 2,000 as was suggested in the Assembly, they could at least raise the limit to Rs. 500. This will be a partial solution of the hardships of these small traders and agriculturists. While such a step will not appreciably reduce the revenue, it will be of considerable help to these people. I therefore move this amendment, Sir. I do not think that many more words are necessary to commend this amendment to the acceptance of the House. This is a very modest proposal. In fact, a more modest proposal is hardly conceivable. I trust, Sir, that the Government at least on this amendment will take a more liberal attitude and accept it.

The HONOURABLE THE PRESIDENT : To the clause under consideration amendment moved :

" That in sub-clauses (iii) (a) (i) and (ii), for the figures ' 250 ', the figures ' 500 ' be substituted."

That amendment is now under discussion.

The HONOURABLE MR. A. C. MCWATTERS (Finance Secretary) : Sir, I don't think the Honourable Mover of this amendment has really made out a very strong case for raising the figure of Rs. 250 to Rs. 500. The figure of Rs. 250 was not adopted by chance. It was a figure suggested, among others, by the Government of Burma, who went into the consideration of the Stamp Bill generally, if I may say so, with the greatest thoroughness. It was mentioned by one or two other authorities consulted, while several others suggested the figure one hundred. So far as I am aware, only one of the authorities consulted suggested a higher figure and they suggested a very much higher one. But, if the object of this provision is to make things easy for the many small people in the villages who use promissory notes, I think Rs. 250 goes far enough and I do not see why we should sacrifice a legitimate revenue from the drawers of bills of over Rs. 250. Incidentally, I think

[Mr. A. C. McWatters.]

that, if you introduce Rs. 500, you do not get nearly as good a scale as you get by the present scale. I think the scale which the Bill proposes is satisfactory and I hope the House will not accept this amendment.

The HONOURABLE THE PRESIDENT : The question is that the following amendment be made in clause 2 :

“ That in sub-clauses (ii) (a) (i) and (ii) for the figures ‘ 250 ’, the figures ‘ 500 ’ be substituted.

The motion was negatived.

Clause 2 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.

CODE OF CRIMINAL PROCEDURE (SECOND AMENDMENT) BILL.

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

“ That the Bill further to amend the Code of Criminal Procedure, 1898, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.”, This is a small amending Bill and I do not think that I need add very substantially to the explanation which has been given in the Statement of Objects and Reasons. It will be seen that the Bill falls into three parts, the first of which is of a drafting character and the remaining two are intended to give effect to certain recommendations of the Indian Jails Committee.

(At this stage the Honourable Sir Zulfiqar Ali Khan took the Chair.)

With regard to the drafting amendment, I need only point out that the difficulty arises entirely from an unanticipated result of the amendment contained in the large amending Act which was passed in the earlier part of this session. The unanticipated result of that amendment has been that, while in the case of appealable cases, triable by a Presidency Magistrate, the Presidency Magistrate is not required to record the examination of the accused in compliance with the full procedure of section 364, in cases where he is dealing with non-appealable cases, he will be required to adopt that more elaborate procedure. That was entirely an intended consequence and, as the House will, I think, agree, a very inconvenient consequence. The object of clause 2 of the Bill is, therefore, to rectify that error.

Clause 3 of the Bill is of a somewhat different character. It is not one of drafting or rectification. It will, I think, effect a substantial improvement in our judicial procedure. It relaxes to a very material degree the procedure relating to the execution of sentences of fines. It will enable the Court to require the payment of fines in instalments and at such intervals as, having regard to the circumstances of a convicted person, are reasonable and proper.

One of the most important effects of this amendment will be that it will be the means of reducing the very large number of short sentences of imprisonment which have been unfavourably commented

upon through a whole succession of Jail Administration reports and in the Report of the Jails Committee itself.

Clause 4 is also a simple one based upon the recommendations of the Jails Committee. The House is aware that it is now open to a Court, which considers that an offence is so trivial or that the circumstances are of so peculiar a nature that a formal penalty is all that justice requires, to sentence the guilty person to imprisonment until the rising of the Court. That is something in the nature of a legal fiction, and we propose to recognise formally in the Act the desirability of such a procedure which will enable the Court to refrain from passing a substantive sentence of imprisonment.

