9th February 1928

LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

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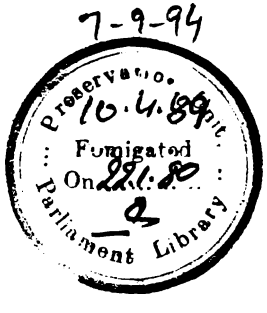
OF THE

THIRD LEGISLATIVE ASSEMBLY, 1928



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1928

Legislative Assembly.

President :

THE HONOURABLE MR V. J. PATEL.

Deputy President :

MAULVI MUHAMMAD YAKUB, M.L.A.

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MR. K. C. NEOGY, M.L.A.
MR. M. R. JAYAKAR, M.L.A.

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MR. L. GRAHAM, C.I.E., I.C.S.

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MR. S. C. GUPTA, BAR.-AT-LAW.
MR. G. H. SPENCE, I.C.S.

Marshal :

CAPTAIN SURAJ SINGH, BAHADUR, I.O.M.

Committee on Public Petitions :

MAULVI MUHAMMAD YAKUB, M.L.A., *Chairman.*
SIR HARI SINGH GOUR, KT., M.L.A.
MR. N. M. JOSHI, M.L.A
MR. JAMNADAS M. MEHTA, M.L.A.
DR. A. SUHRAWARDY, M.L.A

CONTENTS.

8.

CONTENTS—*contd.*

CONTENTS—*contd.*

CONTENTS—*concld.*

CONTENTS—*contd.*

CONTENTS—*contd.*

CONTENTS—*contd.*

LEGISLATIVE ASSEMBLY.

Thursday, 9th February, 1928.

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

THE INDIAN SUCCESSION (AMENDMENT) BILL.

Maulvi Muhammad Yakub (Rohilkund and Kumaon Divisions: Muhammadan Rural): Sir, I beg to move that the Bill further to amend the Indian Succession Act, 1925, be referred to a Select Committee consisting of the Honourable Mr. J. Crerar, Mr. M. A. Jinnah, Pandit Madan Mohan Malaviya, Mr. S. Srinivasa Iyengar, Mr. M. R. Jayakar, Mr. Abdul Haye, Mr. Ismail Khan and the Mover; and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five.

Sir, as I stated at the time when I got the leave of the House to introduce this Bill, this small measure is intended to remove the conflict of rulings between two High Courts, namely, the Allahabad High Court and the Calcutta High Court. It was held by the Calcutta High Court that a succession certificate may be obtained for the amount which is recoverable as a debt, while the Allahabad High Court has held that a succession certificate should be obtained for the whole debt, even if a certain portion of the debt may have devolved upon one of the creditors himself and therefore it is no longer a debt. Now, this view taken by the Allahabad High Court has caused a great deal of hardship to the public in the United Provinces. It was in order to remove this hardship that I introduced this Bill in the House. The Bill was circulated for eliciting public opinion and I am glad to say that even the Allahabad High Court have accepted the principle of my Bill. The Honourable Mr. Justice Suleiman of the Allahabad High Court in his opinion, which is published on page 4 of Paper No. 1, says that "the idea underlying the Bill is sound," but that in his opinion the section is not happily worded. Then Mr. Justice Boys says that the question immediately concerns Muhammadans and that he sees no objection to it and that it is beneficial and proper in the particular case it is intended to meet Mr. Justice Bannerjee says:

> "In my opinion there does not seem any objection to granting certificates for a portion of the debt in special circumstances but I am entirely opposed to the last clause of the Bill prohibiting the second application for certificate. It will lead to fraud as experience shows that debtors do not ordinarily come forward to pay up"

and so on.

I have also gone through the opinions expressed by other High Courts and legal bodies and nearly all of them are in favour of the principle of

[Maulvi Muhammad Yakub.]

the Bill. Of course some of them have differed in regard to the second clause of the Bill which runs thus:

"But nothing herein contained shall be deemed to allow separate or successive applications being made in respect of portions of the same debt whether by the same or a different heir."

My object in inserting this clause was to avoid multiplicity of applications or multiplicity of suits. On reading the opinions of the different legal bodies I find myself that the second clause is not happily worded and when the Bill goes to Select Committee we shall have occasion to amend this clause and I hope that the Bill will come out of the Select Committee in a form acceptable to all. With these words, I commend my motion to the vote of the House.

The Honourable Mr. J. Crerar (Home Member): Sir, I have very few observations to make upon this motion. It is not my intention to oppose it and what has fallen from the Honourable Mover has to a large extent covered what I proposed to say. While we are prepared to accept the general principle of the Bill as one deserving very careful consideration, we are more doubtful as regards the second part of his proposed amendment which, as he himself recognizes, is open to considerable objection. I agree however that these are matters which may be quite satisfactorily dealt with in Select Committee. I would only move to add the name of Mr. Courtenay to the list of names proposed by the Honourable Mover for the Select Committee.

Mr. President: The question is:

"That Mr. Courtenay's name be added to the Select Committee."

The motion was adopted.

Mr. President: The question is:

"That the Bill further to amend the Indian Succession Act, 1925, be referred to a Select Committee consisting of the Honourable Mr. J. Crerar, Mr. M. A. Jinnah, Pandit Madan Mohan Malaviya, Mr. S. Srinivasa Iyengar, Mr. M. R. Jayakar, Mr. Abdul Haye, Mr. Ismail Khan, Mr. R. H. Courtenay and the Mover; and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

The motion was adopted.

THE INDIAN MERCHANDISE MARKS (AMENDMENT) BILL.

Mr. K. C. Neogy (Dacca Division: Non-Muhammadan Rural): I beg to move that the Bill further to amend the Indian Merchandise Marks Act, 1889, be circulated for the purpose of eliciting opinions thereon.

The Indian law of 1899 is based more or less on the English Statute of 1887, but we have not kept pace with the progress of legislation in the country of its origin. All that the present legislation in India requires in regard to trade descriptions on imported goods, is that if any indication of the place of origin of any imported goods is given thereon it must be a correct description, and penalties are provided in case any incorrect description is attached to any article. There is no authority in the existing

law to require the application of any trade description to any article which might be imported. This state of affairs was not considered to be satisfactory in England, with the result that a departmental committee was appointed by the British Government to consider this question. The report of this committee was available in 1920 and I drafted my Bill on the lines of the report of that committee. The legislation which resulted from this report in England was passed as late as December 1926. The principle which this legislation has sought to give effect to is that every consumer is expected to give some sort of preference to the home product if the price and quality of the home product do not compare unfavourably with the price and quality of any foreign manufacture; and in order that the consumer may exercise this choice he has a right to know as to where a particular article is made. This is more or less the principle that was laid down by the Imperial Economic Conference too. Now, my measure is a mere permissive measure which would enable Government to prescribe the kinds or classes of articles in which such a requirement should be laid down, that is to say, in which the trade description, including the place of origin, should be compulsorily given. Apart from the analogy of the English law, there are two specific cases of unfair competition that came to my notice and which prompted me in bringing forward this measure. The first was the case of foreign manufactured cotton piece goods that were passed off as genuine Indian-made *khadar* during the early days of Mahatma Gandhi's movement in favour of country-made *khadar*. We have evidence that large quantities of cotton piece goods came not only from Japan but also from America, and were palmed off on Indians as hand-woven and hand-spun *khadar*. So long as there is no trade mark applied to these articles of merchandise the conditions of the present legislation are fulfilled. Similarly, in the case of the Indian hosiery industry, it has come to my notice that that industry has been suffering from unfair competition owing to the fact that Japan, taking advantage of India's preference for home manufactured hosiery articles, has been sending out hosiery goods from that country in boxes which bear no label giving any indication of the place of origin. I have in my hand a cardboard box in which Japanese hosiery articles generally come to this country. It bears no stamp of the place of origin, no letter press on any side to indicate the place from which the articles come. With the exception of a rather cryptic number given inside the lid there is nothing absolutely on it of the nature of any letter press. Now, Sir, a gentleman who had studied this question with some amount of care actually demonstrated in my presence that underneath this blank sheet of paper which covers the lid of this box there is concealed a Japanese trade mark; and in this particular case he just moistened the covering paper of the lid and took it off, with the result that the Japanese trade mark was revealed. Sir, this shows that there is some positive advantage to be gained by Japan by thus obliterating her own trade mark, and that advantage I maintain is being gained by the Japanese at the cost of the Indian manufacturer.

Now, Sir, I do not think I need say anything more on the present occasion to commend this motion to the acceptance of this House. I feel sure that the Government will be in sympathy with me so far as the present motion at least is concerned, because I do not want anything beyond the eliciting of opinions on this modest proposal of mine. Comparing my Bill with the English Act I find that the English Act is a much more comprehensive measure. I had not the advantage of seeing the

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I have the misfortune to oppose this motion, and I shall give my reasons for it. I am somewhat surprised that the Honourable the Mover of this motion should have coupled his motion with the castigation of litigants in this country and ascribed the increase of litigation in this country to the multiplication of law reports. For in doing so he has condemned, not so much non-official reports as the Judges who are responsible for the numerous rulings and supplying materials for litigation which he says is fomented by the multiplication of the reports. In his perspicacious phrase, he says that the multiplication of law reports and the publication of all sorts of cases, contradictory and otherwise, is a direct encouragement to the litigant to launch litigation upon the strength of weak, erroneous and contradictory judgments. The Honourable Mover, I think, will be the first to admit that the fault, if any, does not wholly lie at the door of the publishers but of those who are not responsible for the judgments themselves, and if he had brought forward a Bill issuing some sort of legal mandamus upon the Judges not to give any contradictory rulings (laughter), he would have been nearer the mark. But his object now is to thwart and gag private enterprise which places at the door of the Judges, litigants and lawyers an amount of legal learning of which they would be deprived if the State were given the monopoly of publishing the reports for which it is responsible. The Honourable Member is perhaps well aware of the fact that in no part of the civilized world does the State enjoy the monopoly of publishing its own law reports. In England, Sir, as you are aware, law reports are not published by the State at all; they are entrusted to a body of men known as the Incorporated Council of Law Reporting. But they have no monopoly; we have side by side, what we may call the semi-authorised law reports, the Law Journal Reports, we have the Times Law Reports, we have the English Law Times, we have the Solicitors' Journal, we have the Justice of the Peace and we have got a very large number of other unauthorised reports; and it has never been suggested that the multiplication of reports in England has either directly or indirectly fomented litigation. Now I submit, so far as this country is concerned, what would be the situation? If you were to place a ban upon the publication of unauthorised reports, we should have the Provincial Law Reports Committee publishing all their cases. Now, Sir, my Honourable friend is well aware of the fact that one great charge against the Indian Law Reports has been and continues to be that they are most dilatory in publishing cases. A case decided to-day would not be published in these authorised reports for some considerable time, say 8 months or 9 months or one year and sometimes not at all. I could give instances of cases decided by Their Lordships of the Privy Council which have come out in the Law Reports, Indian Appeal Series, but which have never appeared in the Indian Law Reports. I therefore submit, Sir, that when in the case of a court of the highest jurisdiction their cases are not reported in the Indian Law Reports and when this Assembly has no jurisdiction over the Provincial Law Reports with a view to improve and control them, there should be no change interfering with the healthy competition which the publication of private reports creates and assists in the dissemination and elucidation of case law.

I further ask, Sir, whether my Honourable friend has considered a few more objections to his Bill. Now, take the question of costs. As you are aware, the cost of the Indian Law Reports a few years back was

only Rs. 20 and with postage it was Rs. 22-8-0. Now they have raised the price of the Indian Law Reports to something like Rs. 90, and what guarantee is there, I ask, that if the competition from unauthorised reports is suppressed, the authorised reports, Provincial Law Reports, would not raise their subscription to even more than what they have raised it to within the last few years? The question of cost is not a question which the Honourable the Mover of the Bill can lose sight of. We have private journals that give us 4 times and sometimes 5 times the number of cases reported in the authorised reports for about half the cost. They sometimes appear weekly and some journals are monthly publications I do not wish to mention any names but I know of several publications which give months and sometimes years in advance information which is not available in the Indian Law Reports

Another point which the Honourable the Mover of the Bill cannot lose sight of is this. Most of the journals in India, take for instance the Calcutta Weekly Notes or the Calcutta Law Journal, or that well conducted journal the Madras Law Journal and other periodicals, have a series of articles criticising the cases decided in India and in the Courts overseas. These comments on cases are a great help to the lawyer and I venture to suggest that they are of very great help to the Judges themselves. The Indian Law Reports do not contain any comments on cases and I therefore submit that if you were to suppress the non-official publications, you would be depriving the public, the lawyers and the Judges of the benefit of these comments on cases which are at times very useful.

Then, Sir, I have one more objection to it. My learned friend says that the non-official reports are a pest. But how can he prevent the citation of certified copies of unauthorised reports and how can he prevent the citation of unauthorised reports not published in British India but published in England? Supposing a journal is started in England and it publishes the reports. How can you prevent the Judges here from reading them? As a matter of fact we know that the learned Judges of the Indian High Courts avail themselves of the reports published in England and some of them even of such far off countries as the United States of America. You cannot possibly check the multiplication of reports and I think it is a healthy sign of the times that there is so much enterprise shown in this country of making available to the public the decided cases at the earliest moment possible. It is not a matter, I submit, for regret. I, on the other hand, regard it as a matter for congratulation that we have in this country a growing enterprise, placing at the disposal of those who are concerned with the administration of law the materials necessary for the transaction of their business.

Then, Sir, I have one more objection, and it is this. If you are to give the State the monopoly of publishing cases which you would do by prohibiting the publication of non-official reports, how are you going to guarantee to the Judges, to the lawyers and to the litigants that they will cease publishing contradictory reports and over-ruled cases. Is not the Honourable Member aware that he will find side by side in the same volume of the Indian Law Reports contradictory rulings published? Is that a blot only on non-official reports? I venture to submit that it is a blot which is equally shared by the official reports; and who are the reporters? Junior members of the Bar who take down short notes or sometimes do not take down any note at all of the arguments and who usually take copies of the judgments and publish them. So, I submit that there is

[Sir Hari Singh Gour.]

very little to choose between the official and non-official reports. The question of cost, the question of comments, the question of stopping healthy competition and the danger of creating a monopoly are, therefore, insuperable objections to my consenting to the motion of the Honourable mover, and therefore, Sir, with much regret I am constrained to oppose it.

