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LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

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SECOND SESSION

OF THE

THIRD LEGISLATIVE ASSEMBLY, 1928



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Legislative Assembly.

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Deputy President :

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MR. G. H. SPENCE, I.C.S.

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

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DR. A. SUHRAWARDY, M.L.A.

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LEGISLATIVE ASSEMBLY.

Tuesday, 14th February, 1928.

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

QUESTIONS AND ANSWERS.

EMPLOYMENT IN GOVERNMENT OFFICES OF THE STAFF OF THE LATE ARMY CANTEN BOARD.

191. ***Mr. Abdul Haje**: 1. Is it a fact that the Government of India have agreed to the employment of the staff rendered unemployed as a result of the final closing down of the Army Canteen Board in India?

2. Will Government be pleased to state whether the members of the staff under reference have passed the usual examinations of the Public Service Commission?

3. If not, will Government please state why differential treatment has been extended to these men?

4. Will Government please state the number of the late employees of the Army Canteen Board who:

(a) have been given employment in the Government of India offices without passing the usual competitive examination,

(b) have been recommended for consideration for Government service under the Government of India on the occurrence of suitable vacancies, and

(c) the number of Hindus and Muslims in (a) and (b) ?

5. Will Government please say what action they propose to take to safeguard the representation of Muslims while employing the ex-employees of the late Army Canteen Board?

Mr. G. M. Young: 1. Yes, on the conditions (i) that they possess the requisite educational qualifications, (ii) that preference must be given to men who have already passed the Public Service Commission tests, (iii) that they pass at the next examination to which they will be admitted whether they are over the prescribed age or not and (iv) that they enter the service of the Board before the decision to abolish it had been arrived at.

2. Most of them have *not* passed.

3. Because Government have a certain obligation towards those who served the Army Canteen Board well for a considerable time and have missed chances of other employment.

4. (a) As far as I am aware, only two such persons have so far obtained permanent employment in the Government of India Secretariat offices.

(b) Forty were originally recommended to the Public Service Commission. 29 of these have been accepted as fulfilling the conditions imposed by the Public Service Commission to which I have referred in my reply to part 1.

(c) Of the 31 persons, 15 are Hindus, 5 Muslims, 6 Europeans and Anglo-Indians, and 5 Sikhs.

5. The general policy of Government with regard to the representation of the different communities will be followed.

GRANT OF ALLOWANCES TO CASHIERS IN MILITARY OFFICES.

192. ***Mr. Abdul Haya:** (a) Will Government kindly say whether it is fact that the cashiers in the military offices are given an allowance of Rs. 50 in addition to their pay?

(b) If so, will Government please inform this House how many Hindus and Sikhs and how many Muslims are getting this allowance?

(c) If the number of Muslims is less than that of the Hindus and Sikhs, are Government prepared to take steps to equalise the number, or to give due representation to the Muslims? If not, why not?

EMPLOYMENT OF MUSLIMS AS CASHIERS IN MILITARY OFFICES.

193. ***Mr. Abdul Haya:** (a) Will Government be pleased to state whether it is one of the functions of the clerks employed as cashiers or under the cashiers in the military offices to deal with questions relating to the establishments of these offices?

(b) Will Government kindly inform this House what was the total number of such clerks in the military offices on the 31st December, 1927, and how many of them were Muslims?

(c) In case the number of Muslims was inadequate, will Government please give the reason and state what steps have been or will be taken to appoint them to these posts?

Mr. G. M. Young: With your permission, Sir, I will answer questions Nos. 192 and 193 together.

The collection of the information desired by the Honourable Member in parts (a) and (b) of these questions would involve an expenditure of time and labour which, in the opinion of the Government of India, would not be commensurate with the results.

As regards part (c) of each question, the Honourable Member will no doubt recognize that it would be impossible for Government to eject any existing incumbents of these appointments and replace them by members of a particular community. The policy of Government in regard to communal representation in Government offices has been clearly defined in terms of which the Honourable Member is, no doubt, aware. These instructions have been communicated to all concerned, and Government are satisfied that they are being, and will be, carried out in the offices of Army Headquarters.

THE HINDU FAMILY TRANSACTIONS BILL.

The Honourable Mr. J. Orerar (Home Member): Sir, I beg to move that the Bill to provide that partitions and separations of interest among the members of Hindu undivided families and other transactions among persons governed by Hindu law shall, in certain cases, be effected by written and registered instruments, as passed by the Council of State, be taken into consideration.

I do not think that at this stage it is necessary for me to add anything material to what is contained in the Statement of Objects and Reasons and in the Report of the Select Committee. I would merely briefly recite that the Bill is intended to give effect to certain recommendations of the Civil Justice Committee, the object being to provide that certain transactions which hitherto have been effected orally shall be reduced to writing and shall be registered. The Committee have expressed the view that owing to the absence in transactions of the character contemplated by the Bill of documentary evidence, the course of justice has been impeded and that much time of the courts has been consumed in taking parole evidence. Further, the existence of this state of affairs affords an encouragement to vexatious and speculative litigation. I shall only invite the attention of the House in particular to one provision of the Bill. Sub-clause (3) of clause I provides that it shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint. The purpose of that clause is twofold, firstly, that due notice may be given of any change in the law before it actually comes into operation; and secondly, the registration of documents and stamp duties being provincial subjects, we consider it undesirable that final conclusions should be arrived at until we have had an opportunity of consulting Local Governments on points which are likely to affect them as a result of the Bill. In particular, I would invite the attention of the House to the recommendation of the Civil Justice Committee that the stamp duty to be levied may be fixed on such a basis as not to work hardship on the parties affected by the partition. All these are matters which, if the Bill is enacted into law, we propose to discuss in detail, including any adjustment of registration fees or stamp duties which might be rendered necessary or desirable, with the Local Governments.

Sir, I move.

Pandit Thakur Das Bhargava (Ambala Division: Non-Muhammadan): Sir, the reason just advanced by the Honourable the Mover of the Bill itself affords a sufficient justification why this Bill should not be allowed to be considered. He has alluded to the fact that Local Governments will be consulted before effect is given to the provisions of the Bill and that the time of its enforcement will be determined subsequently, which shows that the Bill is premature and is not wanted by the people at large. Sir, this Bill will affect a very large number of His Majesty's subjects in this country. At a modest estimate the families which will be affected by this Bill will not be less than about four crores. At the same time, Sir, the Bill is in the nature of a taxation Bill. One would therefore naturally expect that it should first come to the popular House and then it would be taken to the other House. But in this case it appears that the Government was afraid that this popular Assembly would not be a party to the passing of this measure and therefore they got it passed in the other House and they have now brought it to this House. In the other House some strong objections were raised to this Bill and a very pathetic appeal

[Pandit Thakur Das Bhargava.]

was made by one of the Members to withdraw the Bill, and he predicted there that the fate of this Bill will be that of a still-born child in this Assembly, and I have to submit the same to the Honourable the Mover of this Bill.

Now, Sir, the first point which I would humbly submit for your consideration is that this Bill provides for a double registration. I speak with an intimate knowledge of the conditions prevailing in the Punjab, and I think the same conditions exist in other parts of India as well, because so far as partitions are concerned, there is a system of registration prevailing all over India. Now, in an ordinary village every partition of land goes to the annual register and after it is recorded there, a mutation officer attests the mutation, calls the parties, takes down statements and, after all the formalities are over, attests the mutation. Thereafter, when that mutation has been attested, that mutation becomes a part of the *jamabundi* and a presumption of truth attaches to all revenue entries contained in the *jamabundi*. If a registration is made ordinarily under the Indian Registration Act, there is no presumption of truth attaching to any entries contained in any such document, whereas in respect of a mutation, there is a presumption of truth attaching to the entries contained therein. Now, ordinarily, Sir, I would expect that, when this Bill has been actuated by only one object, *viz.*, the clarification of evidence, and that oral evidence, conflicting oral evidence may not trouble the courts and consume much of their valuable time, I think that in matters and in respect of persons where this difficulty is not to be found, this Bill will not touch these matters and persons at all. What do we find to the contrary? In this Bill, all mutations and all other documents which are presumed by law to be correct are not excepted. A perusal of this Bill would establish that an exception is made only in favour of instruments of partition. Now, Sir, so far as the Punjab is concerned, an instrument of partition is drawn up under section 121 of the Land Revenue Act, in a contentious case of partition. But if there is no contention, if the parties come to terms between themselves and go to a mutation officer or to a *patwari* and get their mutations recorded, in that case no instrument of partition is drawn up. So it appears that, if a case is contentious and there is an application for partition, then an instrument of partition is drawn up and that instrument is excepted, whereas in a case in which the parties come to terms and between themselves agree to a partition, no such instrument is drawn up. And it follows as a matter of consequence that such mutations will require registration as a matter of course, which cannot be the policy of the law. This is the main point upon which, I submit, this Bill should be thrown out.

But this is not all. Now, it appears that a difference is sought to be made out between those persons who follow the Hindu law and those who follow the customary law. Now in the Punjab, Sir, in almost every case of partition and in almost all the cases relating to the affairs of a Hindu joint family, there is an objection raised by persons interested in the objection, that the particular family is not bound by Hindu law but by customary law and in most cases the solution of this question is dependent upon oral evidence and conflicting oral evidence. Now, if this Bill is allowed to be enacted, in every possible case this new issue which at present is not universally raised will in future be universally raised and the courts will first have to determine whether in regard to a certain family Hindu law is to be applied or customary law is to be applied. And the very object

of the Bill will be frustrated if oral evidence is allowed to be taken in respect of this question. I therefore submit that, instead of eliminating oral evidence and settling up the conflict of oral evidence, this Bill will lead to more oral evidence and to the presentation of more conflicting evidence, and it will take the courts into such abstruse questions that it will be difficult to disentangle them; and this way of cutting the Gordian knot will not be available to the courts. Moreover, Sir, so far as the rest of India is concerned, the present state of the law in regard to Hindu joint families is that this provision, even if enacted, will not eliminate oral evidence. We all know that divided status can be proved by all kinds of evidence. Even if a particular partition cannot be proved, if it is oral or written but not registered, in that case also there are various ways in which the courts would hold that a family has got a divided status. The doctrine of part performance has come into vogue. It so happens that the rigours of the registration law have led the highest courts of appeal, including the Privy Council, to come to a finding that in cases where this registration law causes this hardship, the doctrine of part performance comes to the rescue and it has been held that, if from the circumstances, the court comes to the conclusion that a person is divided in status, then, although his suit in regard to a particular property which he claimed by virtue of the partition may be thrown out, it will be held by the courts that he has got a particular status. Moreover, awards have been excepted from the operation of this Bill, as will appear from sub-clause (2), clause 3. Now, Sir, there is no law which I know of that an award should be contained in any document. An award can be oral as well as be contained in a document. Now, what is the guarantee that interested parties who now produce oral evidence will not produce evidence to this effect that on a certain evening, one fine evening, the whole village people gathered and arbitrators were appointed and the appointed arbitrator or arbitrators gave his or their decision in regard to a disputed case of partition? So that this evidence which is now being led will never be eliminated as long as the whole structure of the law is not changed. It is no use passing this measure when the very object of this measure will be frustrated by other subterfuges and other known principles of law? I therefore submit that, so far as this object is concerned, it will never be achieved.