I have now given all the important considerations that arise on this Bill, and I move that it be taken into consideration.

The motion was adopted.

(The Honourable the President resumed the Chair.)

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

Clauses 1, 2, 3, 4, 5, 6 and the Preamble were added to the Bill.

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

The motion was adopted.

INDIAN TERRITORIAL AND AUXILIARY FORCES (AMENDMENT) BILL.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI : Sir, in the absence of His Excellency the Commander-in-Chief who has had to leave the House on urgent official business, I beg to move :

“ That the Bill to amend the Indian Territorial Force Act, 1920, and the Auxiliary Force Act, 1920, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.”

This measure is an extremely simple one and the purpose for which it is designed is so obviously necessary that I need only say a very few words in support of this motion in addition to what has been said in the Statement of Objects and Reasons of the Bill. There is only one point which perhaps requires to be explained, namely, that a member of the Auxiliary Force differs from a member of the regular Force in that he is not at all times subject to military law. A member of the Auxiliary Force is only subject to military law when he is attached to, or otherwise acting as part of, any regular forces or when called on by an order or embodied by a notification under section 18 of the Act. To put the matter plainly, he is not subject to military law outside the period of training or outside the period of his embodiment. The situation as regards members of the Territorial Force is somewhat similar. Consequently, as shown in the Statement of Objects and Reasons, if a person belonging to either Force commits a serious military offence not cognizable by an ordinary criminal court towards the end of the period.

[Sir Muhammad Shafi.]

during which he is subject to military law and owing to the shortness of time he cannot be tried by court-martial, he, as the law stands at present, escapes punishment. This is a defect which obviously requires to be remedied, and the remedy is contained in the Bill which is now before the Council. I beg to move, Sir.

The motion was adopted.

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

The preamble was added to the Bill.

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI : Sir, I beg to move :

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

The motion was adopted.

INDIAN LUNACY (AMENDMENT) BILL.

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

“That the Bill further to amend the Indian Lunacy Act, 1912, as passed by the Legislative Assembly, be taken into consideration.”

This is a very small measure and as it is already fully explained in the paper before the House I do not propose to detain the House with any further exposition of it. I move that the Bill be taken into consideration.

The motion was adopted.

Clauses 1 and 2 were added to the Bill.

The Preamble and Title were added to the Bill.

The HONOURABLE MR. J. CRERAR : Sir, I move :

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

The motion was adopted.

INDIAN ARMY (AMENDMENT) BILL.

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI : Sir, I beg to move :

“That the Bill further to amend the Indian Army Act, 1911, and the Indian Lunacy Act, 1912, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.”

The purpose of this measure is in the first instance to repair two obvious omissions in the existing law, and so far as these two matters are concerned, it is unnecessary for me to add anything to what has been said in the Statement of Objects and Reasons on the Bill. There is nothing new in the provisions which it is sought to introduce. They

follow the practice already established in the case of corresponding judicial proceedings under the Civil law.

Secondly, it is proposed to amend the Indian Army Act in order that officers, warrant officers and non-commissioned officers of the Royal Air Force may, under certain circumstances and certain circumstances only, stand in the same relation to Indian soldiers as do officers of the land forces. Officers—non-commissioned officers and warrant officers of the Royal Air Force—already possess the requisite authority in reference to British soldiers. This was provided for by an amendment of the Army Act and a similar arrangement is essentially needed here as a result of the Royal Air Force having been established as part of our armed forces. It is the duty of the Royal Air Force in India as elsewhere to co-operate with the land forces, and there are certain occasions arising out of the association of the two forces when it is necessary that an officer of the Royal Air Force should be empowered to give a lawful command to the soldier of the land force. It is unnecessary for me to detain the Council with a detailed explanation of what these occasions are. They will be prescribed separately and here also we shall follow the practice already established in the United Kingdom. The principle of the measure is essentially simple and one which, I think, the Council will have no difficulty in accepting. Sir, I beg to move that the Bill be taken into consideration.

