17th March, 1926

THE

LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

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OF THE

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LEGISLATIVE ASSEMBLY.

Wednesday, 17th March, 1926.

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

QUESTIONS AND ANSWERS.

Appointment of a Commission to inquire into the Status and Privileges of the Legislative Assembly.

1293. ***Maulvi Muhammad Yakub:** (*a*) Are Government aware that the Honourable Mr. K. C. Roy is going to move a Resolution in the Council of State, asking for the appointment of a Commission to inquire into the status and privileges of the Council?

(*b*) Do the Government propose to appoint a similar Commission as regards the Legislative Assembly?

Mr. L. Graham: (*a*) Government are aware that the Council of State on the motion of the Honourable Mr. K. C. Roy has passed a Resolution appointing a Committee to inquire into the privileges and status of Members of that Chamber.

(*b*) It is open to any Member of this Chamber to give notice of a Resolution in similar terms.

Muslim Representation on the Royal Commission on Agriculture.

1294. ***Maulvi Muhammad Yakub:** (*a*) Has the attention of the Government been drawn to a leading article published on page 2 of the *Muslim Herald*, dated the 7th March, 1926, as regards Muslim representation on the Royal Commission on Agriculture?

(*b*) Do the Government propose to consider the question of Muslim representation on the Commission when its personnel is under discussion?

(No answer was given owing to the absence of Mr. J. W. Bhore.)

Mr. President: The Honourable Member for Government ought to be present here to answer the question.

The Honourable Sir Alexander Muddiman: I regret very much he is not here, Sir.

Grant of Permission to Mr. Fyzee Rahmin to paint a Room in the New Secretariat at Raisina.

1295. ***Mr. B. Das:** Will Government be pleased to state whether Mr. Fyzee Rahmin has been allowed to paint a room in the New Secretariat? If so, will Government be pleased to state whether Government have

decided to bear its expenditure? What are the conditions and period of Mr. Fyzee Rahmin's employment? Is it true that the wall space previously reserved for mural painting has now been filled up with stone because the New Capital Committee have failed to find competent artists in India?

The Honourable Sir Bhupendra Nath Mitra: The answer to the first part of the question is in the affirmative, and to the second part in the negative. With regard to the third part, Mr. Fyzee Rahmin has been permitted to paint one of the rooms, and has made his own arrangements with regard to the expenditure incurred. No period of time has been laid down.

The answer to the fourth part of the question is in the negative.

REPLACEMENT OF INDIAN TRAIN CONDUCTORS BY EUROPEANS AND ANGLO-INDIANS ON THE GREAT INDIAN PENINSULA RAILWAY.

1296. ***Dr. K. G. Lohokare:** Will Government be pleased to say:

(1) if the Indian train conductors on the Bombay Poona mail and express trains have recently been replaced or are about to be replaced by European and Anglo-Indian conductors on higher salaries? If so, what are the reasons?

(2) if the amount of collections of excess fares by the Indian conductors had substantially increased during the last few years as compared with years before?

(3) if there were any complaints against these conductors from any passengers as regards want of civility and attention to passengers?

(4) if any more posts for chief or high salaried travelling ticket inspectors have been recently created on the Great Indian Peninsula Railway?

(5) if these posts are being filled by Europeans and Anglo-Indians?

(6) if the Great Indian Peninsula Railway authorities are satisfying the needs of Indianisation in this branch of service?

(7) what are the reasons for overlooking the claims of Indians already working as chief or senior travelling ticket inspectors and for recruiting fresh Europeans and Anglo-Indians in such appointments?

The Honourable Sir Charles Innes: The only information the Government have in regard to the points raised by the Honourable Member is that five appointments were created recently in connection with ticket examination on the Poona mail. Of these five appointments only two were given to Europeans.

Dr. K. G. Lohokare: Are the Indian train conductors on the Poona express being replaced by Europeans or Anglo-Indians?

The Honourable Sir Charles Innes: I am sorry I have got no information other than what I have given to the Honourable Member.

The Honourable Sir Charles Innes (Member for Commerce and Railways): Sir, I beg to move that the Bill to provide for the regular submission of returns of quantities of cotton goods and cotton yarn produced in British India be taken into consideration.

I do not think I need say very much in explanation of this Bill in addition to what I said when I moved for its introduction. As the House knows the Finance Bill which we passed yesterday repeals the Cotton Duties Act. Under that Act we have for many years collected statistics in regard to the cotton trade. It is absolutely essential that we should continue to collect those statistics, and the Bombay millowners, whom we have consulted, have agreed that this House ought to pass a Bill to provide for the regular submission of these statistics which are essential both for the Government and for the trade itself, in order that we may watch the progress of this great industry. Sir, I move that the Bill be taken into consideration.

The motion was adopted.

Mr. President: The question is:

"That clause 2 do stand part of the Bill."

The Honourable Sir Charles Innes: May I suggest, Sir, for your consideration that we should take clause 3 first since it is the operative clause. If my amendment to clause 3 is made, all the rest will be consequential amendments.

Mr. President: The question is:

"That clause 3 do stand part of the Bill."

The Honourable Sir Charles Innes: Sir, I beg to move:

"That in clause 3:

(i) in sub-clause (*1*) for the words 'all the cotton goods produced from or in, and of' the words 'all cotton goods manufactured and' be substituted; and

(ii) in sub-clause (*2*) for the word 'produced' the word 'manufactured' be substituted."

The explanation, Sir, for this amendment is this. Under the Cotton Duties Act, excise duty was levied on all goods produced in a mill and there was an explanation explaining that by the word "produced" was meant delivered out of the mill premises. Delivered out of the mill may be delivery to a ware-house or sending upcountry for sale or in any other way. The Bombay millowners have suggested that we should now definitely go for statistics of manufacture, that is to say, instead of collecting statistics of goods delivered out of the mill we should straightaway get statistics of goods manufactured during the month in each mill. I think, Sir, those statistics would be much more useful, and we agree that that suggestion should be accepted. Sir, I move the amendment.

The motion was adopted.

Clause 3, as amended, was added to the Bill.

Clause 4 was added to the Bill.

Mr. President: The question is:

"That clause 5 do stand part of the Bill."

The Honourable Sir Charles Innes: Sir, I beg to move:

"That in clause 5, for the words 'production of goods and yarn' the words 'quantities of goods manufactured and of yarn spun' be substituted."

This, Sir, is a mere consequential amendment.

The motion was adopted.

Clause 5, as amended, was added to the Bill.

Clause 6 was added to the Bill.

Mr. President: The question is:

"That clause 7 do stand part of the Bill."

The Honourable Sir Charles Innes: Sir, I beg to move:

"That in clause (*a*) of sub-clause (*1*) of clause 7, for the words 'or book or' the words 'of manufacture or' be substituted."

This is another consequential amendment, Sir.

The motion was adopted.

Clause 7, as amended, was added to the Bill.

Clauses 8 and 9 were added to the Bill.

Mr. President: The question is:

"That clause 2 do stand part of the Bill."

The Honourable Sir Charles Innes: Sir, I beg to move:

"That in clause 2:
(i) the word 'and' be added at the end of sub-clause (*d*);
(ii) the word 'and' at the end of sub-clause (*e*) be omitted; and
(iii) sub-clause (*f*) be omitted."

This is another consequential amendment.

The motion was adopted.

Clause 2, as amended, was added to the Bill

Clause 1 was added to the Bill.

Mr. President: The question is:

"That this be the Title and Preamble to the Bill."

The Honourable Sir Charles Innes: Sir, I beg to move:

"That in the Title to the Bill, for the words 'cotton goods and cotton yarn produced' the words 'cotton goods manufactured and cotton yarn spun' be substituted."

"That in the Preamble to the Bill for the words 'cotton goods and cotton yarn produced' the words 'cotton goods manufactured and cotton yarn spun' be substituted."

The motion was adopted.

The Title and the Preamble, as amended, were added to the Bill.

The Honourable Sir Charles Innes: Sir, I beg to move that the Bill, as amended, be passed.

The motion was adopted.

The Honourable Sir Alexander Muddiman (Home Member): Sir, I beg to move that the Bill to define in certain cases the rights of legal practitioners to sue for their fees and their liability to be sued in respect of negligence in the discharge of their professional duties, be taken into consideration.

Sir, as I explained at the time when I moved for leave to introduce the Bill, this Bill is based on the recommendation of the Bar Committee. The recommendation is a short one and I will read it to the House. It runs as follows:

> "In practice the distinction relating to suing for negligence and being sued for fees is not of great importance. Suits by or against legal practitioners in respect of fees and the conduct of cases are extremely rare. But we consider that in any case in which a legal practitioner has 'acted' or agreed to 'act' he should be liable to be sued for negligence, and entitled to sue for his fee."

Now, as the House is aware, the distinction between pleading and acting is one which has been recognised by the English law. A barrister in England receives in return for his services an honorarium. That is a voluntary fee. He has no right to sue for it and in this country at any rate he generally takes precautions of receiving it before he goes into the court. (Laughter.) On the other hand, a solicitor, whose reward is "merces", has a right to sue and is also liable to be sued for his negligence. The distinction probably comes from the time of the Roman Law. The Bill gives effect to the proposal of the Bar Committee, and is of a simple character, and I trust the House will take it into consideration without any further delay. I move it, Sir.

The motion was adopted.

Clause 2 was added to the Bill.

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

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Sir Alexander Muddiman: Sir, I move that the Bill be passed.

The motion was adopted.

THE CODE OF CIVIL PROCEDURE (SECOND AMENDMENT) BILL.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I move that the Bill to amend the law relating to the appointment of legal practitioners in civil suits and for this purpose further to amend the Code of Civil Procedure, 1908, be taken into consideration.

The provisions of this Bill are explained in the Statement of Objects and Reasons and I explained them still further when I moved for leave to introduce it. It proposes to abolish the existing discrimination between Advocates and other legal practitioners in regard to the filing of a *vakalatnama*. It follows certain recommendations of the Indian Bar Committee. Those recommendations are summarised at length in the Statement of Objects and Reasons and in that Statement I have also indicated the

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manner in which we depart from those recommendations. I believe that in all the cases in which we have departed from the recommendations of the Bar Committee, the Members of this House will approve of the departures which we have made. I do not know how far it is advisable or necessary for me to go further in explaining the provisions of the Bill. As regards these departures, however, I should like to draw the attention of Honourable Members to the departures made by sub-rule (*3*) of proposed rule 4 which will be inserted in Order III of the Schedule to the Code of Civil Procedure by clause 2 of the Bill. In that sub-rule we follow, I may say, provisions which are now in force in Bombay under the Bombay Pleaders Act for Bombay only and also further provisions which are in force in Madras under rules made by the Madras High Court for Madras only. Under sub-rule (*2*) an appointment filed remains in force until the proceedings in the suit are ended so far as regards the client. Under sub-rule (*3*), however, certain proceedings in regard to the suit which may take place after the making of the decree are treated as being proceedings in the suit for the purposes of this particular rule. I do not think it is necessary to make any further remarks at this stage. Sir, I move.

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

Mr. H. Tonkinson: Sir, I move that the Bill be passed.

The motion was adopted.

THE INDIAN DIVORCE (AMENDMENT) BILL.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I move that the Bill further to amend the Indian Divorce Act be taken into consideration.

In connection with this Bill, Sir, I have but little to add to what I stated when I moved for leave to introduce it. There are, however, a few points which I think I should make. In the first place, I would like to refer to the extent of the possible application of the Indian Divorce Act, that is, to what classes of persons does it form part of their statutory personal law. It applies directly to matrimonial causes when the petitioner professes the Christian religion. It also applies indirectly by reason of the provisions of section 17 of the Special Marriage Act to suits for dissolution of marriage and suits for nullity of marriage between persons who have been married under that Act.

The next point to which I wish to refer is as regards the Parliamentary legislation to which I alluded when I moved for leave to introduce the Bill. I then said that His Majesty's Government had decided to introduce in Parliament legislation to empower certain courts in India to make decrees of dissolution of marriage if the parties are domiciled in Scotland or in

England. That is to say, after that legislation has been passed, such decrees granted by duly empowered courts will be recognised by the courts of the domicile of the parties. I find, however, from the printed report that I failed to state that the Secretary of State has authorised us to state that he intends to introduce the Bill in the House of Lords very shortly and he hopes to secure its passage into law during the course of the present session of Parliament. That, I submit, is a very important point when we remember the difficulties which are always experienced in Parliament in securing the passage of legislation amending the law relating to matrimonial causes. This point also is important in respect of certain further amendments to our divorce law which have been included in notices which are on the agenda paper. This follows because the legislation in Parliament may necessitate or may make it desirable in the future to amend our divorce law in other respects. For example, the legislation in Parliament, as at present proposed, will confine jurisdiction in the case of parties domiciled in England or Scotland to our Chartered High Courts. That, I think, is important with respect to the amendments proposed by my Honourable friend, Sir Henry Stanyon. Again, the form of Parliamentary legislation may make it desirable in other respects to amend our law, but it is unnecessary for me to indicate such points further.

Another point which I wish to make is that this Bill merely restricts the powers of our courts to grant decrees to cases in which the persons are domiciled in India. It is confined to that single object. We wish to prevent the scandal which arises when our courts in India grant decrees which they recognise as valid in British India. It has even been said, though we cannot be definite on this point, that the decrees will only be recognised as valid in the Punjab and will not be recognised in the provinces of Agra or Bombay or in Burma. This being so, when such decrees are granted, the status of the persons affected is changed. Instead of being man and wife they become strangers so far as British India is concerned, but they are still regarded as man and wife in the country of the man's domicile. The scandal which may arise is, I take it, obvious to all Honourable Members. The man or woman may marry again. That marriage is regarded as bigamous in England but valid in India, and the children are illegitimate in England but are legitimate in India, and of course further difficulties may follow in regard to succession to property and so on.

A reason why I hope there will be no delay in passing this Bill is that it may facilitate the passing of Parliamentary legislation in England. I have already referred to the difficulties always experienced in making amendments to laws affecting matrimonial causes in Parliament. If we pass this Bill now I think those difficulties in this case will be lessened. It will be remembered that as stated in the Statement of Objects and Reasons after the decision in *Keyes* vs. *Keyes and Gray*, Parliament did pass the Indian Divorces (Validity) Act in 1921. That was a measure intended to do away with the scandal to which I have referred, in regard to causes which had begun before the passing of the Act. By the passing of the present Bill we shall be stopping further scandals and doing our part. I think Parliament can expect this of us. The decision in *Keyes* vs. *Keyes and Gray* was given on the 10th March 1921, and the Indian Divorces (Validity) Act became law on the 1st July 1921. Parliament acted therefore with very great promptitude in validitating past decrees and decrees which might issue in proceedings which had already started. Since the

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decision in *Keyes* vs. *Keyes and Gray*, the Government of India have had a large amount of work to do in connection with this question, but we could certainly have introduced a small Bill of the character of the Bill now before the House long ago. The reason why we took no such action was because of those cases to which I referred when moving for leave to introduce, namely, cases of men domiciled in England or Scotland who come to India and marry ladies domiciled in India. The lady thereupon acquires the domicile of her husband but she may be deserted here, etc., and she would be unable to obtain in India any decree of dissolution of marriage valid in India, though that may be all that she requires, as she may never wish to leave this country. That is the reason why we have delayed in taking any action in regard to this point. Now that we have the Secretary of State's promise in regard to legislation in England, to which I have referred, I think it is only reasonable that we in India should do our part in preventing future scandals as expeditiously as Parliament did its part in 1921.

Sir, I move.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I had given notice of two amendments, one was that the Bill be referred to Select Committee, and the other was the amendment of section 2 by inserting the words "or respondent" after the words "the petitioner". After the very lucid statement made by Mr. Tonkinson I shall not press either of my motions, but as Parliamentary legislation is contemplated I wish to crave the indulgence of the House while offering a few remarks for what they may be worth.

The Honourable the Mover of this motion is perfectly right in saying that there must be uniformity of law in England and in India, and for the matter of that, throughout the civilised world. It is a scandal that a person who is divorced by the courts in this country is regarded as no longer subject to the divorce decree of the Indian courts when he goes to England, and it is therefore necessary that some international compact should be arrived at between the various parts of the British Commonwealth whereby the decrees of one court will be recognised throughout the British Empire. But that, Sir, is a large question. As far back as 1918 the Imperial Conference wished to establish an Imperial Court of Appeal for the purpose of determining all questions which would be binding and valid throughout the British Empire; but this proposal never took any practical shape or form in view of the attitude of the major Colonies. But so far as the present question is concerned I have a few observations to make.

Honourable Members will remember that the Indian Divorce Act was passed in 1869. At that time the English law was incorporated in the Indian Divorce Act and under section 7 of the Indian Divorce Act it was laid down that in administering that law the principles and rules of the English law shall be applicable and applied to cases before the Indian courts. Now, Sir, the English law as then understood, and in fact, as it has been understood or was understood from 1857 down to 1895, was that the English courts had jurisdiction to grant divorce in cases where the parties were merely resident within their territorial jurisdiction—in other words, that residence was the test of jurisdiction; but in a colonial appeal from Ceylon known *Le Mesurier* vs. *Le Mesurier* reported in 1895, Appeal Cases page 517, the Lords of the Privy Council for the first time held that

the rule as to jurisdiction for divorce *a vinculo* was based on domicile and not merely on residence. But the language used by Their Lordships—and it is considered language after a review of all case law on the subject—is contained in the following words: I read from page 540:

"Their Lordships have in these circumstances and upon these considerations come to the conclusion that according to international law the domicile for the time being of the married pair affords the only true test of jurisdiction to dissolve their marriage."

The language is not that domicile is the test of jurisdiction but domicile for the time being of the married parties affords the true test of jurisdiction. Reading very carefully the long report of this case it would appear that Their Lordships were trying to adapt the Scotch law as to matrimonial domicile to the English principle and that they used the term "domicile for the time being" as somewhat wider than the strict term "domicile" as it is known to *jus gentium* or international law. I venture to suggest that in any Parliamentary legislation that may yet take place this view should not be lost sight of, because, Sir, as has been pointed out in this House in connection with another Bill, the question of domicile is a very difficult question and it may be that the person has no fixed domicile within the strict letter of the law in one country but has a domicile for the time being, to use the language of Their Lordships of the Privy Council, which would answer the test which Their Lordships laid down as necessary for the purpose of giving jurisdiction to municipal courts for granting divorce. This case, Sir, has been followed by the Court of Appeal, and it must be regarded now as for the time being the last word on the subject.

The Honourable Mr. Tonkinson referred to the case of *Keyes* vs. *Keyes and Gray*, which is reported in the Law Reports, 1921, Probate, page 204. In that case the facts were as follows. The parties who had an English domicile but resided in India, were divorced by the Punjab Chief Court, as it then was, and the question arose whether the decree of the Punjab Chief Court granting a divorce was binding upon the English courts. Now, Sir, if Sir Henry Duke, the learned President of that Court had merely confined himself to following the case of *Le Mesurier* vs. *Le Mesurier* and said that as the law applicable in India is different to the law applicable in England a decree passed by an Indian court cannot be regarded as a valid decree in England, that I submit would have certainly satisfied me so far as the important point at issue in that case is concerned. But the learned President went further and began to examine the terms of the Indian Councils Act now incorporated in the Government of India Act and laid down somewhat broadly a proposition of law to which I submit every Member of this House must justly take exception. He went on to say that the Indian legislature had no authority to make laws affecting the status of British subjects not domiciled in India, and that, therefore, it could not confer upon the courts jurisdiction to divorce such persons. In other words, the decree of the Punjab Court was *ultra vires* and therefore wholly void. Now, Sir, whatever may be the limitations of the Indian courts regarding the law of divorce, I venture to submit that the powers of the Indian Legislature as laid down in old section 22 of the Indian Councils Act, incorporated in the existing Government of India Act, leave no doubt in my mind that the power of the Indian Legislature to confer jurisdiction on all courts in respect of all persons and property is unfettered and unlimited by any provision either of that Act or any other Act of which I am aware. There is no doubt a proviso appended to section 22, but Sir Henry Duke pointed out that that proviso

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was not germane to the discussion which arose in the case before him. See page 216. Now, Sir, I would invite the attention of Government to this second dictum. Is it the view of the Government that the power of the Indian Legislature is limited and circumscribed in the manner described by Sir Henry Duke? I am aware of the fact that the India Office was represented before the learned President of the Divorce and Probate Court Division. I am also aware of the fact that he only came in, as it were, by a side door as he was allowed to argue the case for India as *an amicus curiæ*. There was no appeal against that decision; and in view of the fact that it is the judgment of a single Judge, however, learned and however eminent, some steps should have been taken by the India Office to vindicate the position of the Indian Legislature as regards its power of legislation. It is in view of that observation made, which, I submit, was not necessary for the decision of the case, that we find some conflict since arising in the decisions of the Indian courts. The question was considered by a full Bench of the Punjab High Court in the case of *Lee* vs. *Lee* reported in 5 Lahore, page 547, where Their Lordships upheld the authority of the Indian Legislature to legislate for all persons and things and to confer upon the Indian courts, if so advised, jurisdiction in respect of such persons and things. It has been further laid down in 40 Calcutta, page 215, that under the existing Indian Divorce Act it was competent for a court in India to grant a decree which would be valid throughout India. There are two cases which stand on the other side of the line. Those are the cases reported in 47 Bombay, page 848, and 1 Rangoon, page 705—a Full Bench decision. There it is laid down by the learned Judges that the courts in India had no jurisdiction to grant divorce to persons not domiciled in British India. But in the Bombay case Mr. Justice Crump, dissenting from Sir Norman Macleod, Chief Justice, and Mr. Justice Marten, held that it had power to grant divorce based on residence which would be good and valid in India. In so holding he upheld the view of the Calcutta High Court . . . . .

Colonel Sir Henry Stanyon (United Provinces: European): And the Punjab High Court.