Mr. M. R. Jayakar (Bombay City: Non-Muhammadan Urban): Sir, I beg to oppose this motion and I do so very briefly on the following grounds. There is nothing very technical in this Bill which non-lawyers cannot follow. My Honourable friend Mr. Yakub is attempting to change the law from where it has stood from the year 1875, in this position that no legal decision which is not reported in a report authorized by Government can be regarded as binding upon courts. That is in effect the present law. I may tell my Honourable friends, those who are not lawyers, that we have in this country a system of Government issuing authorised reports of decided cases. The decisions of the several High Courts in India, Bombay, Madras, Calcutta and several other places are reported under the authority of Government once a month in what is called the authorised series of reports. These Reports include only a few of the decided cases with the result that several decisions are left unreported in this series for the simple reason that the reporters have neither the time nor the space in which to report them. Consequently, a large number of private publications has grown up in the country. These publications serve a very useful purpose. Many cases which are not reported in the authorised series are made available both to the Bench and the Bar through the vehicle of these unauthorised reports. The present law has worked very well in so far as it requires that no authority which is not reported in the authorised series is regarded as binding. What Mr. Yakub proposes to do now by his Bill is to make the law very much stricter by requiring that no court "shall allow to be cited or itself refer" to the report of any case not included in the authorized series. In other words, the present law leaves it entirely to the discretion of the court if such unreported decision is cited before it to consider that authority as binding or not according to its merits. Perfect freedom in this matter is left to the court to accept as binding that authority or not. My Honourable friend will have the ban put on these reports perpetually by saying that no court shall allow to be cited or itself refer to such decisions. The ridiculous result will be that valuable decisions of important Judges, which for some reason or other, *e.g.*, for want of space, want of attention or any other cause—and several such causes may be imagined—do not happen to be reported in the authorised reports, will never be cited in courts and will be lost to the profession. It is obvious that the mere fact that the decision does not happen to be included in the authorised series does not show that it is not worthy of being cited. Law reporting in India has not reached that stage. To require by Statute that no counsel, solicitor or pleader is to be allowed to cite such authority is, I think, Sir, with great respect to the Honourable the framer of this Bill, to push the present law to a ridiculous extreme. I feel certain that this measure, if accepted, will put an undue premium upon the decisions included in the authorised series. The figures which relate to what is the basis of this Bill are interesting. I will not deal here with the stock argument urged by the mover that litigation in this country is increasing to a ruinous extent. My reply will be that in a country situated like India litigation must increase because our system is so imperfect. The figures are as

follows: In 1875 we had four courts in India and 30 legal journals, and the total cost was Rs. 300. In 1927 there are ten courts in this country, yet there are only 100 journals, and the cost is Rs. 279. Therefore the statement of my Honourable friend on which he bases the whole Bill is entirely without foundation and, if so, the very plea for this enactment is gone.

But, Sir, there are graver reasons why this Bill should not be allowed to go even to the stage of eliciting public opinion. I regard this question as absolutely a domestic matter to be reformed and regulated according to the convenience of the profession between the Bench and the Bar. I have had some experience of Indian courts, and especially of the Bombay High Court, and I can assure my Honourable friend that it is very rarely indeed that a bad decision acquires any authority at all with the Bench or the Bar. We all taboo certain decisions, and, if I may say so, of certain Judges; such decisions are never cited, time is a great test in such matters and in my opinion it is ultimately the sense of the Bench and the Bar which is the best corrective of all those anomalies which the Honourable the mover of the Bill refers to. We must leave it to the internal economy and to the arrangement and convenience of the profession as represented by the Bench and the Bar. If we here interfere by means of a Bill of this character, we will in our ignorance cause serious evil. I may give the House some reasons, Sir. The whole theory of legal justice as administered in British Indian courts is, if I may say so, that a judgment ought to be pronounced in open court. This is the theory of British law which we have copied in this country; the reason being that the obligation that the judgment is to be pronounced and reported publicly is a corrective against all abuses which will otherwise creep in. That is the theory of the law. The possibility that the Judge has in his mind that his decision will be reported, heard by the public, commented upon and criticised, is regarded as a very good and valuable corrective against all judicial anomalies which are very often perpetrated in the name of law and justice especially in this country. Now, what my Honourable friend says is, he will not let in this light of publicity except through the small aperture which the authorised series provides. All other avenues of publicity will be stopped; the public will have only one door open, *viz.*, that which is provided by the Government machinery. I can imagine, Sir, several decisions, if I may mention this without disrespect to any Judge—there are I say several decisions which some times for political considerations are not thought fit to be reported. I know a few cases in which a political question has cropped up affecting politics of State, *e.g.*, the relations between the State and its citizens, or Government and the Watandar, which, in my part of the country, often assumes a political aspect going as it does to the very root of the policy of the State not to allow power to consolidate in territorial holdings. I am sure my friend opposite from Bombay Mr. Allison will understand what I mean. I say I am aware of a few cases where such far-reaching questions have come up under the Land Revenue Code dealing with the powers of the Government against its subjects and where decisions have been given in favour of the subject and yet the Judge has expressed his desire that the decision should not be publicly reported or made available easily to the litigating public. The present Bill will make this cowardice more frequent. Will this House, so jealous of popular rights, permit that in such cases the decision shall not be cited for the simple reason that the Judge in his desire to oblige the Secretariat does not wish that his decision should be reported

[Mr. M. R. Jayakar.]

in the authorised series? Does my Honourable friend Maulvi Muhammad Yakub believe that public liberties will grow if this ban were put upon reporting? Is it his wish that because of the mere caprice, timidity or political leanings of a Judge which lead him to refuse the publication of a decision in the authorized series, we should prevent the public from ever using the valuable decision? Is that his intention? And does he think that he is aiding the growth of the liberties of the people by having this Bill? There are several other reasons why Judges often desire that the decisions which they have pronounced in public should not be reported. The result of this enactment will be that such important decisions which for one reason or another are omitted from the authorised series, will cease to be available to the public.

Dealing with another aspect of this question, I confess, Sir, I cannot see much force in the arguments of the Mover. What constitutes the authority of a decision, Sir? What recommends it to universal adoption? Its merit. Not its publication in a particular series. It is always available in the files of the High Court where it was pronounced. The reporter does not manufacture anything of his own. He only puts the decision in the authorised series and makes it available to the public in an easy manner. The decision itself is always available in the archives of that particular court. To illustrate my point. If the Bombay High Court gives a certain ruling as an authority for all future time, it is always available in the records of that court. It can always be sent for by the Judges of that Court. What the reporter does, Sir, is only to make available copies of that authority for a very small price all over India. That is the only function of the reporter. He does not manufacture authorities, or add to or detract from their merits. Therefore, the mere fact that the decision is published in one series and not in another has nothing to do with its authoritative character which depends solely on its soundness. So, as far as the High Court where it was pronounced is concerned, the original judgment is always available from the record office. The Judge merely writes a slip to the Registrar asking for the record in Appeal No. so and so, and the original judgment is readily made available. It is only the High Courts of other provinces that cannot have this facility to obtain these decisions and hence they are made available in the form of a printed report. Why are we going to deprive these Judges of the use of such decisions if on the merits they are valuable and worth citing? I submit, Sir, we will be striking at the root of the very theory of publicity on which judicial administration proceeds.

Sir, in 1875 the present law was enacted. In 1875 it was a great deal less drastic than the Bill which is now put before the House in 1927. Even in those days when the public thirst for knowledge was not so great as now, when there were only four Courts in India, Lord Hobhouse, then in charge of the Bill of 1875, stated in the Council that out of several Judges consulted only a few were in favour of even that mild enactment. One Judge from Madras said: "This had better be left to the internal economy of the Bar and the Bench; we must not interfere with the law as it stands". They would have protested against this Bill if they were alive now. One Judge said about the third section:

"I strongly object to the third section which places in the power of the Government and the executive"

—mark the words, Sir—

"which places in the power of the Government and the executive to exclude from the law any decision of which it disapproves. The matter is beyond the scope of legislation and in my opinion this Act cannot fail to be mischievous."

And yet that section was far less mischievous than the Bill which is now proposed for our acceptance by my Honourable friend, Mr. Yakub. Besides, the Bill will also increase the Judge's work, Sir. Supposing some point which a Judge has to decide has already been considered by another Judge and decided. The thinking has been done by him already, arguments considered and a decision arrived at. If my Honourable friend's law were to be enacted, it would mean that, for want of publication in a certain series, the same point would have to be considered by another Judge although it has been decided already; and that too for the simple reason that its report has not been included in the authorised series and cannot therefore be cited. Under the present law, the Judge has the freedom of adopting or rejecting it as binding, which he always does according to its intrinsic merit. Many Judges have a very quiet and courteous way of showing disapproval. "Have you got any other authority, Mr. so and so, to cite on this point?" or "Will you proceed further?" At present the matter is regulated by the educated sense of the fraternity called the Law, *viz.*, the Bench and the Bar, which I think is a very wise and wholesome provision. If we now step in, in our ignorance of the real evil, I am sure, Sir, we will cause greater evils than those we seek to remedy.

The Mover attacked private publications. I may at once and frankly assure my Honourable friend that I am not conducting any private legal magazine, nor have I any interest in any. My Honourable friend referred to the promoters of unauthorised magazines visiting the Members of this House and explaining the case from their point of view. I fail to see why they should not put their point of view before us. There is nothing wrong. We are after all ignorant of the inside of these things, and therefore there is nothing wrong in our getting at the true facts. I frankly confess, Sir, that I have derived most useful material from a person who has seen and given me information about private publications. I certainly think that we have no right, unless the higher interests of the State require it or public policy demands it, I say, we have no right here to interfere in what has grown into an honest living for industrious and intelligent people. Even on that basis, as my Honourable friend put it, the case for our non-interference is strong. What right have we to interfere with a number of interests which have grown up and reasonably grown up under healthy competition wherein the talents of an intelligent section of our countrymen, who would perhaps be otherwise unemployed, are utilized. What right have we to enact a measure, unless the higher interests of the State required it, which will throw these hard-working men out of employment? There are at present roughly speaking 100 of such private legal publications. Assuming about 4 people are employed on each publication, about 400 men are deriving their means of livelihood from this honourable source. May I know what interests of State require that these intelligent and hard-working men should swell the ranks of the unemployed? It is a practice in this House to trot out the analogy of the British Isles. The official Benches often do that. May I say therefore that in 1864 a similar measure was thought of in England: not so drastic as my Honourable friend's and much less mischievous. In 1864, Sir, the entire Bar of England met and

[Mr. M. R. Jayakar.]

they resolved that "it is best to leave this matter to be regulated by the internal economy and good sense of the profession rather than that the law should intervene". I have in my hand a cutting from the proceedings. In 1864 a general meeting of the entire English Bar debated the idea of Government supporting or interfering, and they rejected the idea of restricting the citation of legal decisions.

This was the condition of things in other countries in 1864. And my Honourable friend in 1928 is asking us in India to go back on all this and put on the Statute-book a measure the result of which will be to cut out a number of decisions which are very important, and to make law reporting practically a monopoly of the Executive. If I were to give the figures to my Honourable friends of cases not reported in the authorised series the House will be surprised. Well, my learned friend in his mofussil court may afford to despise all this valuable legal lore, but we cannot in the Presidency towns afford to do it. Note the figures, Sir. In 1914-26, *i.e.*, 13 years, 214 Privy Council cases were left unreported in the authorised series. Fancy, Sir, Privy Council cases, decisions of the last tribunal for India, left out for want of space, want of attention or similar other cause. In other words in 13 years the volume of legal authoritative learning which was not made available to the legal public through the medium of these reports was 214 important cases. If Mr. Yakub's rule were to prevail, these 214 cases would be permanently lost to our profession, for they would not be allowed to be cited although they are Privy Council decisions and therefore important. Is that wisdom? Then again, Sir, in 1921-26, six years, Full Bench cases were omitted. I will explain to my non-lawyer friends that a Full Bench means a Bench consisting of more than 2 Judges, sometimes 6, at times even eleven Judges, embodying the united learning of a High Court. Full Bench cases are *ex hypothesi* of special value and yet how many cases were left unreported by the authorised reports? 32 cases in 6 years. Now, Mr. Yakub says, all these citations must be put a stop to. Not in the sense that the decisions should not be regarded as authoritative if it did not deserve it, which would be sensible, but in the sense that if any assiduous advocate happened to find a good decision, he should not be allowed to even cite it. The present rule is that it should not be regarded as binding in authority. My Honourable friend goes further and says, that is not enough! It will not be allowed to be cited even! The result will be that we may have new knowledge and new information only filter through the small aperture of the authorised series.

These are the few grounds I wanted to urge before this House against this measure which I have no hesitation in describing as retrograde and mischievous.

Mr. N. C. Kelkar (Bombay Central Division: Non-Muhammadan Rural): Sir, two eminent lawyers have already spoken against this motion, and if I join my voice with theirs, it is simply with the object of putting before this House the view a layman like myself may take. I call myself a layman because I am not a practising lawyer. I have passed a law examination and I have sometimes to do with law in my own way, but I am not a practising lawyer. But it appears to me, from what I know of the mofussil people that we must in good time protest against this measure here, because, even if this Bill were circulated for eliciting

opinion, if we circulated it without any adverse criticism upon it at the right moment, it will have very mischievous consequences in the mofussil. I know the habits of the mofussil people, even sometimes of lawyers; they do not discriminate between a Bill which is published in the Gazette of India simply as an introduced Bill or one circulated for opinion, but sometimes they mistake it for a Bill which is already passed and begin to act upon it.

Now, it appears to me that my friend Mr. Yakub wants Government to legislate against the private enterprise and the private business of law reporting on the mere ground that they are quite a multitude—a multitude which he himself does not like. It appears to me as if he was asking from Government a law against birth control on forensic publications. Now, it is not illegal, not even illegitimate, to preach birth control, but certainly it may be done often times in very very bad taste, and that is the way in which my Honourable friend has done that in his speech when he unnecessarily attacked people and unnecessarily criticised people who are simply doing a public and private duty in printing law reports and making them available to the ordinary litigant world.

12 NOON.

I will now briefly go into the Statement of Objects and Reasons and see how far the objections raised are valid.

"The ever increasing number of Law Reports in India stands in need of check and proper regulation. All sorts of law journals and reports, good, bad and indifferent, are issued from different places."

Now, whose fault is that? It is the fault of the man who cannot choose for himself. In every sphere of life you meet with things which are good, bad and indifferent. But if that by itself will suffice as an argument for putting a ban upon variation and specialisation, then you may put good taste in your pocket and do nothing.

"Mostly the same rulings are sooner or later published in different publications."

The real position seems to me to be this. It is not possible to conceive that one centre of legal publications can satisfy the needs of the whole of India and therefore a number of law reporters appear and do business in different parts of the country.

"Sometimes rulings which have ceased to be operative by the force of a subsequent ruling or change of law are published to swell the volume of reports."

If this is at any time done, it must be done with a special purpose. A repealed ruling or a rejected decision may perhaps serve as history bearing on a point of law, and if this were foolishly done without some special significance, the law reporter, who does it, will soon be detected and would be rightly discarded by the customer world. Also, Mr. Yakub has not given any instances for our elucidation that such rulings have been published in law reports.

"With the same object numerous pages dealing with mere facts which have no bearing on the legal aspect of the case are also published."

I do not suppose that a law reporter would merely add to the volume of his report simply because he might swell the volume. It cuts both ways. It cuts at himself and it cuts also at the customer. Why should a subscriber subscribe to a law report which unnecessarily swells the volume

[Mr. N. C. Kelkar.]

of facts, and why should a printer of law reports unnecessarily swell his volume and add to the cost of production of his book? Evidently the reason seems to be that if sometimes facts are given along with a case, it is in order to elucidate the ruling and the judgment in the case and to supply that particular cue which is necessary in legal argument and decision,—the cue about specialisation or differentiation between one set of facts and another—which is the governing factor in a legal decision. One case is distinguished from another not necessarily upon a law point but even in relation to the particular facts in the case:

"Sometimes rulings published in one journal are published in another after several months, thus causing confusion and embarrassment. The number and volume of Law Reports is becoming simply scandalous and requires check and regulation."