The HONOURABLE LIEUTENANT CHAUDHRI LAL CHAND : Sir, I asked for a copy of the Indian Army Act this morning and if that had been supplied to me it was possible I may not have had to ask certain questions which I, with your permission, beg to ask the Honourable Mover. It has been sought in this Bill to make the Indian soldier subject to be put under the command of an officer belonging to the Air Force. Is there a similar provision for a soldier belonging to the Air Force to be put under the command of an officer of the Land forces? I for one think that the definition of 'soldier' in the Indian Army Act ought also to have been modified to include a soldier belonging to the Royal Air Force. So long as that is not done, an ordinary soldier belonging to the Air Force is not subject to be put under the command of an officer of the regular Indian Army. I hope the Honourable Mover will make this clear.

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI : In connection with the inquiry put to me by my Honourable friend, I am sure it is obvious to the House that in the circumstances in which I have had to ask for leave for this motion, I am not exactly in a position to answer it. But I think I may be permitted to explain that as the Statement of Objects and Reasons of the Bill discloses, what is sought to be done in this Bill is to bring the law into line with the law as it prevails in England with regard to the air force and the land force, and perhaps my Honourable friend is aware that what he calls soldiers in the air force are merely mechanics and others who work in the factories, connected with the Royal Air Force. I believe that pilots and the officers who actually fly the aeroplanes are not soldiers in the ordinary sense in which that term is used in regard to the land forces; they are, I believe, officers; and the rank and file of the air force are mechanics and others who work in

[Sir Muhammad Shafi.]

the factories connected with the Air Force. As far as my knowledge extends, that is the explanation that I can give.

The motion was adopted.

Clause 1 was added to the Bill.

The HONOURABLE LIEUTENANT RAI BAHADUR CHAUDHRI LAL CHAND : Sir, while we were considering the Bill at the last stage, I asked specifically whether a soldier belonging to the air force was liable to be put under command of an officer of the Regular Indian Army. If my Honourable friend the Mover had perused the speeches made in the other House he would have known that the Honourable Mover there pointed out that the occasions where this necessity arises are where the two forces are parts of the same expeditionary force and are stationed in one station and an officer is wanted. So, whether you call the man who is a soldier of the air force a mechanic or a mistry or anything, he is subject to the military law and at least he ought to be liable to be commanded by officers of the Regular Indian Army. He should not be exempt while the ordinary soldier of the Indian Army is subjected to these restrictions. The explanation given by the Honourable Mover is not satisfactory, and I think this House will do well to postpone discussion of this, unless either His Excellency the Commander-in-Chief or the Honourable Mover makes the point quite clear. I beg to move, Sir, that the consideration of this Bill be postponed till an explanation is given to me of the difficulty.

The HONOURABLE THE PRESIDENT : That motion is not in order ; the Honourable Member may move that the consideration of this clause be postponed. If he moves that and the Honourable Mover explains the position, then he may probably withdraw his motion.

The HONOURABLE LIEUTENANT CHAUDHRI LAL CHAND : I propose that the consideration of this clause be postponed.

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI : Sir, this particular measure has been framed in order to enable an officer of the Royal Air Force, under circumstances which may be prescribed, to take command ; under those circumstances soldiers of the land forces will be under his command. That is the object of this measure. The proposal put forward by my Honourable friend, I submit, is not pertinent to the object of the Bill as framed. If my Honourable friend wishes to make the soldiers, if there are any, of the Royal Air Force subject, in like circumstances that may be prescribed, to the orders of commissioned officers of the land force, that would be a different question with reference to which he can either move the army authorities to introduce a Bill, or himself introduce a private Bill if the rules permit him to do that. I submit that the object which my Honourable friend has in view is not directly pertinent to the object with which this present Bill has been framed.

The HONOURABLE THE PRESIDENT : Does the Honourable Member wish me to put his motion ? The Honourable Member has not perhaps quite understood the position. If he is not satisfied with the explanation

given, he can vote against that clause which is a more effective method of expressing his disapproval.

The HONOURABLE LIEUTENANT CHAUDHRI LAL CHAND : In that case I press my motion.

The motion to postpone consideration of clause 2 was negatived.

Clause 2 was added to the Bill.

Clauses 3 to 5 were added to the Bill.

The Preamble was added to the Bill.

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI (Law Member) : I beg to move :

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

The motion was adopted.

CUTCHI MEMONS (AMENDMENT) BILL.