Sir Hari Singh Gour: And the Punjab High Court. Now, Sir, there is a conflict and I recognise that conflict. On that ground I heartily welcome the motion that has been made by the Honourable Mr. Tonkinson that this Bill be taken into consideration; and I further welcome the amendment which he has since made to his original Bill. That amendment will be moved immediately and I certainly shall support it. There is only one word that I should like to say with reference to that amendment. As the law at present stands, under section 2 of the Indian Divorce Act, clause 2, it is provided that nothing hereinafter contained shall authorise any court to grant any relief under this Act, except in cases where a petitioner professes the Christian religion. As I have pointed out, this Act was passed in 1869. Some three years later the Indian Legislature passed an Act known as the Indian Christian Marriages Act, and in that Act it is laid down that in order to validate a marriage under that Act, only one party to the marriage need be a Christian. Consequently under that Act a valid marriage may be contracted by a Christian with a non-Christian.

Now, Sir, that being the position, I ask this House to consider what would be the position, if the Indian Divorce Act was not amended and the Christian petitioner only is permitted to obtain a divorce. What becomes of the party to the marriage? That is a position which I submit creates a real anomaly which I, Sir, in my amendment, of which I have given notice, have striven to remove. It does not merely raise an academic question, as Honourable Members are aware. I happened to be in Rangoon and several leading members of the Bar approached me there and said: "There are a lot of marriages taking place in this province between Burmans and Europeans. The Indian Christian Marriage Act permits such marriages. Such marriages are perfectly good and valid marriages under the statutory law of this country, but when it comes to divorce, the Indian Divorce Act insists upon giving relief only to the petitioner if he or she happens to be a Christian, and the other party to the marriage is deprived of the benefit of the divorce law." I draw the attention of Government to this anomaly, and if it cannot be rectified in this Bill, I still hope that an early opportunity will be taken by the Government to remove it. If such an assurance is forthcoming I certainly will not intervene in the immediate passage of this Bill through this House.

There are two or three points which I wish to make in view of the pending legislation. My friend Sir Henry Stanyon, astute lawyer as he is, has given notice of a very valuable amendment, and that is to the effect that you must define domicile or describe it as far as you can. He suggests that the term "domicile" in the Indian Divorce Act might be defined in the terms in which it is defined in the Indian Succession Act. I submit that is an amendment well worthy of consideration. I realise the difficulty of defining the term "domicile" and the Privy Council also appear to have been confronted with the same difficulty, for while they passed in review the then existing case law on the subject, they did qualify the word "domicile" by these pregnant words "for the time being", which makes me believe, Sir, that Their Lordships of the Privy Council were trying to put a wider construction upon the term "domicile" than might be if the term is used as it is proposed to be used in the Bill before this House without those enlarging words. I, therefore, ask the Government to consider whether it is not possible to make a statutory definition in accordance with the somewhat wider description which Their Lordships of the Privy Council gave currency to in *Le Mesurier* v. *Le Mesurier*.

Now, Sir, the Honourable Mr. Tonkinson is well aware of the difficulties which will confront the courts in India in dealing with the law of divorce. If a person domiciled in England is resident in India and has made India his second home, it may be that his domicile is still England, but his second home is in this country. Now, if we were to restrict the granting of relief by the Indian court only according to domicile pure and simple, the person who has made India his second home would be deprived of the benefit of obtaining divorce in this country. I would not have set much store by this objection were it not for the fact that the law of divorce is intimately connected with other ancillary matters such as settlements, costs, alimony, damages, custody of children and succession to property. All these questions are interlinked, and let me give to the Honourable occupants of the Treasury Benches an illustration. I have assumed that a married couple, technically domiciled say, in England and married in England, have for all practical purposes migrated to this country and have settled down here and made India their second home, and there is a very considerable body

[Sir Hari Singh Gour.]

of people who answer to that description. Now if there is necessity of having recourse to the law of divorce, the petitioner must go to England and he must get a divorce there. The evidence is in India, the property is in India, the children are in India, and in order to obtain a mere paper decree in England the petitioner will have to cross the four seas, obtain a decree there and then. What relief is he likely to get? The relationship between husband and wife would be terminated in England, and I take it that though there is no statutory means at present for the recognition of the decree of the English courts, the Indian courts will recognise the fact that they have ceased to be husband and wife by a decree of a statutory court in England. But then in India there are other questions, questions with reference to the matters I have just now mentioned. Another suit would become necessary and as there is no such thing as *res judicata* in India in respect of matters decided in England, the same matter consequently will have to be re-agitated in this country for the determination of the other questions which are. I submit, in many cases a necessary sequel to a decree for divorce. The case might even be more complicated if the decree be the decree of an Indian court and it has to be enforced in England. I need not point out a somewhat small objection that a decree is only a decree *nisi* and after six months it is made absolute. That is a small point to be added to the points I am making in connection with the main question whether some facility should not be given either by Parliamentary legislation or otherwise. It is because these questions are tormenting me that I gave notice of my amendment that the matter be referred to a Select Committee, where a full and free discussion across the table might lead to a satisfactory solution of all these questions. But I have acceded to the appeal of the Honourable Mr. Tonkinson that this is an urgent matter. Therefore, I shall be the last person to delay the further progress of this Bill. There are a few more observations which are of a technical character with which I do not wish to weary the House. I shall, therefore, rest content with supporting the motion moved by the Honourable Mr. Tonkinson.

Colonel Sir Henry Stanyon: On behalf of my constituency, the Europeans of the United Provinces, I warmly welcome this Bill. I have very few remarks to make in addition to what has already been said by the Honourable the Mover and by my friend Sir Hari Singh Gour. There is no doubt that at present the most serious feature is the difference of opinion that has grown up in India in the several High Courts. I do not myself attach any importance to the idea that a decree given under the Indian Divorce Act may be valid in one province and not valid in another. If the decree is given by a High Court under an Act applicable to the whole of British India then, if it is a decree of divorce, it becomes a judgment *in rem*; and, under section 41 of the Indian Evidence Act it is conclusive at least in India with regard to the personal status which it confers on, or takes away from, any person. It is not for, say, the Allahabad High Court to declare that the interpretation of the enactment given by the Lahore High Court and the Calcutta High Court is so incorrect that those High Courts are not competent to pass such a decree. I do not attach any importance to that apprehension. With regard also to decrees of the Probate and Divorce Division of the English courts based on what is now in England the test of jurisdiction, namely, domicile, I have no fear like my friend Sir Hari Singh Gour, of invalidity being given to those decrees in this country.

Section 41 of the Evidence Act is equally applicable to those decrees. Section 41 reads:

"A final judgment, order or decree of a competent court."

—and the English court is undoubtedly competent in the case of persons domiciled in England—

"in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction . . . shall be conclusive proof that any legal character which it confers accrued at the time when such judgment, order or decree came into operation; that any legal character to which it declares any such person to be entitled accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person; that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease."

The only question of difficulty besides this difference of opinion in our own High Courts is with regard to the position of Indian decrees of dissolution of marriage in England. From 1869 to 1921 they were never questioned. The Indian enactment undoubtedly clearly (with all respect to those who differ from me), without a possibility of any other reasonable interpretation, makes mere residence, and certain other points, such as the profession of Christianity and so on, the test of jurisdiction. In *Keyes* v. *Keyes* we had the case of a person domiciled in England but serving in India, married in India to a wife who committed adultery in India with another officer domiciled in England but also serving in India. The Lahore High Court, in my humble judgment perfectly correctly, granted a decree of divorce. The English court for the first time refused to recognise that decree as valid. Now the English court was in a certain difficulty. In England also we have the law with regard to judgments *in rem* and the ordinary rule is this, that where the judgment *in rem* is pronounced by a court which is competent under the *lex loci* to pass such a decree, that will be a valid decree in England. I may point out that Dicey in his work on the *conflict of laws* has expressed, though with some hesitation, the opinion that decrees granted by Indian courts upon the basis of residence in India have extra-territorial validity. I have no wish to go as far as that. The English courts have now laid down definitely that domicile alone shall be the test of jurisdiction. My friend Sir Hari Singh Gour made reference to a broader use of the term in *Le Mesurier* v. *Le Mesurier*, which is the leading case on the point, but it is now settled law that the domicile must be a real and genuine domicile. Nothing less than a domicile in the fullest sense of the term will suffice. It is not sufficient for the parties to consent to the jurisdiction of the English courts either expressly or impliedly by their conduct. They cannot by such submission give the courts a jurisdiction which they would not otherwise possess. The English law of domicile has been very largely reproduced in our Indian Succession Act. There is a domicile of birth. There is a domicile of choice which may be acquired, replacing that of birth. But this point is settled that a man always has a domicile, and only one domicile at a time all through his life. He cannot have a double domicile. That is the position in England and I was anxious that so far as the law of domicile goes, the courts in India should, as nearly as possible, follow the same principles as the courts in England. That is why I introduced the Indian Succession Act definition into my amendment, but there is another point. In England once the fact of domicile at the date of the petition (or as Sir Hari Singh Gour quite correctly calls it "domicile for the time being") is established, it is immaterial if the marriage which it is sought to have dissolved was contracted elsewhere than in England, or that the parties at the time of the marriage were domiciled abroad, or

[Colonel Sir Henry Stanyon.]

that the parties are not British subjects or reside out of the jurisdiction, or that the misconduct alleged took place abroad. That is supported by a succession of well known cases in English law. Therefore the position of the English courts is this. It has been very well stated in Lord Halsbury's *Laws of England* (Vol. 6, p. 267) in these words:

"As the English courts themselves claim no jurisdiction to dissolve the marriage of persons not domiciled in this country, so also they refuse to admit that anything short of domicile can give the foreign court jurisdiction to decree a divorce which will be valid in England and will carry with it the necessary legal consequences in this country. The court of a foreign country may of course claim to exercise the right of dissolving the marriage of persons subject to their jurisdiction without regard to any question of domicile and no English court would deny that, within the limits of the foreign court's jurisdiction, a decree of divorce so pronounced would be good and valid. To hold otherwise would be to dictate to a foreign country the principles which it should adopt in the administration of its own municipal law; but to a divorce so pronounced the English courts would deny a validity outside the jurisdiction which granted it."

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As I have pointed out, in the case of *Keyes* vs. *Keyes* and *Gray*, the Honourable the President of the English Divorce Court, while quite within the purview of the law of England in refusing to recognize as valid in England the decree of the Lahore High Court on the ground that the parties, albeit resident and married in India, had an English domcile, went further and held that the Indian Legislature had no power under the Government of India Act of 1861 to give the courts in India any jurisdiction to dissolve the marriages of parties domiciled in England, and that therefore the Lahore decree was invalid everywhere. It is this *dictum* which has caused a conflict of opinion between the several High Courts in this country. Now, with the utmost respect I venture to affirm that the *dictum* was *ultra vires* of the English court, and was in fact an attempt to dictate to India the principles which it should adopt in the administration of its own municipal law. I am not concerned with the merits of the conflicting judgments which have issued from our courts. My own opinion is and always has been entirely in harmony with the view taken by the Calcutta High Court, the Lahore High Court in a Full Bench decision, and in the dissenting judgment of the Honourable Mr. Justice Crump in the Bombay High Court judgment. The judgment of the majority in the Bombay case is rather a peculiar judgment. The Honourable the Chief Justice held that the Legislature had no authority to give jurisdiction to the Indian courts. The Honourable Mr. Justice Marten held, as I understand from his somewhat long judgment, that the Indian Legislature had the authority but had not given it. So that even on that point the judges were divided. The Allahabad High Court, I understand, takes the Bombay view, but no judgment has yet been published in the Indian Law Reports. Well, as I have said, I am not concerned with the merits of the opinions. The point is one upon which there may be a difference of opinion. But having regard to the position of India in relation to England, the unsatisfactory nature of the law, under which a husband and wife in one country may be strangers in the other, is apparent; and the necessity of legislation in both countries to remove that incongruity is clearly indicated. My chief objection to this Bill is that, though it rightly introduces the rule of domicile as a test of jurisdiction, instead of substituting it for all those conditions which were necessary when residence alone was the test of jurisdiction, it has added it to them. Under the Bill as it stands the law would require that the petitioner should profess the Christian religion, that he should reside in India

at the time of presenting the petition, that he should also be domiciled in India at that time and that the marriage should have been solemnized in India. That is to say, that in our courts people, though domiciled in India, would be able to get no relief in divorce cases unless either they have also been married in India or the misconduct complained of was committed in India. That means that a person, domiciled in India, who marries a wife in England, if misconduct takes place outside of India, will have no remedy anywhere. But we have now the amendment of which the Honourable Mr. Tonkinson has given notice. If that is to be moved—if Government will give me an assurance that that is to be moved,—I shall not move my long amendment. My amendment is long because I sought to restrict the power to dissolve marriage,—to put an end to marriage,—to the High Courts; and that restriction necessitated a string of consequential amendments right through the Act. However, I agree it is much more important to get this Bill through than to go into a more or less side issue of that kind; and therefore, in any case, I should not move that part of my amendment. It would be wrong to take away the jurisdiction of District Judges until all the provinces had been consulted and all the communities likely to be affected had had an opportunity of stating their views. Then, so far as the definition of High Court is concerned, that amendment will come sooner or later. The Honourable Mr. Tonkinson has told us that this old Act, which is like an old Ford car that has been conditioned and reconditioned and is now only fit to be scrapped, will have to be dealt with later. But I shall certainly press by amendment of section 2 of the Act, except as to the reserving of power to the High Courts only, unless I am assured that the Government amendment of which notice has been given is to be moved. So far as the Parliamentary legislation is concerned we look forward to it. There is no question about this that the test of jurisdiction by domicile in many cases may be greatly inconvenient to many parties concerned in divorce litigation who may be resident in India. Having regard to the number of people with an English domicile who are resident in India the promised Parliamentary legislation in the direction stated will be of very real assistance. Sir, I welcome the Bill.

The Honourable Sir Alexander Muddiman (Home Member): Sir, I am sure the House has listened with great interest to the speeches of my Honourable friend Sir Hari Singh Gour and my Honourable friend Sir Henry Stanyon on this matter, which is of very great importance; but I am sure also the House will not expect me to follow them in all the erudite wanderings they have indulged in, nor will it expect me to follow them in their expert examination of the various judgments of the High Courts or of the case in England which gave rise to our immediate trouble. If it is necessary to do so, my Honourable friend Mr. Tonkinson who had made a special study of divorce law will take up those points.

I propose to deal with two practical issues that have been raised. The first is the question whether we intend to move the amendment of which we have given notice. I may assure my Honourable friend, Sir Henry Stanyon, that if he will allow the motion for consideration to be passed we will hasten to move the amendment in its proper place. The other point in which a practical issue was raised is the point raised by my Honourable friend Sir Hari Singh Gour. He has drawn attention to a portion of section 2 of the Indian Divorce Act which runs as follows:

"Nothing hereinafter contained shall authorise any court to grant any relief under the Act except in cases where the petitioner professes the Christian religion and resides in India at the time of presenting the petition."

[Sir Alexander Muddiman.]

And he has pointed out, quite rightly I think, that there may be cases where the fact that it is essential that the proceedings can only be taken by the petitioner does give rise to cases of hardship. However, that is not a matter which is within the immediate scope of this Bill. I am quite prepared to consult Local Governments and other bodies as to whether it would not be desirable to meet those cases by including the words " or respondent " in the section. But obviously there must be consultation and examination before I can commit Government to any decided view. That is what I understand my Honourable friend has himself in mind. I must confess it does seem to me a practical difficulty which might well be examined. But he recognizes that we cannot delay the passage of this Bill to make that amendment, nor can we make that amendment without consultation. I trust that what I have said will satisfy him. On those two points, however, I trust I have reassured the Honourable Members who have spoken. I should like in this connection to express the thanks of Government to my Honourable friends Sir Henry Stanyon and Sir Hari Singh Gour for the assistance they have given in facilitating the passage of this Bill which is really of great importance to the European community.

Mr. President: The question is:

" That the Bill further to amend the Indian Divorce Act be taken into consideration."

The motion was adopted.

Mr. H. Tonkinson: Sir, I move:

" That for clause 2 of the Bill the following clause be substituted, namely:

' 2. For the second, third and fourth paragraphs of section 2 of the Indian Divorce Act the following shall be substituted, namely:

' Nothing hereinafter contained shall authorise any Court to grant any relief under this Act except where the petitioner professes the Christian religion.

Or to make decrees of dissolution of marriage except where the parties to the marriage are domiciled in India at the time when the petition is presented.

Or to make decree of nullity of marriage except where the marriage has been solemnized in India and the petitioner is resident in India at the time of presenting the petition.

Or to grant any relief under this Act, other than a decree of dissolution of marriage or of nullity of marriage, except where the petitioner resides in India at the time of presenting the petition '."

Sir, the proposals in clause 2 of the Bill as originally drafted would have added " domicile " as a test to those tests already included in section 2 of the Indian Divorce Act in regard to jurisdiction in cases of divorce *a vinculo matrimonii*. The sole purpose of my amendment is to do away with the other tests and to make, in so far as decrees of divorce *a vinculo* are concerned, domicile the only test; that is to say, so far as these decrees are concerned, we wish to give to our courts the same jurisdiction as the English courts exercise. Of course that only applies to people domiciled in India, and I think my Honourable friend, Sir Henry Stanyon, recognizes that so far as people domiciled in England or Scotland are concerned, some tests, in addition to domicile, of the nature contained in section 2 of the Act will be required. Sir, I move.

Sir Hari Singh Gour: Sir, I had given notice of an amendment, the nature of which I described in my speech; but in view of the sympathetic reply received from the Honourable the Home Member, I do not propose to move that amendment.

The motion was adopted.

Clause 2, as amended, was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

Mr. H. Tonkinson: Sir, I move that the Bill, as amended, be passed.

Mr. President: The question is:

"That the Bill further to amend the Indian Divorce Act, as amended, be passed."

The motion was adopted.

THE INDIAN FACTORIES (AMENDMENT) BILL.

The Honourable Sir Bhupendra Nath Mitra (Member for Industries and Labour): Sir, I move that the Bill further to amend the Indian Factories Act, 1911, as reported by the Select Committee, be taken into consideration.

Sir, the Select Committee have examined carefully the various provisions as they appeared in the original draft of the Bill and they have recommended certain modifications in the original provisions. There was practical unanimity in the conclusions arrived at in the Select Committee except in regard to three points. Two of these points, I notice, form the subject of amendments to be moved by my Honourable friend, Mr. Joshi, and I shall reserve my remarks in connection with those amendments until they are moved. For the present I have no observations to make. Sir, I move.

The motion was adopted.

Clause 2 was added to the Bill.

Clauses 3 and 4 were added to the Bill.

Mr. N. M. Joshi: Sir, I move:

"That after clause 4 of the Bill the following new clause be inserted:

'5. (1) In every factory a reasonable temperature shall be maintained.

(2) In the case of any factory in which, in the opinion of the inspector, a reasonable temperature is not maintained, the inspector may serve on the manager of the factory an order in writing, specifying the measures which he considers necessary to maintain a reasonable temperature, and requiring him to carry them out before a specified date'."

Sir, my amendment seeks to reinstate clause 5 of the original Bill. This clause the Select Committee in its wisdom omitted. The Report of the Select Committee and the minutes of dissent make it quite clear that the Members of the Government of India also did not approve of this omission. Sir, I was very surprised to find that the Honourable Member for the Department of Industries and Labour did not move an amendment in

[Mr. N. M. Joshi.]

conformity with the views expressed by him in his minute of dissent appended to the Report of the Select Committee. (*An Honourable Member*: "Pressure of public opinion".) I shall come to that later on. Now, Sir, I have made it quite clear that the clause which I have drafted was not drafted by me. It was drafted by the Department which introduced this Bill. Apparently, as the Bill was introduced by Government, I take it they also approved of this clause. Sir, this Bill was introduced as a result of the conference of Factory Inspectors in India, and I also therefore presume that this clause of the Bill had been inserted in the Bill as the result of that conference of Factory Inspectors. The clause has not been objected to by any Local Government, as the Honourable Member in charge of the Department of Industries and Labour has stated this in his minute of dissent. Of course there are some employers who have objected to this clause. But their opposition is quite natural. Now, Sir, what does the clause seek to do? The first part of the clause states that in every factory a reasonable temperature shall be maintained. (*Diwan Bahadur T. Rangachariar*: "What is it?") You know, Sir, that in India the factories work for eleven hours a day. Now this period is a very long period. If this long period is to be maintained, then let us at least give reasonable conditions in the factory for these people who work for eleven hours a day in the factories. In the hot season naturally the factories become very hot and ordinary workers cannot be expected to work without any detriment to their health when they are working 11 hours in the hot atmosphere of the factories. Sir, the Members of this Legislature know what it is to work in a hot atmosphere of this Chamber when we work for about five hours a day. (*The Honourable Sir Basil Blackett*: "Fifteen.") I shall be very glad if you begin to work 15 hours in this Chamber. Then I am quite sure our Factory Act will soon be changed (*An Honourable Member*: "And the administration will be improved"), and the administration will improve, as my Honourable friend suggests. It is therefore necessary that in factories a reasonable temperature should be maintained. Moreover, in some factories, specially the textile factories, the temperature is interfered with by artificial means in order to suit the conditions of production. Sir, the clause which I have introduced seeks to provide that a reasonable temperature shall be maintained. In the cold season the factory will be heated, so that a reasonable temperature may be maintained. In the hot season, fans will be provided or water may be so used that the temperature may be brought down. Now, Sir, the clause which I propose to introduce is not new to factory legislation in the world. The English law provided a similar clause and I shall read the English provision for the benefit of the Members of this House:

> "In every factory and workshop adequate measures must be taken for securing and maintaining a reasonable temperature in each room in which any person is employed."