I do not see why Mr. Yakub should have said that. We are all human beings and we all of us love a scandal like a joke. We all of us want to hear a scandal now and then. But I for one, I may say, have never heard a scandal against the multitude of law reporters, but I have heard a scandal which goes in the opposite direction. I have heard scandals about heavy indolent lawyers, not minding their own business, taking up other offices and other work on their hands, and then running back to their law courts and just looking up things and trying to finish their business with a cursory knowledge of law. I say this, only because the law reporters have been attacked specifically here in this House by the Mover of this motion. I should fancy that if my Honourable friend Mr. Yakub went ashopping, he might object to a big show room because it presents a multitude of variety and choice and the necessity of making up his mind would oppress him. What he is now proposing is something like that.

Turning now to a few points directly bearing upon the merits of this motion, I would ask first of all, "What is the necessity for this Bill?". My Honourable friend has not been able to make out the necessity for this Bill at all. The two objections urged by him are the multitude of law reports and cost. My friend Mr. Jayakar has already referred to that point and therefore I will not refer to it again. I would only point out that in England there is only one High Court and in order to publish the judgments and reports of that High Court there are already 7 or 8 law reporters always busy. Compared with that, the multitude of law reports in India certainly cannot be called very great. The real and principal objection to this Bill has already been stated by Mr. Jayakar, but I would state it in my own way in this way. This new Bill creates an absolute monopoly, because if private law reporters were tabooed and were prevented from the privilege of citation, then the lawyer will have to depend only upon authorised law reports, and that necessarily creates a monopoly. Now, there can be no monopoly, really speaking, in law reports, because as soon as a Judge pronounces his judgment, it becomes public property, and any private person present in court may take notes from that pronounced judgment and publish it, for there can be no such thing as copyright in judicial decisions. If in 1875 an Act was passed creating a sort of a qualified copyright in judicial decisions, that was unreasonable. But after all it was an Act of the Legislature and had to be obeyed. The Act of 1875 went against the genus of tradition in this

matter, and as pointed out already by Mr. Jayakar, if we look into the literature in the form of opinions received upon that Bill at that time, we will find that numerous opinions were received which went against that Bill. Of course, eventually it was passed and now it is binding. But my point is that the Act of 1875 already created an unreasonable monopoly, but that was tempered by the permission to Judges and lawyers to refer to and to cite other cases reported in private law reports. They were not barred then. What would happen if you bar them now as provided in this Bill is this. The effect will be that the authorised law reports would be an absolute monopoly, and we shall find that this monopoly will have all the defects which every monopoly possesses. And what does a monopoly do? It prevents competition and therefore cuts at the very root of efficiency and cheapness of cost and other things. Supposing these private law reports were banned and excluded. What will then remain in the field? Only the authorised law reports. As has been already pointed out by my Honourable friend Mr. Jayakar, there are grave defects which occur in and which are incidental to these authorised law reports. On the other hand, there are several merits which appertain to private law reports, and among those, I may mention, first of all, cheap cost on account of competition and secondly, the very great wealth of material in the form of facts and other things given along with the judgments. Then the reporting of these unofficial reports is very exhaustive, it is certainly more copious than is contained in the limited field allotted to official law reports. Again, these private law reporters, very energetic and industrious people, supply guidance to the lawyer as well as the Judge. Are we to be deprived, I ask in all seriousness, of all these advantages which appertain to private law reports which is an innocent private business like any other business? Are we to invoke the heavy hand of law upon this private business which is innocent, which does not cause inconvenience to any one and which is positively useful to the lawyer world and the litigant world? If you put a ban upon these private law reporters it means you restrict and narrow down the field of judge-made law or case law as it is called. As I have said, I am not a lawyer but I have a very vivid and interesting impression created upon my mind, say, about 35 years ago when I read Sir Henry Maine's Ancient Law for my law examination, and that impression which has abided in my mind up to this moment is that case law or judge-made law is really the life and nervous system of the judiciary. It supplies the spirit, the nerve centre, it gives life as it were to the rigid bone framework of codified law. Are we going to deprive the judiciary of all these advantages which are supplied by the case law by narrowing the field of its publication?

Now, my Honourable friend has made a great complaint against the increase in litigation, but he does not turn his eye to the right quarters if he really wants to put a stop to litigation. The remedies would be, you might limit the Statutes. Let us put a ban, a self-denying ordinance upon us. Members here of this House, and say we shall not produce more than a certain amount of Statutes or Acts during the life of one Assembly. But that will never do. Here you see man competing with man and trying the fortunes of the ballot to get his name for introducing Bills. And Government, of course, are energetic and busy in their own way. When they have nothing else to do they will ransack their pigeon-holes in order to provide grist for the Legislative Assembly Session and bring

[Mr. N. C. Kelkar.]

up Bills, good, bad, or indifferent, which may be urgent or which may not be urgent, and about which there may be differences of opinion. Therefore, let us enact a self-denying ordinance against ourselves in the first place and limit this production of Statutes. Then you might reduce the courts and ask Sir Hari Singh Gour whether he is prepared to reduce the number of courts. On the other hand, he will be proposing the establishment of a new court, a court of courts, called the Supreme Court. Then you might pass—I am seriously suggesting this measure for reducing litigation for which I have always felt and do feel a great fancy—you might pass laws for compulsory arbitration, because I have always felt that people unnecessarily go to courts of law, and if you provide for a compulsory resort to arbitration courts much litigation will be cut down.

Mr. B. Das (Orissa Division: Non-Muhammadan): What will happen to lawyers then?

Mr. N. C. Kelkar: Again by purely voluntary acts we may curtail litigation. In brief, I may say that whereas my Honourable friend Mr. Yakub should have really revelled in the richness and wealth of the legal resources provided by the private law reporters he has sought to do a thing which really injures both the genius and the business of law making. It may not be uncharitable to say that what he really wants to do is to remove the handicap which operates against the indolent lawyer.

Mr. L. Graham (Secretary: Legislative Department): I should like in a few words to explain the attitude of Government towards this Bill. I cannot say that we welcome it enthusiastically and I cannot say that it attracts us at all. But we have not decided to oppose it at this stage and our reason why we came to this conclusion was that we felt that this was not a case in which we could appropriately come to a decision unless we were placed in possession of the views of at least the Bench and the Bar. My Honourable friend, Mr. Jayakar, and also my Honourable friend, Sir Hari Singh Gour, as practising lawyers, have stated their views very expressly on this subject, and it may be said that it is very unlikely that we should find any divergent opinion from the Bench as they have put to us very plainly that on this subject the Bench and the Bar are in accord. On the other hand, we are under the impression that a good many very bad reports are published and the effect of those bad reports is that courts are very frequently misled. I do not say that the courts in which my Honourable friends practise are misled, they have better materials near at hand; but I do think that in the lower courts a good deal of trouble is caused by the citing of unauthorised reports. For that reason, though we are not prepared at this stage to lend our support to the Bill, we do feel before this House throws out the Bill that the motion of my Honourable friend is to a certain extent a reasonable one, that this House itself perhaps is not the right body to come to a final conclusion on a subject of this sort, and that consequently the motion for circulation which my Honourable friend has made is one which we should not oppose.

Maulvi Muhammad Yakub: Sir, the power of propaganda was never shown to be stronger than when it was exhibited this morning. I never expected that on a motion like this for the circulation of a Bill my Honourable friends, who are eminent lawyers, would devote so much time and energy to opposing a motion of this sort. As I suspected and as I

said in my previous speech, some agents of these publishers have been going round and supplying materials to Honourable Members of this House, and as I submitted the other day, the power of the capitalist is really wonderful in these days. All the politics of this world is rotating round the axle of this capitalist movement. The same thing is exhibited here and we find that some capitalists who are making money by publishing these unauthorised reports are sending out their agents who have supplied old, rotten material to my Honourable friends. The arguments which have been brought forward by my Honourable friends in opposing my proposition relate mostly to the defects in the publication of the authorised reports and they do not go to the root of my Bill.

I believe, Sir, that the arguments which they have brought forward strengthen my case instead of weakening it. I myself admit that at present the publication of the Indian Law Reports is not very satisfactory but what is the reason for this? The reason is this. There are so many other law journals and other sources in the hands of the lawyers for case law that nobody ever cares to improve the publication of the Indian Law Reports and to place them on a more satisfactory basis. If my Bill is passed, then only the authorised series of law reports will be allowed to be cited in the courts and I am sure then all the members of the Bar and the Bench in the different High Courts in India would try their utmost to improve the publication of the Indian Law Reports and I hope that all the objections raised by my Honourable friends, namely, that some cases are not published and that overruled rulings are published in the Indian Law Reports, will be removed. I think therefore that in order to improve the law reports my Bill should be enacted into law.

My Honourable friend Sir Hari Singh Gour has referred to certain comments which are published in these law journals. I would submit that in order to derive the benefit of comments I would prefer the valuable commentaries which are published so voluminously by my Honourable friend Sir Hari Singh Gour himself in which nearly all the important cases are skilfully criticised and commented upon. Illuminating commentaries like those published by my Honourable friend Sir Hari Singh Gour are more useful to the lawyers than these unauthorised reports published by adventurers. Certainly my Bill does not provide against the publication of commentaries on the law books and on that score I hope my Honourable friend Sir Hari Singh Gour will not entertain any fear.

Much has been said about the cost of the Indian Law Reports. The reason is that the Indian Law Reports have got very few customers. Very few copies of them are printed because there is no demand for them on account of these other publications. If you put a ban on these unauthorised reports and say that only the Indian Law Reports should be cited, a larger number of the Law Reports will be published and their cost will certainly diminish, and if the Government do not diminish it, the unanimous voice of the Bar and Bench will make them diminish the cost of the Indian Law Reports.

My friend Mr. Jayakar said that for certain political reasons certain Judges do not allow their judgments to be published. I am really surprised to hear such an argument. If a Judge is straightforward and honest enough to deliver his judgment in the open court, where reporters of news papers can take down reports of the judgment, then why should he be so timid as not to allow his judgment to go into the Indian Law Reports? I think that my friend was not serious when he advanced this argument.

Mr. M. R. Jayakar: I was very serious.

Mr. B. Das: Mr. Jayakar has more experience of the High Court than my friend Mr. Yakub.

Maulvi Muhammad Yakub: Moreover, I consider that the accumulation of published judgments of Judges certainly to a great extent hampers the administration of justice and restricts the power of judgment of the Judges and it is not right that all sorts of judgments which do not enunciate any principle of law should be cited in order to restrict the free judgment of those on whom the burden of administration of justice lies.

I do not think that this is the stage at which one should go deeply into the merits of the Bill. As I submitted before, if public opinion is in favour of the Bill, defects of drafting may be removed when the Bill goes to Select Committee. At the present stage I have not been convinced by the arguments that have been brought forward by my Honourable friends and I do not think this is a measure for which leave should not be given to obtain public opinion. I commend my motion to the House.

Mr. President: The question is:

"That the Bill to regulate and improve the Law Reports be circulated for the purpose of eliciting opinions thereon."

The motion was adopted.

THE INLAND STEAM VESSELS (AMENDMENT) BILL.

Mr. K. C. Neogy (Dacca Division: Non-Muhammadan Rural): I move that the Bill further to amend the Inland Steam Vessels Act, 1917, be circulated for the purpose of eliciting opinions thereon.

Sir, water transport plays a very important part in the trade and passenger traffic of four eastern provinces of India, namely, Bihar and Orissa, Bengal, Assam and Burma. A good deal of traffic in these provinces is carried by inland steam vessels which are owned by more or less monopolistic concerns. The control which Government exercise over these inland steam vessels is laid down in the Act of 1917. No steam vessel can ply for traffic in the inland waters of India unless it possesses certificates granted on certain conditions. In this long Act there is only one small section, however, that lays down the conditions for giving certain protection to the passengers, and that is section 54. Section 54 empowers the Local Government to make rules for the protection of passengers in inland steam vessels, and we find that this protection is limited to two very small points; first, that the prices of passenger tickets are to be printed or otherwise denoted on such tickets, and secondly, that there should be a supply, free of charge, of a sufficient quantity of fresh water for the use of passengers. Government seem to think that that is all the protection that is needed to be given to the passengers under this Act.

Now, Sir, the position was quite clearly put in the Bengal Legislative Council by the Honourable Member in charge of Commerce there a few

years back when this question came to be agitated in the shape of a Resolution. This is what the Honourable Sir John Kerr said on that occasion:

"We have of course certain powers of control over the steamer companies under the Inland Steam Vessels Act. Under the provisions of that Act their steamers have to be surveyed and their officers have to be licensed by Government, and so forth. But we have no more power to compel steamer companies to provide waiting rooms or to reduce their fares than we have the power to compel Messrs. Whiteaway Laidlaw and Co. to provide waiting rooms for their customers or to sell their goods at certain rates."

Then, Sir, he was good enough to continue in the following strain:

"It is of course true that the comfort and efficiency of the steamer services is a matter of some public interest, and we can if we think it justifiable make representations to the steamer companies in compliance with any requests that are made in this Council."

That very clearly demonstrates the helpless position of the travelling public, so far as the amenities of travel in these inland steam vessels are concerned. Now, my Bill seeks to empower Government to prescribe the maximum and minimum fares and rates, and, secondly, to empower Government to make rules for the purpose of the appointment of advisory councils to advise steamer companies on all questions relating to the amenities of travel. And I maintain that in endeavouring to place these provisions on the Statute-book I am not asking for the recognition of any new principle. The Honourable Member in charge being also the Member for Railways is well aware that even in the case of Company-owned Railways such control is exercised by the Government for the benefit of the public. Now, Sir, so far as the position enjoyed by these monopolists is concerned, it is well known that they came to acquire this position by reason of the absence of some such control over their regulation of fares. There have been quite a number of instances in the eastern provinces in which indigenous efforts at starting inland steamship concerns were defeated by these powerful combines with the help of a rate war. There are instances in which, when indigenous companies were formed for carrying passengers and goods, these combines so reduced their rates and fares as to make it impossible for their indigenous competitors to continue. There is at least one case on record in which these big combines did not scruple to carry passengers absolutely free of cost; and not only that, they also used to supply sweetmeats to their passengers in order to attract them.

Mr. N. M. Joshi (Nominated: Labour Interests): Why do you complain of that?

Mr. K. C. Neogy: But these sweetmeats did not continue for long! As soon as the rival concerns were successfully wiped out of existence by these methods the monopolist concerns re-imposed their rates and went on increasing them, with the result that there is absolutely no chance now in these four eastern provinces of any indigenous effort being made again to start any steamer business on a competitive footing. Thus, the absence of a minimum scale of rates has enabled these concerns to kill all competition, and the absence of a maximum rate has enabled them to charge as high a rate as possible to the public for the services they render without paying heed to the numerous grievances of the passengers. I am not going to dilate on this point any further on the present occasion. This question has been greatly agitated in the Press and on the platform for the last six or seven years in my province, and these grievances have

[Mr. K. C. Neogy.]

formed the subject of Resolutions and interpellations in the Bengal Legislative Council during all these years. But although the administration of this subject is a provincial subject, legislation has been left a central subject under the present constitution. That is the reason why I have to come up in this House with this Bill of mine.