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

“ That the Bill to amend the Cutchi Memons Act, 1920, as passed by the Legislative Assembly, be taken into consideration.”

I do not propose to detain the House very long with regard to this motion which is of a very simple nature. I regret that I have not the assistance of the Honourable Khan Bahadur Ebrahim Haroon Jaffer, who as a Member of the Cutchi Memon community was particularly interested in this Bill. I hope, however, that I shall not be guilty of any impropriety if I inform the House that he discussed this Bill with the Secretary in the Legislative Department and expressed his satisfaction with the proposals which we have embodied in the Bill. The original Act, as the House is aware, was passed in 1920, and it has proved of very considerable utility and convenience to the community of Cutchi Memons of whom a considerable number have taken advantage of the provisions of the Act. In the working of the Act, however, certain difficulties of machinery were brought to light and were represented to the Government of India by the Government of Bombay who are especially concerned with its working. The particular difficulties were (i) with regard to the inadequacy of the provision made in the original Act for the true identification of the declaration, (ii) the absence of a specific power to refuse to register a declaration—grant of which raises the question of the desirability of having some provision for appeal, and (iii) the insufficient degree of elasticity of the powers of the Local Government to frame rules for the purposes of the Act. These are the defects in the Act, which it is intended to remedy them by this Bill. I therefore move, Sir, that the House do now take this Bill into consideration.

The HONOURABLE SAYYAD RAZA ALI (United Provinces : Muhammadan) : Sir, the only observation that I would like to make about this Bill is that neither in the Statement of Objects and Reasons nor in the speech just delivered by the Honourable the Home Secretary, has it

[Saiyad Raza Ali.]

been made clear as to why this Bill has been brought before the Central Legislature. The Bill relates to a particular section of the people who reside, if I am not mistaken, in the Bombay Presidency alone. If I am right in that, then I believe the Chamber which would have been much more competent to proceed with this Bill would have been the Bombay Legislative Council. Under the law as contained in the Government of India Act of 1919, Acts of the Imperial Legislature can be modified by the Provincial Legislative Councils. There are only certain cases in which an Act of this description can be brought forward before the Central Legislature. While I have nothing to say against the Bill itself inasmuch as it is more or less an enabling Bill and extends the scope of the former Bill of 1920, I would suggest that in future, if possible, measures of this description should be brought forward before the Provincial Councils which are primarily concerned and which are much more competent to deal with them, than is this Council, where we find that the only representative of the section of the people affected by this Bill is perhaps the Honourable the Home Secretary.

The HONOURABLE MR. J. CRERAR (Home Secretary) : Sir, I do not think there will be much difficulty in resolving the doubts expressed by the Honourable Saiyad Raza Ali. His argument appears to me to proceed on the assumption that the Cutchi Memons are entirely confined to the Bombay Presidency. I did indeed say in moving that this Bill be taken into consideration that the Bombay Government was more particularly concerned in the working of this Act ; that is, in fact the case, because a greater part of this community do reside in the Bombay Presidency. That is by no means inconsistent with the fact that the members of this very enterprising trading community are found probably in every province of India, and even very far beyond the bounds of India. We are considering a measure dealing comprehensively with the question of the personal status of the members of a widely distributed community. This is evidently one of those cases in which uniformity of procedure and uniformity of law would be a matter of great value and importance to the community whose concerns are regulated by a measure of this description.

The motion that the Bill be taken into consideration was adopted.

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

The Preamble was added to the Bill.

The HONOURABLE MR. J. CRERAR : Sir, I beg to move :

“ That the Bill to amend the Cutchi Memons Act, 1920, as passed by the Legislative Assembly, be passed.”

The motion was adopted.

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

The HONOURABLE MAHARAJA SOSHI KANTA ACHARYA CHAUDHURI (Bengal : Nominated Non-official) : Sir, I beg to move :

“ That the Bill further to amend the Code of Criminal Procedure, 1898, as passed by the Legislative Assembly, be taken into consideration.”

Sir, this Bill is a very simple measure and it was unanimously passed by the Legislative Assembly. It only seeks to amend section 4 of the Act

and to remove the disabilities of licensed Mukhtars in the provinces of Bengal, Bihar, the United Provinces and Assam from practising in the courts as a matter of right. The present practice is that permission has to be obtained by them before they are allowed to practise in the courts.