Now, Sir, the first part of my amendment corresponds with this English section. There is some difference between the English and Indian climate. In England they generally want to heat the factories. In India we shall have to keep the temperature lower. That is the only difference between the two countries. Moreover, Sir, in England the factories do not work as long hours as the factories in India. Then, Sir, the second portion of my clause enables factory inspectors to see that a reasonable temperature

is maintained. This is also necessary, because if it is the wish of this House that a reasonable temperature shall be maintained in factories, then they must see that factory inspectors possess the power which will enable them to enforce this provision. Now, Sir, in India this question of temperature was studied by a gentleman named Mr. Molony in connection with humidification of the Indian cotton mills and Mr. Molony has recommended that in India it is necessary to take some measures to maintain a reasonable temperature in factories and he has made certain suggestions as to how that can be done. He makes two suggestions. But, Sir, I need not go into the methods of keeping the temperature reasonable in factories. It is the business of the factory inspector to see that necessary measures are taken to maintain a reasonable temperature in these factories. Now, Sir, I do not know what really made the Select Committee omit this very salutary provision from the Bill which is before us. They have given some reasons, but I am not convinced of the soundness of these reasons. Moreover, Sir, I feel that the Government themselves know that this provision is a reasonable one and therefore they should now, although the Select Committee has omitted that clause, stick to their views and support my amendment. I would like to ask the Member in charge of the Department of Industries and Labour at this stage whether he proposes to support my amendment or whether he proposes to oppose my amendment or whether he proposes to remain neutral. Sir, if he will give me an indication at this stage, it will enable me to deal with this question much better. May I, Sir, expect the Honourable Member to tell me at this stage what his attitude will be.

The Honourable Sir Bhupendra Nath Mitra (Member for Industries and Labour): I intend to oppose the amendment in the form in which it has been put.

Mr. N. M. Joshi: Now, Sir, the Honourable Member proposes to oppose the amendment in the form in which it is put. May I ask whether he proposes to move an amendment to my amendment.

The Honourable Sir Bhupendra Nath Mitra: No, Sir; not at this stage.

Mr. N. M. Joshi: Sir, it is quite clear that the Honourable Member means to oppose my amendment. If the Honourable Member had proposed an amendment to my amendment, I would have welcomed such an amendment. I know, Sir, the constitution of the present House. It is difficult to carry any amendment against the wishes of the Government. It is a pity; it is a thousand pities, because in this House there are very few friends of the working classes left now. (*Two or three Honourable Members*: "Question?") I am very much obliged to those friends who have indicated that they are in favour of my amendment. Sir, I shall be very happy to find that my remarks were wrong. But, Sir, I am somewhat surprised at the attitude of the Government of India. When they introduced the Bill they thought that such a provision was necessary, but what has happened now that they should not move an amendment or support the amendment moved by me? What has made them change their views?

Mr. M. A. Jinnah (Bombay City: Muhammadan Urban): Because we are reduced to a minority.

Mr. N. M. Joshi: Is it the fact that the Swarajists have gone out? Is it the fact that they have hereafter to depend upon the votes of the European Members, whose sympathies the Government of India do not wish to lose at this stage? Sir, I remember having made a remark once in this House that this Government of India serve the interests of the capitalists in this country. I also remember the Honourable the Home Member having got very angry with me at that time. I want to know, Sir, what is going to be the attitude of the Government of India on my amendment. I want to know whether they thought at one time that the amendment was reasonable or not. If they thought that the amendment was reasonable, I want to know what has made them change their views except the fact that they depend upon the support of the European Members who are very anxious to see that clause omitted. Now, Sir, if this is the attitude of Government and if the reason given by me is the reason, which I think is the correct reason, is it right for the Government of India to deny the charge that they are here to serve the interests of the capitalists in this country, both European and Indian?

Now, Sir, I would like to say one word to the non-official Members of this House, especially to the Members of the Independent Party. Sir, I know that that party is independent. I want that party to show that it is independent—not only of the Government but independent of the capitalists also. Sir, let the Members of the Independent Party and other non-official Members remember that there is a great responsibility upon them in this matter. If our Swarajist friends were here, I am quite sure that the Government of India would have brought forward their own amendment. But if the Government of India do not bring forward their amendment in order to retain the support of some Members in this House, let this House show that they are much better than the Government of India. Sir, I move my amendment.

Mr. Kasturbhai Lalbhai (Ahmedabad Millowners' Association: Indian Commerce): Sir, I beg to oppose the motion of my friend Mr. Joshi. I wish he had studied the Indian Factories Act of 1911 before bringing forward a motion of this nature. Clause 9 of the Act provides sufficient safeguards for the health of the workers about whom my friend is so solicitous. In order to convince the Honourable Members, I shall read out the same. It runs as follows:

> "The following provisions shall apply to every factory:
>
> (*a*) it shall be kept clean, and free from effluvia arising from any drain, privy or other nuisance;
>
> (*b*) it shall not be so overcrowded while work is carried on therein as to be dangerous or injurious to the health of the persons employed therein;
>
> (*c*) it shall be ventilated in such a manner as to render harmless, as far as practicable, any gases, vapours, dust or other impurities generated in the course of the work carried on therein that may be injurious to health;
>
> (*d*) the atmosphere shall not be rendered so humid by artificial means as to be injurious to the health of the persons employed therein."

Mr. N. M. Joshi: Where is the mention of temperature here?

Mr. Kasturbhai Lalbhai: The last clause refers to temperature. It will be apparent from this section to Honourable Members that the provisions for the health and comfort of our industrial workers are not wanting. What I desire to know is whether Government did inquire as to how many prosecutions were necessary and were launched under this section, and that we cannot do without some provision of this nature.

Mr. N. M. Joshi: How can there be prosecutions when there is no law?

Mr. Kasturbhai Lalbhai: I very much regret that the Government thought it fit to bring forward such a clause without the full realization of its implications. It is not only very vaguely worded but it has been the subject of bitter criticism by most of the bodies and officials whose opinions were united. I seek the indulgence of the House to read out some of them. I shall first read out the opinion of the Secretary to the Government of Madras, Development Department. On page 5 he says:

"The Government of Madras do not consider that the provision for the maintenance of a reasonable temperature should be enforced in every factory."

He goes on further and says:

"The cost of effecting a reduction in temperature would probably be more than what the Industry could afford. In their opinion a reduction of temperature in such cases does not seem to be absolutely necessary in view of the small number of persons employed."

Mr. C. A. Barron, Financial Commissioner and Secretary to the Government of Punjab, says as follows:

"The lack of definiteness attaching to the expression 'a reasonable temperature' which occurs in clause 5, has been the object of general criticism, including that of the Factory Inspection staff of the Punjab. The requirement presumably refers to hygienic conditions, and the Governor in Council is not unconscious of the difficulty which must attend an attempt to define the term very precisely."

Mr. J. F. Gennings, the Acting Director, Labour Office, Bombay, says as follows:

"I am opposed to this new section. I agree that the prevention of excessive and abnormal temperatures and the maintenance of a reasonable temperature in factories is essential to the health and efficiency of industrial workers; but existing conditions in India seem to make the definition of reasonable temperature a matter of very great difficulty. In England it is a subject to which considerable attention has been devoted by the Industrial Fatigue Research Board, a body consisting of doctors, scientists, physiologists, physicists, etc., of the greatest eminence in their respective professions together with representatives of employers and employees with practical knowledge of working conditions and no legislation requiring a reasonable temperature to be maintained would be initiated in the great industrial countries of the world without careful, detailed, scientific investigations by expert investigators working under the supervision of a Board of scientific experts . . . "

Mr. N. M. Joshi: May I ask the Honourable Member for some information? When was this Board as regards Industrial Fatigue brought into existence in England and was the clause about regulating temperature also introduced in England? If he can tell me that, I can understand that in England these scientific investigations were made before the law was made

Mr. Kasturbhai Lalbhai: I am not in a position to inform the Honourable Member when the Board was instituted. I am simply quoting from the opinion of the Director of Labour, Labour Office, Bombay.

Mr. N. M. Joshi: Sir, may I ask the Honourable Member another question? What is the claim of this Director of Information to know anything about labour?

Mr. President: Order, order. Mr. Kasturbhai Lalbhai.

Mr. Kasturbhai Lalbhai: Sir, the Director goes on to say:

"The draft Bill under discussion merely insists on a 'reasonable' temperature being maintained and leaves it to the factory inspector to decide what amounts to a reasonable temperature. The factory inspector is given the power of calling upon the owner of a factory to instal expensive apparatus and to prosecute him if the orders are not carried out. It is true that an appeal can be made to the court or to the Local Government against any order by the factory inspector. But it does not seem to me that the authority appealed to would be in any better position to decide the question. It appears to me that section 9 (*a*) is premature and should not be inserted into any Act until the question has been scientifically investigated and reliable standards laid down for the guidance of factory inspectors."

Sir, there are very many opinions on the question of reasonable temperature, but not one of them is in favour of this clause regarding temperature. It will be noticed that in his minute of dissent the Honourable Member in charge says:

"We recognise the force of the main criticisms directed against the terms of clause 5 of the original Bill. There are obvious dangers in leaving it to Inspectors to decide what constitutes a reasonable temperature,"

and so on.

"But the main principle of the clause was not opposed by a single Local Government, and we consider that the Select Committee should have recast the clause in such a manner as to meet the criticisms mentioned above."

I regret to note that the Honourable Member seems to attach no importance to the opinions of the responsible Members of Government who have expressed their opinions in the pamphlets from which I have just read. Even in England where the industries are far more numerous, and where the industrial workers are considerably larger than what we have in India, they have not found it necessary or practical to insert a clause of this nature. Not only in England, Sir, but in no other country of the world has such a clause been provided for in the factories legislation.

Mr. N. M. Joshi: I am very sorry the Honourable Member is making an inaccurate statement. I read out the English section myself. The English section is this . . . . .

Mr. President: Order, order. The Honourable Member need not read it again. He has already read it once.

Mr. N. M. Joshi: He is still persisting in making an incorrect statement.

Mr. Kasturbhai Lalbhai: I hope from the opinions I have just quoted Honourable Members will be convinced that such a vague clause as was provided for by the Government in their original Bill could not be inserted in view of the fact that not only are almost all the commercial and industrial bodies who have been consulted on the subject unanimously opposed to it but many Government officials, responsible officials, have thought it desirable to point out to their respective Governments that such a clause would perhaps do more harm than good. I hope that before Government think it desirable to bring in such a clause as this, they will take care to see that the factory owners are not penalised for the fault of the inspecting staff.

I oppose the motion of my Honourable friend, Mr. Joshi.

Dr. K. G. Lohokare (Bombay Central Division: Non-Muhammadan Rural): Sir, I was surprised to see my Honourable friend reading out a piece of a so-called responsible opinion. We know, Sir, usually that there are some terms and some expressions which are to be taken with common sense, and when people want to assume a want of common sense we have to take them as the popular saying goes, " either as fools or knaves ". According to my Honourable friend, for the purpose of defining the term " reasonable temperature ", an expert committee of physiologists and scientists will be required. If that is said to be the responsible and considered opinion, I am sorry, Sir, there seems to be no other explanation and the vendor of such an opinion must be either of the two as described by the adage. Reasonable temperature is nothing else than the usual natural temperature found in a place. It is nothing more than that. Every place has its usual temperature in certain climates and seasons. If a factory on account of the boiler and the fuel used creates a higher temperature, naturally the health of the workers will be affected. Mr. Joshi's clause does not demand anything more than that. (*An Honourable Member*: " Normal temperature.") My friend distinguishes between normal and reasonable temperature. He wants a difference of 3 to 4 degrees. I grant it and yet say the judgment of such reasonableness can be entrusted to the factory inspector. If you think the factory inspector cannot be entrusted with that judgment of reasonableness I have nothing to say. They have been entrusted with discretion on so many points in the Factory Act; however, one more our friends are not willing to add. Labourers are after all human beings with whom we have to deal and we must consider them as human beings like ourselves. If we do not want to consider matters affecting their health and the conditions under which they have to work, Sir, I doubt very much if such an industrial development should be the goal of the Government and the people.

With these few words I support Mr. Joshi's amendment.

Diwan Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): We all acknowledge our indebtedness to my Honourable friend, Mr. Joshi, for espousing the cause of labour, and whenever he strikes a reasonable attitude I always try to support him. I am neither a capitalist nor a factory owner, but I view it from the standpoint of a common practical man. I am familiar with the working of rice mills in my province, and being a landholder I am interested in their well being. If that is an interest which will disqualify me from speaking out my mind here, there it is. But I assure my Honourable friend that that is not the motive that actuated me in taking the attitude I did in Select Committee. In justice to the Government I must remind my Honourable friend, Mr. Joshi, that it was I who took a most prominent part in objecting to this provision. It was neither the capitalist nor the Government Members who took exception to this. My main objection was to the impracticable nature of the proposal in the clause and the majority agreed with me. Nor does Mr. Joshi do justice to the Swarajist Members. The Swarajist Members were represented by Mr. Sarfaraz Hussain Khan. He was present there bodily. He, as a practical man, and likewise other Swarajists, supported the view that this was an impracticable proposal. I put myself the question, having regard to my knowledge of the villages and districts of my province, how are you to prescribe reasonable temperature, since from place to place the temperature varies in my province from 115 degrees to 82 degrees in summer. That is from district to district.

Diwan Bahadur M. Ramachandra Rao (East Godavari and West Godavari *cum* Kistna: Non-Muhammadan Rural): Cannot the temperature be prescribed in each district?

Diwan Bahadur T. Rangachariar: As my Honourable friend, Diwan Bahadur Ramachandra Rao knows, it varies always from *taluq* to *taluq* and also from season to season, and from morning to evening. My Honourable friend may express surprise, but what is the temperature you will prescribe as reasonable? It is to be left to the factory inspector to prescribe this reasonable temperature. In the case of any factories it is left to the opinion of the inspector to say that a reasonable temperature is not maintained. Now the inspector may be an Indian. He may also be a European who wants everything cool; he may require electric fans and various things. He may be an Indian inspector, who like myself likes to toil and moil in the hot weather. Sir, I myself have to argue in the High Court and notwithstanding the electric fans in some months of the year we sweat there. Probably you have to change your linen during the course of the day when you have to argue a heavy case. Even owners of factories and rice mills work under the same conditions, not that they keep aloof in their houses and calmly look on when the labourers are toiling. There are small factories and rice mills where they take part in actual work. That being so it is not as if they are doing anything which would not be advantageous to themselves. You must leave it to the good sense of the employer himself. Of course there may be very big factories in which perhaps the conditions may be made satisfactory, but in these factories in the mofussil, if the law is to be uniform in all cases, I cannot but feel that a great danger will be introduced by introducing a clause like this.

Mr. M. A. Jinnah: Suggest some other clause.

Diwan Bahadur T. Rangachariar: That is a thing the Government asked us to do. I am sure my Honourable friend Mr. Jinnah might be able to suggest another clause. I found it very difficult to suggest a suitable clause. After all the employer and the labourer have to depend upon each other. The employer in most cases, I am sure, will provide reasonable facilities that circumstances may require. It is to his interest to do so. Legislation in these matters certainly cannot produce the desired effects. What is needed is good feeling between the employer and the labourers. No doubt it is a counsel of perfection, but I am sure it is absolutely impracticable to have a clause like this and to expect it to work, and it would be leaving the factory owners to the tender mercies of the inspectors, who may have different views. One inspector may go and another inspector may come and they may have different views. How is an inspector to prescribe a reasonable temperature? Is he to prescribe 95 degrees in the morning and 100 degrees in the afternoon and 95 again in the evening? Supposing the temperature varies and supposing the variations of temperature are due to natural conditions, what is he to do? Is he to introduce electric fans there?

Khan Bahadur W. M. Hussanally: Yes.

Diwan Bahadur T. Rangachariar: Probably he cannot get electric supply there; where is he to get the energy for these small factories? It may have the effect of spoiling and killing these small industries which are very beneficial to the people. I submit that I see many practical difficulties in

applying that clause; it is very difficult to find a suitable clause to provide for such cases, and we cannot help recognising the difficulties pointed out. Even the Government Members in their minute say:

"We recognise the force of the main criticisms directed against the terms of clause 5 of the original Bill. There are obvious dangers in leaving it to Inspectors to decide what constitutes a reasonable temperature, and it is probably true that in most factories no restrictions are required, while in others regulations could only be imposed after careful investigations and with full regard to seasonal variations, the nature of the processes and other circumstances. But the main principle of the clause was not opposed by a single Local Government and we consider that the Select Committee should have recast the clause in such a manner as to meet the criticisms mentioned above."

Sir, the Select Committee waited for a recast of the clause which would suit the circumstances. No member came forward with one. Even my Honourable friend Mr. Joshi to-day, although he recognises the objections, is not able to produce a suitable clause. . . . .

Mr. N. M. Joshi: I do not recognise any objections.

Diwan Bahadur T. Rangachariar: Very well, then, if he does not recognise any objections, we recognise the objections, and I do think the House should not accept this amendment.

The Honourable Sir Bhupendra Nath Mitra: Sir, as the House is already aware, I am in sympathy with the object underlying Mr. Joshi's amendment. In fact, as Mr. Joshi observed, that provision was in the Bill as it was originally presented to this House by Government. At the same time, as has already been stated in the minute of dissent which I have signed, I recognise the force of the numerous criticisms which have been directed against the clause which Mr. Joshi seeks to re-insert and I do not think that, in its original form, it can be commended to this House. To this extent I agree with the majority of the Select Committee, and as I have already said, Government will oppose Mr. Joshi's motion. At the same time I do not agree with my friend Mr. Kasturbhai Lalbhai that the matter is already provided for in section 9 of the Indian Factories Act. I may say this, that Government have no intention of abandoning their idea in this particular matter. . . . .

Mr. M. A. Jinnah: What is their idea?

The Honourable Sir Bhupendra Nath Mitra: Their idea is that the object underlying Mr. Joshi's amendment should be provided for in the Factories Act, but not in the particular form in which Mr. Joshi has moved his amendment. . . . .

Mr. N. M. Joshi: Why not suggest another amendment?

The Honourable Sir Bhupendra Nath Mitra: The House is entitled to ask why does not the Government bring forward another amendment. My friend Diwan Bahadur Rangachariar has fully explained the difficulties in the matter with which we were faced in the Select Committee. In fact, I did put forward certain amendments of my own. They were unacceptable to the majority of the Committee and I had to abandon them. That does not mean that we have abandoned the idea of putting something in the Indian Factories Act to meet our original intention in the matter. Our provisional view is that the necessary provision can be met by an amendment

[Sir Bhupendra Nath Mitra.]

of section 9 of the Factories Act, with consequential amendments elsewhere. At the same time, in view of the great divergence of opinion in the Select Committee,—and I must remind the House that the majority of the Select Committee, consisted not only of my friend Diwan Bahadur Rangachariar, but of members of the Independent and Swaraj Parties, as well as members of the European Party,—I had to admit that this was not a matter which I ought to force through this House in its present condition, through a thin House like the present one; and so far as Government is concerned, the intention is hereafter to try to work out the proper amendments in consultation with the Local Governments and at a later stage to bring in a short amending Bill before this House. . . . .

Mr. Kasturbhai Lalbhai: Do I understand that commercial bodies will not be consulted in the matter?

The Honourable Sir Bhupendra Nath Mitra: I cannot in any way commit myself on that point. I dare say if we do consult the Local Governments, they will again consult commercial bodies, but I think the commercial bodies have had their say. So far as the object goes, Government are certainly still of the opinion that some amendment of the Indian Factories Act is necessary, but they had to change their opinion in regard to the precise amendment which they had originally proposed. Some other formula will have to be devised. I for one would have been very glad if the Select Committee had devised that formula. . . . .

Mr. M. A. Jinnah: Then let us postpone it.

The Honourable Sir Bhupendra Nath Mitra: At the same time there are other provisions in the Bill which need not, for that reason, be postponed. That is quite a simple matter which can be brought in at a later stage, and we can pass an amending Bill to incorporate that particular amendment. Therefore, Sir, I cannot accept Mr. Joshi's amendment.

***Mr. Bipin Chandra Pal** (Calcutta: Non-Muhammadan Urban): I desire to say just two words on this subject, my first explanation for taking any part in this debate is that I was, what shall I say, tempted by the Government Members to put my signature to the note of dissent which they themselves signed, and having signed that note of dissent, with full consciousness of what it implied, I am surprised at the attitude which the Honourable Member in charge of Industries and Labour has taken to-day.

1 P.M. I think it was the distinct duty of the Honourable Member to have applied himself with all the resources which he commands to find a way out of the difficulty which he now pleads in opposing Mr. Joshi's amendment.

Nawab Sir Sahibzada Abdul Qaiyum (North-West Frontier Province: Nominated Non-Official): If a meeting of the Assembly is held here in June and the fans are removed, the matter will be taken up more earnestly by this House.

Mr. Bipin Chandra Pal: Well, I shall be glad if my Honourable friend Sir Abdul Qaiyum comes to the front Bench and represents Government, and then I shall pay all the respect due to his position as the representative

*Speech not corrected by the Honourable Member.

of Government in matters of this kind. I now find, Sir, in this note of dissent that:

"the main principle of the clause was not opposed by a single Local Government and we consider that the Select Committee should have recast the clause in such a manner as to meet the criticism mentioned above."

And who are the signatories to this note of dissent? First of all, the Honourable Sir Bhupendra Nath Mitra, next the Honourable Mr. Graham, third the Honourable Mr. A. G. Clow. The three Government members on this Select Committee, Mr. Clow, Mr. Graham and Sir B. N. Mitra, are all of them signatories to this note of dissent, and they asked me to sign it. I saw the reasonableness of the thing and I signed it, and I do not see how they can go back upon the opinion which they placed on record in this minute and now tell us "Don't do anything now, we will take the matter up later on."

The Honourable Sir Bhupendra Nath Mitra: That is not going back.

Mr. Bipin Chandra Pal: No, not going back but going sideways. With regard to Mr. Joshi's amendment I do not think it is a very dangerous thing. All it says is "Let your inspectors arrange this. They are your officials and you can issue instructions to them." Sir Bhupendra Nath Mitra may issue definite instructions to the inspectors of factories in this matter; he may issue a definite instrument of instructions to the Local Government how this clause is to be worked, and in that way, pending a definite amendment of the Act, suit what he says he wants.

Diwan Bahadur T. Rangachariar: Will my Honourable friend suggest one such instruction?