Sir, ever since my Bill came to be published, the Indian Press in Bengal has, with remarkable unanimity, supported this measure. I do not know what attitude Government are going to take on the present occasion, but I do hope that having regard to the fact that all I want is to elicit opinions on this measure, they will not adopt an attitude of hostility. Now, Sir, I do not know whether any objection will be taken on the score that Government ought not to interfere in private trade in this manner; I feel that that point is no longer open, having regard to the control which Government already exercise through the administration of the Inland Steam Vessels Act. The only question is as to what the extent of such control should be, and in this view of the matter, I do hope that neither Government nor the non-official European representatives in this House will raise any objection to my present motion.

Sir Walter Willson (Associated Chambers of Commerce: Nominated Non-Official): Sir, I would like to offer a few remarks at this stage. Mr. Neogy always puts his cases before us so briefly and fairly that it is always a delight to listen to him even if one may not agree with his conclusions. I think however that I might take this occasion to point out one or two reasons why the position is not quite as stated by Mr. Neogy. In the first place he dealt with what he called the monopolist concerns. Now, I would like to point out to Mr. Neogy that the concerns to which he refers are not monopolistic in any shape or form, and I will give him figures in support of that statement. It would in my opinion be entirely unjust to legislate in the manner proposed, unless it were at the same time proposed to inquire into and regulate the freights and passenger fares of the country boats which ply in the rivers. The competition is largely between the country boat and the steamer and it is also between the steamer and the railway. Apart however from this, legislation designed to prevent healthy competition is in my opinion hardly within the province of Government. Unless the law be changed in regard to the river carrying companies and they are put in the same position as railways it is a further reason to doubt whether interference should be attempted. The Mover of the Bill has apparently overlooked the considerable changes which have taken place in recent years in the conditions applicable to the inland steamer business. On the Ganges river the steamship companies for very many years have had to face keen competition from the railways on both sides of that waterway, and their freight charges are entirely based on the rates charged by the railways. On the Brahmaputra river rail competition is already keenly felt and further railway extensions are now in hand and contemplated which seriously threaten the future business of the steamship companies. On the Cachar river the steamship companies have direct competition with the Assam-Bengal Railway and have taken the view that since the Assam-Bengal Railway does not over a number of years pay its own way, it amounts to a railway being subsidised at the expense of the other railway earnings in India. In the Gangetic Delta, where the inland steamship companies have for many years provided in the public

interest an excellent service of steamers and satisfactory means of communication, railway extension is in direct competition with them. It will thus be seen that the position is really not a case of monopoly, as my Honourable friend attempted to make out. I will now ask his attention to a few figures which I have at hand. In the year 1914-15 (I am taking a pre-war year) the articles imported into Calcutta, the principal entrepôt port in the province to which my Honourable friend belongs, amounted to 19 million odd maunds. In 1921-22 they were 23 million maunds. Those two figures are for the trade by country boat. The figures for inland steamers in the same period were 10 million maunds and 9 million maunds respectively. The figures for the export trade of Calcutta were as follows. In 1914-15 there were 8 million odd maunds exported by country boat and 13 million maunds by inland steamers, and in 1921-22 8 million maunds by country boat and only 9 millions by inland steamers. Therefore you will see, Sir, that in both cases the figures for the latter period 1921-22 by inland steamer are less than the figures for the 1914-15 period. You will also see that the trade by country boat is larger than the figures for inland steamers. Where therefore, may I ask, is the monopoly?

In regard to the rates of passenger fares, it would perhaps not be very convenient to give the House a long list at this moment but I have here, and will be pleased to show to my Honourable friend at any time, a statement showing the comparison between the railway fares and the steamer fares for third class passengers, the effect of which is to show that the steamer fare is less than the railway fare. Further, if the suggestion be that the steamship companies are charging too much, let us look at their dividends, which are low. If you take the average of the dividends of the two large companies for the last ten years, you will find that it is only between 6 and 7 per cent.,—not a big figure when you consider the enormous value of the block that has been at work, that was purchased mostly at a favourable time and that to replace those vessels would cost a great deal more money. The figures for the other company are strikingly similar, and the dividends are merely a decimal point better for the same period.

Then my Honourable friend should remember the difference in the law of carriage. A railway is not a common carrier; a railway is protected, whether it is a Government-owned or a privately managed railway, under the provisions of the Railway Act of 1897, whereas in the case of the inland steamship companies their rates cover liabilities as common carriers and they are subjected to the provisions of the Indian Carriers Act, 1865; they are common carriers and have to undertake a great deal of liability which attaches to no railway company.

I think, Sir, therefore, that the position is not what Mr. Neogy appeared to think.

I was one of those brought up to hesitate very very seriously before I ever asked Government to interfere with trade. It is one of my standard beliefs that the less interference trade gets from the Government, the better for trade. My general attitude towards Government's interference with trade is one of no affection but for the policy of "hands off". I think I have dealt with most of the points made by Mr. Neogy and certainly most effectively disposed of his suggestion that there is any monopoly in the matter. As I said, Sir, Mr. Neogy puts his cases so

[Sir Walter Willson.]

very reasonably and so commendably briefly that I have no desire at this stage to carry the arguments any further.

I would hardly ask the House to throw out his motion if the House really feels that it would like it to be circulated, but I think that the reasons for circulation are really not good. It means a certain amount of expense and throwing a certain amount of work on companies and Local Governments to put up their answer, which is hardly justified. But with these few remarks I leave it entirely to the House to decide whether they think that Mr. Neogy's motion for circulation is one that they should support or not.

Mr. B. Das (Orissa Division: Non-Muhammadan): Sir, I have been always of the opinion that inland shipping companies like the railways which carry public passengers, mails and also goods are public carriers and should always be regulated and controlled by Statutes of the State. While the railways are in a way controlled by Acts and Statutes of the State, the steamship companies in the eastern part of India—I cannot speak of the Bombay side—are not controlled by any Statutes of the State. My Honourable friend, Mr. Neogy, has just now cited instances showing how the monopolies concerned have fought against and crushed indigenous attempts and prevented them from developing in the Bengal province. My Honourable friend, Sir Walter Willson, alluded to the fact that country boats have all along been competing with steamship companies. I should not be surprised to hear a few minutes later, when my Honourable friend Sir George Rainy speaks, that the railways have been finding great obstruction and great competition from the bullock carts,—and there are at least 50 millions of bullock carts in the country. But this is the first time that I hear, that Indian India hears, that the small country boats, the little Inchcapes of our fishermen who man our country boats, are fighting with the steamship companies that are controlled by my friend Sir Walter Willson, Lord Inchcape and his friends.

Sir Walter Willson: I am sorry I cannot claim the honour mentioned by the Honourable gentleman opposite.

Mr. B. Das: That is the meaning that is understood. My Honourable friend Sir Walter Willson is against the circulation of the report. He is very anxious to save the tax-payers' money, and at times my European friends are very anxious to save the tax-payers' money. But this Bill has been brought forward to do away with the hardships of millions of passengers in Bengal, Bihar and Orissa and Assam, and for that it ought to be circulated. Mr. Neogy's suggestion that there ought to be advisory committees to control the traffic of passenger and goods service of steamship companies is a very good suggestion, although my experience as a member of the Local Advisory Committee on a railway goes to show that such Advisory Committees will do very little good and will be given very little power. The rules and regulations framed by the Honourable the Commerce Member will be such that Advisory Committees will always be advisory and will have very little statutory power. There was a Deck Passengers' Committee which reported for the convenience of passengers. Very little steps have been taken and Government have not enforced the recommendations of that Report for the

convenience of passengers; and it is now high time for the enactment of legislation for the convenience of passengers by inland steam navigation and also for regulating rates for passengers and goods on that system of public carriers which cater for millions of passengers and carry heavy tonnage in goods.

Mr. Sarabhai Nemchand Haji (Bombay Central Division: Non-Muhammadan Rural): Sir, as I understand it, the object of this Bill is to add to the participation of Indian steamship companies in the carriage of passenger traffic along the inland waterways, and the reason why I believe my friend Mr. Neogy has introduced the Bill and now is asking for its circulation is to make it easier for new companies to thrive by making it impossible for the established British companies to try and cut Indians out of that business. The step which Mr. Neogy proposes is one which is very essential, because the history of the subject shows that throughout the very many years that these inland lines of communication have been utilised for the purpose of traffic, the English companies under the very many direct and indirect benefits that they enjoy owing to the peculiar and unfortunate method of formation of Government in this country, have not only managed to establish themselves, but they have also managed to keep the Indian companies out of their proper and legitimate share. Sir, in this regard the proper and legitimate share of Indians is not merely a friendly co-operation with the foreign companies but the proper share ought to mean the complete elimination of the foreign companies from inland navigation in order that the inland lines of communication should be provided with carriers owned and controlled by Indians. The reason, Sir, why this is necessary is brought out by my friend Mr. Neogy in his clause which deals with the maximum and minimum freights and fares. Now, Sir, the scandal of rate wars against Indian companies has been of such a long duration and there are so many cases of such rate wars being carried on against Indian companies that I will not waste the time of the House by quoting any examples. But attention must be drawn not merely to the rate wars which are public, however abominable, but to the private pressure put upon Indian shipowners by British companies and their representatives in this country in order to induce them to wind up their concerns, occasionally with the temptation of large bribes and sometimes with the threat of the impending rate war if the company does not cease to run its steamers along the routes which have been monopolised by these foreign organisations; and, Sir, as the subject matter of the Bill is merely referring to the inland steam vessels, I shall merely put before you an extract from the evidence given before the Indian Mercantile Marine Committee by an Indian company, which is specialising in this particular kind of traffic and that company is the East Bengal River Steam Service, Limited, Calcutta. Run under the most efficient Indian management, backed up by one of the first rate capitalists of Bengal, this Company with its adequate capital finds it difficult to carry on, because of the British opposition and that opposition, Sir, works in a variety of ways. I will just quote to you one or two of them with your permission. In their statement to the Mercantile Marine Committee, this Company stated:

"Even Indian shippers intending to ship jute by this Company's vessels to Indian consignees, such as mills owned by Indians, are restrained from doing so, by the threat that they will find difficulty in securing space for goods intended for the European mills and also in shipping from the stations where this Company's vessels do not run."

[Mr. Sarabhai Nemchand Haji.]

Now, this kind of threat, Sir, works in two ways. First of all, owing to the impending threat the Indian Company is not able to go in for a larger number of steamers. Then, as they have a few steamers in their possession, they are not able to provide regular adequate service at all the ports. The result is that not merely does the British Company threaten to extinguish the Indian Company directly but they put pressure on the shippers as well. Of that the example I have just quoted is an illustration. But, Sir, they sometimes go further; they even threaten the life of the company itself, as the statement of the East Bengal River Steam Company reads:

"Even the Honourable Mr. Mackenzie of Messrs. Macneill & Co. threatened as in so many words that unless we sold or made over the management of this company's business to them they were determined to crush our company."

This, Sir, is the statement of a very very respectable firm in Calcutta, whose representative when challenged at the time of the oral examination by the representative of the British shipping interests on the Indian Mercantile Marine Committee stated as follows: When he was asked by Sir Arthur Froom to withdraw the above quoted reference he said:

"A firm like mine would not have put it in the statement if it had not been a true fact."

This, Sir, is a kind of manœuvre by which Indian interests are not allowed to come forward in inland shipping. At the moment of course it is not necessary to take up the wider question and I desist from the temptation of doing so. But I do not understand how it is possible for any group of men having the interests of the Indian community at heart to oppose a Bill of this nature at any stage, because this Bill will enable new Indian companies to come into the inland waterways traffic. Personally, I wish the Bill was made much stronger than it is. But as my Honourable friend Mr. Neogy believes in moving slowly, I do hope that the Government will not put any difficulties in his way, and that, in order to show their *bonâ fides* in this connection, the Government will give all proper facilities to the Mover of this Bill to see it through the various stages.

1 P.M.

Sir, with these words, I support the motion before the House.

The Honourable Sir George Rainy (Member for Commerce and Railways): I do not propose, Mr. President, to speak at any length to-day on the subject of this Bill. Briefly, the attitude of Government is that they do not think they would be justified in opposing the motion for the circulation of the Bill, but they must stand absolutely uncommitted on the merits of the case until the opinions of the Local Governments and others are received. The Honourable Mover, as Sir Walter Willson said, explained the objects which he had in view with his usual lucidity and precision. I take it that the main objects of the Bill are twofold. In the first place, the Mover is of opinion that the imposition of minimum rates is necessary in order to make it possible for new companies to start and to obtain a share in the trade. So long as there are no minimum rates it is possible for the existing companies to cut rates to such an extent as to render the position of any new company, if not impossible, at least precarious. That is his first point.

The second point is that maximum rates are necessary in order to prevent extortionate demands from the public in places where the steamship company may have something of a monopoly.

It may be convenient perhaps if I say a few words on the latter point first. My Honourable friend Sir Walter Willson has already given some very sound reasons for doubting whether it is really true either that the steamship companies have a monopoly or that they are misusing such advantages as their position may give them. I do not want to go over the same ground again, but I think the supporters of the measure would do well to consider, before they decide to press this proposal for maximum rates, whether they have really made out their case. I should have supposed, that if the facts strongly supported my friend Mr. Neogy's proposal, he would have been able to bring before the House to-day concrete examples of big increases in rates and fares, and would have mentioned actual rates which *primâ facie* were excessive for the distances over which the goods were carried. It is possible, of course, that he proposes to reserve his facts until some later stage of the Bill, and that he was unwilling to go into great detail to-day. But my point is that at some stage it will be desirable, and indeed necessary, in order to make out a case for maximum rates, that fact should be adduced to convince the House that this kind of control is necessary.

The Honourable Mover said that he was not asking the House to accept any new principle in this matter, and that for the imposition of maximum and minimum rates there was ample precedent to be found in the fact that Government possessed a similar power in the case of Railways. I do not think, Mr. President, however, that the railway precedent will really establish his point that there is no new principle involved. In my view there is a very substantial difference between the two cases. When the railway is set up, the company or the railway administration is granted a monopoly of the traffic over the line, and the power to prescribe maximum and minimum rates is closely connected with the existence of that monopoly. If no such power existed, then in theory at any rate it might be possible for the railway company or the railway administration to make their rates so high as to impose a very serious burden upon traders and passengers. But in this case neither the Government nor the Legislature has conferred upon the steamship companies any monopoly. It is perfectly open to any one to put a steamship or other craft on any of one's rivers, and begin to carry goods and passengers. In this country I do not know of any exact parallel for what is proposed in this case, that is to say, the imposition of maximum and minimum rates where there is no monopoly. Whether it be the introduction of a new principle or not, it is at any rate a novel application of principle.

There is another point about the maximum and minimum rates which are proposed. The idea of the minimum rate is that it will enable new companies to start and to take a share in the trade, but I do not clearly understand what exactly is supposed to happen after they have once started. Let us take a concrete case. Supposing there is a particular section of the river Brahmaputra, let us say, in Assam, where the existing steamer company (or companies) provides a service adequate for all the traffic offering. A minimum rate is prescribed which makes it impossible for them to reduce their goods rates in order to meet competition, and a new company starts and puts on its steamers to compete against the existing

[Sir George Rainy.]

companies. The original steamers are assumed to have been adequate for the traffic, and with the addition of new steamers the inevitable result in such a case would be that none of them would be able to carry goods at a profit; the competition would go on exactly at it does at present both companies carrying goods at a loss. Now, it does not seem to me that in that way you are doing very much to enable the new company to survive, because, unless it had very considerable capital behind it, in all probability the older company would still be able to survive the longest and eventually remain in uncontrolled possession of the field. It seems to me exceedingly doubtful whether in a case of that kind the remedy proposed would be effective. Indeed, unless some kind of monopoly is intended, I doubt very much whether the imposition of maximum and minimum rates is appropriate at all. If there is to be competition, you do not get the advantages of a competitive system unless practically uncontrolled freedom is allowed to the competitors to fix their own rates. This is a point which I personally consider requires much closer examination than the Honourable Mover gave it.