Sir, while I congratulate the Law Member on having introduced this measure because I understand he is actuated by the best of motives, I would submit one point for his consideration. Speedy disposal of cases, however laudable by itself, however good, is not the sole thing to which the attention of Law Members and politicians like him should be directed. The peace and contentment of the family is perhaps a greater concern. The remedy proposed by him is perhaps worse than the disease itself. Now, there are lots of families in which partitions take place every day and the courts do not hear of these partitions. Every day, these things are settled in villages, and in towns, and nobody hears of them. An ordinary way in which a partition takes place in a Hindu family is one which does not create any sort of excitement and which need not take people to any registration offices. Now, Sir, it is well known that in many cases of rich people these registrations are effected. It is to their interests to effect registration, and in most cases in which large properties are involved this registration takes place. Registration does not ordinarily take place in those cases in which poor people are involved. And this Bill has the merit of hitting those very people who ought to be protected.

[Pandit Thakur Das Bhargava.]

Land is the chief source of maintenance of these people. I have already submitted that partitions of land by these people are even now registered in a manner provided for by the law of this country. As regards village property and houses, they are generally not so valuable, but when partition does take place, the people sever their interests. They separate their properties and get into possession, and that possession by itself is the best evidence of title. Under section 110 of the Indian Evidence Act it is good proof of their ownership. So, in most cases there is generally no likelihood of any dispute arising on account of the absence of writing. In regard to properties in urban areas I have submitted that generally registrations are resorted to, so that this Bill will only touch a very few cases, and especially those cases which ought to be protected by the Legislature.

Now, this Bill has got another merit. This is a Bill which provides for sectional legislation. I can very well understand the Indian Registration Act. It affects all the subjects of His Majesty and equally. But this Bill will affect only the Hindu joint family. May I humbly ask what is the basic difference between the enjoyment of joint property and the enjoyment of property by a Hindu undivided family? I understand that the difference is that survivorship obtains in one while it does not obtain in the other. Now, Sir, this conception of law, this abstruse matter, is absent from the minds of those unsophisticated people who live in the villages, whom this Bill is sure to hit. This separation of interest as known to the Hindu law is a matter which is unknown to those whom the Hindu law affects. In the majority of cases there is nothing like a separation of interest as such. In the majority of cases you will find that division by metes and bounds is the only form of partition which they know of, and in those cases, as I have submitted already, partitions are registered. But if there is a separation of interest and subsequently there is a division by metes and bounds two registrations will be required, and supposing it so happens that the members of a family do not agree and they go to litigation, then for the third time also the parties will have to go to the courts. In the Punjab the stamp duty is 3 per cent. so far as registrations of this nature are concerned. Now 3 per cent. on two occasions means 6 per cent., and if the parties have to go to court, the court fee in cases of property of the value of Rs. 500 and more is Rs. 11-4-0 per cent. Therefore it means that for obtaining possession of property of the value of about Rs. 100 a member of a Hindu joint family will have to spend something like Rs. 17-4-0 by way of payment to the treasury alone.

Now, Sir, this registration affair is not so simple as it might seem to those who do not know how registrations are effected. I should have thought that no Government who has not done its duty by the people by educating them should bring in a measure of this sort. I would further say that in fairness Government should hide its face in shame that people are not educated. 90 per cent. of the people are illiterate. In some places railway connections are not so easy and people live at a distance of 30 miles or perhaps more from registration offices. Supposing 2 or 3 persons belonging to a Hindu undivided family have to come from a distance of 30 miles or more; they are illiterate people, and they have to

effect a transaction affecting property of the value of Rs. 200. What would happen? All these persons would have to come to the registration office, and their witnesses also would have to come. They will come a day earlier. They will go to a petition writer who will demand his fees. Then they will have to go to a person who sells stamps. Those who know these things know fully well that it is not always easy to get stamps even without an extra payment. Then they may have to take the advice of a lawyer, and after that, they will reach the registration office. What would happen in the registration office? It is not very easy to get registration effected, and after this Bill is enacted into law such registrations would become so frequent that it would be difficult to cope with the work and they may have to stay for a couple of days for effecting registration of this sort. The trouble does not end there. People generally are very loath to take the ladies of their family to registration offices, and if you have a provision of the nature as is contained in sub-clause (2) of clause 2 relating to surrender by widows or grant of maintenance to widows, the trouble increases all the more.

I wish to submit one thing from the national standpoint. Now, Sir, uniformity of laws and equality of status is a thing which will be valued by all nationalists. I do not see what difference there is between a village inhabited by Sikhs and Hindus and a village inhabited by Muhammadans. In the case of the more fortunate of the two, the Muhammadan village, you will find that all their transactions are attested by mutation officers as in the case of the village inhabited by Hindus and Sikhs, but in the latter case there will be an extra tax and they will have to go to the registration office if this Bill is enacted into law. Why this difference? The mere fact that a person is a Hindu or a Sikh should not make any difference in the eye of the law, and this difference will be perpetrated if this Bill is passed. So far as the enjoyment of joint property is concerned, I claim there is no difference between Hindus, Mussalmans and Christians, and in many cases relating to persons other than Hindus the plea is put forward that a property has already been partitioned. It is not a plea which is peculiar to the Hindus, and from that standpoint I fail to see why the Hindus should be selected to be penalised in this manner. Moreover, this Bill makes a distinction which has so far been unheard of. This Bill makes a difference between a Hindu family owning property worth Rs. 1,000 and a Hindu family owning property worth less than Rs. 1,000. It is not the amount of property which is sought to be transferred which is the basis of inclusion in this Bill, but all the transactions made by members of families owning property to the extent of Rs. 1,000 will come under the provisions of this Bill. It follows that even a transaction relating to a property of Rs. 5 will have to be registered if this Bill is passed into law. I read the speech of the Honourable the Law Member in the Council of State and I find from it that so far as this Bill is concerned there is a misconception in his mind. His speech runs thus :

"All that it attempts to do is that in the case of partition of immoveable property of the value of more than Rs. 1,000 it should be in writing."

Now, Sir, if I understand the English language aright. I would submit that the Bill proposes to do more mischief than this. If the plain provisions of the Bill are looked at, it would follow that all cases of partition.

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whatever the value of the property, if they are effected by persons belonging to a family which owns more than Rs. 1,000, will come within the ambit of this Bill. And so far as the declaration or expression of intention to separate is concerned, no question of value arises at all, and this provision of the Bill has not been given due attention by those who have perused this Bill. I would, in the circumstances, submit that since this Bill proposes a change of a very vast magnitude and differentiates between the various classes of His Majesty's subjects it should not be allowed to be considered. The Honourable the Law Member has not been pleased to give us any statistics as to how many cases come into court in which partition is disputed and in how many of those cases the question of conflict of oral evidence arises, and it is very difficult to appreciate the effect of this Bill without those statistics. I have been practising for the last 17 years and I have never come across a single case in which the question of surrender by a widow has been pleaded to be based on oral agreement, and similarly, I can say from my small experience that the number of cases relating to partition is quite small and the trouble is not so great as it has been represented to be. And the trouble will not be obviated, as I have already submitted, by the provisions of this Bill.

Now, Sir, it is a platitude of politics that in the laws of the realm the national will should be represented. If that is so, I am rather surprised at the audacity with which this Bill has been brought before the Legislature. When one reads the opinions expressed by those whom this Bill will affect, it takes one's breath away, and one is apt to feel that the measure of disagreement is the sole basis of this legislation. I will, first of all, submit for your consideration some of the opinions which have been expressed in the Punjab. Our Chief Justice has expressed himself against the provisions of this Bill in unmistakable terms. Various other Judges of the Punjab High Court are also opposed to the passing of this Bill. I am anticipating some objection and therefore I am hesitating to make that statement. It may be said that two of the Judges have given an opinion in favour of the Bill. In regard to those two opinions I would submit that one of the Judges looks at this Bill from a detached standpoint. He looks at the Bill only from one standpoint, namely, the judicial standpoint, and I agree that in some cases this Bill, if passed into law, will be found to be useful. But the question is not whether it is an unmixed evil, the question is whether this Bill is one which ought to be passed by us, whether in the totality of cases the effect of the Bill will be to produce more harm or more benefit. That Judge was under the impression that this Bill will only relate to properties which exceed Rs. 1,000 in value. The other Judge seems to have been obsessed by some of his experiences in regard to the contracts between Manchester and Delhi. Delhi is not the only place which will be affected by this Bill. In so far as Delhi and other mercantile towns are concerned, my objection is not half so great, and moreover, that Judge also was under the impression that only such families would be effected as possessed an income of Rs. 1,000 or over. Now, the owning of property valued at about Rs. 1,000 or more is quite different from the status of a family which can command an income of Rs. 1,000 or more. Barring these two Judges, the consensus of opinion is against the Bill and one of the Indian Judges has gone so far as to opine that this Bill will be productive of more litigation. Then, Sir, about 8 Bar Associations were consulted in this matter so far as the Punjab is concerned, and with the exception of one Bar Association, 7 Bar Associations

have given their opinion against the Bill. Some of the District Judges were consulted and a perusal of their opinions will establish the fact that those District Judges who gave some consideration to this Bill were opposed to its provisions, whereas other District Judges who only looked at this Bill from a detached standpoint, from the judicial standpoint, were found to be in favour of the Bill. As regards the rest of the non-official opinion, some Hindu Sabhas were consulted and they all unanimously stated that this Bill is productive of greater harm than good. I must say that so far as those persons who will be affected by the Bill are concerned, all of them are against this measure. So far as the other provinces are concerned, I will leave the matter in the hands of more competent speakers; but I will just call the attention of the House to the expressions of opinion by some of those who know the Hindu mind intimately. Some of the Local Governments including the Madras Government have given their opinion against this Bill. The Assam Government and the North-West Frontier Government have given their opinion against this Bill. I am referring to the Assam and the North-West Frontier Province Government especially because in those provinces the Transfer of Property Act is not in force. This Act is not in force in the Punjab also. Now, in the present state of the law all the transactions including sales worth lakhs of rupees can be effected orally in the Punjab and in such provinces in which the Transfer of Property Act is not in force. Sir, if this Bill is enacted into law, then wills, sales, mortgages, exchanges, leases, irrespective of the value of the property affected, can all be effected orally; only partitions of property to the extent of, say, even Rs. 20 will not be allowed except under a registered document. The opinions given by the Governments of Assam and the North-West Frontier apply especially to the Punjab, because the Punjab stands on the same footing as the provinces of Assam and the North-West Frontier so far as the question of the application of the Transfer of Property Act is concerned. As regards the rest of the opinions, an impartial perusal of those opinions which are supplied to the Members would establish beyond any doubt that Hindu India does not want this Bill. From ages past it had been the Hindu law that partition can be effected orally. Do I understand that in Hindu India such a revolution has taken place that a brother cannot trust a brother, and that literacy is so prevalent that it will not be difficult at all for any person to write out a document and get it registered? If this is not so, and if, as I have submitted, 90 per cent. of the population is illiterate, where is the need, where is the demand, for a registration of this nature? I would under the circumstances press for your consideration that, judging from the magnitude of this measure and also from its extent, it is clear that the provisions of this Bill are very drastic and therefore it should not be enacted.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhamadan): Sir, I regret that I am unable to accord my support to this extremely reactionary and drastic measure which is intended to penalise the Hindu society and to place upon them a tax which, as the Chief Justice of the Punjab High Court has pointed out, would be in many cases considerable. The Honourable the Home Member in his opening speech says that this Bill is intended to prevent the giving of conflicting and false evidence in a court of law. Sir, I have read the report of the Civil Justice Committee on this subject and, if I may venture to say so, I do not find in it any expression of opinion to that effect. It is no doubt true that this Bill is intended to simplify litigation; but this House is aware of a very