Mr. Bipin Chandra Pal: Well, I am not in a position to suggest anything just now. No, I support Mr. Joshi's amendment and I do not think there is any objection to the acceptance of that amendment unless you are afraid that the inspectors will interfere with the free and easy way in which you are carrying on your factories and your works. Now that is the only argument which it seems to me stands at the back of this opposition to Mr. Joshi's amendment.

The Honourable Sir Bhupendra Nath Mitra: What about the minute of dissent?

Mr. Bipin Chandra Pal: Yes, the minute of dissent says there are factories where unnecessary hardship is at present caused to the operatives by the maintenance of temperatures which could be substantially reduced by simple and inexpensive means, and it is desirable that Local Governments should be in a position to insist on reasonable steps being taken in such cases, and it seems to me that Mr. Joshi's amendment provides the Local Government with the instrument of carrying out the wishes expressed in the note of dissent.

Khan Bahadur W. M. Hussanally (Sind: Muhammadan Rural): Sir, once in a way I should like to act as an assistant to my friend Mr. Joshi and to champion the cause of labour, as his assistant, as I said. Sir, the point at issue is a very simple one. I do not see what the difficulties are which appear to lawyers in this House like Sir Hari Singh Gour and my friend Diwan Bahadur Rangachariar who see snakes and scorpions at every step.

Diwan Bahadur T. Rangachariar: Because we know the difficulties.

Khan Bahadur W. M. Hussanally: Moreover, the dissenting minute of the Government members contains the following words:

"But the main principle of the clause was not opposed by a single Local Government and we consider the Select Committee *should have recast the clause* in such a manner as to meet the criticisms mentioned above."

Now, Sir, I do not understand why the Honourable Member in charge of the Industries Department could not have commanded the services of all the regiment he possesses of solicitors, secretaries and drafters or draftsmen as they are called, to recast this clause to meet the criticism, and that is what my Honourable friend Mr. Joshi wants. If they had been employed perhaps a definite suitable clause could have been drafted so as to be embodied in this very Bill. But if that could not be done and if the time was too short, why could not this Bill be recommitted now to the Select Committee or postponed till the next autumn Session at Simla? Where is the hurry or urgency of carrying through this Bill when the Honourable Member himself admits that some provision of the kind proposed by Mr. Joshi is necessary to be incorporated in the Act. If I am in order, Sir, I would propose that the Bill be recommitted to the Select Committee and the Government be asked to draft a suitable amendment to bring out the purpose Mr. Joshi has in view.

Mr. President: Order, order. The Honourable Member knows that that stage has passed. The motion for the consideration of the Bill has already been adopted by this House and the Bill is now being considered clause by clause. The question before the House is that clause 2 stand part of the Bill, to which an amendment has been moved by Mr. Joshi.

Khan Bahadur W. M. Hussanally: In that case, Sir, I support Mr. Joshi's amendment.

Mr. M. A. Jinnah: Sir, I must say I was surprised at the attitude of the Honourable Member on behalf of the Government. Sir, when this Bill was introduced it contained a clause 5 and in the Statement of Objects and Reasons you find it stated:

"The existing Act makes no provision for the prevention of excessive temperatures within a factory. The new section is designed to remedy this defect. The amendments proposed in clauses 17 and 22 are consequential."

Then this Bill was referred to Select Committee and the Honourable Member in charge is a party to the dissenting minute where he says this:

"We are opposed to the omission of any provision relating to the maintenance of a reasonable temperature in factories."

Therefore the Government are opposed to that:

"We recognise the force of the main criticisms directed against the terms of clause 5 of the original Bill. There are obvious dangers in leaving it to inspectors to decide what constitutes a reasonable temperature and it is probably true that in most factories no restrictions are required while in others regulations could only be imposed after careful investigation and with full regard to seasonal variations, the nature of the processes, and other circumstances."

Then they proceed to say:

"The main principle of the clause was not opposed by a single Local Government and we consider that the Select Committee should have recast the clause."

"Recast the clause". Therefore, according to the Honourable Member, who is a signatory to this dissenting minute, he is of opinion that "the Select Committee should have recast the clause in such a manner as to meet the criticisms mentioned above." But the Government divest themselves of all responsibility because the Select Committee decide to omit the clause.

The Honourable Sir Bhupendra Nath Mitra: No, they don't: they only want time.

Mr. M. A. Jinnah: I know perfectly well they want time, but I say any responsible Government, with the assistance they have got behind them, with the successor of Macaulay sitting on that Bench, ought to have been able to put forward amendments in order to support their view. Instead of that we get an answer that they want time. Why? What difficulties have you to face? Is there no legal assistance at your back? Why then divest yourselves of this responsibility? You hold that opinion. Why haven't you brought forward an amendment?

Diwan Bahadur T. Rangachariar: It is not a question of legal assistance.

Mr. M. A. Jinnah: I suppose it is the assistance of the factory owner or perhaps the assistance of my Honourable friend Diwan Bahadur Rangachariar, who is incapable of producing an amendment. I decline to believe that my Honourable friend if he had applied his mind to it could not have produced an amendment.

Diwan Bahadur T. Rangachariar: You produce one!

Mr. M. A. Jinnah: I was not on the Select Committee.

Diwan Bahadur T. Rangachariar and **Sir Hari Singh Gour:** You produce one now.

Mr. M. A. Jinnah: Yes, I can now. My Honourable friends seem to think that it is our business to attend to every matter of detail in this way. I maintain, Sir, that it is the business of the Government,—I say it was their duty. They introduced this clause originally in this Bill as it was presented to this House. The Select Committee, I say, was carried away and omitted that clause. The Government Member dissents from it and yet he has not come forward with an amendment. Have not they come forward with a number of amendments, when in the Select Committee certain clauses have been altered or omitted? Why have they not brought an amendment on this occasion? Have they not got the assistance? My Honourable friend says "Oh, but we will consider this matter", and the position of the Government is that they will consult the Local Governments again. What for? What are the Local Governments going to tell you? You are yourself convinced that some provision should be made in order to regulate excessive temperature. Is there any Member of this House who is opposed to it? Then all that you have to do is to make a provision. Why don't you come forward with a definite provision? What is the urgency? We are very often told by Government, "Let us pass this Bill, we will then bring in a small amending Bill and we shall see to it". Then probably we will hear nothing more about it. Will the Honourable Member give me a definite undertaking on the floor of this House that he will bring in a Bill embodying the principles of this provision which were originally in this Bill, in clause 5? Will he give an undertaking that he will bring in a Bill in the next Session of this Assembly? If he does that, I might accept his assurance. Otherwise I support the amendment of Mr. Joshi.

[Mr. M. A. Jinnah.]

Then, my friend Diwan Bahadur Rangachariar always now thinks that he must do justice to the Government. He says "How are you going to ascertain what is the reasonable temperature". He says sometimes he has got to change his linen twice when arguing a heavy case. If he has got to do that, what about the poor man who sweats near the boiler. Do you realise that? Who asks in this House that we should provide him with electric fans? Who is the man who asks "Give him ice" which my Honourable friend enjoys while he is arguing a heavy case? All that is intended by this provision is this. In a factory there must necessarily be excessive temperature, in excess of the ordinary temperature which prevails outside. All that is intended is that the temperature within the factory should not be so abnormal as to make the lives of these people miserable and to impair their health.

Mr. W. S. J. Wilson: Would you mind defining the word "abnormal"?

Mr. M. A. Jinnah: If you have any common sense you can decide it in five minutes. If you have no common sense you can never define it. Now, we are told that the inspector will harass these millowners and these factory owners. The inspector is such an objectionable person that he will abuse his powers. That is an argument which is a perennial argument. If we are to go by that argument, we can never have an inspector. It is very often said that the police is bad and why don't you therefore do away with the police. It is necessary to have the police. The inspector is necessary. If the factory owners are going to put their case merely on the ground that the inspector will be an instrument of harassment, an instrument which would try and extort money and blackmail, that is an argument which you will never get rid of till the end of the world. We must have inspectors. My Honourable friend asks "What is a reasonable temperature". I say any honest inspector going into a factory will come to the conclusion at once whether the temperature is reasonable or not, having regard to all the circumstances of that factory or locality. The provision which was incorporated originally is this:

> "In every factory a reasonable temperature shall be maintained. In the case of any factory in which in the opinion of the inspector an unreasonable temperature is maintained the inspector may serve on the manager of the factory an order in writing specifying the measure which he considers necessary to maintain a reasonable temperature."

If the temperature is unreasonable, say 130 or 140 degrees, he will say "You must devise means by which you can reduce this temperature" and he will specify a date within which to carry that out.

Diwan Bahadur T. Rangachariar: They are not all powerful. There are hundreds of small owners.

Mr. M. A. Jinnah: What will this inspector do to them? Will they shut up their factories if this provision is passed? What is the good of arguing in this fashion? We find that the Honourable Member on behalf of the Government himself says that there are factories where unnecessary hardship is at present caused to the operatives by the maintenance of temperature which could be substantially reduced. That is the opinion of the Honourable Member there and this minute is signed by my Honourable friend Mr. Graham, Mr. Bipin Chandra Pal and no less a person than an expert in this kind of legislation, Mr. Clow. What do we find?

They say that it is desirable that Local Governments should be in a position to insist on reasonable steps being taken in such cases. And what are the Local Governments going to do? Is His Excellency the Governor in Council going to inspect this factory and see whether the temperature is reasonable? They must depute somebody. Can this work be done by any other man than an inspector? You cannot get rid of the inspector. I do ask the Government to look into this. They have themselves admitted that the hardship could be reduced at a small expense in several factories. I do ask the Honourable Member to give us an undertaking that at least in the autumn Session he will bring in a Bill with a sound provision. Then I shall consider that Government mean business.' My Honourable friend, the millowner (Mr. Kasturbhai Lalbhai) is sitting next to me and my friend who is constantly interrupting me sits opposite to me (Mr. Willson). They will get the Honourable Member who represents Government into meshes again and he will get so confused that in spite of the assistance that he will get from behind he will be unable to meet the situation. Therefore, I want a definite undertaking from Government that they will bring in a Bill next September Session embodying the principle of Mr. Joshi's amendment.

The Honourable Sir Bhupendra Nath Mitra: Sir, I have already said that Government have no intention of dropping the matter and I can give my friend Mr. Jinnah the assurance that it will be brought up for discussion at the next Session of the Assembly. We cannot go beyond that.

Mr. President: The question is:

"That after clause 4 of the Bill the following new clause be inserted:

'5. (1) In every factory a reasonable temperature shall be maintained.

(2) In the case of any factory in which, in the opinion of the inspector, a reasonable temperature is not maintained, the inspector may serve on the manager of the factory an order in writing, specifying the measures which he considers necessary to maintain a reasonable temperature, and requiring him to carry them out before a specified date'."

The motion was negatived.

Clauses 5, 6, 7 and 8 were added to the Bill.

Mr. President: The question is:

"That clause 9 do stand part of the Bill."

Mr. N. M. Joshi: Sir, I move:

"That in clause 9 of the Bill, sub-clause (*c*) be omitted."

Sub-clause (*c*) is:

"(*c*) in the paragraph beginning 'in case (*a*)' after the word 'sections' the figures '21' shall be inserted."

Now, section 30 of the Indian Factories Act, which is mentioned in this sub-clause (*c*) of clause 9, says the Government may exempt in

"case (*a*) such class of work from all or any of the provisions of sections 27 and 28."

Now, I shall tell the House what that (*a*) is. Sub-section (*a*) of section 30 of the Indian Factories Act is:

"that any class of work in a factory is in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of the factory;"

Now, Sir, this sub-section is intended to give exemption to the factories

[Mr. N. M. Joshi.]

from section 21 of the Indian Factories Act. Section 21 of the Indian Factories Act runs thus:

"21. (1) In every factory there shall be fixed,—

(*a*) for each person employed on each working day

(*i*) at intervals not exceeding six hours, periods of rest of not less than one hour, or

(*ii*) at the request of the employees concerned periods of rest of not less than half an hour each so arranged that, for each period of six hours work done, there shall be periods of rest of not less than one hour's duration in all, and that no person shall work for more than five hours continuously, and

(*b*) for each child working more than five and a half hours in any day, a period of rest of not less than half an hour.

(2) The period of rest under clause (*b*) shall be so fixed that no such child shall be required to work continuously for more than four hours."

So this clause is intended to give exemption to those people who are engaged in work which is considered to be preparatory or complementary. Now, Sir, I do not understand why this exemption is at all necessary. In the case of people who do preparatory and complementary work, it may be necessary that they should be employed some times before the factory opens or sometimes at the end of the period of work generally. What they really want is that these people who are engaged in the preparatory and complementary processes should begin their work before the other workers begin. I can understand this necessity, but I do not understand why there is any necessity for depriving these people of their midday rest. Every one wants to take his food during the middle of the day and he is given by the Factory Act a period of one hour. We also go, Sir, for our lunch for an hour, and why should not these people who work in factories and do the preparatory and complementary work get one hour's rest in the middle of the day to enable them to take their food? Why should they be deprived of this concession if it is given to them by the Factory Act, even if they are engaged in preparatory and complementary work? That work has to be done before the day's work begins. These people must have some rest and time to take their food. A man does not commit a sin in getting employed on preparatory and complementary work in a factory. Sir, if the Government think that these particular people should not take their rest when the other workmen do, I can understand that; if they say that their hour of rest should be different from the others, I can understand it. But why deprive these people engaged in preparatory and complementary work of their midday rest altogether, and not give them time to eat their food. I think it is cruel and unnecessary as well. I therefore think this House should not accept the change proposed in the Bill at all. Sir, this section 30 of the Factories Act has already given so many exemptions that the Act is becoming practically useless, and especially so when these exemptions make it difficult for the factory inspector to inspect; in every factory you will always find some people exempted, so that the factory inspector does not know who is who. If he goes to a factory and finds that the rule is broken, and if there are people there who are exempted, naturally he will be told that those are the people exempted and it is not very easy for him to find out whether they are or not. Sir, on account of the exemptions which exist the protection given by the Factories Act is much reduced. I therefore want this House not to accept this sub-clause (*c*) of clause 9, because I think the people engaged in preparatory and complementary work require some

time in the middle of the day to rest and take their food. No case is made out why they should not be given that period of rest. I can understand if they had to take their period of rest at a different time from the others. In that case let the Government bring forward an amendment providing that these people who are engaged in preparatory and complementary work should get their midday rest at some time to enable them to take their food. Sir, I propose my amendment.

Mr. A. G. Clow (Industries Department: Nominated Official): Sir, I oppose this amendment. I think that Mr. Joshi has unconsciously misrepresented the position. There is no question of withdrawing from these men the periods of rest. I can assure the House that in practically every case they will get periods of rest; they must get periods of rest from the nature of their work. Mr. Joshi has dealt in his speech both with amendment No. 2 and amendment No. 3, which is in effect of the same character, and much the same arguments apply to both. The point is that the nature of the work, preparatory or complementary work or work that is essentially intermittent, means that the man is not continuously employed as a rule. But the difficulty is that you cannot say definitely beforehand at what time the interval will take place. Take the case of a man who is going round attending to small repairs of machinery. You can say of the process operatives that so many operatives will be off from one to half past one, and so many from half past one to two, but you cannot say for that man that in no circumstances will he be called upon to work between half past one and two. He may spend and normally does spend a large part of the day idle, but in order to comply with section 21 it is necessary that the factory owner should specify, before the work begins, the hours at which each person shall be employed and that he should send notice of those hours beforehand to the factory inspector. It is to overcome that difficulty that these amendments have been devised.

I admit that there is a good deal in what Mr. Joshi says about exemptions, but there is one point that he omitted to mention, and that is, that all exemptions are subject to conditions specified by the Local Government, and these exemptions, I need hardly assure the House, are closely watched by the Government of India. And wherever possible it is made a rule that with regard to an exemption you should grant compensatory periods in some form or another. That is a rule which can be applied not only with regard to holidays but also with regard to intervals. As a matter of fact the exemptions which we now propose to add to the Act had the unanimous support of the Chief Inspectors of Factories, and I think that is a sufficient recommendation to the House.

Mr. President: The question is:

"That in clause 9 of the Bill, sub-clause (*c*) be omitted."

The motion was negatived.

Mr. N. M. Joshi: Sir, I move:

"That in clause 9 of the Bill, sub-clause (*d*) be omitted."

Sub-clause (*d*) of clause 9 of this Bill says:

"in the paragraph beginning 'in case (*b*)' after the words 'sections' the figures '21', and after the figures '22' the figures '26' shall be inserted."

[Mr. N. M. Joshi.]

Now, Sir, the paragraph in case (*b*) is this as given in section 30 of the Indian Factories Act:

"in case (*b*) work of the nature described from all or any of the provisions of sections 22, 27 and 28."

Now, the kind of work which is intended to be covered by this section is the work which is essentially intermittent. Now, Sir, here also I do not understand why this exemption from section 21 should be given. Sir, even if the work is intermittent, there must be some period when the man will get time to take his food. My Honourable friend, Mr. Clow, said that the man will get a period for rest. But where do you provide it? You are giving an exemption from section 21.

Mr. A. G. Clow: No, no. We are giving the power to exempt.

Mr. N. M. Joshi: You are giving the power to the Local Government to exempt, and I think you intend that the power should be used; and if you intend that the power should be used, the power I think will be used; and if the power will be used, some people will be exempted from the protection of section 21; and I do not understand why people who do intermittent work should not get any time for having their food in the middle of the day. Sir, I think that the House should see that this exemption is not granted. There is also exemption given by this section from section 26 of the Indian Factories Act which runs:

"The manager of a factory shall fix specified hours for the employment of each person employed in such factory, and no person shall be employed except during such hours."

Now, Sir, even if a man is doing intermittent work, why should there not be fixed hours for him? Simply because a man's work is intermittent, is he going to be employed for 24 hours a day? Why not have some fixed hours? You can say that the hours fixed for him should be long. I can understand that. That you have already provided. You are giving an exemption to those people who are engaged in work which is essentially intermittent—you are giving them exemption from section 26. They can work in the factory for longer hours, but to say that there should be no hours fixed for these people means that the men may be engaged for 24 hours and no hours shall be fixed for him. Sir, the meaning of that section is quite clear. When you give exemptions from sections 26 and 27 it is quite clear that a man engaged in intermittent work may be engaged for even the whole day because no hours of work will be fixed and there will be no fixed time during the day. Now, Sir, in the case of my last amendment it could have been said that the number of people who are engaged in preparatory and complementary work is very small number. But in the case of people whose work is intermittent, their number may be very large in certain kinds of factories, and to deprive them of the protection of the Factories Act unnecessarily is I think doing a great harm to these people. I hope, Sir, that the House will accept my amendment.

Mr. A. G. Clow: Sir, I do not want to add much to what I said on the previous amendment which really raised practically the same point, but I do want to reply to a fresh suggestion from my Honourable friend, Mr. Joshi, which is that the men who may be exempted under this new

clause will be required to work, or may be required to work, for 24 hours a day. As a matter of fact the power to exempt men of this character from the provisions of sections 27 and 28 of the Factories Act is already in the Factories Act, but it is safeguarded by the fact that every Provincial Government, at the instance of the Government of India, has fixed definite limits to the amount of overtime that a man may be permitted to work. I think the House will agree that when a man's work is essentially intermittent, there is no doubt that he is going to get long intervals of rest.

Mr. President: The question is:

"That in clause 9 of the Bill, sub-clause (*d*) be omitted."

The motion was negatived.

Mr. N. M. Joshi: Sir, I move:

"That in sub-clause (*c*) of clause 9, for the word 'for' the word 'omit' be substituted, and the words and figures 'the word and figures '22 and 28' shall be substituted' be omitted."

Sir, the clause with my amendment will read:

"in the paragraph beginning 'in case (*c*)' omit the word and figures 'and 22'."

The other portion of the clause will also be omitted. Now, Sir, the class of people who are covered by sub-clause (*c*) of section 30 of the Indian Factories Act are those who are engaged in factories which necessitate continuous production for technical reasons, and in their case the Indian Factories Act gives exemption from sections 21 and 22. My proposal is that that exemption shall be given only from section 21 and there shall be no exemption given even from section 22; and I also do not want the exemption from section 28. Now, Sir, I do not understand why in the case of those people who are engaged on processes which require continuous production exemption should be given from section 22. Now, section 22 is a section providing for a weekly rest day and I do not know why simply because certain people are engaged on processes which require continuous production they should be deprived of the provisions of the Factories Act providing for a weekly holiday. Sir, if a man is engaged on continuous production, you can employ shifts of people and provide weekly rest to those who are employed on continuous production. Is it a great sin that some people have to work on processes which require continuous production? Why should they be deprived of a weekly rest day? Now, Sir, as regards this continuous production, there are very important factories, such as the Tata Iron and Steel Works in which practically the whole work requires to be a work of continuous production, and if you give exemption to a factory like that from section 22 of the Factory Act, you make a weekly rest day practically impossible for the whole lot of people engaged in the steel works at Jamshedpur; and as a matter of fact a large number of people engaged in Jamshedpur do not get a weekly rest day. The only reason why a weekly rest day is not given is that the employers do not want to engage a sufficient number of people to enable them to give a weekly rest day to their employees. If they had a weekly rest day, then naturally they would have to employ some more people in order that people may get a weekly rest day by shifts. I can understand that all the people will not get rest on one particular day. If Sunday is observed as a weekly rest day and if the

[Mr. N. M. Joshi.]

factory is a factory of continuous production, then all the people cannot be given a weekly rest on Sunday; but if the employer employs a sufficient number of people, he can give a weekly rest to all workmen on different days. Some may get a weekly rest on Monday, some on Tuesday and some on Wednesday. It is quite possible to provide a weekly rest for all people on different days, although it is not possible to do so for all people on one day. I therefore think that my amendment which takes away the exemption from section 22 for factories engaged in continuous production should be accepted by the House.