Finally, Mr. President, for I do not wish to go more fully into these matters to-day, I conceive that there might be very great practical inconvenience in fixing what the actual maxima and minima were to be. It would be almost impossible, I think, to devise a system on railway lines by which the minimum or maximum would be a uniform rate of so much a month. For one thing, as one knows, rivers in India change their course and the distance between two points on the river may be quite different in one season or one part of a single season than it is in another. But quite apart from that, there is this further difficulty that for particular sections of the river the steamship companies may be exposed to severe competition from the railways. There are cases that I know of where the river makes a big loop and the railway cuts across the chord. In such a case, in all probability, if the steamship companies are to get any traffic at all, they will have to keep the rates between these two points at a very low level. Now, if a uniform minimum rate were fixed, low enough to enable the steamship companies still to compete with the railways on such sections, it would in all probability be too low to produce any effect at all in any other section of the river. If, on the other hand, the minimum rate was fixed sufficiently high to prevent rate cutting in most sections of the river, it might also be too high to allow the steamship company to get any traffic at all between these two points. In that case the system would produce a result quite unintended, I am sure, by the Mover, namely, to throw the traffic entirely into the hands of the railway, or perhaps, as my Honourable friend Mr. Das suggested, into our very formidable rivals the bullock-cart.

I think I have said enough, Mr. President, to satisfy the House that there are a number of difficulties which will have to be considered before Government could accept in principle the proposals contained in this Bill. But I have not put them forward at the present stage in any spirit of hostility. The Government are entirely uncommitted at the present time and will weigh fully all that can be urged in the matter on the one side and on the other. For that reason they will not oppose the motion for circulation.

Mr. K. C. Neogy: Sir, I was not surprised to find my Honourable friend, Sir Walter Willson, taking up the cudgels on behalf of his old love, the inland steam vessel concerns, but, Sir, I should have expected him to devote some little attention to the pamphlet which I remember to have laid on his table and which, if he had read it, would have obviated the necessity of his referring to some of the points to which he has made reference. Sir, he has hurled certain statistics at my head. I can assure my Honourable friend that I am not very much perturbed by statistics. As a matter of fact, I hold in my hands very long tables of statistics in connection with this measure of mine. But I do not want to tire the House by going into them on the present occasion. My Honourable friend's intervention has, however, served another useful purpose, because, although this question has been agitated in my province at any rate for the last 7 years, we have not succeeded yet in eliciting any definite reply from the steamer companies concerned. Representations were submitted by the Government; letters were written by standing committees appointed at public meetings dealing with the grievances of the public, but the steamer companies have maintained an attitude of supreme indifference. As a matter of fact, my Honourable friend Sir Walter Willson's statement is for all practical purposes the very first statement that we have got in reply to some of the charges against the steamer companies.

Now, Sir, my Honourable friend has stated that the rates charged by the steamer companies are based on the rates charged by the railways. Well, I find in the green pamphlet, a copy of which I supplied to him, that as early as February, 1926, the Secretary of the Standing Committee of a public meeting addressed a letter to the steamer companies concerned, in which they make the definite allegation that the fares are based on no fixed basis as to distance, etc. Definite allegations like these stand unrebutted. Although two years have elapsed, no reply has been vouchsafed by the steamer companies concerned to this representation. Then again, with regard to the low rate of dividend paid by these steamer companies. I hold in my hand a newspaper extract which states that for the year 1926 the dividend for the year was 5 per cent. on preference shares and 8 per cent. on ordinary shares. I do not know whether my Honourable friend, Sir Walter Willson, gave 8 as the percentage of dividends.

Sir Walter Willson: I gave the average over the last ten years of 6½ per cent. and that included 8 per cent. for 1926.

Mr. K. C. Neogy: Very well, Sir. With regard to the dividends I have a copy of the abstract of the balance sheets of two of these companies for the last few years. Not being an expert in these matters, I entrusted these figures to a friend of mine, who might be called an expert, and this is what he says. He says:

"The explanation (of the low rate of dividend) is not very difficult to find. And that is that an unduly large amount seems to have been transferred to the reserve and block account and only a small percentage of the dividend is transferred to the current account so as to argue that the company is not making much and cannot afford a reduction in rates and fares as demanded or even finding the ordinary finances necessary for the public using their services."

Sir Darcy Lindsay (Bengal: European): The name of your friend?

Mr. K. C. Neogy: Well, all that I can say is that he can be taken to be an expert in these matters.

Sir Walter Willson: Is he a writer on the subject?

Mr. K. C. Neogy: He is.

Sir Walter Willson: Then you may take it from me he is no expert.

Mr. K. C. Neogy: Now, Sir, my Honourable friend says, the less the Government interferes the better for the trade. Certainly better for the British trade. That has been our experience in the past. The non-interference policy of the Government has been responsible for the fact that in Bengal we do not possess a single indigenous company carrying on passenger traffic in the vast inland waterways of our province, although there were several attempts made in the past by several concerns, but in each and every case these concerns failed, not because of any want of custom, not because the facilities afforded by the existing steamship companies were adequate, but because of the unholy rate war. I should like to see my Honourable friends, Sir Darcy Lindsay and Sir Walter Willson, getting up to support this rate war, a war which, as I said, in one instance permitted these monopolistic concerns to carry people free of cost and supply them with free refreshments into the bargain.

Sir Walter Willson: And they had a band as well. Don't forget that.

Mr. K. C. Neogy: Yes, they had a band as well. That is the sort of non-interfering policy of Government which commends itself to my Honourable friend very much, because it helps British trade.

Now, Sir, I come to my Honourable friend Sir George Rainy. He says there is some distinction between the railways and the steamship companies in regard to the question of fixation of maximum and minimum fares. He said the railways, even the private railways, are admittedly granted a monopoly and therefore there is some justification for fixing the rates. Well, Sir, I do not propose to quarrel about words. The steamer companies may not be granted by the Government in so many words a monopoly. But what is the exact position? I want my Honourable friend to investigate the matter and find out whether as a matter of fact the steamer companies by their own action and by virtue of the policy of inaction followed by Government have not established themselves in the position of monopolists. It does not at all matter whether the steamer companies started frankly as monopolistic concerns or helped themselves to acquire that position. If they have acquired that position, then certainly there is absolutely no ground on which my Honourable friend can seek to draw the distinction between railways and the steamer companies. He says, "What is the good of allowing further competitors to come into the field?" Certainly it is not going to do any good to the British companies that hold the field at the present moment. But, Sir, my Honourable friend assumes that the present companies are making the minimum profit commensurate with bare existence. That is a point on which I do not agree with him at all. Then the second assumption which he makes is that these companies have been providing adequate facilities for the traffic that exists. That again is begging the whole question. There is no end of our grievances against these companies, and that is the reason why I have been asking that there should be Advisory Committees attached to the administration of these concerns. My Honourable friend has quietly assumed that we

have absolutely no grievance against the present concerns, that the present concerns are quite capable of handling the traffic and they are doing it most admirably. Nothing of the kind. My Honourable friend has got no justification for making these assumptions, particularly in view of the statements made in the green pamphlet, a copy of which I have supplied to him.

Both my Honourable friends, Sir Walter Willson and Sir George Rainy, have assumed that there is a good deal of competition between the steamer companies and the railways. If there is, it behoves my Honourable friend Sir George Rainy as Member in charge of Railways to examine this matter either from the point of view of the public or from the point of view of the railways, the public which is affected by the steamer companies, or the railways of which he is in charge. Let us see whether the steamers or the railways are likely to suffer from this competition or whether the railways are taking any undue advantage of their position as monopolistic concerns as against the steamer companies. Let us be fair to both the railways and the steamer companies.

Well, Sir, I do not propose to take up any more of the time of the House in view particularly of the fact that my motion is not opposed either by Government or by my Honourable friend Sir Walter Willson.

Mr. President: The question is:

"That the Bill further to amend the Inland Steam Vessels Act, 1917, be circulated for the purpose of eliciting opinions thereon."

The motion was adopted.

THE INTEREST BILL.

Maulvi Muhammad Yakub (Rohilkund and Kumaon Divisions: Muhammadan Rural): Sir, I beg to move that the Bill to limit the interest charged on loans of various kinds in British India, and to bring the law in conformity to the needs of the people, be circulated for the purpose of eliciting opinions thereon.

Sir, on this occasion I do not propose to go into the merits of the Bill in detail and would confine myself to a brief statement of the objects and reasons with which this Bill is intended to be introduced. The main object of this Bill is that it is designed to prevent the accumulation of interest for long periods and thereby save many a debtor from the clutches of covetous and clever creditors. Sir, we all know very well that the prosperity of a country depends mostly on the progress of trade and commerce, and the progress of trade and commerce depends to a large extent on the method of moneylending in the country. The unsatisfactory condition of trade in this country to my mind is greatly due to there being no proper and sound method of regulating the moneylending business in this country. The object of this Bill is to regulate the moneylending business in such a manner that it will not bring ruin on the debtor and dislocate his business and also may guarantee the creditor a just and proper amount of interest on the money advanced by him. The Bill seeks to stop the accumulation of interest for long periods as well as unconscionable and usurious rates charged by the speculating moneylender. The provisions of this Bill are not a new invention. They provide for the recognition of

[Maulvi Muhammad Yakub.]

that sound and businesslike rule of Hindu Law known as *Damdupat* by which a creditor cannot claim interest more than the principal money advanced by him. This rule is even now applicable in the Bombay Presidency and in Berar in cases in which the debtors are Hindus, while in the town of Calcutta it applies to cases where both the parties are Hindus. My Bill aims at making the rule universal and applicable to all classes and communities throughout the whole country. This Bill is not introduced in the Assembly now for the first time. It was in 1922 that an effort was made to bring a measure on the Statute-book. On that occasion, the Honourable Sir William Vincent, the then Home Member of the Government of India, made the following observations:

(The Honourable Member then sat down in order to find the quotation.)

Mr. President: The House stands adjourned till Half Past Two.

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

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

Maulvi Muhammad Yakub: Sir, when the House adjourned for Lunch I was just going to say what the Honourable Sir William Vincent said at the time when this Bill was introduced in this House in 1922. He said:

"I think every Member in this Assembly has a great deal of sympathy with the object which the Honourable Member has in view, namely, to curtail the exorbitant demands of usurious money-lenders."

Then, again, this Bill came before the Assembly in 1923 and on that occasion the then Member in charge of the Bill also expressed his sympathy with the object of the Bill, but he said that there were certain objections to the Bill on account of which they could not support it. Honourable Members will see that those objections have been met by clauses 2 and 4 of the present Bill and therefore the reasons which led the then Honourable Member in charge to oppose the Bill do not hold good as regards my Bill. In 1923 leave to introduce a similar Bill was asked for and the Honourable Mr. Haig in opposing it on behalf of Government said—I am sorry I have got the wrong volume, but of course that matters little. Now, Sir, the experience of the last six years has clearly shown that the Usurious Loans Act of 1918 provides no remedy to stop accumulation beyond a certain limit, and I am not aware of any steps which the Government may have taken since 1923 to make a full enquiry into the working of the Usurious Loans Act, 1918. Under these circumstances I hope Government will not object to my Bill being circulated for eliciting public opinions thereon. Of course, I do not want the House nor the Government to accept the principle of the Bill. What I want is merely that the Bill may be allowed to be circulated for eliciting opinions and we may be able to find out what the opinion of the public is on this important measure. There is a precedent. Once this Bill was allowed by the Government and it was not opposed for circulation. I hope that the same example will be followed on the present occasion. With these remarks I move my motion.

Mr. Muhammad Yamin Khan (United Provinces: Nominated Non-Official): In 1923 I introduced a Bill in the Assembly which I named as the Moneylenders Bill, and the main clause of the present Bill is one of the clauses of that old Bill which had 14 clauses. That Bill of mine was opposed on some technical grounds by the Government. That Bill was divided into three main groups, one was for the registration of moneylenders, another was for the granting of receipts by moneylenders for all payments received by them in satisfaction of their loans, and the third contained the main object which the present Bill has got in view. The first two were of course very controversial matters, namely, registration of money lenders and the granting of receipts. That Bill of mine was drafted after an Act which was passed in England. After the objections that were taken in the Legislative Assembly in 1923, I drafted another Bill which I presented in the Council of State in 1925. There was another Bill in the Assembly in 1922 by Maulvi Abdul Quadir, at the time I had my Moneylenders Bill. That only wanted the amendment of the Act of 1839 and if the Act of 1839 had been amended and the Act of 1855 had been left intact, then the remedy which he was seeking would have been of no value at all. I put down the last clauses of my Moneylenders Bill in the Bill which I produced in the Council of State in 1925. Somehow or other there was a misapprehension in the House and leave to introduce the Bill was opposed by Government. I simply wanted to find out whether there was a sufficient body of opinion in support of my Bill and I called for a division. I found that all the elected Members of the Council of State supported my motion. Amongst them were Sahibzada Aftab Ahmad Khan., the Nawab of Loharu, Mr. Barua, Sir Ebrahim Haroon Jaffer, Mr. R. P. Karandikar, Mr. Ali Buksh Muhammad Hussain, Raja Sir Rampal Singh, Raja Pramada Nath Roy, Mr. Raza Ali, Sir D. P. Sarvadhikary, the Maharaja Bahadur of Dumraon, Lala Sukhbir Sinha, Colonel Umar Hayat Khan, Mr. Vedamurti, Mr. Zahir-ud-din and myself. Those who went against me were the Government Benches. Seeing that there was public opinion in favour of the Bill, I reintroduced the Bill in the Council of State again in the Simla Session and Government, realising that public opinion was in favour of the measure, did not oppose my motion and that Bill was allowed to be introduced. Unfortunately the term of the Council of State came to a close and further motions were not moved. My friend Maulvi Muhammad Yakub has brought the same Bill with a little amendment. All the clauses of my Bill are there excepting clause 3 of the present Bill which is at present law, namely, the Usurious Loans Act of 1918. I am not sure what led my Honourable friend to put this clause in the present Bill when it already stands as law. I do not want to say anything about clause 3 which is already the law of the country. My remarks are only about the other clauses of the Bill. I want to place before the House the consistent demand of the country for the introduction of a law on the lines of the Hindu Law of Damdupat. An attempt was made to introduce a Bill in the United Provinces Council, but that was rejected on the ground that it was not for the provincial Council to pass such legislation. I find that a Bill similar to my Moneylenders Bills was introduced in the Punjab Legislative Council and passed. Before 1855, the law in India as far as interest is concerned was governed by Hindu Law because Muhammadans do not allow any interest at all. As all sorts of people were living in India, Muhammadan courts administered Hindu Law and the

[Mr. Muhammad Yamin Khan.]