The mukhtars have to pass an examination held in the High Court, and they have to obtain 60 per cent. of the marks before they pass that examination; and they are recognised by the Legal Practitioners Act. Speaking of my province, there are many mukhtars there, who, in their sphere of criminal practice, hold their own against pleaders and barristers, and to make them dependent on the permission of the Court which is usually given but may be refused is rather unjust and unfair towards them. I submit that, if we pass this Bill, it will be doing bare justice to the mukhtars who number about 8,000 in the four provinces, and it would also be doing justice to the numerous clients whom they represent.

The HONOURABLE SAIYAD RAZA ALI (United Provinces East : Muhammadan) : Sir, it affords me very great pleasure indeed to support the Bill that is before this Council. As has been pointed out by the Honourable Maharaja Sahib, the practical effect of the Bill is that a class of legal practitioners known as mukhtars, who have been defined by the Code of Criminal Procedure and who under that definition are not entitled as such to appear, plead and practise in the criminal courts, will no longer be under the disability under which they have been working hitherto.

Sir, the definition of a pleader as given in section 4 assigns mukhtars a status whereby they are not entitled without the special permission of the Court before which they are practising to conduct a case. On the other hand, they are put in a class which is known in the definition as other persons who may practise in Court with the permission of the presiding officer. In fact, more than one High Court has held that such permission is discretionary and can be refused by the presiding Magistrate. The fact is, Sir, that a mukhtar cannot show that amount of care and independence in the conduct of a case which the public is entitled to expect from its legal adviser, and is to a very large extent at the mercy of the Court. It is just in the fitness of things, Sir, that the Reformed Council should further extend the scope of the rights of various classes of people, and, not being a mukhtar, it affords me the greatest pleasure to give my support to this measure. Sir, I do not conceal from myself the fact that even among lawyers there is a section that is so jealous of its exclusive rights that it is quite prepared to deprive others of it and is not prepared to allow others to participate in that exclusive privilege. Those who know as to what are the conditions in which work is carried on on the original side of the Calcutta and Bombay High Courts will be well aware of the force of my remarks. Sir, I am glad to say that I am not one of those who, instead of levelling up, are prepared to level down and, Sir, it is in this spirit that I give my hearty support to this measure.

The HONOURABLE MR. J. CRERAR (Home Secretary) : Sir, in the few remarks which I propose to make about this Bill, I shall restrict myself entirely to a brief statement of the attitude of Government to the Bill. At

[Mr. J. Crerar.]

some of its earlier stages Government did as a matter of fact oppose the Bill. We collected opinions from the various Local Governments and those opinions, I think I ought to state for the information of the Council, were by no means entirely in favour of the Bill. There was, I think, if I may attempt an impartial summary of the opinions, distinctly a balance of opinion against the Bill and the reasons which were alleged were that in nearly every part of India there is already a sufficient supply of legal practitioners whose qualifications are superior to those of the class of practitioners with whom this Bill is concerned. It was suggested that it was even a retrograde measure and that it would be better to encourage new aspirants to the legal profession to enter one of the higher branches of that profession.

Well, Sir, I am not urging this against the Bill. I merely wish to state for the information of the House what the general purport of the arguments for and against the Bill have been. Government, in view of the marked support which the Bill received in another place, though they were not very completely convinced either of the desirability or of the expediency of the measure, were not, at the same time prepared to take an attitude of definite opposition to it. They, therefore, decided there, and it is our intention to follow the same course here also, to leave the matter entirely to the judgment of the House. Members of the Executive Council will take no part in the debate and, as in the case of similar measures, other official Members may vote or speak in such manner as they desire.

The HONOURABLE THE PRESIDENT : The question is :

“ That the Bill further to amend the Code of Criminal Procedure, 1898, as passed by the Legislative Assembly, be taken into consideration.”

The motion was adopted.

The HONOURABLE THE PRESIDENT : The Bill only contains one clause, so I need not put it to the House separately.

The HONOURABLE MAHARAJA SOSHI KANTA ACHARYYA CHAUDHURI : Sir, I beg to move :

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

The motion was adopted.

The Council then adjourned till Eleven of the Clock on Friday, the 27th July, 1923.