Mr. A. G. Clow: Sir, I must congratulate my Honourable friend on the ingenuity of this amendment. I imagine that what happened was that originally he wanted to delete the new power of exemption which Government proposed to introduce in the Bill. Then he saw that by a very slight change of words he could carry the fight into the enemy's camp and delete also one of the existing exemptions which has been in the Factories Act since the Act of 1922 was passed. Well, it is ingenious, but I am not sure that it is quite fair either to Government or to the members of the Select Committee, because no such proposal was made before the Select Committee. I am not at all sure that it arises out of the present Bill. However, the point is this. As regards section 22, in many cases it is very unreasonable to insist that in big factories with working processes which must be carried on continuously, like the Tata Iron and Steel Works a weekly holiday must be given to every one of the employees. A great many of these factories work, as my Honourable friend knows, three eight-hour shifts; so that the hours are very much shorter than in the majority of factories throughout India. We do try and insist on compensatory holidays as far as possible; and, speaking from memory, I think I am right in saying that in the factory to which my Honourable friend referred a holiday is given to operatives at least once a fortnight.

Mr N. M. Joshi: Why not once a week?

Mr. A. G. Clow: Even where that is done, it is not necessarily suitable that the shift should invariably end at midnight. It is obvious that even when you give 24 hours rest, if the shift ends at 3 in the morning, you are not complying with the Factories Act unless you let the men off for two days. I hope the House will reject the amendment. As regards section 28, I only wish to say that although the exemption will permit men to work for more than eleven hours a day, there is nothing in the Act which makes it possible to abrogate for these men the provisions of section 27 which insists on weekly hours not exceeding sixty.

Mr. President: The question is:

"That in sub-clause (*e*) of clause 9, for the word 'for' the word 'omit' be substituted, and the words and figures 'the word and figures '22 and 28' shall be substituted' be omitted."

The motion was negatived.

Mr. N. M. Joshi: Sir, I move:

"That in clause 9 of the Bill, sub-clause (*e*) be omitted."

I have already explained to the House what this sub-clause (*e*) refers to. Now, this sub-clause (*e*) gives exemption from section 28 of the Indian Factories Act. Section 28 of the Indian Factories Act says that no person shall be employed in any factory for more than eleven hours in any one

day. Now, Sir, my Honourable friend Mr. Clow said that most of these factories which are engaged in continuous production work for 8 or 8½ hours. If that is so, why do you want to give exemption from section 28 which says that no person shall be employed for more than 11 hours in one day. Clearly an explanation is required. If these factories engaged in continuous production work for 8 hours only and generally do not work 11 hours, you should certainly not give them exemption from the section which requires that the factories should not work for more than eleven hours. But, Sir, the fact is that there are very few factories in India which are engaged in continuous production which work for 8 hours. Generally they work a longer shift, a shift of 12 hours. Factories of continuous production can only work by shifts, with either shifts of 8 hours or 12 hours. Now, this exemption is given in order to enable factories to work on 12 hour shifts. That is quite clear; and to say when an amendment regarding a weekly rest day is discussed that there are very few factories which work more than 8 hours and therefore no weekly rest day should be given, and then again to come forward with an amendment and say that these factories should be given also an exemption from the rule that no factory should work for more than 11 hours is a very curious thing. I hope, Sir, that the House which does not feel very much interest in this subject will for once at least take an interest in this amendment, because there is a clear injustice. If the factories engaged in continuous production do not work for more than 8 hours, you do not want an exemption from the rule that the factories should work only for 11 hours. You cannot have it both ways. You cannot refuse to give holidays to the people on the ground that the factories do not work for more than 8 hours a day and then also make a rule that these factories may be worked even for 12 hours a day or for any longer hours a week.

Mr. B. Das: Then they get overtime.

Mr. N. M. Joshi: My Honourable friend says that they get overtime. If the Government provide that the people who work in these factories for more than 8 hours will get overtime, I shall see whether these exemptions will be given or not. My Honourable friend had better make it clear to the Government. You give overtime when you work for more than 11 hours. If the Government make it a rule that those people who are engaged for more than 8 hours shift shall get overtime pay according to the Factories Act, I am prepared to withdraw my amendment. But I am quite sure they will not do it. For overtime they calculate 11 hours a day.

Mr. A. G. Clow: 60 hours a week.

Mr. N. M. Joshi: 60 hours a week. But if you spread it over 6 days, it means 10 hours a day. It all depends upon how many days you work. But, Sir, it is 60 hours a week. If you give overtime allowance for any extra work over 8 hours a day, that is, 48 hours a week, then I am quite prepared to withdraw my amendment. But, Sir, it is not right that the Honourable Member should tell this House that the Factories do not work for 11 hours a day and that they work for 8 hours and 8½ hours a day and therefore the exemptions really do not matter much. These exemptions are given to the biggest factories in order that they should get cheap labour. They are not given to small factories; they are given to the biggest factories and I have already mentioned one of the biggest factories in India. As a matter of fact, these big factories in India are so big and so powerful that sometimes factory inspectors cannot do anything. Now, Sir, it is not fair that these big factories, which are the only factories

[Mr. N. M. Joshi.]

engaged in continuous production, should ask for exemptions in this way in order to get cheap labour. Continuous production does not require that a man should lose his weekly holiday nor does it require that a man should work for more than 11 hours. You can work continuously with an 8 hours shift. Of course, you can also work with a 12 hours shift. You really want a 12 hours shift, which, I trust, this House will now allow.

Mr. A. G. Clow: I just want to clear up a misapprehension raised by my Honourable friend Mr. Joshi. There is no question here of a regular 12 hours shift. In fact, it is impossible. No exemption can be given in this case for work which is more than prescribed in section 27, unless the same work comes under one of the other clauses, which is most unlikely. Section 27, which says that work can only be permitted to the extent of 60 hours a week can be abrogated in the case of clauses (*a*) and (*b*) of section 30 and not in the case of clause (*c*) which we are now considering. So that a man cannot work for more than 60 hours a week. I hope that meets my Honourable friend's point.

Mr. President: The question is:

"That in clause 9 of the Bill, sub-clause (*c*) be omitted."

The motion was negatived.

Clauses 9, 10, 11, 12, 13, 14, 15 and 16 were added to the Bill.

Mr. President: The question is:

"That clause 17 do stand part of the Bill."

Diwan Bahadur T. Rangachariar: Sir, I beg to oppose this clause. Honourable Members will see that the object of this clause is to take away the time limit which is prescribed under the law as it stands at present for launching prosecutions for failure to give notice. This proposed amendment is to take away the time limit to enable the Government to prosecute people after any length of time from the date of the commission of the offence. The nature of the offence in this case is failure to give notice before opening a factory and of the particulars prescribed by section 33, such as, giving the name of the factory, the names of the persons who have opened the factory and various other things. There are four requirements given in that section. The law as it stands at present prescribes the period of 6 months within which such prosecutions should be launched. Now, the proposal is to take away that period of limitation altogether. I cannot say that Government have made out any case for making this change in the law. All that was said was this. Take a hypothetical case where the factory has been working without the prescribed notice having been given. Then the Government will not be in a position to prosecute the party concerned for failure to give this notice. What is the harm done? The factory inspector will be entitled to go in and see if the requirements of the Act are complied with or not. If the factory inspector is so lazy or negligent that he is not able to know of the existence of a factory, then what is the object in enabling this prosecution to be launched? Indeed, there will be very few such cases. These factories are bound to be in municipal areas and in the area of local boards. I know that in my province both in the District Boards Act and the District Municipalities Act there are provisions requiring licences to be taken out for working factories, so that they are bound to

be known. It is not a thing which can be easily concealed. It was suggested, for instance, that in the by-lanes of Bombay city there may be a factory working without anybody knowing it. But how many such cases will there be? Government have not brought forward any figures that they have been unable to prosecute any cases of this sort. It is purely to meet a hypothetical objection which was put forward at a conference of inspectors. The inspectors merely suggested that it will not be possible for them to prosecute if a factory has been working for six months. No figures of such cases were given. It was only said that such cases can arise. But they are easily discoverable and I do think that there must be a period of limitation now. The proposal is to take away all limitation. If six months is too short, then let them have one year. If any difficulties in the working of the factory are discovered and if other provisions of the Act are not complied with, then there is nothing to prevent the men from being prosecuted for failure to comply with other provisions of the Act. Therefore, it is not a vital matter and I do think that there should be a limit of time for launching a prosecution of this sort. It is usual to prescribe a period of limitation within which prosecution should be launched. It must be a short period. This provision is really intended to encourage neglect on the part of the factory inspectors. They should be on the lookout and I do submit that here is a case where this wholesome provision of the law should not be removed. There is no case made out for the repeal of this section.

2 P.M.

The Honourable Sir Bhupendra Nath Mitra: Sir, my Honourable friend, Diwan Bahadur Rangachariar, raised this very point in Select Committee, but I am afraid he found himself in a hopeless minority. It was then explained to him, and I shall again repeat the explanation, that the factory inspector is not in the position of a police officer. It is not his business to go round and find out where factories are being started. After he has received notice that a factory has been started, then his functions really begin. He then inspects the factory and satisfies himself that the provisions of the Factories Act are being complied with. The danger, if we continue the limitation now provided, is that a factory may spring up, no suitable notice is given to the inspector, and the inspector is left to find out the existence of the factory from other sources and he may not be able to get that information. There may be an accident because of the contravention of the factory regulations, and people may lose their lives. Happily cases of that sort have not been numerous, but still cases have occurred. Cases have been brought to our notice, and that is what led to the provision being inserted in the amending Bill.

Clause 17 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Sir Bhupendra Nath Mitra: Sir, I move that the Bill, as amended, be passed.

The motion was adopted.

The Assembly then adjourned for Lunch till Ten Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Ten Minutes to Three of the Clock, Mr. President in the Chair.

NOMINATIONS TO THE PANEL FOR THE STANDING COMMITTEE ON EMIGRATION.

Mr. President: I have to inform Honourable Members that up to 12 noon to-day only 10 nominations have been received for election to the panel for the Standing Committee on Emigration. As 16 members are required for the panel in question I extend the time for receiving further nominations up to 12 noon to-morrow, the 18th March, 1926.

THE INDIAN INCOME-TAX (AMENDMENT) BILL.

The Honourable Sir Basil Blackett (Finance Member): Sir, I beg to move that the Bill further to amend the Indian Income-tax Act, 1922, for certain purposes, as reported by the Select Committee, be taken into consideration.

It will be remembered from our previous discussion of this Bill that it deals with two main questions. One is the question of the machinery for the recovery of super-tax from non-resident share-holders in Indian companies. The other is that it provides for an appeal in certain cases to the Privy Council. The Select Committee has returned the Bill to the House very much in the form in which it received it, having inserted, however, some small improvements. On the question of the appeal to the Privy Council there is a small matter in which the Government do not quite agree with the Select Committee, but I believe that I shall be able, when we come to deal with the clause in question, to make a statement and give an undertaking which will be satisfactory to the House and will meet the point at issue. On the question of the recovery of super-tax from non-resident shareholders, Mr. Willson maintains his dissent. I regret very much that we have been unable to secure Mr. Willson's support because I do attach importance to the working of the Income-tax Act in co-operation with the tax-payer. However, I do not propose to anticipate the discussion that will no doubt arise, and I therefore confine myself at this stage to moving for consideration.

The motion was adopted.

Mr. President: The question is:

"That clause 2 do stand part of the Bill."

Mr. W. S. J. Willson (Associated Chambers of Commerce: Nominated Non-Official): Sir, I beg to move the small amendment* which stands in my name. This clause 2 is, if I may say so, one of the best clauses in the Bill, in so far as it seeks to place at the disposal of Government information as to who are receiving dividends. It will therefore assist them in collecting ordinary income-tax as well as super-tax from the resident and from the non-resident. The clause however reads, in the middle, that the principal officer of the company shall furnish the names "and so far as they are known to such principal officer, the addresses of

* "In clause 2 of the Bill in the proposed section 19A for the words 'so far as they are known to such principal officer, the addresses' the words 'of the addresses, as entered in the Register of Shareholders maintained by the company' be substituted."

the shareholders." Sir, that seems to me to place an unfortunate doubt upon what is the duty of the principal officer of a company. I must point out here and now that under this Bill a great deal of duty is being imposed upon the principal officer of a company, for all of which he is to remain unpaid. But nevertheless, especially under clause 5 (2), sub-sections (2) and (3), he is to be financially responsible if he fails to carry out any obligations under this Bill. I therefore, Sir, want this section 19A to be quite plain in stating what is to be expected from a principal officer in this case, and I think I need do not more than place before the House an imaginary case. Will the House kindly imagine itself in the position of a principal officer of a company for a moment, and take a shareholder, say, Sir Purshotamdas Thakurdas, who is well known to everybody in this House. Under this clause it should be made quite plain that in giving his address, the principal officer should give his registered address, which I presume would be Malabar Hill, Bombay. But under this clause as it is worded, it would be quite competent for any income-tax officer to come to the unfortunate principal officer of the company and say, "Why did you give me the address as Malabar Hill, Bombay, when you must have known perfectly well that Sir Purshotamdas Thakurdas had gone to England on the Currency Commission and would be there for some time?" Now that is a very real example and all I say is that the principal officer cannot be expected to know, cannot be expected to occupy his brain in thinking out what may be any temporary address of anybody. The only address that he has official cognisance of is that in his Register and that is what my amendment is worded to achieve. I, Sir, lay no claim to being an expert draftsman, so that if the Government accept the principle for which I ask, and think fit, with their superior knowledge of drafting, to alter my wording, I shall not have the slightest objection, but for the principle I do ask.

The Honourable Sir Basil Blackett: Sir, this clause as it stands is very nearly a reproduction of another clause which lays a similar duty on the principal officer to give certain names, so far as they are known to him. As drafted the clause I think is really quite clear. The objection that I feel to accepting this amendment is not that I should expect in ordinary circumstances that the principal officer would give any other address than that which he takes from the register of shareholders, but we wanted in this matter to be working with the companies, and it does seem to me that it is undesirable that the principal officer, if in any case he knows quite well that the registered address would convey nothing to the income-tax officer, while some other address might be useful to him, should be in a position to refuse to give him any other information, but I do not want unnecessarily to quarrel with Mr. Willson, and though I prefer my own words, I will not object to his amendment.

Mr. President: The question is:

"That in clause 2 of the Bill in the proposed section 19A for the words 'so far as they are known to such principal officer, the addresses' the words 'of the addresses, as entered in the Register of Shareholders maintained by the company' be substituted."

The motion was adopted.

Clause 2, as amended, was added to the Bill.

Clauses 3 and 4 were added to the Bill.

Mr. President: The question is:

"That clause 5 do stand part of the Bill."

Mr. W. S. J. Willson: Sir, I beg to move the amendment which stands in my name:

"That in sub-clause (2) of clause 5 of the Bill the proposed sub-section (2) of section 57 be omitted."

Sir, I want to put my case as briefly as I can, because I have already had occasion to address the House before on this subject, but all the debates in Select Committee and elsewhere have not shaken me in my opposition to this clause for one moment. The clause, as I have already pointed out, aims at the whole root of secrecy in regard to super-tax. I do not propose to go over this same ground at any length, because I have dealt with it in my minute of dissent and I give Honourable Members credit for having read that. Sir Basil Blackett in his speech on a previous occasion said that it was only disclosing a part of, or the Indian, income of a person, but that is no answer to the objection to the whole principle. I would like to detain the House for a minute by quoting to them from an American journal received quite lately, which shows how, even in America, which has accepted the principle of publication, it is objectionable. On the 14th January in Washington, U. S. A.:

3 P.M.

"steps were formally taken by the Senate Finance Committee to-day to ratify the action of the House in removing from the laws the offensive publicity provisions and to write into the pending 1926 Tax Act Bill a provision for the creation of a permanent board or Committee of the House, Ways and Means Committee, etc."

That will be found in the *Journal of Commerce*, New York, dated the 15th January, 1926. On the next day, Saturday, the 16th January, there was a leader headed "End of the First Lesson", from which I will read as little as I can:

"With the news from Washington that the Senate Finance Committee has determined to leave out of the new Income-tax Bill the so-called publicity provisions, it may be fairly said that here endeth the first lesson. . . . The provision was obnoxious to vast masses of people, perhaps less so to the rich than to those who are poor and did not care to have their neighbours and competitors know how small an income they had. . . . Our income-tax practice is now so complex and intricate, with so many legal and perhaps legitimate ways of evasion, that there can never be any certainty as to whether an income is non-taxable."

I will not read any more. (Laughter from Members on the Government Benches.) I will, if you like!

"Yet the frame of mind which produced publicity must be looked to as an unquestionable source of other schemes equally hare-brained, equally inconsiderate and equally unproductive."

Sir, the clause before us, I submit, is contrary to the intention of the Legislature at the time the Act of 1922 was introduced and passed, and it is contrary to the accepted policy on which super-tax is based. It is introduced here for the purpose of taxing non-residents only; but what will be the effect of it? May I quote to you the case of English investment companies trading abroad? It is their business to collect money from their own countries and invest them wherever they can get a good return. An investment company usually aims at safe investments such as preference

shares, debentures, etc. I have pointed out in my minute of dissent that this Bill anyhow would be inoperative against debentures, which are usually payable to bearer with an interest coupon attached. Therefore, so far as debentures are concerned, this Bill would be of no use to Government. In the case of preference or other shares, however, it would involve a deduction at source. Now, Sir, those investment companies who have invested their money out here have never hitherto had to pay super-tax, and if it is now sought to cast that upon them, what must be the effect of it? It would discourage them absolutely from investing their money in this country. It may be said, "They will sell out. Let them." Well if a resident B, buys from a non-resident A, you are not adding one iota to the capital of the country, but you are stopping B's money from being available for purposes of new developments in this country by diverting it into shares which are already held and industries which are already in existence. That to my mind is a bad feature, and it is entirely contrary to the findings of the External Capital Committee which sat a year ago, wherein it was stated that foreign capital is not disadvantageous to the country.

Consider another case which has only recently occurred to me although I have known of it for a long time, and it is this. There were in this country two trustees—A, a well-to-do man paying super-tax, and B, not so well-to-do, not paying super-tax, who were trustees and held a trust for a third party C, a resident of this country not liable to super-tax. A having retired and gone to England, what will now happen? The principal officer of a company only recognises the first name on his list, A. We will assume he knows A has to pay 4 annas super-tax. He will therefore deduct from that trust fund dividends 4 annas and send the dividend warrant to A with 4 annas or 25 per cent. deducted. Unfortunately the beneficiary C will have his income cut forthwith. He cannot even make a claim for refund, as I understand for 12 months, and it will take several months after that to get the money back. That is a direct injustice to C. Look at it how you will, beneficiaries whenever there are non-resident trustees, must suffer an altogether undue amount of interference under this clause. Banks, as I point out in my minute of dissent, are all large registered shareholders. Though the shareholdings may not belong to them the adjustments, which will have to take place under this clause if it is passed, will involve an enormous amount of work and the worry this clause will put upon legitimate holders seems to me to be out of all proportion to what we are likely to get out of it. I cannot, any more than can the Honourable Member himself, give any figure as to what Government are likely to get out of it. My point is, my advice to him will be to leave out this clause. Let us see how the last clause 19A operates, and from that you will be able to prepare a statement showing what you actually do lose. Then we shall know whether it is worth it or not. Then if you prove it is worth it, we shall be willing to help you to draft some other clause to meet the state of affairs.

There is also an effect which I think may not have been taken seriously into account. That is the effect upon a man's credit of having it published that he used to pay 2 annas—we will say—in super-tax on his shares and subsequently a notice issues to say it is reduced to 1 anna. It may be said that that only means he has sold out some of his Indian holdings, but it may be *known* that he has nothing else! So the blow to his credit will be real. I understand that no attempt has ever been put into force in England, to collect super-tax from the non-resident. It has been gone into time and again, but no suitable machinery for that purpose has ever been devised.

[Mr. W. S. J. Willson.]

I should like to quote just this one paragraph from the "Report of the Royal Commission on the Income-tax" published in 1920:

> "The effect of residence outside the United Kingdom places such difficulties in the way of returns, serving notices and collecting duty that any attempt to collect super-tax from non-residents tends from one cause or another to break down in practice."

Our Government in India seem to think that they are more capable of introducing a measure to collect non-resident super-tax than they are in Great Britain, hence this Bill which is before us, and this clause which I have submitted is so highly objectionable. I have already touched upon the defects of it and I may mention another, and that is that for those who wish to evade it it is extremely easy.

I say as a principal officer of a company that I am perfectly willing to go on giving all the information to Government that they may reasonably demand of me, but that that is the most I can be expected to do. It is not my duty to do the collecting for Government and they should do it themselves. I point out to the House further that, if this principle be once accepted, you must be prepared to find eventually that it is but the thin end of the wedge. Sooner or later Government will be anxious to introduce measures by which everybody's super-tax will be deducted at the source and of course they could then go one step further and so collect any other tax they like. It is unfair further to suppose because a man is once upon the books of the Government as liable to super-tax, that that liability is the same every year. Income-tax is a totally different matter. A dividend warrant made out for a certain sum, say Rs. 50,000, carries on the face of it an implication of an income-tax but it does not carry an implication of super-tax, nor of any amount. I do not propose to repeat my arguments in regard to the way dividend warrants pass round from hand to hand. I should like to know what procedure the Income-tax Department propose to follow with a view to not casting upon proper tax-payers the evils which I have endeavoured to point out. I shall have occasion later on to enlarge a little upon that in connection with the next clause, but I do make a last appeal to Sir Basil Blackett to agree to the deletion of this clause for the present and ask him first of all to test the efficacy of clause 19A. With these words I move the amendment for the deletion of the clause.

Dr. L. K. Hyder (Agra Division: Muhammadan Rural): Mr. President, I regret very much that I cannot support the amendment which has been brought forward by Mr. Willson. I regret further to have to say that I read his minute of dissent very carefully and I find that the reasons which he has given are not at all good. He has added two additional reasons to the reasons which he has embodied in his minute of dissent. Now I will take up these points one by one in order to show that the position which he has taken up is not at all a position that anybody should take up. First of all he says that the publicity provision in the income-tax law of the United States of America has been deleted. I ask him to apply the argument fairly. What has been deleted, I understand, is the publicity in the newspapers about the amount of income-tax paid by the different people, and I ask him to say whether in the income-tax law embodied in the Income-tax Manual issued by the Central Board of Revenue there is any provision of that kind for publicity in the newspapers. That, Sir, is a bad reason for a bad case.