East India Company also administered the law according to Hindu Law. In 1854, an Act was passed in Parliament which stated that the agreement which has been entered into must be taken into consideration by the courts and that interest must be allowed according to settled terms. As soon as that law was passed in 1854 in England, the Indian Council of 1855 passed a similar law. At that time there was no Indian representative and they could not realise how far the Indian population would be affected by it. That was not represented in the Council and the result was Zamindari estates have been dwindling and zamindars and agriculturists have suffered immensely by the Act of 1855. I have collected statistics for many districts in my province and I find that 80 per cent. of the zamindaries have passed out of the hands of zamindars into the hands of moneylenders alone. I collected some statistics about the tenants also and I find that tenants in the United Provinces taken as a whole have been paying a rate of interest which amounts to 100 per cent. per annum. Sometimes the debt accumulates to such an extent that the tenant can never hope to get rid of it even if he went on paying during his whole life. The present position of a tenant under the Act of 1855 is that if he borrows any sum of money from a moneylender he practically works thereafter for that moneylender as a labourer, cultivating the soil for the benefit of the moneylender and not getting enough to eat for himself, while the bulk of his earnings go into the pocket of the moneylender. I will repeat for the benefit of this House a sentence or two which I said when I introduced my Bill in 1923. I introduced my Bill on the 15th February, and on the 13th of that month the High Court of Allahabad had passed a decree in a suit on a bond. The House will be shocked to hear what the accumulation of interest amounted to in that case. The original sum borrowed was Rs. 400 and the decree eventually passed was for Rs. 66,98,731-2-0, or practically 67 lakhs. This case was published in the *Pioneer* of the 15th February, and the decree was made by Mr. Justice Reeves and Mr. Justice Gokal Prasad. Again in the Calcutta High Court in a case decided by Mr. Justice Chatterji and Mr. Justice Pearson sitting on the Appellate Side, a man who had lent Rs. 350 to his son-in-law claimed Rs. 7,16,800. I have a large number of cuttings of a similar nature which show the extent to which a loan may be accumulated in the course of years. They do not generally reach the huge sums I have mentioned, but from my own experience I can say that a loan of a hundred rupees very frequently amounts up to Rs. 3,000 or Rs. 4,000 with the addition and accumulation of interest. And if the Government would take a little trouble and obtain statistics for a period of two years or so of the money decrees passed together with the original amounts of the loans, they would find that sums lent have accumulated not ten-fold or twenty-fold but a hundred-fold. That is the state of affairs prevailing in the country in spite of the Usurious Loans Act of 1918. That Act allowed the reopening of transactions and left to the courts a great deal of discretion to determine the rate of interest. But in practice we find that it all depends upon the presiding officer of the court and what view he takes. Some presiding officers consider that 2 per cent. per mensem is a very low rate of interest, while others hold that 8 annas per cent. per mensem is a good rate of interest which can be allowed on good security. I find that even to-day decrees are passed allowing Rs. 3-2-0 per cent. per mensem on loans advanced to poor people, who not only take

money on proper security but have even mortgaged their houses to the moneylenders. In the streets of Delhi any one desiring a loan of Rs. 100 on jewellery worth Rs. 200 will be unable to get it at less than Rs. 3-2-0 per cent. per mensem; so that in two years time if he has not repaid the loan he will lose the jewellery if it is worth two hundred. This state of affairs in a purely agricultural country like India is telling very hardly on the people. The reason why capital is not forthcoming for industries in this country is not the reason which many able persons have thought to be the one. The reason why capital is not employed for other purposes is that the moneylender finds it safer and much more profitable to lend his money to the poor agriculturists and zamindars.

Mr. President: I want the Honourable Member to realize the distinction between a motion for circulation and a motion for consideration.

Mr. Muhammad Yamin Khan: Sir, I was just making these remarks for the benefit of the people who will form their opinions after the Bill has been circulated, so that they might give due consideration to these facts.

Mr. N. M. Joshi (Nominated: Labour Interests): May I just point out to the Honourable Member with your indulgence that when long speeches are made on a motion for a Bill to be circulated they come in the way of other Members who have to introduce Bills. There are many Bills still awaiting introduction left over from the last Session.

Mr. President: That is no concern of the Honourable Member who is speaking.

Mr. N. M. Joshi: But it is the concern of the House.

Mr. President: Mr. Yamin Khan.

Mr. Muhammad Yamin Khan: I am sorry, Sir, if the House will not give due indulgence to the great calamity which is overtaking 80 per cent. of the population of India. My friend Mr. Joshi is very anxious about the class which he represents in this House. I want to point out to him that this Bill affects that class which he represents a great deal.

Mr. N. M. Joshi: May I point out that I am more anxious than the Honourable Member for the passing of the Bill.

Mr. Muhammad Yamin Khan: I am very glad. One very important portion of this Bill, Sir, is clause 5, and I think this will not entail any hardship upon the moneylenders at all if they get usufructuary mortgages on the loans which they advance. In that case the zamindar or the agriculturist or anybody can redeem his property within sixty years' time; and that is a great safeguard which I had put down for the moneylenders. There might be a misapprehension in the minds of certain Honourable Members here while lending their support or deciding on which side they should vote whether this Bill entails any hardship at all on the moneylenders. This only wants to force them to bring their suits in the court as soon as the interest accumulates to a hundred per cent. Beyond that, they should not be allowed to let their capital earn an interest which is going to be accumulated, and the real debtor is not paying off anything towards the satisfaction of the interest; it is only forcing the moneylender to bring his suit and the debtor to pay off some thing or regularly to pay off his interest to the moneylender, which will

3 P.M.

[Mr. Muhammad Yamin Khan.]

be in the interest of both the moneylender and the debtor. There are many many Acts which have been passed for the protection of people who cannot protect their own interests, like the Court of Wards Act. In that Act protection is given to the man who wants to squander away his property and that property is taken by the Government under their management. In a similar way, Sir, there are many other Acts which afford protection, and it is only an Act which aims at the protection of those people who cannot see to their own interests. I may, Sir, point out that this law is at present prevailing in Calcutta proper, in Berar, in the Bombay Presidency, in many Indian States, and when it is administered in such a vast area of India, I do not see any reason why this law should be taken away from other provinces which are administered by the British Government. The Calcutta High Court and the Bombay High Court have held repeatedly that the Act of 1855 does not take away the law of Damdupat rule and they are still adhering to that law in spite of that fact, but there has been a contradiction that if the debtor and the creditor both are Hindus, then the law will prevail, but supposing that the debtor is an Englishman or a non-Hindu, then this law will not prevail. If the creditor is not a Hindu but the debtor is a Hindu, then this law will not prevail; so the Hindu will have to suffer if he is a debtor but his creditor is not a Hindu, and a Hindu creditor has to suffer if his debtor is not a Hindu. I want that the law should be similar and should be administered in the same way to all classes of the population; and of course, Sir, as I say, I have said enough on this occasion and that will be quite sufficient for Honourable Members when they have to vote on this motion; of course I will reserve for a future occasion the statistics which I have got in my possession. With these remarks, Sir, I support the motion before the House.

Mr. F. W. Allison (Bombay: Nominated Official): It is impossible, Sir, not to sympathise with the object aimed at by the Honourable the Mover, because the crushing burden of agriculturist indebtedness in this country is a grave and serious evil which must claim the attention both of the Government and of the Legislature. If the Honourable Member could only convince this House that his present proposals would afford a practical and effective remedy for this evil, he would have the support of everyone of us. I must also pay a tribute to the courage and perseverance of the Honourable Member, for indeed the fate of previous Bills which have with the same object been brought forward both in this House and in the Council of State must be discouraging in the extreme to him. In fact since the year 1922 no less than four Bills, in each of which the clause regarding the extension of the rule of Damdupat recognized by Hindu Law was the most important, have been introduced, and not one of them survived beyond the introduction stage. Therefore, even to the Honourable the Mover himself, I fear that his present enterprise must seem to be something in the nature of a forlorn hope.

The most important part of this Bill is clause 2, which is practically a universal extension of the rule of Damdupat which is still effective in some parts of India. I may say in passing that in some important particulars the Honourable Member seeks to extend the rule beyond the limits to which it is confined even in its present operation in limited areas to Hindus. For my present purpose it will suffice if I indicate with extreme

brevity some of the principal objections to this proposal of the Honourable Member. The rule of Damdupat in fact is a primitive expedient suited only to primitive communities and introduce in primitive times, when it afforded the only form of protection to the debtor against his creditor. In modern times it is out of place. It is contrary to the generally accepted idea of sanctity of contract. It undoubtedly tends to restrict the flow of credit, and from that point of view is objectionable. In practice it may and frequently does cause real injustice to the honest moneylender; and what is perhaps the greatest objection of all, it is easily evaded by the dishonest moneylender and affords him the strongest temptation to become dishonest. Experience shows us that even within the present limits of its operation it fails to attain the objects which the Honourable the Mover has in view. For these reasons, which have been repeatedly stated in this House, the Government would have opposed the motion if the motion had been to advance the Bill containing this clause to a further stage.

With regard to clause 3 of the Bill, the remaining operative clause, the Honourable the Mover in his Statement of Objects and Reasons has not explained what is the advantage of this clause. I followed his speech with the closest attention, and I could not discover therein any good reason for supposing that the addition of this clause, which is a mere repetition of sub-section (*1*) of section 3 of the Usurious Loans Act with the provisos omitted, and also without the further sub-section, could afford additional protection to any debtor. However, this motion is merely a motion for circulation, and in view of the magnitude of the evil to which I referred, if the House is of opinion that the proposals of the Honourable Member might afford any possible avenue of relief, it might be worth while to explore it. I desire to state clearly and explicitly that the Government do not at present accept or approve the proposals in the Bill, and are not in any way committed to its principles. Subject always to this reservation, if the House, in spite of patent objections, desires that the Bill should be circulated, the Government will not oppose the motion, but leave the decision to the free vote of the House.

Maulvi Muhammad Yakub: Sir, as I stated in making this motion, my object at present is not to go into the details of the clauses of this Bill. Certain objection has been raised why I have inserted clause 3 which already forms part of a law on the Statute-book of the country. But I think, Sir, that in order to safeguard the interests of the moneylender the insertion of that clause was quite necessary. As I have just now explained, after public opinion has been obtained and we find that there are certain definite suggestions or certain definite objections to the construction of the Bill as it is constituted at present, when the Bill goes to the Committee stage, we can amend the wording of the clauses, and I hope that from the Select Committee the Bill will come out in a form which would be acceptable to the House and to the country in general. It would not be right if I were to waste the time of the House by going into the details of the Bill at present. I hope, Sir, that the House will realise the gravity of the situation, and every body will accept that the hardship which usurious loans in the country are inflicting upon the agriculturist and the zamindar classes is very severe and certainly needs our grave attention; and it is to meet this hardship that I have introduced this

[Maulvi Muhammad Yakub.]

Bill. I hope the House will allow at least that public opinion should be obtained. With these words, Sir, I again leave my Bill to the vote of the House.

Mr. President: The question is:

"That the Bill to limit the interest charged on loans of various kinds in British India, and to bring the law in conformity to the needs of the people, be circulated for the purpose of eliciting opinions thereon."

The motion was adopted.

THE INDIAN PENAL CODE (AMENDMENT) BILL.

AMENDMENT OF SECTION 141.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I propose to take a very few minutes to move this motion which stands against my name, namely:

"That the Bill further to amend the Indian Penal Code (Amendment of section 141), be referred to a Select Committee."

Those of the Honourable Members who are not familiar with the provisions of section 141 of the Indian Penal Code will indulge me if I tell them what those provisions are. Section 141 of the Indian Penal Code defines an unlawful assembly, and it says that an assembly is unlawful—I leave out the unnecessary words—if its object is "to commit any mischief or criminal trespass, or other offence" or if its object is "to enforce any right or supposed right." Now, these two clauses in section 141 have given rise to a great deal of misunderstanding on the part of the subordinate magistracy. As Honourable Members are aware, section 143, which prescribes the punishment for the offence which I have just now been reading about is triable by any magistrate. An honorary magistrate and stipendiary magistrate of inexperience do not really understand what is the meaning and purpose of these two clauses, with the result that there has been a great deal of waste of time on the part of the court, counsel and parties concerned; and my sole object in coming forward here is to assist the Government for the purpose of clarifying the law. If the Government oppose my motion, I shall withdraw my motion, immediately, because I do not stand pledged to any particular amendment. I have tried to put in clearer language what appears to me both obscure and ambiguous.

Now, Sir, with these words, I shall explain my amendment. As regards clause 3 where it says "to commit any mischief or criminal trespass, or other offence", the difficulty is what is the meaning of the words "other offence"? Does it mean *ejusdem generis* with "mischief or criminal trespass" or does it mean any other offence defined in the Indian Penal Code? If it is *ejusdem generis*, then it excludes from the purview of clause 3 a very large number of offences relating to person and property which are defined and made punishable by Chapters XVI and XVII of the Indian Penal Code. If the "other offence" means all offences punishable under the Indian Penal Code, then I do not understand what is the necessity of this clause "to commit any mischief or criminal trespass."

Why not say "to commit any offence"? That is my first objection to clause 3. Passing on to clause 4, the ambiguity lies in the words "or to enforce any right or supposed right". Any right does include supposed right and what is the meaning of "a supposed right"? If it is a supposed right or any right protected by the earlier provisions of the Indian Penal Code, that is to say, the provisions of the Indian Penal Code relating to general exceptions given in sections 76, 79, 96, and 97, then surely these general exceptions override the special provisions of this law. The language, therefore, in both cases is capable of improvement, and in trying to redraft these two clauses, I have merely carried out the purpose of the Legislature and made the meaning perfectly clear.

If the Honourable the Home Member or any other spokesman on behalf of the Government has any objections to my Bill, I shall be very happy to withdraw it. I do not wish to press it to the vote of this House, because what I am trying to do is to clarify the law, and if those who are responsible for the administration of law do not want the clarification of the law, very well, Sir, I shall be glad to withdraw it.