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large number of Bills that have been introduced by the Government to give effect to the various recommendations of the Civil Justice Committee. And this House is equally aware of the reception that these Bills have received from the non-official Members and the fate to which they were consigned eventually. Sir, this is one of those Bills. Sir, we have protested in the past and we protest again that if the Government desire to give effect to the recommendations of the Civil Justice Committee, they should introduce one comprehensive measure giving effect to all the recommendations made by that Committee so that this House may be in a position to examine them and to pronounce their verdict on them once for all. This the Government has not done. Take, for instance, the present Bill itself. In Chapter XXXVI of their Report, the Civil Justice Committee deal with the requirement of writing and registration of Hindu partitions. In the very next Chapter (Chapter XXXVII), they deal with a cognate subject, the registration of partnerships. Now, the Government have in their wisdom thought fit to bring this Bill giving effect to their recommendations in Chapter XXXVI but have left out a very cognate matter, namely, the registration of partnerships, dealt with in the ensuing chapter. I submit, Sir, therefore, that on the ground that Government have not introduced this Bill in response to the universally expressed desire by the non-official Members, namely, that they should introduce one comprehensive Bill dealing with all and sundry recommendations of the Civil Justice Committee so as to give this House an idea as to what the Government wants this House to pass and to enable the Honourable Members on this side to examine the recommendations which are more or less inter-dependent and in order that it may be in a position to give its verdict upon these recommendations, this House should not accede to the passing of this Bill. But this, Sir, would be a feeble argument if it stood alone. The more I read this Bill the more I dislike it. Honourable Members will be pleased to remember that this Bill singles out for writing and registration the partitions made by undivided members of a Hindu family. Now, Honourable Members are aware that the joint ownership of land and property is not merely confined to Hindu joint families. It may extend to Muhammadans, it may be partnership or co-sharership, which is a much larger circle of joint ownership than Hindu coparcenership. The Government has not dealt with the general law of co-ownership. But they have selected for enactment only the law of Hindu partitions.

Now, let me explain to the Honourable Members how partitions amongst members of Hindu families are effected. My authority is the Report of the Civil Justice Committee itself. They point out that in a large majority of cases partitions between members of a joint Hindu family may be by an act or by conduct. Now, this Bill does away with partitions by conduct altogether and, requiring as it does that all partitions shall be in writing and registered, it cuts at the very basic principle of the Hindu law of partition. Honourable Members, who are versed in the law, will bear me out that Hindu partitions may take place by various acts, as, for instance, to-day the brothers may separate in mess, to-morrow in residence, the third day in worship, the fourth day by mutual understanding. One takes one lot of property, the other takes another lot of property, and they begin to live as separate members. Now by this long course of conduct the brothers become separated. In fact now such a separation would not be possible in view of the provisions of this Act. That is the first point. The second point is, there may be a separation of what

the Privy Council said some seventy-five years ago, separation of rights, intellectual separation, separation of status, as distinct from separation by metes and bounds. That is also done away with by the Partition Bill which this House is called upon to consider.

Now, Sir, I do not wish to labour this point, but I wish to point out to Honourable Members that a very serious encroachment is made upon Hindu society by the enactment of this measure, and the Hindus must unite in protesting as vehemently as they can against this Bill passing into law. The Honourable the Law Member in his Statement of Objects and Reasons says—and I refer to the last sentence—that the Local Governments and High Courts were consulted in the matter, and the Committee's proposals have met with considerable support. Mr. Bhargava has drawn the attention of this House to the opinion of the Chief Justice of the Punjab. Now, Sir Shadi Lal, C. J., is a Hindu himself, and he has in unmistakable terms condemned this Bill lock, stock and barrel. This is what he says:

"I am opposed to the Hindu Family Transactions Bill, which was introduced in the Council of State in August last. The ostensible object of the measure is to substitute documentary evidence for oral evidence to prove certain transactions mentioned therein, and to allow proof of any such transactions by oral evidence. There can, however, be little doubt that if the Bill is passed into law, it will prove to be a retrograde measure."

And then he points to the very high cost of registration, which he says is 3 per cent. in the Punjab.

An Honourable Member: The stamp alone.

Sir Hari Singh Gour: The stamp alone is 3 per cent. in the Punjab. If the Chief Justice stood alone, his opinion would be entitled to consideration, but when I bring to the notice of the House the consensus of opinion of the other non-official bodies throughout India, and particularly of responsible Hindu associations, I think I have made out an unanswerable case.

Now let me draw the attention of the House to the opinions expressed in Bombay. At page 49 of this compilation, this is what is said by the Secretary to the Government of Bombay:

"I am directed by the Governor in Council to forward herewith copies of papers, and to state that among the opinions received by this Government, those expressed by Hindus are almost unanimously against either the Bill as a whole, or some of its main provisions. I am to say that while the Governor in Council recognises the importance of the objects which the Bill aims at, he considers that it is too far in advance of public opinion to be workable."

That is the considered opinion of the Governor in Council of Bombay.

Now let me refer you to the opinions of the other Governors. I next deal with Bihar and Orissa. You will find the opinion expressed at page 55, and I do not wish to read at length the opinion expressed because I shall rest content by reading a line or two of the opinions of each Government as conveyed to the Government of India. The Bihar and Orissa Government says:

"Though Honourable Judges of the Patna High Court always expressed support to the original proposal, they are now divided on the Bill, and I am to enclose copies of their letters."

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That is the view of the Patna High Court conveyed by the Government of Bihar and Orissa.

Now turning next to the United Provinces Government, we find their opinion in the opening sentence:

"It will be seen that, with two exceptions, the Judges of the High Court and the Chief Court approve the Bill. On the other hand, most of the Hindus consulted are opposed to it."

Then, Sir, I deal with Delhi itself. The Bar Association of Delhi was consulted, and this is what they say:

"I have the honour to say that my Association is not prepared to support the Bill."

Then we have, as my friend Mr. Bhargava has already referred to, the opinion expressed by the authorities in the North West Frontier Province. I may point out that he is bowled out by the Paper Book, Page 1, where it is pointed out that the two leading Hindu lawyers were opposed to it, and that the opinions of the Judicial Commissioner and the Additional Judicial Commissioner, North West Frontier Province, agree with these two gentlemen.

Now, Sir, when we turn to Burma, the Burma Government say that "we are not here concerned with the Hindu Partitions Act, because the population is mostly Buddhist", but when the Hindu Association in Burma was consulted, this is what they said. This is from the President of the Madras Hindu Association:

"I am to say that my association is of opinion that in the present condition of Hindu society in general, the proposed legislation is not called for."

Now I have dealt with all the provinces. I have advisedly left out Bengal. My Honourable friend, the Law Member, hails from the province of Bengal, but as Honourable Members are aware, they are not subject to the Mitakshara but to the Dayabhaga law, and consequently this Bill will very remotely affect the people of Bengal. Honourable Members are aware that under the Dayabhaga law it is not the joint tenancy but tenancy in common, which is the prevailing rule, and consequently, so far as my Honourable friend the Law Member and his compatriots in Bengal are concerned, they are not directly affected by the Bill, and consequently the Bengal opinion in this matter is of little moment, because the Bill will directly hit at the Mitakshara society and the Mitakshara Hindu opinion.

Mr. K. C. Neogy (Dacca Division: Non-Muhammadian Rural): And even the Bengal opinion does not support the Bill.

Sir Hari Singh Gour: And even the Bengal opinion does not support the Bill. In the face of this consensus of opinion I wish to ask the Honourable Members what justification there would possibly have been for the statement contained in the Statement of Objects and Reasons that this Bill had received a considerable measure of support. I submit, with due respect to the Honourable sponsor and author of this Bill, that the facts are at any rate now otherwise, and if you read the collected opinions to which I have adverted, you will find that Hindu opinion is almost unanimous, and non-Hindu opinion substantially opposed to the principle of this Bill.

Now, Sir, I have therefore pointed out that there are *a priori* objections to this Bill, and, secondly, that it is not supported by public opinion.

12 Noon. I now pass on to the special criticism of the provisions of this Bill which will show how unworkable this Bill is from beginning to end. If Honourable Members will turn to the very Preamble they will find what is stated there. You begin first of all by saying:

“Whereas it is expedient to provide that partitions and separations of interest among the members of Hindu undivided families and other transactions among persons governed by Hindu law shall, in certain cases, be effected by written and registered instruments.”

Now, Sir, I pause for breath, when I read this Preamble. What could it possibly have meant? Surely, Sir, we know very well that we have in Hindu society such a thing as a family arrangement, and a family arrangement is little distinguishable from a partition. Now is it the object of this Preamble to include all family transactions, all family arrangements also as a part of the law of partitions. The ambiguity, the diffuseness, the vagueness, the uncertainty, of this Preamble might draw into its octopus tentacles even transactions such as family arrangements.

And now we pass on to the rest of the Bill. When we turn to clause 2 of the Bill, what do you find? You find that after the commencement of this Act, no partition of the whole or any part—remember the words—any part of the immoveable property of any Hindu undivided family owning immoveable properties which exceeds Rs. 1,000 can be made. This, Sir, is a standing menace to Hindu families owning property over Rs. 1,000; it is a constant menace, a constant penalty, that if you are a family owning property of over Rs. 1,000, you cannot transfer anything by partition unless you do so by a writing registered. Surely such a statutory disability is akin to a perpetual punishment of members of a Hindu family owning property over Rs. 1,000 in value. Any transaction of any value of any kind which comes within the purview of this Bill, whether by way of release, surrender or partition, will not be effected except in writing registered in accordance with the provisions of the Bill. Whole families have been penalised and I ask my Honourable friends here whether they will not give us their support to save them from this dire penalty that the Legislature is about to enact penalising the whole of Hindu society for all time to come.