The second argument he has given is that there will be discouragement of investment as regards foreign capital. I say he has not analysed the case. Otherwise he will not adduce a bad reason for a bad case. Let me put to you the case like this. There is according to him investment in British India not only by investment companies operating from abroad but I think he will admit there is investment also by individuals or non-resident foreigners, whatever their country of residence may be. Now then, he says that this will tend to discourage the investment of capital by these companies. I ask him—why does he jump from that to the conclusion that there will be discouragement of investment of capital generally? Capital from other countries is there. The people who invest in India, not through the investment company but on their own behalf, have to pay super-tax, have to pay income-tax and there is no discouragement at all. The thing which he fears cannot arise because the non-resident foreigner who does not invest through an investment company pays the due share which ought to be paid to the State and this only tends to show that the investment of foreign capital in British India by means of investment companies, what shall I say, defrauds the revenue.

Mr. W. S. J. Willson: You might prove that.

Dr. L. K. Hyder: I will prove it. The case I am arguing is this. There is the investment in India of capital through other sources than the investment company. This other capital which is in the ownership of non-resident persons pays super-tax and income-tax. Since this capital pays this super-tax and income-tax, how does it come about that there will be discouragement of investment through the investment company? That is precisely the thing which we want to break up because the investment through the investment companies cheats the revenue and an honest non-resident foreigner does nothing of the kind and is subject to the same liability.

I oppose the amendment which has been brought forward by my friend Mr. Willson because it cuts at the root of another matter. There is nothing more fundamental in the income-tax law or super-tax law than this that you ought to apply the principle of aggregation. Collect all the aggregate income which accrues to a certain person, whether resident or non-resident, and in this way we should be able to judge of his ability to bear the tax. The thing should be applied to the people resident in the country but when it comes to the investment companies Mr. Willson says "hands off". He also says there is nothing of the kind in England. Let me read to him from an English text book written by a lawyer as regards the liability of foreign capital to the taxes levied in England. He says:

"The income of an incapacitated, non-resident or deceased person is chargeable to super-tax in the name of his representative or the incapacitated or non-resident person may himself be charged if he can be reached."

That is the provision which exists in England.

With regard to the question of refunds let me put to you the position. I do not wish to read the rules. I may say this that in England there is no reduction made from the assessable income if the income accrues to a non-resident person. There is a provision only for three matters, deduction, reduction and allowance if it accrues to a British subject. I put this to Mr. Willson, let him have it fairly and squarely. Let his favourite investment company and the persons who compose it come under the provisions which exist in our law with regard to relief from double income-tax within the Empire. Not otherwise. What, Sir, Mr. Willson

[Dr. L. K. Hyder.]

wants is to put the burden of the taxes on to the shoulders of the general tax-payer. I say that that is a very bad thing to put forward.

Now, Sir, I understand he says something also about secrecy. I am not at all certain in my own mind whether to advocate the maintenance of this principle of secrecy. But take the case he has put forward. Secrecy is advocated with regard to income-tax because there is a fear that the person may be injured in his business credit. I ask him whether if there is a non-resident person carrying on his business in British India, there is any danger that his business credit will be injured. No, Sir, nothing of the kind. His credit exists in some other country, in America or France or wherever he comes from. He will not be in fear of losing his business credit if the income-tax officer and a few of the company's officers get to know what his total income from Indian sources is.

I began by saying that my Honourable friend Mr. Willson has given very bad reasons for a very bad case, and therefore I oppose his amendment.

Sir Darcy Lindsay (Bengal European): Sir, I have listened with considerable attention to the speech made by my Honourable friend Dr. Hyder but I cannot say that he has dealt as effectively as he himself imagines with the points made by my Honourable friend Mr. Willson. The main argument put forward by Mr. Willson in favour of this amendment is that he does not want publicity, and I have heard very little from Dr. Hyder on that point. The major part of his speech was devoted to investment companies and whether they kept their money out here or whether they removed the money. Now, Sir, Mr. Willson, I maintain, has made out a very good case why there should not be publicity, as might be the case if this particular clause remained. I fully realize that the Honourable the Finance Member is no more in love with publicity than the rest of the House, and I suggest . . . .

The Honourable Sir Basil Blackett: The rest of the House are not in love with publicity?

Sir Darcy Lindsay: No.

Mr. M. A. Jinnah: It is the other way about.

Sir Darcy Lindsay: I suggest to him that under clause 2, new section 19 (*a*), he has made ample provision for obtaining information as to who is liable for super-tax both resident and non-resident. He further obtains from the principal officers of companies the addresses of all the shareholders and I ask that the Income-tax Department, when they have ascertained whose incomes are liable to super-tax, should send one of the usual polite letters that most of us receive commencing, " Sir, I have the honour to inform you, etc.", so that the shareholders who are assessable to super-tax should be advised by the Department that the super-tax is due. If they fail to meet the claim it is time for Government to take such action as lies in their power to recover the amount. I contend, Sir, that that could be secured by a slight alteration in sub-section (2) of clause 5, where it says:

" He may by order in writing require the principal officer of the company to deduct at the time of payment of any dividend from the company to the shareholder, etc. . . ."

I would say:

"He may by order in writing require the principal officer of one or other of the companies to deduct at the time of payment of any dividend from the company to the shareholder in that year the total amount of super-tax found to be due."

The Government would be obtaining the full amount of the tax but they would not be disclosing to possibly numerous companies what proportion of super-tax the man was assessable to. That would in my opinion secure the privacy that is so desirable in this matter. I am quite at one with the desire that all who are liable should be made to pay. I am quite in agreement with the views held by the Department that this information that they now seek to obtain from companies will bring in increased revenue, because in my opinion there are a certain number of assessees who have retired from India for good and are still obtaining dividends from Indian companies and unwittingly paying super-tax thereon to Somerset House instead of to India. This letter that I suggest should be addressed to the assessees would no doubt explain the position and in future the super-tax would be paid here and refunds obtained from home, because they would have to pay there in any case; or it might be possible for the Government of India to set up an agency to obtain from Somerset House an adjustment for these assessees. We quite recently passed a small demand for, I think, about £600 towards expenditure at the High Commissioner's office, London, in connection with refunds.

Mr. A. H. Lloyd: For one year.

Sir Darcy Lindsay: Well, never mind. The amount was sanctioned, as Mr. Lloyd says, for one year; but if the work proves successful there is no reason why it should not be extended and come into operation as regards super-tax as well as income-tax.

The Honourable Sir Basil Blackett: Sir, I am sorry not to be able to meet Mr. Willson on this amendment. Its acceptance would destroy the purpose of the Bill. As far as I understand his objections they are very nearly reduced to the one of undue publicity. Most of the objections indeed which he has brought against the section apply to the existing section which we are trying to improve. But this argument of publicity is the one on which he evidently relies with particular force. Now it is a curious thing that when we discussed this Bill with the various Chambers of Commerce last year—the matter has been under discussion since the autumn of 1924—when we discussed this provision last year, this question of secrecy was never raised in any quarter. On the contrary, one of the Chambers which was consulted on that, the Bombay Chamber of Commerce, wrote in reply to our circular letter regarding the amendment of section 57 (2), that:

"the efficacy of the proposal is largely a matter for the income-tax authorities to determine, and in so far as, if practicable, it would relieve the principal officer of a Company of the responsibility of deciding the actual amount of super-tax demand in each instance, the Committee can only welcome the introduction of such a system."

I do not want to pursue the question of the attitude of the Chambers of Commerce, but I think it is only fair to the Government to point out that they had no notion, until these debates began in this House, that this question of secrecy was of any importance to Chambers of Commerce. I must confess that I still regard it as a point without substance. The complaint is that this provision for information at the source and taxation at

[Sir Basil Blackett.]

the source will bring to the knowledge of the principal officer of the company concerned and possibly of some others the general division of the scale within which the income of the subject to be taxed is believed by the income-tax officer to fall. It will not of course disclose even the exact figure of anybody's income, nor will it disclose the total of anybody's income. It will merely disclose the sort of amount that he happens to have invested in India, being himself a non-resident in that particular year. If it changes from year to year, it may simply be and very often will simply be as the result of re-investment. In effect this is a permissive section. The principal officer of a company is to receive from the Income-tax Officer information as to the rate at which super-tax is to be deducted from the dividends of a non-resident shareholder, but this procedure will not ordinarily be resorted to where the non-resident shareholder has a duly authorised agent in British India to whom dividends are paid, and through whom he may be assessed to super-tax in the ordinary way under section 48 of the Act. The individual tax-payer himself has therefore in his own power the means of avoiding any kind of disclosure whatsoever. The Government are perfectly prepared to include instructions in the Income-tax Manual to the effect that the clause will not be usually brought into effect in regard to tax-payers who have authorised agents in British India and are paying super-tax. Sir, I really do submit to the House that this point about publicity, of which we have heard so much, is really not a major point.

As regards the Honourable Sir Darcy Lindsay's suggestion, I think that if he will consider it, he will see that it would be scarcely an improvement. His proposal is that the income-tax officer should be given apparently a wide choice as to which of the particular companies he should fix on and should deduct possibly the whole of the dividends payable by one particular company by way of income-tax instead of spreading it over the course of the year over all dividends. I do not think that is really a proposal which would appeal to those who are opposing this Bill.

Mr. President: The question is:

"That in sub-clause (2) of clause 5 of the Bill the proposed sub-section (2) of section 57 be omitted."

The motion was negatived.

Mr. President: The question is:

'That clause 5 do stand part of the Bill."

Mr. W. S. J. Willson: Sir, I have another amendment?

Mr. President: I had already called upon the Honourable Member to move it.

Mr. W. S. J. Willson: I am very sorry that I misunderstood you, Sir.

Sir, I have another small amendment* with regard to this clause now under discussion, in order to provide that where the non-resident is in fact paying super-tax, this clause as drafted shall

* "In sub-clause (2) of clause 5 of the Bill on the proposed sub-section (2) of section 57 after the words 'British India' the words 'and is not or has not been paying super-tax' be inserted."

not operate against him. Here, again, Sir, I have to say that I am in no way proud of my drafting, and it may be that Government, if they were willing to accept the principle, could draft it in a very much better way for me. If so, I should be very glad. This gives me an opportunity to say that Sir Basil Blackett has not dealt with all my objections to this clause; otherwise I should not have to proceed with this present amendment. It is of course something that he is prepared to issue instructions in the Manual that this clause shall not be used where the non-resident has an agent. That is, I admit, something, but it is extremely little to give when the clause in itself has been so objectionable. He said that to delete this clause would destroy the purpose of the Bill. Well, I cannot go into that now, but I differ from him absolutely. He said that my other arguments would not apply to the objections we were trying to remove. I would point out, Sir, that he has not in any way attempted to explain how he would deal with the hardships to which I have referred as undoubtedly arising under the Bill as in the case of trustees and as in the case of banks or other holders on behalf of third parties. It is therefore, Sir, to safeguard such people as those that I move this present amendment.

The Honourable Sir Basil Blackett: Sir, in regard to Mr. Willson's last remarks my general reply has already been given, namely, that those objections which he is making apply equally to the clause in the Act as it stands in so far as they apply at all. I am sorry that I cannot accept the amendment that is now proposed. If it were adopted either in this form or in an improved form, it would still leave a large loophole for evasion; but I am perfectly prepared to give instructions as already stated, and these instructions would be inserted in the Manual to the general effect that the assistance of this new section is to be invoked only where the non-resident has not been reached by other means.

The motion was negatived.

Mr. W. S. J. Willson: Sir, I beg to move:

"That in sub-clause (*2*) of clause 5 of the Bill in the proposed sub-section (*3*) of section 57, for the words 'has not reason to believe that the shareholder is resident in British India' the words 'has reason to believe that the shareholder is not resident in British India' be substituted."

Sir, this is merely putting the "not" in a different place, but the effect of it appears to me to make a very considerable difference to the Bill. The Bill as worded says that the principal officer of a company shall deduct super-tax if he has not reason to believe that the shareholder is resident in British India. Now, Sir, let me put it to the House in this way. Let us take an example. Let us take another friend of ours, a Member of this Legislative Assembly. Let us take Mr. N. M. Samarth. How is a principal officer of a company to know whether he "has not reason to believe that the shareholder is resident in British India"? I submit that one principal officer of one company would read it one way and another would read it another way. I presume that Mr. Samarth's shares if he has any, would be registered at a Bombay address. Yet any principal officer could say that he "has not reason to believe that the shareholder is resident in British India". I think if I were to ask Mr. Hussanally what his interpretation of that would be, he would give me one answer, and if I ask a merchant like Mr. Kasturbhai he would give me a totally different one! I do think that the wording proposed by me

[Mr. W. S. J. Willson.]

is a great deal plainer, and moreover it is more in accord with the wording of sub-section (*2*) as drafted by the Government. It says:

"Where the Income-tax Officer has reason to believe that any person, who is a shareholder in a company, is resident *out of* British India . . . "

When the principal officer of the company is concerned, he "has not reason to believe that the shareholder is resident *in* British India". The principle should be that the principal officer should assume him to be resident in British India unless he had *reason* to believe that he was *not* so resident. That is a point which I should particularly put to Mr. Jinnah who can interpret the law better than I can myself.

I do not know, Sir, whether you would like me to move the second part of my amendment at the same time or treat it separately. The second part is similar to the one which . . . .

Mr. President: Both parts go together. If the Honourable Member so desires, he might move both together.

Mr. W. S. J. Willson: In that case I will formally move it as it is down on the paper. As however the House did not support me with it in the last clause, it is hardly worth putting it again. With your permission, I will confine myself to the wording which I moved when I first rose. I must again point out, Sir, that it is not fair to put upon the principal officer of the company any doubt as to what he is to do. I have pointed out he is to be liable and if he makes a mistake, he will have to pay the money. That is undoubted. Therefore, Sir, you should not put the principal officer in any position of doubt. I am inclined to admit that this clause as at present worded affords as full a measure of protection as possible to a principal officer against a shareholder, but on the other hand it gives the unfortunate shareholder no claim at all. Under this clause a principal officer must, if he has the slightest doubt, unhesitatingly deduct the money; otherwise, he is responsible for it himself; whereas if a shareholder is improperly treated, if as I have suggested different principal officers treat a shareholder in different ways and the non-resident receives a dividend from one company with super-tax deducted and from another company with super-tax not deducted, if he goes round to the company that had deducted and asks "Why did you deduct this?" the principal officer would simply say "I had not reason to believe that you were resident in British India" without having to make any case or statement that he had reason to believe that he was resident *out of* British India. Therefore, Sir, this clause puts the shareholder in a difficult position. After all it is the shareholder that we want to consider, firstly, because he is the man who has great difficulty in getting his redress, and this clause imposes far too much responsibility on a principal officer, a man who is not paid for the duty which it is now sought to impose upon him yet who must pay if his action is by any means at fault.

The Honourable Sir Basil Blackett: I am not quite sure what the real difference between Tweedledum and Tweedledee is in this case. In the present form we have put the principal officer of a company in a stronger position in relation to the shareholder who questions his action. I see that Mr Willson agrees, so that I am almost convinced now that we are right in sticking to the form in which we have drafted this Bill, because it is our object in imposing this duty on the principal officer not to expose him

to vexatious trouble from the shareholder in the event of his having acted to the best of his knowledge and belief in a way that does not please the shareholder. The only difference, I think, between the clause as drafted by us and as drafted by Mr. Willson is that the principal officer will act in the same way in all cases, but he will be rather more exposed to trouble from the shareholder under Mr. Willson's drafting.

Mr. President: The question is:

"That in sub-clause (*2*) of clause 5 of the Bill in the proposed sub-section (*3*) of section 67:

(i) for the words 'has not reason to believe that the shareholder is resident in British India' the words 'has reason to believe that the shareholder is not resident in British India' be substituted.

(ii) after the words 'resident in British India' the words 'and is not or has not been paying super-tax' be inserted."

Mr. W. S. Willson: I asked your permission to withdraw the second part.

The second part of the amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is that the first part be adopted.

The motion was negatived.

Clauses 5, 6, and 7 were added to the Bill.

Mr. President: The question is:

"That clause 8 do stand part of the Bill."

The Honourable Sir Basil Blackett: Sir, I beg to move:

"That in clause 8 of the Bill, the proviso to sub-section (*2*) of the proposed section 66A be omitted."

This proviso has the effect of making it a condition of the High Court certifying a case as a fit one for appeal to the Privy Council that the High Court should be satisfied that

"if the respondent does not appear at the hearing of the appeal and the judgment of the High Court is varied or reversed, the right to recover any costs which may be awarded by the order of His Majesty in Council to the appellant will not be exercised."

I quite recognise the object which is sought to be achieved by this proviso and I have no objection in principle to that object being achieved. My objection is to the inclusion of a clause of this nature in a Bill of this sort. I am quite willing to give an undertaking on behalf of the Government that, unless there are very exceptional circumstances, the Government would undertake not to ask for costs in cases of the character envisaged by the provision in question. As a matter of fact I do not think the Privy Council would in any ordinary case think of granting costs even if they were asked for, but there are, I think it is obvious to the House, objections to a clause of this sort involving a very big general principle being adopted in what I may call, a hurry. I therefore move, Sir, the deletion of the proviso and I trust that the undertaking I have been able to give on behalf of the Government will satisfy my Honourable friend Diwan Bahadur Rangachariar and others that a substantial point has been met.

Diwan Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, I quite recognised that a provision to this effect is rather a novel provision, but at the same time we felt it necessary that there should be such a provision because we are giving a right of appeal in exceptional cases. Being a costly procedure we thought that a Government which had the command of the public purse should not harass by recovering costs against persons who do not care to defend the appeal to the Privy Council. The undertaking is good enough, but unfortunately it is hedged round again by that clause, "unless there are exceptional circumstances." It is only to cases where the respondent does not appear and defend the appeal before the Privy Council that the undertaking extends. I do not know why my Honourable friend wants to have that limitation in that undertaking, for, after all, it is only an undertaking; it is not a legislative provision. These undertakings must be issued as departmental instructions. They will, I think, act as a guidance to the executive officer. At any rate, they should take that form. "Unless there are very exceptional circumstances;" the difficulty will be, who is to be the deciding authority. It may be the Government of India. If there is such a provision, then I can understand it. But if it is to be the Local Government or any other party, then there will be difficulty.

The Honourable Sir Basil Blackett: It will be the Government of India.

Diwan Bahadur T. Rangachariar: Although it is not so satisfactory, I am prepared to accept that undertaking for my part and I am sure my Honourable friends would also accept it. I only hope that this "unless" will not become a *mamul*, but that it will be resorted to in most exceptional circumstances, and I hope they will be very careful in carrying out this undertaking.

***Diwan Bahadur M. Ramachandra Rao** (East Godavari and West Godavari *cum* Kistna: Non-Muhammadan Rural): Sir, I only wish to add one word and that is that the executive instructions which the Honourable Sir Basil Blackett has promised to issue should be as far as possible in terms of the section which has been embodied in this Act. I really do not see how any exceptional circumstances can really arise when the respondent does not choose to appear before the Privy Council and when the only case that is provided for in this clause is the case where the man does not choose to appeal but where the Government of India consider that the matter is one of supreme importance for them to obtain the decision of the Privy Council. Therefore the words "unless there are very exceptional circumstances" are, I venture to say, merely the extremely cautious way in which my Honourable friend has put them. They are really Pickwickian and mean nothing in regard to this particular clause. Therefore, I wish to make it quite clear that there can be no case until those words can be really operative. I do not wish that my Honourable friend should put us in any difficulty regarding this matter because those words do not really mean anything.

Sir P. S. Sivaswamy Aiyer (Madras Nominated Non-Official): The respondent may be a very rich man.

Diwan Bahadur M. Ramachandra Rao: My Honourable friend says that the respondent may be a very rich man. But he does not choose to appear.

*Speech not corrected by the Honourable Member.

There are many rich men who do not wish to waste their money in litigation. There is no reason why you should saddle a rich man like my Honourable friend with costs, because Government think that they should go to Privy Council, I do not think he would relish such an idea. Therefore, my Honourable friend should make it quite clear that there is no need for this extreme caution suggested by his words. Now that he has consented to issue executive instructions, I trust they will be acted upon. Of course my Honourable friend said "in the opinion of the Government of India". The real difficulty is that these cases will be within the purview of each Income-tax Commissioner in the various provinces. I do not know if my Honourable friend proposes to have all these cases reported to the Government of India. I do not think the Government of India would like to have a report on each case.

The Honourable Sir Basil Blackett: Certainly.

Mr. A. H. Lloyd (Member: Central Board of Revenue): No Commissioner of Income-tax will be allowed to appeal to the Privy Council without applying to us.

Mr. M. A. Jinnah (Bombay City: Muhammadan Urban): Sir, I would like to say one word on this Bill. I really fail to understand what special circumstances can possibly arise in the case which we are contemplating. Either the Government mean to give an undertaking in the clearest language or they do not mean to give an undertaking at all. If you do not want to give an undertaking, then it is no use giving one which is of no use. Here we are contemplating a class of cases where the Government alone would appeal and the respondent does not appear. In that event surely there can be no special circumstances of any kind whatsoever. And I do ask the Honourable the Finance Member really to consider the position. I say the undertaking is worthless unless you give a definite undertaking that in the event of a respondent not appearing, if the Government choose to go up to a higher court and they succeed, they will not claim costs. The Privy Council, in my humble opinion, would be bound to order costs against the respondent even if it is obliged to decide the case *ex-parte* because he fails. If he does not choose to appear, it is no fault of the appellant. They will say he obtained the decision in his favour in the lower court and the Government were bound to appeal to have that decision reversed. Unfortunately or fortunately, the lower court is not made to pay the costs for having come to a wrong judgment when it is reversed. You find in many cases that the Privy Council have awarded costs against the respondent who does not appear. Therefore this undertaking is no good at all. I do ask the Honourable Member, therefore, to give an undertaking which is worth something or to give no undertaking at all.