Mr. M. Keane (United Provinces: Nominated Official): Sir, the Honourable the Mover has made a very fair offer in the course of his speech; he said that if the Bill was opposed he was ready to withdraw it. The Bill must be opposed for various reasons, but I need not in the face of the undertaking that he has given enter into great detail on the subject. I am all the more anxious not to enter into detail, because for personal reasons I would prefer to support if possible the Honourable Member. I realise how very sincere he is in his legislative efforts and I hope some day to find myself in the position of supporting one of his Bills. But in the case of the present Bill, Sir, I wish to point out certain objections. His first point is that the Legislature must have had some other meaning in their mind when they put in the words "other offence" in section 141 rather than the obvious meaning. The section as it stands in the Indian Penal Code says that if five or more persons assemble together they will be considered to be an unlawful assembly if their common object is to commit mischief or criminal trespass or other offence. The drafters of the Code could not have used the word "offence" in any casual manner. They had already considered in section 40 of the Code what exactly was the meaning they were going to attach to the word "offence". They had not treated that word lightly. They had discussed the matter several times before they came to a satisfactory definition of the word "offence". They asked themselves "What shall we say is an 'offence' "? They replied in the most comprehensive manner, and said, "We will define the word 'offence' as anything made punishable by this Code"—very comprehensive. But they reconsidered the question and said "We will go farther than that" and then they added "anything punishable under any special or local law," and even after that they added more to the definition of the word. After all this toil and labour, these drafters were not likely to have forgotten what meaning they should attach to the word "offence", and when they came to say that if the common object is to commit mischief or criminal trespass or other "offence", they could not use the word "offence" lightly. I put it to my Honourable friend whether they could have forgotten what they had said after they had spent so much time and labour in defining offence in section 40. If they had said something like criminal trespass or "other unlawful action", it

[Mr. M. Keane.]

might have reference only to criminal trespass, but when they definitely put down the word "offence" on which they had spent so much time and labour, they must have intended that the word should bear the meaning that the Penal Code gave it. My Honourable friend said that this word has given great trouble to the subordinate magistracy. I was, I am a subordinate magistrate, and I can say that I have much experience of the subordinate magistracy, and I cannot remember that there was ever any difficulty felt in regard to this matter. So far as I remember from my Joint Magistrate days, no one has had any difficulty in believing that the word "offence" meant offence. Why should we have any difficulty? We have so interpreted it. No one has contradicted it; no High Court has attempted to contradict it. And now my Honourable friend brings forward this little Bill from his laboratory (laughter) and tells the House that the word "offence" has been giving difficulty to the magistracy. Sir, I don't think this clause needs any further drafting than the draft of Lord Macaulay's Committee or whatever the Committee was. I cannot believe that the Honourable the Mover is correct in saying that they did not realise the meaning of the word and he is now trying to give their meaning a more felicitous expression.

The second point that he deals with is more important than this which is really a matter of drafting. The second amendment that he innocently puts before the House would be a public disaster if it were carried. He says—we return to the section again. The section reads that an assembly of five or more persons would be designated an unlawful assembly if the common object is by criminal force or show of criminal force to enforce a right or a supposed right. My Honourable friend says that that was not the meaning of the Legislature. Their meaning was, if the common object is by criminal force to enforce or defend a right to which a person is not entitled. I do not know myself exactly what the meaning of his draft is; he says "to enforce or defend a right to which *a person* is not entitled". A person is not entitled. What person has the Honourable Member in his mind? Any person in the wide world? There is practically nothing that some person or other is not entitled to, but possibly he had in his mind Members of the Assembly (laughter) the unlawful assembly of five or more persons. If that is so, then we might have a position in which the enforcers and the defenders had joint rights, one side enforcing lawfully and the other side defending lawfully, and both lawfully exterminating each other. (Laughter). That is an impossible situation. The Honourable Member's point appears to be, first of all, do you think you are entitled to a right? Then go for it; let the law be considered later. It is the old motto, borrowed I believe from the other side of the Atlantic:

> "Thrice armed is he who hath his quarrel just.
> But ten times he who gets his blow in fust."

That is the Honourable Member's view. The fact of the matter is that we should be going back, as has been pointed out by almost every body with whom I have discussed the question, we should be going back to a state of private war. The Honourable Member wishes to establish not only the right of private defence but a right of private attack. That is not to be. In private affairs at least we have gone beyond that. It is not only putting the face of the clock back, but it is putting the hands of time

back 10,000 years. We have been all this time in the course of evolution trying to establish the rule of law to displace the rule of force. The Honourable Member comes forward now and says, force first and law afterwards. That is an impossible situation. Even in International disputes we have gone beyond that position. We have been very busy with our Leagues trying to establish a rule of law. Great nations now have first to seek the judgment of their peers as to the legality of their actions, and we know, we have reason to remember that in 1914 a great nation did think that it was entitled to a certain right and proceeded to enforce it and in doing so to overrun a small country; we know, and we are not likely to forget that it cost us and half the world precious blood to prove them wrong. And what do we gain by effecting the change proposed by the Honourable the Mover? As far as I can make out, all that the Honourable Member says is that we would harmonise the rulings of the High Courts. It is a very good thing to introduce harmony between these august bodies, but not at the cost of upsetting the whole of the principles on which we have been administering our criminal law. Our law is aimed definitely at orderly administration; what we want is orderly administration, and the section as it stands has given us for three quarters of a century that orderly administration. I would therefore beg the House to leave the section as it is.

The Honourable Mr. J. Crerar (Home Member): Sir, in view of the fact that the Honourable and learned gentleman opposite intimated that, if his motion was opposed, he would withdraw it, and in view more particularly of the very lucid statement made by my Honourable friend Mr. Keane of the objections we entertain to the Bill,—in view of these things, I should not be justified in detaining the House for more than one or two minutes, and I only rise to say a very few words. I feel that I should be lacking in courtesy to the Honourable gentleman if I said nothing at all in view of the fact that he at the outset explained that his only object was to assist Government to clarify the law. Well, Sir, I should be sorry if he or anybody else here were to suppose that we are not very desirous of availing ourselves of assistance from whatever quarter, however unexpected, and it is really with a sense of great regret that I feel that I am unable to accept in this matter the particular assistance proffered by my Honourable friend Sir Hari Singh Gour. His object is, as he put it, to clarify the law, and after the detailed explanation which my Honourable friend from the United Provinces has given, the House will realise that the proposed clarification of the law is calculated to inspire not only the greatest apprehension in the minds of Government but to result in the very gravest dangers to public security with which they are charged. I shall only say that the objections in brief to the proposed amendment are, that there is no difficulty in the legal interpretation and that the amendment therefore is unnecessary. It is not required because the clause in its present form is not in point of fact in conflict with other sections of the Code. It is further objectionable in view of the fact that it would bring this section of the Code into very violent conflict with another section of the Code. And, finally, it would introduce into the law a most dangerous and anarchical principle. It is for these very cogent reasons that with the most profound regret I must decline with many thanks the assistance proffered by Sir Hari Singh Gour.

Sir Hari Singh Gour: Sir, as I stated at the commencement of my speech, I was trying to clarify the law, and if the Honourable Members on the opposite side . . . .

Mr. President: If the Honourable Member desires to withdraw his motion, he is not entitled to make a speech.

Sir Hari Singh Gour: I beg leave, Sir, to withdraw the motion.

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

THE CHILDREN'S PROTECTION BILL.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I beg to move that the Bill further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, be taken into consideration.

Honourable Members are aware that this is the Children's Protection Bill which has been before this House on a previous occasion. At that time I sought to protect minor children from contamination by raising the so-called age of consent from 12 to 14, and from 12 to 15 outside marital relations. This House, with the assistance of the free vote of the Government, supported both these clauses and on the third reading, a formal reading, when the motion was that the Bill be passed, the Honourable the Home Member, Sir Alexander Muddiman, put on the Whip, with the result that those Honourable Members who had supported me, clause by clause, by telling majorities, had to vote against the passing of the Bill. I then pressed for a similar Bill which I reintroduced in the House in the following Session. And thereupon Sir Alexander Muddiman brought in a diluted Bill raising the age of consent from 12 to 13 inside marital relations, and 12 to 14 outside marital relations, and he gave me an undertaking, which I shall presently read to the House, that that was a half-loaf which I should accept and that he would circulate my own Bill to the Local Governments and then decide whether to support my Bill or not. Honourable Members will remember that it is upon that assurance that I withdrew my Bill and I have now reintroduced this Bill for the purpose of reinforcing the arguments which I then advanced and which, with the passage of time, have become stronger and stronger still. Only the other day, I had the honour of presenting a petition signed by no less than 6,000 men and women of India pressing upon the Government the desirability of saving this appalling race suicide by raising the age of consent from 12 to 14, and the ladies have been pressing for the raising of this age not merely to 14 but to 16 and even 18. My Bill, Sir, in comparison with the popular demand in the country, is a very moderate measure, and I hope that the Government will not offer any obstacle to the passage of my Bill, taking advantage of the deserted benches which they must be seeing behind me. It must not be assumed that those who have not come here are opposed to my Bill. On the other hand, I feel confident that, if they were here, the majority of them would have supported my measure.

Mr. B. Das (Orissa Division: Non-Muhammadan): Except the Madras Brahmins.

Sir Hari Singh Gour: I say, Sir, that this is not a measure of social reform. I say it is a measure of humanitarianism, in which every man and woman, whether an Englishman or an Englishwoman, Indian, Muhammadan, or Parsi, must combine to stamp out this great national evil. For what is the result? The result of this law is early marriages, early cohabitation and the birth of offspring which, according to the statistics which have been collected by the medical authorities, come to the appalling percentage of 33⅓ per cent. I read, Sir, on the last occasion, an extract from the Census Report, which points out that on account of the early marriages, the growth of consumption in this country is appalling; and that a large percentage of young mothers die on account of early maternity. I, therefore, submit that the measure is intended not only to save these mothers, to prevent matricide, but also to prevent infanticide, and I appeal to the Government who have abolished human sacrifices and *suttee*, not to permit this appalling human sacrifice that is going on in this country in consequence of early cohabitation. Sir, if you want the people of India to pull their weight amongst the nations of the world, if you want the people of India to become a strong and vigorous race, you cannot stand in the way of this measure which is intended to safeguard immature children and prevent early cohabitation. We have been reading in the newspapers, accounts given of speeches made in the House of Commons, of Indian babies weighing 1½ lbs. and 2 lbs. Sir, whether they weigh 1½ lbs. or 2 lbs., one fact remains and he who runs may see that the debility, the weakness of the Indian people, is due to these early marriages and early motherhood. The life of the people, according to the insurance statistics, is not even half of what it is in England and other European countries. The reasons cannot be all climatic. One reason is the pernicious habit of early marriages and early cohabitation which is sapping the manhood and the womanhood of this country. It is an evil from which not only the persons directly concerned suffer, but it is an evil which cannot be described as anything but a national calamity. What is the result? You have a child aged 11 or 12, wedded to a man or a boy who is at school. Early cohabitation prevents him from prosecuting his studies in the schools or colleges. She herself becomes a mother when she is about 13 or 14. After a year or two, if she is at school, she has to give up her school education. After a year or two, the child dies. The parents are in mourning, the relations are in mourning, the neighbours are in mourning, and the poor boy says, "I was a father; my son is dead; I cannot now learn in the school or college; I cannot prosecute my studies." And the poor girl who has with the last drop of the blood of her life tried to save this baby becomes an easy victim to consumption or other diseases and probably dies. This is the result of early cohabitation and I ask, can any Englishman in this House fail to sympathise with a motion which is intended to better the social condition of the people of this country? We have been told, and we shall be told again, that while in the abstract my motion is perfectly right—and copious words of sympathy will be lavished upon my motion—the Government are not able to support my motion because, forsooth, there are administrative difficulties. Now, Sir, what are the administrative difficulties? They say the difficulties arise from the fact, that it will be very difficult to prove whether the girl is 13 or 14. I answer, Sir, that these administrative difficulties exist throughout the Indian Penal Code. Wherever there is an offence which deals with the age of the man or the woman

[Sir Hari Singh Gour.]

these difficulties exist. The difficulty is there. Under the present law you have the age of consent fixed at 13 years. Have you not that difficulty? Before the amendment of 1925 the age was 12 years. Did you not have that difficulty then? You had that difficulty, and if you are trying to exaggerate these difficulties for the purpose of opposing a piece of social legislation to which the popular party in this House and the people at large outside the House stand committed, you are doing a disservice to this country as the custodians and trustees of the people of this country. I ask you, therefore, Sir, to take your courage in both hands, stand up and say that you will stand by our side in this measure of national reform, in this measure of humanitarian reform, in this measure of mercy to the people of this country, and you will find that you will have earned the blessings of the people of this country and of the generations yet unborn.

I say, Sir, that I introduced this measure for the raising of the age of consent and I withdrew it upon an understanding that Government would not stand in the way of it. I wish to read to you a passage from the speech of the Honourable the Home Member. This is the speech to which I refer. When this Bill of mine was before the House and a counter Bill was introduced by the Government, and I gave notice of amendments for raising the age of consent, this is what the Honourable Sir Alexander Muddiman said:

"I must tell the House quite frankly that, if it carries the amendments that are down in Sir Hari Singh Gour's name, I should take the Bill to the other place and I should try to have it circulated . . .

—terrible threat, and I am awfully afraid of the Council of State (laughter)—

. . . . . because I should not feel that I was justified in accepting those amendments to which my mind—I will not conceal it from the House—is naturally inclined without consultation with Local Governments and Local Administrations. I will go so far as to say that I think that the amendments in Sir Hari Singh Gour's name are on the right lines. They institute a minor offence and, if Local Governments were to report favourably on them, well, that would be another matter and—without committing the Government of India which I have no authority to do—I should personally be inclined to accept them. Therefore, the position is this. It seems to me that the Bill I now bring forward is likely to pass if it is not amended. If it is amended, it may pass; but it will certainly not become law for a considerable period . . .

—He was quite sure of the fate my Bill would have received from the Council of State—

. . . . . This is a case where I would say to the conservatives on the one side, 'You must recognise that you must go forward a little' and I would say to the advanced party on the other, 'This is a case where half a loaf is better than no bread'."

Now, Sir, one fact is perfectly clear from this statement that my amendment was not to be prejudiced by reason of the fact that the Government measure was to be passed in 1925. You will be presently told by the spokesman on behalf of Government that since this House has enacted a measure only as late as 1925, we must have time to gain experience of the working of the measure. Sir, it was the objection that was uppermost in my mind in 1925, and I drew the attention of the Home Member to the fact that if we were to pass this measure as a temporary measure

giving relief until my own measure was ripe for legislation, I was prepared to withdraw my amendment, and I understood that so far as my measure was concerned, it was not to be prejudiced by the temporary enactment of the measure which became law in 1925. I have read to you, Sir, the words of the Honourable the Home Member. Is there anything in that speech to suggest that by the passing of that measure in 1925, my own measure which was then pending was in any way to be prejudiced? And if there is anything to suggest it, I hope, Sir, that you will use the weight of your vote and authority in voting down the Government if they trotted out the argument that we have not had sufficient time to gain experience of the working of the Act of 1925. Sir, I feel strongly on the subject. I have been at this measure for the last 4 years, and I feel that it is my duty to my people and to my country that I should speak on this occasion in unmistakable terms. The Government, I submit, have been accused of being a reactionary in social matters. Motives have been ascribed to the Government that it is easy to govern a weak people. If the Government oppose this elementary piece of justice, Government must rest content with the charges levelled against it that the Government is an enemy of social progress because its strength lies in the weakness of the people.

Sir, I move

Rai Sahib Harbilas Sarda (Ajmer-Merwara: General): Sir, I rise to support the motion made by my Honourable friend, Sir Hari Singh Gour. No question of principle is involved in the Bill. The principle underlying the Bill has been accepted by Government as well as the public. The object of the Bill is only to afford greater protection to girls than they are entitled to get under the present law; and, I think, public opinion on the question has become sufficiently mature since the passing of the last amendment of the section in the Penal Code to admit of this House passing the present measure. So far as marital relations go, the Bill is an indirect attempt to introduce reform in the marriage institution of certain communities in this country, which reform has long been overdue. Sir, in my opinion and in the opinion of all sane people, no girl should be subjected to all the obligations of a marriage, in which as a rule she has little voice in this country, till she attains full maturity. And no girl in this country could be said to attain even partial maturity till she is sixteen years of age. It is true we have to move slowly in this country owing to the peculiar social conditions prevailing here, but taking even the most restricted view of a girl's rights, we can say that no husband has a right to subject his wife to cohabitation before she is fourteen. We know that so far as marital relations go this measure will not act as a proper remedy. The only proper remedy is to prohibit child marriages. But even if only to give our recognition to the rights of girls, we must pass this measure. Out of marital relations, 16 is the proper age, which has been fixed. Sir, I support the motion.