Then, Sir, we have another one of those ambiguities which we very often find much to the profit of the members of the legal profession. A proviso is added which is said to be an exception:

“Provided that a unilateral declaration or expression of intention to separate shall not require to be registered if it is contained in a public document, or in a plaint or written statement of defence presented in a suit before a Civil or Revenue Court, * * *”

But what about the criminal court? Have we not got such a thing as proceedings under section 145 of the Criminal Procedure Code where questions relating to immoveable property are disposed of? Supposing a statement is filed before a criminal court which amounts to a unilateral declaration or expression of intention, that is excepted from the provisions of this Bill. And for what reason? Just for the reason that by a *lapsus calami*, by a slip of the pen, the draftsman never thought of the Code of Criminal Procedure. And he equally forgot applications other than written statements in civil cases. Then, you pass on to the next clause, you turn over

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the page and you come across another precious gem. It is to this effect. Having done with partitions, they then turn their attention to the unfortunate Hindu widow. Now, turning our attention to the unfortunate Hindu widow, she cannot make a surrender, she cannot make a release and no grant of maintenance over Rs. 100 can be made except by writing registered. That is so far as releases and maintenance grants are concerned. And then comes the last of all. By placing an embargo on oral partitions the Bill would retard the growth of individualism and the perpetuation of coparcenership which as every body knows is a mere survival of an archaic institution. Then again, there is the question of secrecy on which I need not dilate. The Honourable the Home Member said that as to how much we will charge you for these documents, these partition deeds, by way of stamps and registration fees is a matter for negotiation with the Local Governments. We are aware that Local Governments are notoriously impecunious in these days. They have been asking for a remission of their provincial contributions, and they will seize hold of this opportunity to add to their income by saying that these partition deeds must be in accordance with the general stamp law. Now, I wish to ask that if you give this *carte blanche* to Local Governments to levy stamp duty and registration charges, will you not further penalise the unfortunate people who wish to execute partition deeds if they happen to separate from the coparcener?

Now, Sir, I wish to say and say with all the emphasis that I can command that no Hindu in this House, and I venture to submit that no Muhammadan or European in this House, can conscientiously lend his support to a measure of this reactionary character. I suggest, further, Sir, that the least that Government can do is to relegate this Bill to a Select Committee where all these questions will be considered, so that the Select Committee might devise ways and means of bringing into existence a more reasonable measure, providing sufficient safeguards against its abuse and against the fiscal exactions which are likely to be threatened in consequence of its enactment. It is, I submit, a motion which should not be opposed by the Treasury Benches. Sir, with these words I shall move the motion that stands in my name, that the Bill be referred to a Select Committee.

Mr. President: The Honourable Member has most vehemently opposed the principle of the Bill and by making this motion he is now asking the Assembly to accept the principle of the Bill.

Sir Hari Singh Gour: Well, Sir, in that case I rest content with opposing the principle of the Bill.

Mr. K. C. Neogy: Sir, I enjoy the high distinction of being governed by the same school of law that governs two Honourable Members of the Executive Council of His Excellency the Governor General. It has already been pointed out that the school of law, namely, the Dayabhaga, which prevails in Bengal, is not characterised by those complications to which the Mitakshara is subject; but my Honourable friend Sir Hari Singh Gour was not quite right when he said that this particular measure does not very much affect Bengal. As a matter of fact, in my humble opinion, this Bill will lead to complications even in my province where they do not at present exist. Sir, looking through the collection of evidence on this Bill, I find that the Government of Bengal took the peculiar step

of consulting only just a few selected persons with regard to the merits of this Bill. I do not know what led them to adopt this course. I find that only 5 individual opinions from Bengal are included in this collection, and out of those five, three are definitely opposed to this measure and two support it. It might perhaps be said that the Civil Justice Committee itself had an opportunity of sounding Bengal opinion on this point and that was perhaps the reason why the Government of Bengal did not think it necessary to give the Bill as wide a circulation as was needed; and with a view to finding out the exact position in this matter I looked into the Bengal volume of evidence given before the Civil Justice Committee. I find that there is very little reference to this point, and even in cases where any witness was asked his opinion about this proposal, the opinion given was almost in every case opposed to it. Now, Sir, several opinions have already been read out to this House. I will read only one extract from the evidence of a very well-known gentleman whose authority, I take it, will not be questioned at least by the Honourable the Law Member, and that is the opinion of the Honourable Mr. S. R. Das, Advocate General of the High Court, Calcutta, who was examined by the Civil Justice Committee on Saturday, the 16th February, 1924. If the Honourable the Law Member will refer to page 102 of the evidence volume—Vol. I of the Civil Justice Committee's Report, he will find that the Honourable gentleman to whom I made reference expressed himself in the following terms in reply to questions. Now, Sir, I will read out the questions as also the answers to this House. The first question on this point was:

“With regard to the execution of the decree there is another point that has frequently been the cause of delay. If you have a decree against property belonging to a Muhammadan family or a joint Hindu family, you have a lot of trouble. Is there any method of preventing it?”

The answer given by the Honourable gentleman is in the following terms:

“I do not think any satisfactory method can be found.”

Then, Sir, the next question was as follows:

“There is another point on which I should like to have your opinion and that is with regard to reversion suits. Forty or fifty years afterwards a claimant comes up, supported by evidence that is manifestly false.”

This, I take it, has a direct bearing on the present measure.

“Can you suggest anything which will prevent this? Is it not possible?”

The answer is:

“I do not think so.”

Sir, I leave it to the Honourable Mr. S. R. Das to reconcile this opinion of the Honourable the Advocate General of Bengal with that of the present Law Member.

Now, Sir, I shall just remind the Honourable the Law Member of the exact position in Bengal as briefly as I may. I claim that we in Bengal, under the system of Dayabhaga, enjoy the benefits of the joint Hindu family without any of the disadvantages that this system leads to. As has already been pointed out, the shares of the different members of a

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joint Hindu family in joint property are quite distinct under the Bengal school of law; and there is therefore not any very great necessity always to have any formal partition made of the definite shares. It very often happens that a family lives in a joint mess enjoying definite shares of the income of a joint family. Sometimes it happens that the family experiences inconvenience by living under such a system; and then all that is necessary for the family to do is to have a sort of amicable arrangement under which the different members of the family occupy different parts of the house and enjoy a distinct share in the income of the joint property. This is done without any fuss, without letting the world know that there has been any difference among the different members of the family. It sometimes happens that the joint Hindu family has not sufficient property for the purpose of supporting the entire family, and in such cases if a member of that joint family happens to have a larger income than the rest he generally contributes to the upkeep of the family without in any way giving up his status as a separate member. Let us assume that either of the Honourable Members of the Executive Council of the Government of India, who are subject to the Dayabhaga, happens to have younger brothers, or, let us say, dependent cousins, who are not quite as fortunate, as well off, as the Honourable Member himself. You cannot expect all the members of a family to be members of the Executive Council at the same time. Executive Councillors are more or less freaks of nature, and therefore it is quite conceivable that an Honourable Member may have a less fortunate brother living under the same roof with him. As far as the present position goes, although the two brothers may live under the same roof and the Honourable Member may be contributing towards the support of his less fortunate brother, the earnings of the two brothers are quite distinct and there is no presumption with regard to jointness; but as soon as this Bill is passed, it would be a great risk on the part of the Honourable Member of the Executive Council to allow his brother to live under the same roof with him, without having first of all executed the document required by the present measure and relegating his brother to the position of a guest. Now, Sir, I know that Executive Councillors are above the ordinary standards of conduct, but I do not think that they are altogether devoid of sentiment, and I should like to ask the Honourable the Law Member as to whether he would prefer to place himself in that position by passing this measure?

I have no desire, Sir, to oppose the consideration of this Bill, but I do beseech the Honourable Member in charge of the Bill to accede to the request addressed to him so that we can have the Bill examined in a Committee. I do not know the exact position: has Sir Hari Singh Gour withdrawn his motion?

Sir Hari Singh Gour: If the motion for consideration is passed I shall move the next motion.

Mr. K. C. Neogy: I find that there is a motion in the name of another Honourable Member of this House asking that this Bill may be referred to a Select Committee. I do hope that when that motion comes to be moved, the Honourable the Home Member will kindly accede to it.

The Honourable Mr. S. R. Das (Law Member): Sir, in my reply I do not propose to deal with the arguments which have been addressed

practically clause by clause of this Bill, but only on general points as to whether this Bill should be taken into consideration or not. To begin with, a charge has been made against the statement in the Statement of Objects and Reasons of the Bill as introduced, that the Local Governments and High Courts were consulted in the matter and the Committee's proposals have met with considerable support. It has been suggested that that is not a correct statement and I have been challenged to show how I agree to insert this paragraph in the Statement of Objects and Reasons. I do not think the Honourable Member who referred to this noticed that the words there are:

"The Local Governments, etc., were consulted in the matter and the Committee's proposals have met with considerable support."

I do not know if my friend, Sir Hari Singh Gour, is aware that the proposals of the Civil Justice Committee were circulated for opinion in the first instance and subsequently the Bill itself was circulated for opinion. The statement there refers to the support which was generally obtained to the recommendations made by the Civil Justice Committee which are referred to in the Statement of Objects and Reasons. Now, as regards support to the Bill itself, which was circulated after introduction, I am sorry I do not agree with the statement that the consensus of opinion is against the Bill. On the contrary, as we read it, we found that there was a very strong body of opinion in support of the principle of the Bill. The main objection to the Bill, as originally circulated, was firstly on the ground of stamp duty; that is to say, a good many objections were taken on the ground that if this Bill was passed and nothing was done with regard to stamp duty, it would be a great hardship on the people. With regard to that point, the Madras Government really sums up what practically every other body or Government has stated so far as the objection to the Bill on this ground is concerned. They point out this:

"I am to invite attention to the concluding portion of Rao Bahadur Varadachari's opinion in which he expresses the apprehension that the general public will regard the measure as one adopted for securing additional revenue and to say that His Excellency the Governor in Council considers it necessary that the stamp duty should be fixed at a specially low rate."

Most of the objections to the original Bill were on this ground, and it was for this purpose, when the Bill came before the Select Committee, that they altered sub-clause (3) of clause 1 of the Bill which originally ran as follows:

"It shall come into force on the 1st January 1929."

It was subsequently altered to—

"It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint",

the object being that before this Bill was being given effect to, the question of reducing the stamp duty on the transactions which would come under the purview of this Bill, should be considered. Now, it is not possible, as Honourable Members are aware, that the Government of India, —when I say it is not possible I should say it is not right—that the Government of India should fix the stamp duty on these deeds or lower it without consulting Local Governments who would be affected by this measure. As Honourable Members are aware, stamp duty and registration fees are now provincial subjects, and they are a source of revenue to the provinces,

[Mr. S. R. Das.]

and therefore the Government were of opinion that before introducing the Bill, they should consult Local Governments, and that in the meantime this Bill shall not be given effect to. It is with that object the Select Committee altered sub-clause (3) of clause 1 of the Bill

Sir Hari Singh Gour: Why don't you withdraw it? You can introduce it after that matter is settled.

The Honourable Mr. S. R. Das: That policy my Honourable friend may advocate, but apparently the Government of India do not think that it is necessary to do so. It has already taken a considerable time before this Bill has been introduced since the recommendation made by the Civil Justice Committee. The Government have taken care to get the opinion of the general public, not only on the Report of the Civil Justice Committee, but also on the Bill framed on the recommendations of the Civil Justice Committee.