The Honourable Sir Basil Blackett: Sir, I rather feel myself on the way down to Jericho when I see myself amongst so many lawyers. I am completely beyond my depth when Mr. Jinnah takes up hypothetical circumstances and tells me, what I am sure is quite the case, that he cannot conceive these exceptional circumstances. Nor can I. But that is exactly why I have put in these cautious words. We are dealing with hypothetical cases and I am sure the Government will give their most careful consideration to such cases. In order, however, to give the desired hall-mark, I am prepared to withdraw the words "in the most exceptional circumstances."

Mr. President: The question is:

"That in clause 8 of the Bill, the proviso to sub-section (2) of the proposed section 66A be omitted."

The motion was adopted.

Clause 8, as amended, was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Sir Basil Blackett: Sir, I move that the Bill further to amend the Indian Income-tax Act, as amended, be passed.

The motion was adopted.

THE DELHI JOINT WATER BOARD BILL.

The Honourable Sir Bhupendra Nath Mitra (Member for Industries and Labour): Sir, I beg to move that the Bill to provide for the maintenance of the works established to supply drinking water in bulk for the urban area of the city of Delhi, and for that purpose to constitute a Joint Water Board to undertake such maintenance, be taken into consideration.

Sir, when I introduced this Bill some days ago, I mentioned that this was a simple Bill. It is intended to give a legal backing to certain arrangements which are already in force for this particular purpose in accordance with administrative orders. After I introduced the Bill I gathered that the Delhi Municipality, which is interested in this measure, did not accept all the detailed provisions which had been embodied in the Bill. It was for that reason that I postponed the second reading of this Bill. I discussed the matter with the representatives of the Delhi Municipality and we arrived at a settlement. That settlement is embodied in the amendments which I propose to move shortly. Sir, I move that the Bill be taken into consideration.

The motion was adopted.

Mr. President: The question is:

"That clause 2 do stand part of the Bill."

The Honourable Sir Bhupendra Nath Mitra: I beg to move:

"That in sub-clause (*c*) of clause 2:

(i) the word 'and' be added at the end of clause (*iii*);

(ii) in clause (*iv*) the word 'local' and the word 'and' at the end of the clause, be omitted; and

(iii) clause (*v*) be omitted."

The object of this amendment is not to provide for any other bodies which may come into existence in future participating in the arrangements embodied in the Bill.

4 P.M.

The motion was adopted.

Clause 2, as amended, was added to the Bill.

Mr. President: The question is:

"That clause 3 do stand part of the Bill."

The Honourable Sir Bhupendra Nath Mitra: I beg to move:

"That in clause 3:

(i) in clause (*b*) of sub-clause (*1*) the words 'of whom three shall be' and the words 'and the fourth shall be nominated by the Chief Commissioner' be omitted;

(ii) in sub-clause (*2*):

(*a*) for the words 'person residing within the area in which such' the words 'member of that' be substituted;

(*b*) the words 'exercises its powers' be omitted; and

(*c*) for the words 'elects a member' the words 'elects another member' be substituted."

The object of these amendments is obvious and I do not propose to dilate on it.

The motion was adopted.

Clause 3, as amended, was added to the Bill.

Clauses 4, 5 and 6 were added to the Bill.

The Honourable Sir Bhupendra Nath Mitra: Sir, I beg to move:

"That in clause 7 for the words beginning with 'Unless' and ending with 'undertaken by the Board' the following be substituted, namely:

'The Governor General in Council may direct that any specified work, repair, renewal or replacement which is to be undertaken by or for the Board'."

The motion was adopted.

Clause 7, as amended, was added to the Bill.

Clauses 8, 9 and 10 were added to the Bill.

Mr. President: The question is:

"That clause 11 do stand part of the Bill."

The Honourable Sir Bhupendra Nath Mitra: Sir, I beg to move:

"That to clause 11 the following proviso be added, namely:

'Provided that, if the Delhi Municipal Committee by notice in writing to the Board so requires, the amount supplied to the Committee shall not in any one day during such period as may be specified in the notice be less than five-sevenths of the total supply available during that day or seven and a half million gallons, whichever amount is less'."

This provision forms part of the present administrative arrangements, and at the desire of the Delhi Municipality Government has agreed to incorporate it in the Bill before this House.

The motion was adopted.

Clause 11, as amended, was added to the Bill.

Clause 12 was added to the Bill.

Mr. President: The question is:

"That clause 13 do stand part of the Bill."

The Honourable Sir Bhupendra Nath Mitra: Sir, I beg to move:

"That in the proviso to sub-clause (*4*) of clause 13, for the words 'recoverable from' the words 'payable to the Board by' be substituted."

[Sir Bhupendra Nath Mitra.]

The object of the amendment is simply to make the intention of the provision clearer.

The motion was adopted.

Clause 13, as amended, was added to the Bill.

Clauses 14 and 15 were added to the Bill.

Mr. President: The question is:

"That clause 16 do stand part of the Bill."

The Honourable Sir Bhupendra Nath Mitra: Sir, I beg to move:

"That in clause 16 for the word 'shall' the word 'may' be substituted."

The motion was adopted.

Clause 16, as amended, was added to the Bill.

Clause 17 was added to the Bill.

Mr. President: The question is:

"That clause 18 do stand part of the Bill."

The Honourable Sir Bhupendra Nath Mitra: Sir, I beg to move:

"That to sub-clause (*1*) of clause 18 after the words 'Imperial Bank of India' the words 'or any other bank approved by the Auditor General in this behalf' be added."

The motion was adopted.

Clause 18, as amended, was added to the Bill.

Clauses 19, 20, 21, 22, 23 and 24 were added to the Bill.

Mr. President: The question is:

"That Clause 25 do stand part of the Bill."

The Honourable Sir Bhupendra Nath Mitra: I beg to move:

"That to sub-clause (*2*) of clause 25, after the words 'repair the same' the following be added, namely:

'and to refund the fee paid under sub-section (*1*), together with such sum, if any, as is proved to the satisfaction of the Board to have been paid in excess by the constituent body by reason of the incorrectness of the meter'."

The motion was adopted.

Clause 25, as amended, was added to the Bill.

Clauses 26, 27 and 28 were added to the Bill.

Schedules I and II were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Sir Bhupendra Nath Mitra: Sir, I beg to move that the Bill, as amended, be passed.

The motion was adopted.

(At this stage Mr. President vacated the Chair which was taken by Mr. Deputy President, Diwan Bahadur T. Rangachariar.)

The Honourable Sir Bhupendra Nath Mitra (Member for Industries and Labour): Sir, I beg to move that the amendment made by the Council of State in the Bill to provide for the registration of Trade Unions and in certain respects to define the law relating to registered Trade Unions in British India, be taken into consideration.

The only amendment which the other House has made in the Bill, as passed by this House, is in sub-clause (j) of clause 15. I must confess, Sir, that the unsatisfactory state in which this particular provision was left, when this Bill was passed by this House, was, to some extent, due to me. The matter was noticed later on in this House by my Honourable friend Dr. Macphail and we undertook to have the defect corrected in the other House. The amendment made in the other House is simply directed to remedy the defect and I hope this House will pass that amendment.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I cannot congratulate the other House upon the change made by it in a Bill which was thoroughly considered by the Legislative Assembly. Sub-clause (j) of clause 15, as passed by this House, contained a very simple proposal. The sub-clause referred to the power given to the Unions to spend their money in helping the working classes generally, and the restriction which the Council of State has now put upon that power was not necessary at all. When I spoke during the discussion on this clause, I made it quite clear that legislation was unnecessary to damp peoples' altruistic spirit. Nobody is going to spend all his money upon other people. You have not therefore to legislate and tell a particular Trade Union that it cannot spend more than one-fourth of its money. The clause, as passed by this House, contained, as I said, a very simple proposal that, whenever a call was made upon a particular Union for help, that Union had only to find out what would be one-fourth of the total assets which it possessed, and it could help up to that extent. Now, Sir, the proposal which the Council of State has made is very difficult to work. I will give an example. Suppose a Union has got assets of about Rs. 10,000 and a call is made for help from outside. Now in one year there may be several calls. When the first call is made, how is that Union to find out what will be the nature and the importance of the other calls which may be made thereafter? When the first call is made the Union knows only that it cannot spend more than one-fourth of its money, but there is no guidance to that Union to know how many more calls will be made during the course of that year, and so it will be very difficult for members to render help to their utmost capacity. They know that during the year they can only spend Rs. 2,500 if their assets are Rs. 10,000, but how are they to know on a particular occasion how much maximum help they could give? They do not know how many other calls would be made during that year. I therefore think that the change made by the Council of State is very difficult to work, and I am very sorry to find that the Government are supporting the Council of State. Perhaps it is quite natural. The Council of State supports the Government, and so the Government return the compliment. Sir, although I do not congratulate the House upon the change it has made, I do not propose to oppose this motion because I am anxious that this Bill should pass.

The Honourable Sir Bhupendra Nath Mitra: Sir, I fail to realise the point of Mr. Joshi's remarks. Still I shall not detain the House long, as my Honourable friend did not think it meet to oppose my motion. The provision in clause 15 (j), as it emerged from this House, contained this proviso:

"Provided such payment does not exceed one quarter of the amount of the general funds available at the disposal of the Trade Union at the time of such payment."

Now the effect of that would be this: The Trade Union makes a payment, say, to-day equal to one-fourth of the funds at its disposal. It makes another payment to-morrow equal to one-fourth of the funds at its disposal. In that way the funds would be dispersed in no time. I do not see where the difficulty would be in working out the amended provision as inserted by the Council of State. That provision is perfectly clear. At the time of making any payment, all that the Trade Union will be able to pay will be one-fourth of the total gross income which has up to that time accrued to the general funds of the Trade Union, and of the balance at the credit at the commencement of that year. Sir, I do not want to say anything more.

Mr. M. A. Jinnah (Bombay City: Muhammadan Urban): Sir, I entirely agree with the Honourable Member in charge of this Department who spoke on behalf of the Government that that was the intention of the House and in the hurry it remained in the form in which it went to the other House. Therefore, Sir, I entirely agree with the motion of my Honourable friend, and as on the last occasion when the Bill left this House I somehow or other had not the opportunity of thanking the Honourable Member in charge, I now take the opportunity to congratulate him. He is the first Indian Member of the Government of India whose good fortune it has been to initiate this measure which will constitute a very important landmark in the future development of the labour problems of India. I heartily congratulate him on the labour and the trouble he has gone through in piloting this Bill and thank him for the most reasonable manner in which he has met the wishes of this House in the passage of this Bill.

Mr. Deputy President: The question is:

"That the amendment made by the Council of State in the Bill to provide for the registration of Trade Unions and in certain respects to define the law relating to registered Trade Unions in British India, be taken into consideration."

The motion was adopted.

Mr. Deputy President: The question is:

"That this House do agree to the following amendment made by the Council of State:

'In sub-clause (*j*) of clause 15 for the words beginning with 'provided such' and ending with 'at the time of such payment' the following be substituted, namely:

'Provided that the expenditure in respect of such contributions in any financial year shall not at any time during that year be in excess of one-fourth of the combined total of the gross income which has up to that time accrued to the general funds of the Trade Union during that year and of the balance at the credit of those funds at the commencement of that year'."

The motion was adopted.

THE LEGAL PRACTITIONERS (AMENDMENT) BILL.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I move that the amendments made by the Council of State in the Bill further to amend the Legal Practitioners Act, 1879, be taken into consideration.

We are now, Sir, dealing only with one clause in the Bill to amend the Legal Practitioners Act in regard to touting, the clause which has been amended by the Council of State. The amendments which were made in that Chamber were amendments to a small part of the definition of a tout. If Honourable Members will refer to the definition of a tout in the Bill as passed by this House, they will find the definition is divided, in the first place, into two parts (*a*) and (*b*), and in the second place that part (*a*) is also sub-divided. The sub-division of part (*a*) is into two classes, persons who procure the employment of a legal practitioner and persons who propose to procure the employment of a legal practitioner. That is the distinction followed exactly in the definition of a tout in the Legal Practitioners Act, at present. Now the amendments made in the Council of State affect only the class of person who procures the employment of a legal practitioner. The amendments made were to exclude the words "or from any person interested in any legal business" and to make the entirely consequential amendment of substituting for the words "in such business" the words "in any legal business." Now in the definition as passed by this House it will be seen that the remuneration might have moved either from a legal practitioner or from a person interested in a legal business, and that applies to both parts of part (*a*) of the definition as we passed it. Now the effect of the amendments made by the Council of State will be as follows, in the case of a person who procures the employment, etc., if his remuneration moves from a person interested in a legal business,—that, as I explained on the last occasion, includes the client—he will not be included in the definition of a tout. The second part of the definition of tout as passed in this House has of course now been passed both in this House and by the Council of State. This brings me to the point as to why we desire to include in the scope of the provisions relating to touts persons whose remuneration moves from a party to the suit or his authorised agent. As I explained on the last occasion the Civil Justice Committee recommended that the definition should be expanded to include the large class of people who in *sarais*, railway stations and other places intercept prospective litigants in order for a consideration, whether paid to the pleader or the client, to take their business to particular legal practitioners. It will be seen that in this class of case the Committee recommended that the definition of a tout should cover cases whether the remuneration moves from the client as well as those cases when it moves from the legal practitioner. I submit it is obvious that in this class of case, where we have prospective litigants or their agents intercepted by people who frequent these public places for this purpose, it is a much simpler matter to prove that the remuneration moved from a party to the suit or his agent. The person may further get remuneration from the legal practitioner; but we do not wish to have to prove this, namely, a movement from the legal practitioner, and I submit that obviously we ought not to have to do so. The man who does so intercept prospective litigants obviously belongs to the class that we wish to proceed against and which we wish to reduce in numbers by this legislation. On the last occasion it was suggested in the discussions in this House that

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this class of man is dealt with in clause (*b*) of the definition. I do not know whether any doubt is now felt upon this point, but I submit it is clear that the class of man is not completely dealt with by clause (*b*). This is I submit obvious because if you look at clause (*b*) you will find that it begins with the words " who for the purposes of such procurement "—that is to say, a procurement of the character described in clause (*a*); and of course if in clause (*a*) we have no case of a remuneration moving from the client or any party to the suit then such a case will not come within clause (*b*).

I turn now to the reasons for the amendments which were made in the Council of State. Honourable Members will remember that in this House, both on the consideration stage and on the passing stage, the point was raised that in the definition of a tout as given in the Bill there would be included persons who are duly engaged by a party to the suit to go and get an appeal or an original suit filed and who would of course receive remuneration for their services from a party to the suit. On the passing stage of the Bill I promised to consider the objection in regard to this point which was raised by my Honourable and learned friend Sir Sivaswamy Aiyer. This authorised agent of the party to the suit is the person who goes and procures the employment of a legal practitioner. That is the reason why we have excluded the case of a remuneration moving from the party to the suit from the first part of clause (*a*) of the definition of a tout. I think it meets absolutely the point raised by my Honourable friend. We could not have removed this provision from the second part of clause (*a*) of the definition without lessening the stringency of the proposed provision in what I submit is a very undesirable manner. It would mean, as I think I have already sufficiently fully explained, that in the case of these persons frequenting public places who intercept prospective litigants we shall have to prove remuneration moving from the legal practitioner. Before the amendments were moved by the Honourable the Law Member in the Council of State they were mentioned to my Honourable friends opposite and I understood that they were accepted by them as meeting their point. Sir, I move.

Mr. Deputy President: The question is:

" That the amendments made by the Council of State in the Bill further to amend the Legal Practitioners Act, 1879, be taken into consideration."

The motion was adopted.

Mr. Deputy President: The question is:

" That this House do agree to the following amendments made by the Council of State:

' In clause (*a*) of the definition proposed to be inserted in the Legal Practitioners Act, 1879, by clause 2 of the Bill:

(*1*) the words ' or from any persons interested in any legal business ' be omitted and

(*2*) for the words ' in such business ' where they first occur the words ' in any legal business ' be substituted."

Sir P. S. Sivaswamy Aiyer (Madras: Nominated Non-Official): I beg to move the amendments which stand in my name. I sent in three alternative amendments to the Secretary so that if any prior amendment is not acceptable to the House the subsequent amendment may be accepted.

Mr. M. A. Jinnah (Bombay City: Muhammadan Urban): Which is the best?

Sir P. S. Sivaswamy Aiyer: The first is the best . . .

Mr. H. Tonkinson: Sir, . . .

Sir P. S. Sivaswamy Aiyer: First let me explain myself. I will anticipate your objection. The amendment which I consider the best is that for clause 2 (*a*) the following be substituted:

"(*a*) who in consideration of any remuneration moving from any legal practitioner procures or offers to procure his employment in any legal business."

I may at once confess that this first amendment involves a matter of substance and is not a mere drafting amendment. My Honourable friend Mr. Tonkinson will probably object that it is not competent for me now to move this amendment because it was not moved . . . .

Mr. Deputy President: Does the Honourable Member move his amendment or does he merely mention it?

Sir P. S. Sivaswamy Aiyer: I wish to move it in order that I may have a ruling from the Chair as to whether it is in order or not.

Mr. H. Tonkinson: On a point of order, Sir. I wish to submit for your ruling that this amendment is out of order and cannot be moved. The position we have reached in regard to these amendments is that indicated by Rule 35, sub-rule (*2*). The motion that the amendments be taken into consideration has been carried, and you, Sir, have put the amendments to the House. The only amendments which may be moved are those which come within the description of sub-rule (*2*) of Rule 35, namely:

"amendments relevant to the subject matter of the amendments made by the other Chamber but no further amendment shall be moved to the Bill unless it is consequential upon, or an alternative to, an amendment made by the other Chamber."

My Honourable friend desires to make an amendment to a portion of the definition of "tout" which has been accepted by this House and by the other House, and on a point of substance, Sir, I submit that the amendment cannot at this stage be moved.

Sir P. S. Sivaswamy Aiyer: I submit, Sir, that the subject matter now before the House is the whole of this definition in clause (*a*), that is to say, the question which went up to the other House, and now that it has come back, I submit that it is competent to us to move any amendments in clause (*a*). I should therefore like to have a ruling from the Chair upon this point, as to whether I am or am not in order in moving this amendment. I may perhaps add that my reason for moving this amendment is this—that the only amendment suggested by the Civil Justice Committee is the one which has been incorporated in clause (*b*) and the inclusion of the acceptance of remuneration from a person interested in legal business or from the client was not contemplated by the Civil Justice Committee. I myself think that we are seized of the whole of clause (*a*). That is the reason why I move it.

Mr. Deputy President: Under Rule 35 (*2*) the amendment must be relevant to the subject matter of the amendment made by the Council of State, not to the subject matter of the clause, and as the Honourable Member does not say that it is relevant to the subject matter of the amendment I rule it out of order.

Sir P. S. Sivaswamy Aiyer: If that amendment is not accepted, I move the next amendment. This is merely an improvement in drafting. The original clause (*a*) is clumsy and I submit my amendment is much neater and is an improvement upon the language of the original. I may point out that the clause as amended by the upper House is open to considerable criticism from the point of view of drafting. It says:

"who procures, in consideration of any remuneration moving from any legal practitioner, the employment of the legal practitioner in any legal business;"

I will pass on from that. I do not have any serious criticism to offer against that part, but as regards the latter part, it runs thus:

"or who proposes to any legal practitioner or to any person interested in any legal business to procure, in consideration of any remuneration moving from either of them, the employment of the legal practitioner in such business."

To show the clumsiness of this language I would ask the House to take each of these parts separately and see how it reads. Taking first of all the proposal to the legal practitioner, it would run thus:

"who proposes to any legal practitioner to procure in consideration of any remuneration moving from either of them the employment of the legal practitioner in such business."

The words "such business" would really have no antecedent. Let us take the other case:

"who proposes to any person interested in any legal business to procure, in consideration of remuneration moving from him the employment of the legal practitioner."

Which legal practitioner? There is no antecedent. So that the latter part of clause (*a*) as it stands is very clumsily constructed and my amendment is more elegant, if I may say so, than the original clause. The words are:

"In consideration of any remuneration moving from any legal practitioner procures or offers to procure his employment in any legal business or who in consideration of any remuneration moving from any person interested in any legal business offers to procure for him the employment of any legal practitioner in such business."

I think this reads much neater and it uses more apt legal language. I prefer the word "offers" to "proposes" and it is a much shorter and clearer definition.

Mr. H. Tonkinson: Sir, I think it will be convenient if I speak on both these amendments together. I think the remarks of my Honourable and learned friend practically cover both these amendments. The only difference between these two amendments is the use in one of the word "offers" and in the other of the word "proposes". I notice that my Honourable friend, however, has made a slip in the second amendment and has used "offers" in one place where doubtless he intended to use the word "proposes". As regards the difference between the word "offers" and the word "proposes" I submit that there is nothing in it. Of course also the word "proposes" is the word at present used in the definition of "tout". Taking the second definition in which he uses the word "proposes" as we use it in the Bill as passed in this House and as amended by the Council of State, again the effect of my Honourable friend's amendment is exactly the same as the effect of the amendment now in the Bill. My Honourable friend suggests it is an improvement in the drafting, and if there was no previous history to the case perhaps we might be prepared to agree with him. My real objection to the amendments, to all of them, is that they do not follow our normal course. When we draft amendments to our statute law we endeavour, I think, as far as

possible, to adhere to the original provision. By so doing of course we make it much clearer as to what changes have been made in the law and that is the reason why I object to my friend's re-drafts. I further object of course because at this stage of the Session their adoption means a further reference to the Council of State. Actually they effect no substantive changes on the law as included now in the Bill at all.

Sir P. S. Sivaswamy Aiyer: Sir, if my Honourable friend is willing to accept the last amendment I do not want to press the second amendment.

Mr. H. Tonkinson: No, Sir.

Mr. Deputy President: Amendment moved:

"For clause 2 (*a*) the following be substituted:

'(*a*) who in consideration of any remuneration moving from any legal practitioner procures or offers to procure his employment in any legal business or who in consideration of any remuneration moving from any person interested in any legal business offers to procure for him the employment of any legal practitioners in such business."