The Honourable Mr. J. Crerar: Sir, I think it is desirable that I should intervene at this stage in the debate in order that the House may be at once informed of the attitude of the Government in this matter. In spite of the great importance of the subject which has been explained in language of so much force and eloquence by the Honourable and learned gentleman opposite, I do not intend to speak at length because, for reasons which will presently be apparent, it is not my present purpose to deal in detail with

[Mr. J. Crerar.]

the merits of the Bill. No one will deny the Honourable and learned Mover the virtues of courage and persistency. Without courage and persistency no great reform was ever achieved. With the general and ultimate objects which Sir Hari Singh Gour has in mind in promoting this legislation no one with any feeling of humanity and public spirit could fail to have sympathy. Throughout all the controversy, sometimes angry and acrimonious, which has been aroused, few, whatever their opinions may be, will be found to deny that the problem, with all its ramifications, has a vital bearing on some of the most fundamental conditions of national life. With these general and ultimate objects Government has a deep sympathy, interest and concern proportionate to its own great and special responsibilities in the matter. They yield to none in their desire that progress should be achieved as rapidly as circumstances permit, on the basis of an enlightened public opinion and of a well considered and efficacious law. Now, Sir, at this stage I want to say one word on the quotation which Sir Hari Singh Gour made from my predecessor, Sir Alexander Muddiman's speech. I was not present in the House at the time and I am not in a position to interpret with authority what was in the mind of Sir Alexander Muddiman. But I do not think that it would be reasonable to infer that what Sir Alexander Muddiman intended then to communicate was that the consequences of that very important piece of legislation passed in 1925 were not consequences which in further discussion of this great and important question ought to be taken into consideration by this House.

The position, then, is this. Two years ago, by Act XXIX of 1925, a very important modification was made in the law. On previous occasions, in 1923 and 1924, other amendments of the law were made which had some indirect bearing on the general problem which is now before us. The amendment effected by Act XXIX of 1925 in one respect brought the Indian law in advance of the present English law on the subject. Now, Sir, there are manifest dangers in drastic changes in the criminal law at short intervals, not the least of which is that it occasions uncertainty in the public mind as to the actual state of the law. In matters of this kind, unless the public mind is in a reasonably close contact with the modification of the law, there is the danger that the law may become, if not ineffective, at least less effective than it should be. I should point out also, to emphasise what fell from Rai Sahib Harbilas Sarda, that there are other methods by which this complicated problem may be approached, and one of those is contained in a Bill which will shortly come before a Select Committee of this House and which the Honourable Member has himself promoted. I am inclined to agree with him, though I am not saying this with any prejudice whatever to the main principles of Sir Hari Singh Gour's Bill—I am inclined to agree with him that a very practical and useful way of approaching the problem is to deal directly with the question of child marriages. It is the existence, the possibility of child marriages which give the opportunity, the secrecy, and in some cases I have no doubt the temptation to commit the offences which the present law would penalise and Sir Hari Singh Gour's Bill would further penalise. Whatever may be the precise expedient adopted to give effect to Rai Sahib Harbilas Sarda's views on the matter, I entirely agree with him that that is an aspect of the question which requires our gravest, most careful and most practical consideration. It is therefore of the utmost importance that we should examine carefully and estimate the results

that have been achieved. The interval which has elapsed since the last amendment of the Indian Penal Code is not a long one for this purpose. But we have already called for detailed reports from the Local Governments on the operation of the amended sections, and for purposes of comparison, on the state of affairs in the five years preceding that amendment. Some of these reports have been received and they contain information of a very interesting and valuable character, though I must candidly admit to the House that at the present stage several Local Governments have reported that they are not convinced that the amendment of the law has been in operation for a sufficiently long time to enable any really accurate and sound estimate to be arrived at of the results. That represents the views of those Local Governments which have so far replied, and I have no doubt that similar views are likely to be taken by others. That, however, is not and obviously cannot be the conclusion of the affair. On receipt of these reports it is the intention of the Government of India, if the reports appear to render further enquiry necessary, to appoint a strong committee of officials and non-officials to undertake a comprehensive survey of the whole question with a view to further action. An inquiry by such a committee would, it may be confidently anticipated, discharge the very important function of stimulating and concentrating public opinion as well as, in the more direct and positive direction of investigating and formulating the lines of further possible advance. In view of these definite steps which the Government of India have either taken or have in contemplation, I should venture to suggest to the Honourable Member that his proper course would be not to press the present motion for the consideration of the Bill which, for the reasons above mentioned and having regard to the course which they themselves contemplate, Government would not be in a position to support. If an amendment were made for the circulation of the Bill for opinions I should take no objection whatsoever to that course.

4 P.M.

I have only one word more to say. The Honourable and learned Member appealed to me not to take advantage of what he called the denudation of the House in order to oppose his Bill. Sir, I have no intention whatsoever to take advantage of the denudation of the House but I would point out to him that, if the House is in a state of denudation, for which Government is in no way responsible, this is perhaps not the most happy occasion for a full and final discussion of this extremely important measure.

Lala Lajpat Rai (Jullundur Division: Non-Muhammadan): I rise to associate myself fully and almost unreservedly with the remarks made and sentiments expressed by my friend Sir Hari Singh Gour about this Bill. The subject is of the greatest possible importance to the national well-being of this country and any delay would certainly be deleterious to the cause. We ought to move on as fast as we possibly can in this matter.

The Bill can be divided into two parts. One relates to intercourse with unmarried girls and the other is with regard to marital relations. I think there will be absolutely no opposition in the country with regard to the first part of the Bill, but there is no use of concealing the fact that there will be some objection to the latter part in the same way as there is some opposition to Rai Sahib Harbilas Sarda's Bill, though in my judgment it is very feeble and not worth considering. In the matter of social reform the country is advancing rapidly and sentiment is developing quite fast. I may safely say that all intelligent people are of opinion that the

[Lala Lajpat Rai.]

Hindu community will be a dying race if they do not stop child marriages and early consummation of marriages. Feeling has been growing so fast that I can safely say that even orthodox Hindu public opinion is very strongly in favour of an advance, even a rapid advance, being made in this matter. There are practically very few people whom we can call diehards who do not want this reform. Their number is very limited. At the same time I find that there are immense difficulties, at least to-day, in carrying this motion for consideration of this Bill, particularly having regard to the attitude of Government. I welcome the statement made by the Honourable the Home Member that the Government contemplates the appointment of a committee which will go thoroughly into this question and the allied questions. I also know that Rai Sahib Harbilas Sarda's Bill has been referred to a Select Committee which will presently sit to consider the opinions that have been received by Government with regard to that Bill. I think the effort which is being made by Government in this matter should be welcome to the non-official benches and if, as the Honourable Member promises, a committee of officials and non-officials is going to be shortly appointed to go into the whole question so that the conclusions arrived at might be put into legislative form, I think that no good will be gained by pressing this motion at once to the consideration stage. I may say at once that I feel on this question as strongly as, perhaps even more strongly than, Sir Hari Singh Gour and I am not at all prepared to accept some of the arguments advanced by the Honourable the Home Member to delay the measure. I am perfectly alive to the vital importance of the question to the progress of the nation. At the same time considering the attitude of Government I would ask my friend not to press the motion for consideration.

With your permission I should like to make a motion that the Bill be circulated for opinions which would be received in time for the Simla Session. By that time we shall be in a position to know what action Government takes in pursuance of the statement made by the Honourable the Home Member to-day and what is being done with regard to Rai Sahib Harbilas Sarda's Bill for preventing child marriages. These three things will be before us during the Simla Session and we can then take such further steps as seem necessary. In order to facilitate matters, I shall with your permission move that the Bill be circulated for eliciting opinions. If the Government, as I am told, is prepared to accept it, we need not any further deal with this measure before us.

Mr. President: The original question was:

"That the Bill further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, be taken into consideration."

Since which an amendment has been moved:

"That the Bill be circulated for the purpose of eliciting opinions thereon."

The question I have to put is that that amendment be made.

The motion was adopted.

THE SPECIAL MARRIAGE (AMENDMENT) BILL.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I beg to move for leave to introduce a Bill further to amend the Special Marriage Act, 1872.

In asking this House to give me leave I shall take a very few minutes. I introduced an identical measure in 1922 in the first Legislative Assembly and that Assembly referred that Bill to a Select Committee, but in consequence of the difference of opinion in the Select Committee I had to cut out certain communities from the scope of that Bill and the Bill as revised by the Select Committee became Act XXX of 1923. Since then I have been strongly advised by the representative members of the very community exempted from the Bill that I should reintroduce a pure Civil Marriage Bill in this country and that I should receive the support of the leaders of the other communities. I may point out to you, Sir, that Mr. S. Srinivasa Iyengar, the Leader of the Congress Party in this House was the co-author of this Bill and so was their Chief Whip, Mr Goswami, and leaders like Lala Lajpat Rai and Mr. Kelkar and a few other friends, whose votes and voices count in this House, have assured me of their wholehearted support. This is therefore a very good augury for the future of my Bill. To Englishmen I say that you have your Civil Marriage Act in England, and you should lend me your support because it enables you to contract civil marriages in this country, and I therefore ask for the support of all communities for leave to introduce this Bill.

Sir, I move.

Mr. President: The question is:

"That leave be given to introduce a Bill further to amend the Special Marriage Act, 1872."

(Maulvi Muhammad Yakub rose in his place.)

Mr. President: Is the Honourable Member opposing the motion?

Maulvi Muhammad Yakub: I want to make the position clear. I will neither support nor oppose it, because . . . .

Mr. President: The Honourable Member need not speak at all at this stage.

Mr. President: The question is:

"That leave be given to introduce a Bill further to amend the Special Marriage Act, 1872."

The motion was adopted.

Sir Hari Singh Gour: Sir, I introduce the Bill.

THE INDIAN LIMITATION (AMENDMENT) BILL.

Mr. N. C. Kelkar (Bombay Central Division: Non-Muhammadan Rural): I beg to move for leave to introduce a Bill further to amend the Indian Limitation Act, 1908, for a certain purpose.

The objects of the Bill have been sufficiently stated in the note appended to this Bill and I simply ask the leave of the House to introduce the Bill.

Mr. President: The question is

"That leave be given to introduce a Bill further to amend the Indian Limitation Act, 1908, for a certain purpose."

The motion was adopted.

Mr. N. C. Kelkar: Sir, I introduce the Bill.

THE RESERVATION OF THE COASTAL TRAFFIC OF INDIA BILL.

Mr. Sarabhai Nemchand Haji (Bombay Central Division: Non-Muhammadan Rural): Sir, I beg to move for leave to introduce a Bill to reserve the Coastal Traffic of India to Indian Vessels. In making this motion, Sir, it is not my intention to make a long speech, in view of the fact that the measure is one which—though drafted by me in 1922 when I did not know that I would one day have the privilege of introducing it myself on the floor of this Honourable House—has since got the approval of the Mercantile Marine Committee appointed by the Government of India at the suggestion of the Honourable Sir Sivaswamy Aiyer, the pioneer of national shipping for this country. It would not be out of place if I say at the outset, in the hope of warding off Government opposition, that the principle underlying the Bill has the full support of the Committee that they themselves appointed and which was presided over by Captain Headlam, Director of the Royal Indian Marine, who brought the frankness of a sailor and the impartiality of a High Court Judge to bear upon the deliberations and Report of that Committee. The Committee have recommended that the Indian coastal trade should be reserved for shipping the ownership and controlling interests of which are predominantly Indian. It is because my Bill seeks to further this recommendation that I beg to move that leave be given for introducing it.

The motion was adopted.

Mr. Sarabhai Nemchand Haji: Sir, I introduce the Bill.

THE INDIAN MERCHANT SHIPPING (AMENDMENT) BILL.

EMPLOYMENT BUREAU FOR SEAMEN IN CALCUTTA AND BOMBAY.

Maulvi Abdul Matin Chaudhury (Assam: Muhammadan): Sir, on the grounds given in the statement of objects and reasons I beg to move for leave to introduce a Bill further to amend the Indian Merchant Shipping Act, 1923, for certain purposes.

The motion was adopted.

Maulvi Abdul Matin Chaudhury: Sir, I introduce the Bill.

THE INDIAN DIVORCE (AMENDMENT) BILL.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I have made a somewhat full statement justifying this measure and I do not wish to add to that statement.

I beg to move for leave to introduce a Bill further to amend the Indian Divorce Act.

The motion was adopted.

Sir Hari Singh Gour: Sir, I introduce the Bill.

THE INTEREST RESTRICTIONS BILL.

Mr. N. C. Kelkar (Bombay Central Division: Non-Muhammadan Rural): Sir, I beg to move for leave to introduce a Bill to restrict the amount of interest recoverable from debtors.

The motion was adopted.

Mr. N. C. Kelkar: Sir, I introduce the Bill.

THE HINDU INHERITANCE (REMOVAL OF DISABILITIES) BILL.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I move for leave to introduce a Bill to amend the Hindu Law relating to exclusion from inheritance of certain classes of heirs, and to remove certain doubts.

In the Statement of Objects and Reasons appended to my Bill I have pointed out that this Bill was passed by this House but was rejected by the Council of State, and I wish therefore for leave to reintroduce it.

The motion was adopted.

Sir Hari Singh Gour: Sir, I introduce the Bill.

THE CASTE DISABILITIES REMOVAL REPEALING BILL.

Mr. N. C. Kelkar (Bombay Central Division: Non-Muhammadan Rural): Sir, I beg to move for leave to introduce a Bill to repeal the Caste Disabilities Removal Act, 1850.

The motion was adopted.

Mr. N. C. Kelkar: Sir, I introduce the Bill.

THE ABOLITION OF DEFERRED REBATES BILL.

Mr. Sarabhai Nemchand Haji (Bombay Central Division: Non-Muhammadan Rural): Sir, I move for leave to introduce a Bill to provide for the abolition of the deferred rebates in the Coasting Trade of India.

As the Bill has already been once introduced into this House by my friend the late lamented Mr. T. V. Seshagiri Ayyar, Leader of the Democratic Party in the first Assembly, and as opinions have already been received on it, I need not say anything more on the subject.

The motion was adopted.

Mr. Sarabhai Nemchand Haji: Sir, I introduce the Bill.

IMMUNITY OF MEMBERS OF TRADE UNIONS FROM THE CONSEQUENCES OF THE CONSPIRACY LAW.

***Mr. N. M. Joshi** (Nominated: Labour Interests): Sir, I move for leave to introduce a Bill further to amend the Indian Penal Code.

The Indian Trade Unions Act frees the members and office-bearers of registered trade unions from the consequences of the conspiracy law in India as contained in section 120 (*d*). I seek by my Bill to give freedom to the members and office-bearers of unregistered unions, as also two or more persons who are engaged in a trade dispute or in furtherance of any action which will be construed to be an action in restraint of trade. I hope that the leave asked for will be given.

The motion was adopted.

Mr. N. M. Joshi: Sir, I introduce the Bill.

The Assembly then adjourned till Eleven of the Clock on Friday, the 10th February, 1928.

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*Speech not corrected by the Honourable Member.