A point was made that since stamps was a source of revenue to the Local Governments they were not likely to agree to a reduction of the stamp duty. I need only point out, so far as that is concerned, that the Madras Government themselves suggest that the stamps on transactions falling within the scope of the Bill, should be fixed at a specially low rate. That is the suggestion of the Madras Government, and we have no reason to suppose that other Provincial Governments would be opposed to the suggestion made by the Madras Government.

Now, Sir, a good many objections have been made to the Preamble of the Bill. I believe with regard to that there is an amendment proposed by my friend Sir Hari Singh Gour, and if this Bill is taken into consideration I shall deal with it when the amendment is proposed. I would only like to say this. I think, Sir, my friend Sir Hari Singh Gour is entirely wrong in saying that this Bill does not directly affect Bengal. So far as the operation of the Bill is concerned, it affects Bengal just as much as it affects the provinces governed by the Mitakshara law. In Bengal the principal distinction is that every share is ascertained of an undivided family, but if there is to be a partition it is effected just in the same way as a partition in the case of a family governed by the Mitakshara law

Sir Hari Singh Gour: Can the son claim a partition from the father?

The Honourable Mr. S. R. Das: There is no such thing as a partition between a father and son in Bengal. They are not joint. But there are joint families, and the only point is, in an undivided family, if there is to be a partition, this Bill affects the members just as much as in the case of partition of any other kind of undivided family. It is wrong to say that the father and sons are an undivided family, because the father, as long as he is alive, is the owner of the property; the sons have no interest in it under the Bengal school. If there is to be a partition in the undivided family, it is effected exactly in the same way as under this Bill.

My friend, Mr. Neogy, pointed out that under the Bengal school very often it happens that a brother in an undivided family is in a very fortunate position, makes a fortune and allows his other brothers to stay with him, and he suggests that unless there is an express deed of partition

the question may arise as to whether there has been a partition at all or not. I would only point this out that this Bill expressly excludes all questions of family arrangements and it only provides that if there is a partition that partition must be by a written and registered document; but if there is not a partition, that is to say, the members of the undivided family continue undivided between say four brothers, it does not affect them. The brothers may live together, and if one of the brothers has self-acquired property, this Bill does not affect that. I do not know if Honourable Members have noticed that the Bill as originally introduced provided this in sub-clause (2) of clause 2. It stated this:

"The following transactions amongst persons shall be governed by Hindu law, namely :

* * * * *

(c) family arrangement among the members of a Hindu undivided family as to the mode of enjoyment of the family property."

The original Bill provided that the family arrangements should also be effected by a written and registered document. The Select Committee left that out, as they pointed out in their Report . . .

Mr. K. C. Neogy: What about a unilateral declaration of intention?

The Honourable Mr. S. R. Das: So far as family arrangements are concerned, it does not come within the scope of the Bill. The Bill merely affects, apart from sub-clause (3), with which I shall deal presently, two classes of enjoyment of property, a partition and separation by unilateral declaration of intention. That is all it does. So far as partition is concerned, the Bill provides, when there is a partition to be effected, that it must be in writing and that it should be registered. So long as there is not a partition, so long as they separately live in messes or they are separate in worship, no partition deed is necessary under this Bill, and, as my friend Sir Hari Singh Gour knows, mere separation in mess or separation in worship does not affect partition although it may be evidence of a partition having taken place. The whole point of this Bill is that if there is a partition in fact, that can only be effected by a written document. It does not affect the right of members to live separately, to mess separately, but it is only in the case of an actual partition that this is necessary.

Mr. M. E. Jayakar (Bombay City: Non-Muhammadan Urban): May I ask the Honourable Member one question? Does not the Bill do away with the whole doctrine of partition effected by conduct spread over several years?

Sir Hari Singh Gour: That is the point: it does.

The Honourable Mr. S. R. Das: I submit not; and I will try and explain. Over a series of years, there may be first a separation in mess, living at the same house. There may be later on separation in the manner in which they live; that is to say, members of the family may live in separate houses. There may be separation in worship. But my friends will all agree that that does not amount to a partition. Until the partition actually takes place, there may be evidence that a partition has taken place, but no part of that conduct by itself amounts to a partition. Supposing a family begins by agreeing to live separately without intending to partition.

[Mr. S. R. Das.]

Well, they may do that. It does not effect a partition and it does not come within the scope of this Bill. They may have separate worship. It does not come within the scope of the Bill. It is only when the conduct spreading over a series of years amounts to a partition, that is to say, when the parties intended that that should effect a partition, that this Bill comes in.

Sir Hari Singh Gour: If it amounts to separation as distinct from partition, what then?

The Honourable Mr. S. R. Das: I do not understand separation as distinct from partition. My friend means separation in respect of a particular individual?

Sir Hari Singh Gour: Yes.

The Honourable Mr. S. R. Das: Then it is provided for in this manner. That is to say, if that separation of interest is effected by a unilateral declaration that has to be in writing and registered.

Sir Hari Singh Gour: And by conduct?

The Honourable Mr. S. R. Das: That is absolutely excluded from this Bill. If separation of interests takes place by conduct, then no registration is necessary. It does not come within the scope of this Bill and the object of the proviso is that. The Bill says this. And I may mention to Members that this matter was very fully gone into in the Select Committee and it was practically agreed to by all the members of the Select Committee, which was composed of, amongst Hindu members, Sir Sankaran Nair, Mr. Ramadas Pantulu, Mr. G. S. Khaparde, Mr. Kumar Sankar Ray Chaudhuri, and Sir Manmohandas Ramji. The matter was very fully gone into. Now the Bill provides this that:

"No unilateral declaration or expression of intention to separate on the part of any member of a Hindu undivided family, shall be effected otherwise than by a written instrument."

That is to say if there is a unilateral declaration or expression of intention, that must be by registered document.

Pandit Madan Mohan Malaviya (Allahabad and Jhansi Divisions: Non-Muhammadian Rural): Why?

The Honourable Mr. S. R. Das:

"Provided that a unilateral declaration or expression of intention to separate shall not require to be registered if it is contained in a public document, or in a plaint or written statement of defence."

Now, separation by conduct cannot be included within a declaration or expression of intention to separate. Conduct would be entirely different from a declaration or expression of intention to separate. That is to say, it does not affect the decision of the Privy Council that an individual member of a family may by conduct separate his interests from that of the rest without an actual partition.

Sir Hari Singh Gour: There is no exception in the Bill to that effect.

The Honourable Mr. S. R. Das: There is no exception. My humble submission is that no exception is necessary because the words are clear,

that it is only in the case of a declaration or expression of intention that the deed is necessary and in no other case. You will notice that this particular clause was altered by the Select Committee. Instead of the original words:

“No separation of interests by reason of which the members of any such family or any of them cease to be undivided shall be effected otherwise than by a written and registered instrument.”

They went into this question whether the original words would not include conduct. And it is for that reason that the Select Committee altered the wording of it and laid it down and used these words:

“No unilateral declaration or expression of intention to separate.”

It must be a declaration or expression of intention, in which case and in which case alone is it necessary to have a written and registered document. In no other case. You cannot bring in conduct. After all, if the separation has taken place by conduct, it cannot be by written document. How can conduct be written?

Pandit Thakur Das Bhargava: Oral evidence will be allowed to be produced then?

The Honourable Mr. S. R. Das: Undoubtedly in cases of conduct.

Sir Hari Singh Gour: Then it will defeat the very purpose for which the Bill is designed.

The Honourable Mr. S. R. Das: No. My friend forgets this: you cannot bring in everything. As I was going to say in answer to what Pandit Thakur Das Bhargava has said, I am not one of those who think that merely because a particular law causes delay or introduces oral evidence that we should legislate against it. I am not one of those. And therefore we cannot bring in the question of conduct within this Bill merely because it lets in oral evidence. That would be taking away a particular right which the Hindus have and that is the reason why that has been expressly excluded from the Bill. But so far as expression or declaration is concerned, that may be oral or that may be in writing. All that we suggest is that, if there is a declaration of intention to separate, there is no difficulty in setting it out in writing and having it registered. We are excluding “oral” because if you are going to make an oral declaration, you might just as well write it. In the matter of conduct you cannot write it. Evidence of conduct can only be derived from oral evidence and we do not want to exclude it and therefore that does not come within the scope of the Bill.

Sir Hari Singh Gour: “No partition shall be made”. Will you please read it?

The Honourable Mr. S. R. Das: Undoubtedly. I will endeavour to explain to my Honourable friend again. There is a world's difference between a partition and separation of interests. Partition involves a partition of the whole family. Separation of interests is when one member of the family gets out and divides himself from the undivided family.

Mr. M. R. Jayakar: Is not that a case of partial partition?

The Honourable Mr. S. R. Das: It may not be a partial partition.

Sir Hari Singh Gour: It is a partial partition.

The Honourable Mr. S. R. Das: My friend will pardon me. It may not be—for this reason. May I point this out to my friend Mr. Jayakar? Under the Mitakshara law as soon as a man declares his intention to separate from the family his status becomes separate. But it does not follow that there is a partition.

Sir Hari Singh Gour: There is intellectual partition.

The Honourable Mr. S. R. Das: I confess I am not familiar with the phrase "intellectual partition". I have not heard it before to-day.

Mr. M. R. Jayakar: "Notional" partition is the term.

The Honourable Mr. S. R. Das: I have heard of notional partition but not intellectual partition. That is a new forensic term. But even in regard to notional partition this does not include notional partition because it includes actual partition. A member may separate in the sense that he is no longer a member of an undivided family. He can thereupon sue for partition and get actual partition of the property. Now, I would remind my Honourable friends there that, even if you state in a plaint which has been filed, in a case, that you want to separate,—a plaint in a suit for partition, as soon as that is filed, has been held to constitute a separation of interests. But it does not amount to a partition. It amounts to a separation of interests in this sense as has been held in many cases. A suit has been entered by a member of an undivided family for partition, but before the actual partition has taken place, he has died and the question has arisen whether his property goes by survivalship or his widow succeeds to the property. It has been held that if there has been such separation of interests the widow succeeds to the property. But there is no partition. The widow is thereupon entitled to go on and ask for partition.

Sir Hari Singh Gour: Why don't you define "partition" in this Bill?

The Honourable Mr. S. R. Das: If it is necessary really to define an elementary thing like "partition" it will be impossible to go on with the Bill. I submit to my friend with great respect that he should really read through the clauses of the Bill carefully, and I can assure him that it has been very carefully drafted by the Select Committee with men like Mr. Ramadas Pantulu and Sir Sankaran Nair in it, and they have taken very great care with regard to that. They have endeavoured to the best of their ability to make the language clear. I am perfectly open to this, that if you consider that the language is not clear, you can put in any amendment which will make it clear and I shall raise no objection to it. As I have pointed out, the whole intention of the Bill is that when there is actual partition, it shall be in writing and registered, or when there is a unilateral declaration of intention, it shall be in writing and registered. That is the whole object of clause 2. If you think that that object is not clearly expressed and that the clause affects other forms of partition, it is quite open to you to suggest amendments to make the intention quite

clear. I may mention that Mr. Ramadas Pantulu, who agreed to the principle of the Bill, pointed out in his dissenting minute as follows:

"I feel that the intention of the Committee to exclude from the operations of the Bill transactions whereby a family can become divided in status, such as conduct, partial alienations of joint interest by one or more members of a coparcenary, business transactions between the coparceners, and so forth, has not been given effect to by the Bill even as amended. The right to become partially divided, either in respect of the members of the coparcenary or in respect of coparcenary property, leaving the family joint in respect of the other members and the undivided property is now recognised by the decisions. It is desirable to insert a proviso to clause 2 to make the intention of the Committee clear in respect of these matters."