The question is that that amendment be made.

The motion was negatived.

Sir P. S. Sivaswamy Aiyer: In that case, Sir, I move my third amendment.

Mr. Deputy President: Amendment moved,

"That for clause 2 (*a*) the following be substituted:

'(*a*) who in consideration of any remuneration moving from any legal practitioner procures or proposes to procure his employment in any legal business or who in consideration of any remuneration moving from any person interested in any legal business offers to procure the employment of any legal practitioner in such business."

The question is that that amendment be made.

The motion was negatived.

Mr. Deputy President: The question is:

"That this House do agree to the amendments made by the Council of State."

The motion was adopted.

THE MADRAS CIVIL COURTS (AMENDMENT) BILL.

Mr. H. Tonkinson (Home Department: Nominated official): Sir, I move that the amendments made by the Council of State in the Bill further to amend the Madras Civil Courts Act, 1873, be taken into consideration.

Honourable Members will remember that the Bill as passed by this House enabled the Madras High Court to empower District Munsifs as well as Sub-Judges to decide contentious probate and administration matters. The amendments which have been made in the Council of State are to omit entirely the provisions in regard to District Munsifs. Those who remember the discussions which then took place will remember that you, Sir, suggested in regard to the proviso to sub-section (*3*) of proposed section 29 that provision might be made for the appeals from an order of a District Munsif going direct to the High Court. In view of your remarks on that occasion we considered the whole effect of the Bill and we decided in the

[Mr. H. Tonkinson.]

first place that under the Bill as drafted after the appeal from the District Munsif's decision to the District Judge there would be no second appeal; that is to say, in a case disposed of by a District Munsif there would be no chance of getting to the High Court at all. In those circumstances we consulted the Madras Government as to the best course to take, and the action which was taken in the Council of State on the recommendation of the Government was in accordance with the advice which we received from the Madras Government. The question was really whether we should cut out all possible references to the High Court altogether in cases disposed of by District Munsifs; that is to say, whether we should leave the Bill as passed by this House or whether we should provide for a second appeal. A provision for a second appeal has been made in Bombay, and there is a similar but different provision in force in Bengal, in Agra and Assam, which we believe, however, has now no effect. A third possible course was to cut out the District Munsifs altogether. That is the course which has been taken in the Central Provinces by an amendment of the law made there in 1923, and that is the course which we have actually adopted. A fourth possibility would have been to trouble the High Court with appeals direct from District Munsifs. I submit, Sir, that we have followed the best course in disposing of a somewhat difficult problem. Sir, I move.

Mr. Deputy President: The question is:

"That the amendments made by the Council of State in the Bill further to amend the Madras Civil Courts Act, 1873, be taken into consideration."

The motion was adopted.

Mr. Deputy President: The question is:

"That this House do agree to the following amendments made by the Council of State:

'In clause 2 in the new section 29 proposed to be inserted in the Madras Civil Courts Act, 1873:

(*a*) the words 'or District Munsif' wherever they occur, and

(*b*) the proposed sub-section (*3*)

be omitted'."

The motion was adopted.

THE INDIAN BAR COUNCILS BILL.

The Honourable Sir Alexander Muddiman (Home Member): Sir, I beg to move that the Bill to provide for the constitution of Bar Councils in British India and for other purposes, be referred to a Select Committee consisting of Mr. L. Graham, Mr. K. C. Neogy, Mr. S. C. Ghose, Diwan Bahadur M. Ramachandra Rao, Diwan Bahadur T. Rangachariar, Sir Chimanlal Setalvad, Mr. Devaki Prasad Sinha, Khan Bahadur Maulvi Ghulam Bari, Rai Bahadur Raj Narain, Rao Bahadur M. C. Naidu, Colonel Sir Henry Stanyon, Mr. Harchandrai Vishindas, Maulvi Muhammad Yakub, Sir Hari Singh Gour, Mr. K. Ahmed, and, I should like to add now, Sir P. S. Sivaswamy Aiyer, and the Mover; and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be seven.

Sir, the Bill with reference to which I make this motion has been on the paper of the House for many days. The Bill and the Statement of Objects and Reasons has been in the hands of Honourable Members for their consideration and perusal almost since the beginning of the Session. It is only the regrettable diffidence in proceeding with Government business which has prevented me up to day from bringing this motion before the House. The Statement of Objects and Reasons was prepared with great care and has doubtless received the careful perusal of Honourable Members. I would merely say that the Bill is the result of our consideration of certain important recommendations of the Bar Committee, consideration which I think you, Sir, indicated on one occasion had been somewhat prolonged. That is true, but the consideration has been very thorough. The proposals of the Bar Committee in regard to the constitution of statutory Bar Councils were referred to the Local Governments and to the High Courts. As a result of the replies we have received from these bodies, we have had in some directions to amplify and in other directions to modify those recommendations, and these modifications and amplifications have been given effect to in the Bill. The Bill is also to carry out certain other recommendations of the Committee. In that connection I would refer the House to paragraph 2 of the Statement of Objects and Reasons where they will find these miscellaneous recommendations summarised in a very convenient form. Furthermore, the House has already had a full opportunity of considering in detail the modifications we have made in the actual recommendations of the Bar Committee. They have been summarised in paragraph 4 of the Statement of Objects and Reasons. I will therefore not weary the House at this hour by repeating them. The only point, therefore, on which really I feel it necessary to address this House is my object in making the motion at this time at the end of an expiring Session. My object is this. It is almost impossible nowadays, certainly in connection with a Home Department Bill, to consider a Bill of this nature with the care and leisure that it demands during the progress of the Session when the House meets always for four and sometimes for five days in the week. It is not possible to do so, and that is particularly the case with this Bill now. This Committee is a large one, and, as I think you will agree, is fully representative of all the interests in this House which are affected. I think therefore it was quite impossible to take up this Bill in Delhi. We propose therefore that the Committee should meet in Simla in the course of the summer. It is my intention, in order that the Committee may have further material to consider the Bill on, to circulate the Bill to Local Governments and High Courts by executive order. This is a Bill of very considerable importance. It is a Bill which affects vested interests in some degree. It is also a Bill which I think from what knowledge I have of India will excite considerable interest for it affects one of the most powerful classes in India, namely, the legal practitioners. I trust, therefore, the House will agree to my motion that the Bill be referred to a Select Committee. Sir, I move.

Khan Bahadur W. M. Hussanally (Sind: Muhammadan Rural): May I inquire, Sir, if the Honourable Member has obtained the consent of Mr. Devaki Prasad Sinha to serve on this Committee?

The Honourable Sir Alexander Muddiman: Most certainly: I should not otherwise have put it down. I had obtained his consent, and I have not received any application from the Honourable gentleman to withdraw his name. I have therefore allowed his name to remain in the motion.

Mr. K. C. Neogy (Dacca Division: Non-Muhammadan Rural): Sir, I realize that this is not a very favourable hour for making a speech in this House, but having been associated with the movement that has culminated in this Bill, I feel I would not be doing justice to myself if I were to give a silent vote on this motion. Sir, the movement that has resulted in this Bill had mainly three objects. First of all, the organization of the legal profession in India as an autonomous body, with power to enrol members and exercise control over members in regard to professional matters. The second object was the unification of the different branches of the profession, and the removal of the distinctions between Barristers and Vakils in regard to professional privileges. The third object was the abolition of the compulsory dual system which obtains particularly in Calcutta and Bombay in the original jurisdiction of the High Court. The Bar Committee have recommended the creation of Bar Councils as advisory bodies merely. But what is more, they have confined its operation only to the class of practitioners who practise in the High Court. The legal profession put forward a strong plea in favour of the constitution of Bar Councils exercising jurisdiction over all classes of legal practitioners, but this suggestion of theirs has not been acceded to by the Bar Committee, and it is not proposed in this Bill to create Bar Councils which will serve the pleaders of the district and mufassil courts. Sir, the mufassil lawyers will thus be left in the same position as they have been under the Legal Practitioners Act in matters relating to professional conduct. I am in a position to say that this has been widely regretted, particularly in Bengal where there have been some unfortunate cases under the Legal Practitioners Act of recent years which make the pleaders feel that they are absolutely at the mercy of the local courts. I trust, however, Sir, that the wider Bar Councils will not take long in coming in the wake of the restricted Bar Councils which we propose to set up to-day. Although the Bar Committee recommend the abolition of the distinction between the Barristers and the Vakils to a certain extent, they do not recommend the complete unification of these two different branches, nor do they recommend the abolition of the dual system in Calcutta and Bombay. The present Bill is even more unsatisfactory in so far as it is left for the High Courts of Calcutta and Bombay to regulate the admission of advocates who would be authorised to practise on the original sides of those two respective High Courts. The House, if it turns to the proviso to sub-clause (1) of clause 14 of the Bill, will find that the main provision of that clause which empowers an advocate to practise, does not apply to the High Courts of Calcutta and Bombay in the exercise of their original jurisdiction. Sir, I do not know on what grounds Government have decided to leave this very important matter to be regulated by rules to be framed by these two High Courts themselves. So far as we are aware, the High Courts of Calcutta and Bombay have not been very sympathetic in this matter in the past. If I may refer for a minute to the opinion expressed by the High Court of Bombay on the recommendations of the Bar Committee, it will be seen that Their Lordships are practically opposed to all the important recommendations made by this Committee. For instance, it is stated that:

> "Their Lordships are of opinion that in the Bombay Presidency there is no necessity for any change now in the nomenclature of practitioners."

Next:

"Their Lordships are not in favour of a Bar Council being established by statute. They would certainly view with the gravest apprehension the establishment of Bar Councils with the power proposed to be given to them by the recommendations of the Report."

Thirdly:

"Their Lordships are opposed to the recommendation that Vakils of not less than 10 years' standing should be entitled to be admitted at once to practise on the original side."

If we refer to the separate minutes recorded by the learned Chief Justice of the Bombay High Court and some other individual Judges, we find even stronger expressions of opinion on these points. It is therefore not quite clear to me why it is that the Government are leaving this particular matter, which in my judgment is the most important feature of the recommendations of the Bar Committee, to be regulated by these two High Courts at their discretion. I now come to the Calcutta High Court. I am perfectly aware that the Calcutta High Court have already framed certain rules which partly meet the recommendations made by the Bar Committee. But, Sir, I would refer to a very important recommendation of the Bar Committee in regard to which I am in a position to say that the Calcutta High Court have definitely made up their mind not to give effect to it. If the Honourable Members will turn to paragraph 33 of the Bar Committee's Report, they will find that one of the clauses, clause No. 7, runs thus:

"That vakils whose names are on the special list shall be subject to the same restriction as barristers when practising on the appellate side or in the subordinate courts."

Then, in sub-clause (8) of that paragraph we come across this recommendation:

"* * that proposal (7) shall remain in force for seven years and shall then cease to have effect unless the High Court, if there is no Bar Council, or the Provincial Bar Council with the approval of the High Court otherwise determines."

Sir, this is considered to be a very important recommendation, by at least the vakil section of the profession in Calcutta. Now, what do the High Court of Calcutta propose to do in this matter? As a result of correspondence which was carried on between the Vakils Association of Calcutta and the High Court, the High Court definitely stated as follows in a letter addressed in August, 1924, to the Honorary Secretary, Vakils' Association, Calcutta:

"I am directed to point out that the assumption in your letter that the disabilities of advocates as regards acting on the appellate side will automatically cease on the expiration of seven years is a misapprehension. This is not the intention of the Court."

I want my Honourable friend, the Home Member, to say whether it is his intention that this recommendation of the Bar Committee is to be given effect to or not. If it is to be given effect to . . . .

The Honourable Sir Alexander Muddiman: How does that arise on this Bill?

Mr. K. C. Neogy: It arises in this way. You are leaving one of the most important recommendations made by the Bar Committee to be given effect to by the High Courts of Calcutta and Bombay . . . .

The Honourable Sir Alexander Muddiman: I ask whether the Honourable Member is opposing consideration of this Bill or not; then I would know where I am.

Mr. K. C. Neogy: I am not. I am merely pointing out that you are not carrying out the recommendations of the Bar Committee.

The Honourable Sir Alexander Muddiman: Then, I submit, Sir, that my Honourable friend is out of order.

Mr. K. C. Neogy: Out of order? This Bill purports to give effect to the recommendations of the Bar Committee. It does nothing of the kind!

The Honourable Sir Alexander Muddiman: Not at all. This Bill purports to give effect to certain recommendations of the Bar Committee.

Mr. Deputy President: The Honourable Member may proceed.

Mr. K. C. Neogy: If it is a Bill to give effect to only certain recommendations, I am entitled to submit that it does not meet with the approval of this House.

The Honourable Sir Alexander Muddiman: Then my Honourable friend is opposing the motion to take this Bill into consideration.

Mr. K. C. Neogy: If you want me to formally oppose the present motion, I will do so.

The Honourable Sir Alexander Muddiman: I do not want you to oppose at all.

Mr. K. C. Neogy: If you leave this very important recommendation to be given effect to by the High Courts, better you had not appointed the Bar Committee at all.

Mr. Deputy President: I may mention that at this stage general principles can be discussed. I think the Honourable Member is perfectly in order in referring to the defects in the principle of the Bill.

Mr. K. C. Neogy: Sir, I have already given an indication as to what the attitude of the two High Courts in this matter is. I therefore ask, is it proper for the Government not to cover by legislation these very important recommendations of the Bar Committee? I think the Bar Committee cost something like Rs. 1,17,000.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): You are responsible for it.

Mr. K. C. Neogy: Certainly, and I almost regret it. If it is the intention of Government that these recommendations should be left to be given effect to at the discretion of the High Courts, I do not think that this large expenditure of money has been at all justified. I remember Sir Edward Chamier, the Chairman of the Bar Committee, giving expression to the view that if the Government of India were to refer the recommendations of this Committee to the High Courts of Calcutta and Bombay, they might as well apply a lighted match stick to this Report; because so far as Sir Edward Chamier was concerned, he did not believe that if you expected the two High Courts of Calcutta and Bombay to give effect to these most important recommendations of the Committee, they would do anything of their own free choice. Sir, the distinction as between Barristers and Vakils, which it was the intention of

the Bar Committee to remove, is proposed to be removed only in name, so far as the Calcutta and the Bombay High Courts are concerned. You propose, in this Bill, to call the Vakils by the name of Advocate in future. That is all. But, Sir, the Vakils of Calcutta are not ashamed of the term "Vakil". As a matter of fact, past members of the Vakil Bar have shed lustre on the legal profession in Calcutta and elsewhere. And we feel proud of that term.

Mr. K. Ahmed: What are you doing now? Going back?

Mr. K. C. Neogy: Then again, Bar Councils will merely be advisory bodies. In this respect, the recommendations of the Bar Committee are rather unsatisfactory, and the Bill merely gives effect to those recommendations. But here again we find that so far as the Calcutta and the Bombay High Courts are concerned, the very constitution of these advisory bodies has been left to be regulated by these High Courts, because we find that it would be for the Calcutta and the Bombay High Courts to determine the proportion of Barristers and Vakils that will be entitled to be elected members of these Bar Councils.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): That is for the Select Committee.

Mr. K. C. Neogy: Certainly. I am pointing out the defects of the Bill, as I think they should be attended to in the Select Committee.

Sir Hari Singh Gour: You will be there.

Mr. K. C. Neogy: I will be there, but I must not be taken to have assented to all these defects in the Bill. Again, we find that under one provision it is proposed to empower even the subordinate courts to make inquiries into allegations of professional misconduct against Advocates of the High Court. I think here is a serious departure, because so far as I know the subordinate courts do not possess this power at present. Then again, it will be for the High Court to determine the number of legal practitioners that will be admitted every year. There is no such restriction in the present circumstances, and I do not know what considerations moved the Government to put in this clause.

Sir, I have made these observations so as to place on record the fact that the course which Government have adopted in not covering the entire field of the recommendations of the Bar Committee by legislation, is not commended by this House. And I trust that the Select Committee will so improve the Bill as to make it acceptable to this House.

Mr B. Das (Orissa Division: Non-Muhammadan): Sir, . . .

Sir Hari Singh Gour: What do you know about law?

Mr. Deputy President: I must protect the Honourable Member. I do not think that any Member is entitled to ask another Member "What do you know about it?"

Mr. B. Das: Sir, I confess I am not a lawyer, but I am putting before the House certain facts on behalf of the Indian mercantile community, so that they may be considered by the Select Committee. The Indian Merchants' Chamber of Bombay strongly object to the passage in clause 2 (*d*) of the Statement of Objects and Reasons, wherein it is mentioned:

"where there is a compulsory dual agency system at present it should be allowed to continue."

[Mr. B. Das.]

They strongly object to that. They are of opinion:

"That the dual agency system prevails in the High Courts of Bombay and Calcutta, and, to a modified extent, in the High Court of Madras. The Bill completely fails to take into account the public opinion on this momentous question. It does not touch the real crux of the whole question, *viz.*, the unification of the different grades of practitioners and the consequent doing away with the dual agency system where it is in existence."

For this reason, Sir, the mercantile community in Bombay and Calcutta, if they go in for litigation, have to pay three lawyers—two counsel and one solicitor—in conducting one single case. This is very hard on the mercantile community. Sir, the Indian Merchants' Chamber represented the views of the Indian mercantile community in this matter to the Bar Committee as follows:

5 P.M.

"The present dual system of advocates and attorneys should be discontinued and there should be only one grade of advocates. My committee are of opinion that the present dual system is responsible for the heavy costs in commercial suits and that it is not at all suited to the requirements of the country. As far as the Committee is informed, in several instances the parties have been deterred from filing suits in the High Courts to recover legitimate claims because of the high costs of litigation and similarly defendants have been deterred from putting forward their defence against an unjust claim for the same reason."

Later on they observe as follows:

"My Committee are informed that the dual system of advocates and attorneys is only known in London, Calcutta and Bombay and that even in other leading High Courts of India like the Rangoon High Court, for instance, it does not exist. Nor is it to be found, so far as the information of my committee goes, in the United States of America where the non-existence of that system has not proved the American Bar in any way inferior to the English Bar."

I also find that none of the Dominions or Colonial High Courts have got this dual agency system. As far as I understand the European Chamber of Commerce in Bombay, as early as the 17th May 1886, sent a memorial to the Government on the various disadvantages of the dual agency system. Mr. Charles Percy, M.P., introduced a Fusion Bill in the House of Commons to do away with this dual agency system and as far as the commercial opinion of England went, leading Chambers of Commerce and other public bodies passed resolutions in favour of this fusion. The Bill was even introduced but could not be passed.

Sir, I will conclude my speech by making a quotation from the Right Honourable Viscount Haldane, twice the Lord High Chancellor of England, who has publicly expressed his opinion in favour of the unitary system in the following words:

"Great industrial communities could not stand consulting two specialists where one would suffice. It seems to me inevitable that the time is drawing near when the two Branches of the one Profession are to be fused. Specialists there will be and must be, but the original barriers are not only out of place but, as I believe, damaging to both."

In his evidence before the Lytton Committee Lord Haldane has openly advocated the adoption of a unitary system in the Presidency towns in India. Sir, I hope that these objections which have been raised by the Indian mercantile community and which I am sure will be supported by the European community all over India will be taken into consideration by the Select Committee.

The Honourable Sir Alexander Muddiman: Just one word, Sir. I do not want my Honourable friend Mr. Neogy to be under the impression that my interruptions were unsympathetic. I can assure him that this was not the case. I was merely anxious to get on with the business as fast as I could. I may inform the House that it is not my desire that this Bill should be regarded as finally disposing of all the matters which arise in the Bar Committee's Report. We shall, after this legislation has been disposed of, have to examine all the rules that have been made by High Courts to ascertain what, if any, further action is necessary in the way of supplementary legislation. I hope my Honourable friend will be reassured by what I have said.

Mr. Deputy President: The question is:

"That the Bill to provide for the constitution of Bar Councils in British India and for other purposes, be referred to a Select Committee consisting of Mr. L. Graham, Mr. K. C. Neogy, Mr. S. C. Ghose, Diwan Bahadur M. Ramachandra Rao, Diwan Bahadur T. Rangachariar, Sir Chimanlal Setalvad, Mr. Devaki Prasad Sinha, Khan Bahadur Maulvi Ghulam Bari, Rai Bahadur Raj Narain, Rao Bahadur M. C. Naidu, Colonel Sir Henry Stanyon, Mr. Harchandrai Vishindas, Maulvi Muhammad Yakub, Sir Hari Singh Gour, Mr. K. Ahmed, Sir P. S. Sivaswamy Aiyer and the Honourable the Home Member; and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be seven."

The motion was adopted.

THE TRANSFER OF PROPERTY (AMENDMENT) BILL.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I shall take very few minutes to ask this House to pass the Bill amending the Transfer of Property Act which stands in my name.

Honourable Members will remember that when this Bill was committed to the Select Committee I stated more fully the reasons for this Bill. The Select Committee have since unanimously reported in favour of this enactment. I need only add that, while I accept this amended Bill as a compromise, I feel that it does not go far enough. The Bill intends to assimilate the law now to be embodied in the Transfer of Property Act to that contained in the Indian Succession Act. But the difference between the two Acts is vital for, while the Will under the Indian Succession Act is not required to be registered, and, therefore, the provisions regarding attestation under that Act are necessarily more rigorous, all important transfers covered by the Transfer of Property Act are now required to be compulsorily registered, and, therefore, the same degree of rigour need not exist in the attestation clause relating to such transfers. But this is a matter, Sir, which will be dealt with later on if necessary. For the present the Bill, as it emerges from the Select Committee, effects a considerable improvement upon the law as interpreted by Their Lordships of the Privy Council whose decision has since been followed by the Indian High Courts. Sir, I move.

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

Sir Hari Singh Gour: Sir, I move that the Bill, as reported by the Select Committee, be passed.

Mr. Deputy President: The question is:

"That the Bill to explain certain provisions of the Transfer of Property Act, 1882, as reported by the Select Committee, be passed."

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 18th March, 1926.