I can understand that, although I do not agree with him. I think it is quite clear that separation by conduct is not within the scope of the Bill. I can understand an objection by Mr. Ramadas Pantulu that that ought to be made clearer, but certainly it is not the intention of the Bill to affect any other transaction than actual partition, not merely separation of interest but partition of the property, not division of the family—I draw your attention to that—but partition of the property. It is this and a unilateral declaration which can be easily reduced into writing which clause 2 (1) intends to deal with, and I submit with great respect that it deals with that and that alone. If there is any doubt in the mind of Honourable Members with regard to that it is open to them to move amendments which would make this intention clear.

Sir Hari Singh Gour: You cannot do that here. Why don't you agree to a Select Committee?

The Honourable Mr. S. R. Das: I may say at once that with regard to a Select Committee the difficulty is this. You cannot move for a Select Committee as we are advised that under Rule 29, there having been a Select Committee that motion is not in order.

I have dealt then with the question of partition and unilateral declaration. Family arrangements and things of that description, although they were in the original Bill have been taken out of the Bill as reported on by the Select Committee.

There are two points with regard to the arguments advanced by Pandit Thakurdas Bhargava that I should like to deal with. I think the Honourable Member rather misunderstood my colleague when he moved for consideration of the Bill. He did not suggest that Local Governments were not consulted on the Bill. All he suggested was that Local Governments had not been consulted with regard to the reduction of stamp duties, but so far as the Bill itself and its provisions were concerned, every one has been consulted, and if you read through the opinions, you will see that there is really no consensus of opinion against the principle of the Bill. We find on a reading of the opinions that the consensus of opinion is generally in favour of the principle that partitions and separation of interest by unilateral declaration should be in writing. The original Bill and the suggestions of the Civil Justice Committee contained many other things to which objection was raised by the different Local Governments and Associations consulted, but so far as the principle embodied in the Bill is concerned, there has been general support, and I still maintain that there has been general support notwithstanding, as I admit, that the Chief Justice of the Lahore High Court is opposed to the measure.

[Mr. S. R. Das.]

There is another misconception in the mind of Pandit Thakurdas Bhargava with respect to the Punjab which I should like to deal with for one moment. He was speaking of partitions in the Punjab by revenue officers. Now, the same sort of thing takes place in Bengal and I believe also in other provinces. That is to say, if property which pays Government revenue is to be partitioned, it can only be by revenue officers, and that is done by entries in the different land revenue books. This Bill expressly excludes them from its operation. My friend seems to think that all that is excluded from the Bill is instruments of partition. Sub-clause (3) of clause 2 says:

Nothing in this section shall apply to—

(c) any instrument made by a Revenue Officer purporting or operating to effect a partition of any property of, or a separation among any of the members of, a Hindu undivided family."

It is not an instrument of partition that is excluded but any instrument by which a revenue officer purports to effect a partition is excluded from it.

Pandit Thakur Das Bhargava: May I ask the Honourable the Law Member to read the opinion expressed by the Financial Commissioner, Punjab, on this point?

The Honourable Mr. S. R. Das: All I can say is that the Financial Commissioner, Punjab, has not understood the wording of this exception. After all, Honourable Members can see for themselves whether it excludes all instruments of partition or not. Personally I know of no instruments of partition effected by revenue officers. They are mere entries in books, and the wording here is "any instrument of partition made by a Revenue Officer". If the instrument is a deed of partition it is excluded. Whatever the instrument may be by which a revenue officer effects it, it is excluded.

Lala Lajpat Rai (Jullundur Division: Non-Muhammadan): Does the revenue officer ever execute an instrument? This is the first time I hear of it.

The Honourable Mr. S. R. Das: An Order is made by him. It may come within the term "instrument".

Lala Lajpat Rai: You are going to interpret it that way?

The Honourable Mr. S. R. Das: "Instrument" is such a wide term.

Pandit Madan Mohan Malaviya: "Instrument" can never mean an Order. An Order is not an instrument.

The Honourable Mr. S. R. Das: I submit to Honourable Members that the intention of the Bill is that any partition effected by a revenue officer does not require registration. They do not desire by this Bill to insist that any partition effected by revenue officers should be registered, for this reason that it is an act of a public official and the evidence is there. It does not in any way cause delay in the administration of justice nor is it necessary to bring in oral evidence, and therefore there is no intention on the part of Government that anything done by a revenue officer

to effect a partition should be by a written order or a registered document. If this House thinks that this is not clearly expressed in the Bill, it is open to them to suggest amendments to make it quite clear. All I am submitting is that there is no occasion, there is no necessity for having a provision that any act of a revenue officer effecting a partition should be by a registered document. It does not come within the object of the Bill, and that is not the intention, and if there is anything in the wording which throws any doubt with regard to it, Government are quite willing to accept any amendment which will make their intention clear. That is with regard to (c). It certainly did not strike the members of the Select Committee that there was any confusion with regard to it. If you think so, you may suggest any manner by which that can be made clear and we will make it clear, because the object of the Bill is not served in any way by insisting on registration of the act of a public officer which can be proved by itself.

I do not want to go into the question whether this is a national matter or whether this is really penalising the Hindus or not. The position I take it is this. It does not take away any rights; it deals with, as I have said, two matters and two matters only, and that is, actual partition, not division of family status, but actual partition and declaration of intention to separate without actual partition. It deals only with these two matters and it is not difficult to set them down in writing and register them. People are quite accustomed to register documents effecting transactions relating to property of the value of Rs. 100. They have become accustomed to the Registration Act and to the Transfer of Property Act. Every transaction effecting a transfer of property of the value of Rs. 100 has now got to be in writing and registered and it is being done every day without any difficulty. Therefore, all that we are suggesting is that in the case of partition also that should be in writing and registered. I do not know how we are penalising the Hindu community by that. It may be said you are penalising them in this sense that you will make them pay a stamp duty and registration fee for that. As Honourable Members are aware, so far as partition is concerned, although partition can be effected verbally, if once it is in writing it has got to be registered under the Registration Act. If there is a partition deed it has got to be registered. We are asking that there should be no more oral partition in order to prevent a conflict of evidence, but that it should be in writing. If there is any hardship by reason of the fact that more cases of registered instruments of partition will now come in than happen under the present system, well, that can be met by taking into consideration the stamp duty and the registration fees to be levied on them. So far as that is concerned, it is obvious that the Local Governments must be consulted. But to show that the intention is that that should be considered very seriously by the Government, the Government of India have themselves agreed to a provision that this Bill is not to come into effect until after those consultations have taken place. One of the Governments have suggested that the fees should be reduced and I do not see any reason for believing that other Local Governments will not equally say so, because after all they will not lose. Instead of, say, 100 documents of partition registered now, under this they will get, say, a 1,000 documents. By getting 1,000 documents registered they get a larger amount of stamp revenue and they can afford to reduce the stamp duty for the purpose of giving effect to this very useful legislation. I submit in these circumstances that this House should consider this Bill and amend it in such a way as they think fit.

Mr. M. R. Jayakar: I have listened with very great attention to the remarks made by the Honourable the Law Member. It is not a pleasure to me to oppose this Bill, for the simple reason that the points of contact between the Honourable the Law Member and this House are so few indeed, that speaking for myself I should have liked to greet his presence in this House by a more favourable reception accorded to his Bill if it was possible to do so. We see so little of the Law Member in this House. Having regard to the fact that this is one of the few measures which emanate from him, I should have liked to give him greater support than I am in the circumstances able to do.

The Honourable Mr. S. R. Das: May I just get rid of one misconception? The Bill emanates not from the Law Member but from the Government, and perhaps my Honourable friend is aware that all Bills are initiated by my colleague, the Honourable the Home Member.

Mr. M. R. Jayakar: I was aware of that legal fiction that all Bills emanate from Government, but I was trying to get behind to that particular personality from whose thoughtful mind this Bill emanated. I do not congratulate the Honourable the Law Member on either the lucidity of this Bill or the propriety of it, and what little doubt I had in my mind in the beginning has been very largely confirmed since I heard his remarks and the expressions of a difference of views between two such eminent men on opposite sides, as my Honourable friend, the Law Member, and my esteemed friend, Sir Hari Singh Gour.

The Bill is based on this principle that it is intended to prevent the delay of litigation. My non-lawyer friends in this House, who have heard the serious differences of opinion which have arisen in the course of half an hour on six important points, at the very first and cursory reading of this Bill between two such eminent legal authorities as the Honourable the Law Member and the Honourable Sir Hari Singh Gour, can judge for themselves whether this Bill will save or increase litigation. Whether this Bill is going to clear the law or make more legal difficulties I leave them to decide. I shall present for my Honourable friend's consideration a few difficulties which struck me at first glance. He says that the doctrine of partition by conduct in Hindu law is kept intact by this Bill. May I draw his attention to the wording of clause 2? It says:

"After the commencement of this Act, no partition"

—I am quoting the material words only—

"shall be effected otherwise than by a written and registered instrument."

One need not be a lawyer to follow the sense of it. Is it not absolutely clear English, is it not a paraphrase in plain English that all other ways of effecting partition are done away with by this Act? Is this not the clear meaning of the expressions used in clause 2? The words are:

"No partition . . . shall be effected otherwise than by a written and registered instrument,"

This is absolutely clear to me as to any Member here. One need not be a lawyer to follow my argument. It is perfectly clear that it is not the intention of the Honourable the framer of this Bill to preserve intact the well-known modes of partition which have been operative under the Hindu law for centuries . . .

The Honourable Mr. S. R. Das: Would my Honourable friend mention one or two other modes of partition?

Mr. M. B. Jayakar: The Honourable the Law Member, unless he has forgotten his law since he became Law Member, should be perfectly well aware of what modes I mean. I mean those modes like, *e.g.*, partition by conduct which I regard as operative in Hindu law. When I come to state my objections to the Bill mainly from the Hindu point of view, I shall deal with this point in greater elaboration. My strongest objection to this Bill, apart from all technicalities, is this and I hope my Honourable friend who happens to be himself a Hindu will follow this. This Bill, and I will state frankly my main objection, will interfere very seriously with that silent and imperceptible process of social evolution causing a gradual disintegration of joint families which is going on in Hindu society. I want nothing to be done which will arrest that process because that process in my opinion means progress towards individualism. In my opinion, although it may seem to some a heresy, self-government in our

I P. M. social life should come through individualism and for this purpose the process of disintegration of Hindu joint family life with all its defects of dependence and self-suppression must begin and go on as fast as possible. My strongest objection to this Bill is this that it makes the operation of this process difficult and of this we, the lawyer politicians, are the best witnesses. And I will tell my Honourable friends, especially the Englishmen opposite, how this process goes on. It goes on slowly but surely. One man becomes a lawyer and marries young; another man is at home pursuing the somewhat lucrative duties of an astrologer of the village; and the third man is an engineer. All these three brothers make a joint family. The lawyer comes to Bombay and makes a huge fortune at the Bombay Bar. (Here, hear.) The astrologer, who stays at home, earns Rs. 10 a month, but still they form this anomalous and unequal combination called the Hindu joint family with equal ownership, rights and privileges. This state of affairs exists even now. Englishmen may not understand it, but we all understand it and the Honourable the Law Member understands it perfectly well. The man in Bombay knows that out of his earnings of Rs. 20,000 a month, the astrologer at home, who is the drone of the family, gets his *pro rata* share. Though he thinks that this is unfair, he does not want to disintegrate violently his family life but has under the present law a very suitable means of gradually effecting a partition. What he does is, he silently opens an account in the family books wherein Rs. 20,000 a month go towards his credit. His share is distinctly set apart, his earnings credited and his expenses debited to it. It is a very silent process of gradual disintegration, it disturbs nobody, causes no revolution of feeling and keeps intact tender and affectionate relatives. He is creating every day slowly, peacefully and harmoniously little bits of evidence which after 10 years, when he dies, swell up into a mighty volume on which his poor childless widow can rely for the purpose of proving that her husband died separate, and she inherits his fortune and not his brothers. Hundreds of instances I can point out of this nature where such slow disintegration of families is going on bringing in its train habits of thrift, self-reliance, and assiduity. It pleases a social reformer like myself, although it may not please some of my Honourable friends here. As a political and social worker I am delighted that gradually the drones of the family, with the presence of whom in large numbers social self-government is not possible in this country,

[Mr. M. R. Jayakar.]

are being gradually wiped out and their place taken by energetic, self-reliant young men. This process of silent social evolution is going on underneath the surface of the law, most of which never comes into law courts at all.

Now what does this Bill require? It says:

"No partition shall take place except by a written and registered instrument."

Now, to revert again to this man of Bombay who earns Rs. 20,000 a month. He cannot resort to the slow and peaceful process of partition but must violently and at once disrupt the family, send for his lawyer and say: "I hereby declare that I am from this day separate from my family," creating thereby bitterness, hostility and grief in his family. Now I would like to ask my English friends on the official and non-official Benches: "Do you wish to come in the way of this social evolution which is going on in the Hindu family? And, if so, in the name of what? What is after all the basis of this measure?" The somewhat out of date Committee called the Civil Justice Committee, whose recommendations this Government is bringing forward before this House bit by bit, has served no useful purpose. I should like to know why this Government does not bring forward an omnibus Bill in which all the mischievous and inopportune recommendations can be put together and done away with finally just as we find Hindu adoptions also in this Bill? May I know what is the connection between adoption and family partitions? I, for my life, cannot understand it.

The Honourable Mr. S. E. Das: That is merely a matter of drafting. If you will read that section in the Registration Act, you will find that it simply reproduces it.

Mr. M. R. Jayakar: I am aware of all that could be said in favour of this procedure but I cannot help saying that it is absurd to link them together as in this Bill. I say so with great respect to the members of the Civil Justice Committee who were all honourable and eminent men. In this connection I will quote to the House the very words of the Statement of Objects and Reasons:

"The object of these recommendations is to place the transactions, as far as possible, beyond doubt, and thus to obviate delay in the disposal of suits by the Courts."

I doubt very much if this Bill will ever achieve that object. Assuming for a moment that it does so, may I ask my friends opposite, who are, I suppose, equally anxious with me that India should be set on foot and become self-reliant, whether it is in the fitness of things, even for the achievement of this laudable object with which I am in complete sympathy, to put on the Statute-book a Bill which is sure to seriously interfere with the social evolution of this country into a higher stage of individualism? Sir, the boundary lines between law and social evolution are very thin. In many departments of life they are juxtaposed. In fact, in many cases one cannot say where the domain of law ends and that of social obligations begins. I do not want to treat my friends to a lecture on this interesting topic but I am absolutely clear that even my friends opposite understand that there are measures which entrench on questions of social evolution in the name of law. Even the laudable object of decreasing litigation, I say frankly, will not be achieved by this Bill at

all. We had a little foretaste of it in the cross-questions which went on between Sir Hari Singh Gour and the Honourable Mr. Das a few minutes ago. Is it worth our while to pursue this measure? At the very threshold we have got these difficulties and I am sure if Sir Hari Singh Gour was paid Rs. 1,500 a day to set up the difficulties for a rich client against this Bill and argue against its ill-drafted provisions, the number of those difficulties will be infinitely more than what he has suggested without any inducement to find flaws in this Bill. Therefore, I can assure my Honourable friends opposite that instead of achieving the object we have in view we are foolishly entrenching on the domain of Hindu family life and interfering with its power to cure slowly and peacefully the evils which it has discerned in its midst.

Let me give another instance to make my point clear. As Hindus, my Honourable friends know their duties towards their wives. When we marry, we do not separate at once from our parents but we live under the same roof. Our wives get accustomed to the family discipline and the best and the most cultured amongst us are the most obedient to family obligations. So we all continue in one family—wives and children and everyone. But this is gradually disappearing and we have now arrived at a stage when a curious social admixture has grown up in families which can neither be called a state of separation or jointness. It is something between the two. I may call it an inchoate state of division. The tendency is more and more to progress towards the creation of separate family units, out of such an inchoate state which possibly continues for several years. The father is very often old, and his children and their sons and their daughters all peacefully take their part in separating without causing disharmony. Very often they do not do so during the life-time of the aged father. You have to be a Hindu, Sir, to understand what it means to a Hindu father to let the children go away. I am aware of an instance where the father was 90 years of age and his sons were about 64 to 68 years old and yet the father desired that they should not leave him and go away as long as he was alive. We must respect these deep-seated sentiments and do nothing that would interfere with their operation in Hindu family life. Let me take an instance. Supposing I marry to-day. I know perfectly well that if I died to-morrow without children and without partition, all my property goes to my coparceners. My widow only gets maintenance and residence, and therefore if I wish to make proper provision for my wife, which is most obviously my duty, I must go to this length under this Bill. I must at once call for the family lawyer and effect a partition, because this Bill says "no partition shall take place except by a written and registered instrument". I ask Honourable Members: "Is that your wish and why?" If you were doing it for a distinctly social purpose, e.g., to bring Hindu society to a stage of a higher evolution, I would not mind the interference. But in the name of the law's delay, which is a very different purpose indeed, in the name of securing more despatch in your legal work, which is comparatively a matter of small importance, you are making serious inroads on family life. In the name of the law you are interfering with a process which should go on faster and faster, so that each family will be a small unit by itself easy of locomotion, improvement and adaptation, and developing virtues which have not hitherto been neglected. Why on earth in 1928 do Government bring this Bill and adding insult to injury begin operations in the Council of Elders? When we say, "Give us a Select

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Committee", Government reply, "A Select Committee has already sat in the upper Council". What business have Government to go to that House with a Bill of this description when they have a more representative House here? They ignore this House and go to a House which may have some value as a second Chamber but is not the best medium to get such Bills through. When we point out the many defects of this Bill, my Honourable friend cheerfully says, "Oh, there is some petty provision in this law which prevents a Select Committee of this House from considering the defects of this Bill". I certainly think, Sir, that Government have caught hold of the wrong end of the stick. They had no business to go to that House in a contentious measure of this character ~~when they had in this Honourable House~~ a body of greater legal talent and public spirit! They go to that House by the back door, if I may say so, have a Select Committee there, and when we ask for a similar opportunity to cure the many defects of this Bill my Honourable friend is instructed to say that there is some provision in our Rules under which we cannot have a Select Committee again. I say in reply, your proper duty was to come to this House which is more representative of the talent and patriotism of the country. The only thing, therefore, that we can now do is to reject the Bill. Personally I approve of one or two principles in it. I will state that frankly, but if the answer given by my Honourable friend opposite is that we cannot have a Select Committee at all, then I must say we will be compelled to reject the Bill, unless the Honourable Member in charge withdraws the Bill and brings in another measure.

The defects of this Bill are clear. Shall I point out one or two? Take sub-clause (2) of clause 2:

"Provided that a unilateral declaration or expression of intention to separate shall not require to be registered if it is contained in a public document, or in a plaint or written statement of defence presented in a suit before a Civil or Revenue Court"

May I know from the Honourable Mover of the Bill, or the framer, supposing this declaration of intention is contained in an "application" to the revenue officer? Why do you exclude it? Is it not on the same footing as a plaint or a written statement? It is not a plaint, it is not a written statement, it is an application, therefore it does not fall within the two categories mentioned in this clause and yet it has the same characteristics of deliberateness. The hurry with which this Bill has been drafted is astonishing. Government frighten us with the name of the Honourable Mr. Pantulu. Surely this is an argument of an extremely *ad hominem* character. If these names were intended to frighten us—I am sorry my Honourable friend has resorted to them—then I may tell him at once they will not frighten us. Will he answer this question: how is it the word "application" is left out, and if he deliberately chose to exclude it, may I know why he did so? He refers to a plaint or written statement before a civil or revenue court, and excludes for some reason, which I cannot follow, a criminal court. All these three stand on the same footing: a court is a court, whether civil, criminal or revenue. If that is so, will my Honourable friend kindly state why a criminal court is excluded, why an application before a civil or revenue court is excluded?

The only answer is that it did not occur to him at the time. Many things did not occur to him. Many more discoveries of such lapses would have been made if I had more time to look into the Bill, a copy of which I got only this morning. Therefore my plain answer is that it is a very hurriedly drafted Bill, and I can assure my Honourable friend that if he and I sat on opposite sides of a table I would be able to point out at least a dozen defects of drafting and purport which would cause serious litigation.

He says the "intention" to separate shall not be effected otherwise than by a written or registered instrument. This is the first time I have heard of such a thing, although I have been connected with the law for 23 years. It is the first time that I have heard of a mere "intention", not the actual effectuating of that intention but a mere intention being made registrable. It is the first time in the whole civil law of British India that I have heard of this. At present we have two sections in the Registration Act which say expressly that a mere intention does not require obligatory registration. One may express many intentions, but so long as these do not effectuate anything, they do not require registration. But this Bill for the first time says that no unilateral "intention" to separate shall be effected without registration. I put a case to my Honourable friend. Supposing you have the "intention" to separate followed by actual separation. Will you tax the person twice? Supposing you have a statement of an intention, which falls within the compulsory provision of this Bill, and supposing that intention is stated in a letter or plaint, and supposing it is actually followed by a bilateral deed of partition which falls under section 17 of the Registration Act. Will you tax it twice? And supposing the intention were followed by a transaction between three out of ten members, by another between seven out of such ten, and ultimately by all the ten dividing *inter se*? How will you regulate the stamp and registration duties? I can assure the Honourable Member that there are many such defects which I have not the time to go into fully. I do not want to dilate on them, but may I appeal to my Honourable friend that this Bill, notwithstanding that it is the handiwork, as he says, of Sir Sankaran Nair and Mr. Pantulu in the Upper House, is so full of defects that I have no hesitation in saying that it ought to be rejected unless we can go to a Select Committee and mend its defects. Owing to the wrong course adopted by Government, that is not possible now. The only thing, therefore, that is open to us is to reject this Bill altogether.

Munshi Iswar Saran (Lucknow Division: Non-Muhammadan Rural): Sir, there is a Persian couplet which says that there are occasions when you should not ride fast but should lay down the shield. (*An Honourable Member*: "Will you kindly quote the couplet in Persian?") Do you know Persian? There are occasions—and this is one of those occasions—when Members on this side of the House should not speak very strongly in view of the empty benches all round. I am therefore going to speak in a very subdued tone myself and I shall submit humbly and respectfully to those who have got the authority at the present moment owing to a variety of causes into which we need not go, that they will be well advised if they will agree to my suggestion that this discussion should be adjourned so that there may be time for the Honourable the Home Member, the Honourable the Law Member and some other representatives of Government to

[Munshi Iswar Saran.]

confer with some representatives on this side of the House and come to a satisfactory decision as regards this Bill. The House will observe that this Bill is by no means of such a character that it must be passed at once. I venture to hold that the Home Member who has introduced it in this House will agree with me that no harm can accrue to anybody if the adjournment suggested by me is granted. Sir, it is obvious that there is a great deal of conflict of opinion about the advisability of this present measure. I shall not put my case higher than that. I do not say that there is a consensus of opinion against it, but I do maintain—and I hope no exception will be taken to this position—that there is a great deal of conflict of opinion about this Bill. I also venture to maintain that at least the wisdom or the correctness of the phraseology of some of the clauses of this Bill is not admitted on all hands. That being so, I submit that it will be better if we have a little time in which to compose our differences and it may be that we may be able then to produce a Bill which may be perfectly satisfactory.

I do not think in view of the suggestion that I have ventured to make that it is necessary for me to go into any detailed examination of the provisions of the Bill, or of the policy underlying it; but I shall, with your leave, permit myself to make only one or two observations. I do not agree with my Honourable friend, Mr. Jayakar, that this Bill is going to retard the social disintegration to which he referred. If it did, then I should be the first to support it because I do not believe in that kind of social disintegration which, according to my Honourable friend, Mr. Jayakar, is the essential condition of our acquisition of self-government, because if that be the essential condition of our acquisition of self-government I suppose we shall have to wait for self-government till the crack of doom. The joint family is not going to disappear for long from this country. It is not going to vanish and I do venture to think that the modern thought in the West is turning away from individualism and is tending in the opposite direction. What is the good of saying that the joint family must go? The joint family has its defects, but the joint family has also those attributes which are peculiarly its own. May I put forward this view because a great deal has been said about it and more particularly because a certain class of Anglo-Indian writers delight in condemning our systems without understanding them? What is the joint family? It is based, Sir, on sacrifice, the noblest quality that any individual or nation can think of. There are two brothers, one is poor and the other is rich. The rich brother voluntarily says, "We shall share our earnings; we shall put our earnings together and as far as monetary matters are concerned there will be no distinction between you and me." I take courage, Sir, to assert that this is a principle which will extort and must extort the admiration of every man who is not obsessed with the idea of individualism. Be that as it may, I venture to submit that this Bill, if it is accepted in its present form, will work a great hardship on a vast number of people in this country. I shall not controvert for the moment all that has been said by the Honourable the Law Member, but let him consider the effect of this Bill. If it becomes law, a member of a joint family which possesses immoveable property worth more than a thousand rupees can effect partition only by means of a written and registered document. Look at the number of partitions that silently and quietly take place every day. By:

this Bill you are really introducing a revolution in Hindu society. And for what? One could have agreed to this Bill if one could have felt convinced that by the passing of this Bill oral testimony would be excluded and there would be no conflict between one set of witnesses and another. If we could achieve that, there would be some object in accepting the Bill in the form in which we find it; but that is not so. The Honourable the Law Member has said that separation by conduct will not come within the purview—I am quoting his words—of this Bill. There are some questions on which oral evidence is bound to come in, and that being so, I submit to the Honourable the Law Member and the Honourable the Home Member to agree to a short adjournment so that there may be some consultation between the two sides and the difficulties which do exist may be removed, and both sides may be able to agree to a Bill which will be found satisfactory.

If I have your permission, Sir, I shall move that the discussion of this question be adjourned for a week.

The Honourable Mr. J. Orerar: Sir, I do not at this stage of the debate propose to say more than a very few words. In the first instance

Mr. President: I should like to dispose of the motion for adjournment before I call upon the Honourable the Home Member to speak on the original motion.

The Honourable Mr. J. Orerar: I shall restrict myself mainly to the remarks which have fallen from the last speaker, but I think I may be permitted to say this in the first instance, that very diverse views have been expressed with regard to this Bill. As against the eloquent appeal made by my Honourable and learned friend, Mr. Jayakar, in which he adjured us to do nothing that might interfere with the gradual process of social dissolution of which he was in favour,—as against that argument we have had from other parts of the benches opposite a totally different argument. I mention that because it has a distinct relevance to the suggestion made by the Honourable and learned gentleman who spoke last. He suggested that we should adjourn this debate. May I point out that the Report of the Select Committee, on which this Bill was based, was issued in 1924 and 1925? Its contents have been under consideration for not less than three years. The particular Bill which is now before the House has been very carefully digested, very carefully framed and very carefully considered. I cannot admit that the suggestion that it was first introduced in the Council of State is any ground on which objection can reasonably be taken. If it is the fact that the atmosphere in another place is calmer than that which sometimes prevails in this House, I could not myself accept that as a very conclusive reason why a measure of this kind should not first be taken up for consideration in that atmosphere, though I should deprecate very much indeed that any suggestion should be made that a calm and judicial atmosphere cannot now prevail in this House and cannot here and now be applied to this Bill.

As for the particular circumstance to which Munshi Iswar Saran adverted, that is a circumstance for which Government cannot accept any responsibility whatsoever; and I venture to point out that his suggestion is a somewhat unreasonable one. The suggestion really amounts to this: if certain circumstances occur over which we have no control and for which we have no responsibility, we should on that ground and on no

[Mr. J. Crerar.]

other reasoned and considered ground hold up the despatch of public business. If we were committed to that in this particular instance, I do not know what class of public business we should be in a position to regard ourselves as justified in proceeding with. While, therefore, I have no desire whatsoever to preclude this House from the most careful consideration it desires to give to the details of this measure—that can come on at a later stage in the debate—I regret very much on behalf of Government that I cannot accept the suggestion that the debate should be adjourned.

Munshi Iswar Saran: May I, Sir, offer a word of personal explanation? The Honourable the Home Member has thoroughly misconceived my position. I made the motion for adjournment not because some of the Honourable Members of this House were not present, but in order that we might come to some settlement as regards this Bill.

Mr. President: The question is:

“That the further consideration of this motion be postponed for a week.”

The Assembly divided:

AYES—37.

Abdul Matin Chaudhury, Maulvi.
Abdullah Haji Kasim, Khan Bahadur
Haji.
Ahmed, Mr. K.
Bhargava, Pandit Thakur Das.
Chatterjee, Revd. J. C.
Cocke, Mr. H. G.
Crawford, Colonel J. D.
Das, Mr. B.
Gavin-Jones, Mr. T.
Ghazanfar Ali Khan, Raja.
Gour, Sir Hari Singh.
Haji, Mr. Sarabhai Nemchand.
Ismail Khan, Mr.
Iswar Saran, Munshi.
Jayakar, Mr. M. R.
Kelkar, Mr. N. C.
Kunzru, Pandit Hirday Nath.
Lajpat Rai, Lala.
Lamb, Mr. W. S.

Lindsay, Sir Darcy.
Malaviya, Pandit Madan Mohan.
Mohammad Ismail Khan, Haji
Chaudhury.
Moonje, Dr. B. S.
Moore, Mr. Arthur.
Mukhtar Singh, Mr.
Neogy, Mr. K. C.
Pandya, Mr. Vidya Sagar.
Purshotamdas Thakurdas, Sir.
Sarda, Rai Sahib Harbilas.
Sassoon, Sir Victor.
Shah Nawaz, Mian Mohammad.
Siddiqi, Mr. Abdul Qadir.
Singh, Kumar Rananjaya.
Sinha, Mr. R. P.
Willson, Sir Walter.
Yakub, Maulvi Muhammad.
Zulfqar Ali Khan, Nawab Sir.

NOES—37.

Abdul Aziz, Khan Bahadur Mian.
Abdul Qaiyum, Nawab Sir Sahibzada.
Ahmad, Khan Bahadur Nasir-ud-din.
Alexander, Mr. William.
Allison, Mr. F. W.
Anwar-ul-Azim, Mr.
Ashrafuddin Ahmad, Khan Bahadur
Nawabzada Sayid.
Ayangar, Mr. V. K. Aravamudha.
Bajpai, Mr. G. S.
Blackett, The Honourable Sir Basil.
Bray, Sir Denys.
Chatterji, Rai Bahadur B. M.
Coatman, Mr. J.
Cosgrave, Mr. W. A.
Couper, Mr. T.
Courtenav, Mr. R. H.
Crerar, The Honourable Mr. J.
Ghuznavi, Mr. A. H.

Gidney, Lieut.-Colonel H. A. J.
Graham, Mr. L.
Irwin, Mr. C. J.
Kabal Singh Bahadur, Captain.
Keane, Mr. M.
Mitra, The Honourable Sir Bhupendra
Nath.
Mukherjee, Mr. S. C.
Parsons, Mr. A. A. L.
Rainy, The Honourable Sir George.
Rao, Mr. V. Pandurang.
Roy, Mr. S. N.
Sams, Mr. H. A.
Shamaldhari Lall, Mr.
Shillidy, Mr. J. A.
Subrawardy, Dr. A.
Svkes, Mr. E. F.
Taylor, Mr. E. Gawan.
Yamin Khan, Mr. Muhammad.
Young, Mr. G. M.

Mr. President: The result of the voting is:

Ayes: 37, Noes: 37. (Laughter.)

The Honourable the Home Member has already pointed out to the House that the report of the Select Committee has been before the country for the last three years, and the Chair under the circumstance will not be justified in arresting the further progress of the Bill by its casting vote. Therefore, I shall give my casting vote for the "Noes". The "Noes" have it.

The Assembly then adjourned for Lunch till a Quarter to Three of the Clock.

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

Mr. President: The House will now resume further consideration of the following motion moved by the Honourable Mr. J. Crerar:

"That the Bill to provide that partitions and separations of interest among the members of Hindu undivided families and other transactions among persons governed by Hindu law shall, in certain cases, be effected by written and registered instruments, as passed by the Council of State, be taken into consideration."

Mr. Vidya Sagar Pandya (Madras: Indian Commerce): Sir, may I invite the Chair's attention whether we have got a quorum?

Mr. President: There is no quorum. The House stands adjourned till to-morrow morning, eleven o'clock.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 15th February, 1928.