

9th February 1937

**THE
LEGISLATIVE ASSEMBLY DEBATES**

(Official Report)

Volume I, 1937

(25th January to 19th February, 1937)

**FIFTH SESSION
OF THE
FIFTH LEGISLATIVE ASSEMBLY,
1937**



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1937**

M89LAD

Legislative Assembly.

President :

THE HONOURABLE SIR ABDUR RAHIM, K.C.S.I., KT.

Deputy President :

MR. AKHIL CHANDRA DATTA, M.L.A.

Panel of Chairmen :

SIR MUHAMMAD YAKUB, KT., M.L.A.

MR. S. SATYAMURTI, M.L.A.

SIR LESLIE HUDSON, KT., M.L.A.

SIR COWASJI JEHANGIR, BART., K.C.I.E., O.B.E., M.L.A.

Secretary :

MIAN MUHAMMAD RAFI, BAR.-AT-LAW.

Assistant of the Secretary :

RAI BAHADUR D. DUTT.

Marshal :

CAPTAIN HAJI SARDAR NUR AHMAD KHAN, M.C., I.O.M., I.A.

Committee on Petitions :

MR. AKHIL CHANDRA DATTA, M.L.A., *Chairman.*

SIR LESLIE HUDSON, KT., M.L.A.

SARDAR SANT SINGH, M.L.A.

MR. M. GHILASUDDIN, M.L.A.

MR. MATHURADAS VISSANJI, M.L.A.

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LEGISLATIVE ASSEMBLY.

Tuesday, 9th February, 1937.

The Assembly met in the Assembly Chamber of the Council House at Eleven of the Clock, Mr. President (The Honourable Sir Abdur Rahim) in the Chair.

MEMBERS SWORN:

Mr. Kenneth Grant Mitchell, C.I.E., M.L.A. (Government of India: Nominated Official); and

Mr. Kizhakkepat Ramunny Menon, M.L.A. (Madras: Nominated Official).

QUESTIONS AND ANSWERS.

†381*

PROVISION OF DAILY DELIVERIES AND OPENING OF RURAL POST OFFICES IN THE GUNTUR AND NELLORE DISTRICTS.

382. *Prof. N. G. Ranga: Will Government be pleased to state if it is not a fact that the villages of upland Taluks of the Guntur and Nellore Districts are provided with only two deliveries a week and that no new post offices have been opened therein since 1935 and, if so, whether they are prepared to consider the advisability of taking early steps to provide daily deliveries at least to the important villages, having a population of at least 2,000 each, and of opening new rural post offices?

The Honourable Sir Frank Noyce: An inquiry is being made and a reply will be placed on the table of the House in due course.

Mr. N. M. Joshi: May I put question No. 383 standing in the name of Prof. Ranga, Sir?

Mr. President (The Honourable Sir Abdur Rahim): Has the Honourable Member been authorised?

Mr. N. M. Joshi: No, Sir, but I am specially interested in it, and I am asking for your special leave.

Mr. President (The Honourable Sir Abdur Rahim): Very well.

APPLICABILITY OF THE PAYMENT OF WAGES ACT TO BURMA.

383. *Mr. N. M. Joshi (on behalf of Prof. N. G. Ranga): Will Government be pleased to state:

- (a) whether the Payment of Wages Act has been made applicable to Burma; and

†This question was withdrawn by the questioner.

- (b) if not, whether they are prepared to consider the advisability of implementing their assurance to apply it to Burma before the separation of Burma actually takes place?

The Honourable Sir Frank Noyce: (a) and (b). The Act will be brought into force next month and as it is applicable to Burma, any notification so issued will have the effect of bringing it into force in Burma. I might add that draft rules have already been published by the Government of Burma.

NEGOTIATIONS REGARDING DEVELOPMENT OF THE TUNGABHADRA PROJECT.

384. ***Prof. N. G. Ranga:** Will Government be pleased to state:

- (a) at what stage are the negotiations between various Governments interested in the development of the Tungabhadra Project;
- (b) if any agreement has been reached between them as to the allocation of the waters of the Tungabhadra;
- (c) if so, what the agreement is; and
- (d) what are the other obstacles to be overcome before the construction of the project is undertaken and how soon it is likely to be undertaken?

The Honourable Sir Frank Noyce: (a) An understanding has been reached between the Governments of Madras and Mysore regarding the sharing of the Tungabhadra waters and the Government of Madras are now taking steps to ascertain if the Government of Hyderabad have any objection to its terms.

(b) No.

(c) Does not arise.

(d) There are political, engineering and financial difficulties and construction cannot begin until the preliminary difficulties are overcome.

REFUSAL OF PASSPORT TO MRS. KAMALADEVI TO GO TO EUROPE TO ATTEND THE INTERNATIONAL PEACE CONFERENCE.

385. ***Prof. N. G. Ranga:** Will Government be pleased to state:

- (a) why Mrs. Kamaladevi was refused a passport to go to Europe to attend the International Peace Conference; and
- (b) whether they are aware that she had been to Europe several times without causing any untoward incident to the prevalence of law and order in India?

The Honourable Sir Henry Crank: (a) and (b). This lady's activities abroad some time ago led Government to cancel her passport; and her application for a fresh passport was refused, because Government do not think it advisable that she should be given facilities to travel abroad.

IMPOUNDING OF MR. M. R. MASANI'S PASSPORT.

386. ***Prof. N. G. Ranga:** Will Government be pleased to state:

- (a) why Mr. M. R. Masani's passport was impounded;
- (b) whether it was done at their instance; and
- (c) when it will again be freely issued to him?

The Honourable Sir Henry Craik: (a) and (b). Mr. Masani's passport was impounded, because its validity has expired and in view of Mr. Masani's activities, Government considered it undesirable to grant him further facilities to travel abroad.

(c) When Government are satisfied that it would no longer be inadvisable in the interests of the State to grant Mr. Masani a passport.

OPENING OF THE TOBACCO RESEARCH STATION IN THE GUNTUR DISTRICT.

387. *Prof. N. G. Ranga: Will Government be pleased to state if the Tobacco Research Station has been opened in the Guntur District and if so, where and when, and what is the annual estimate of expenditure to be incurred on it?

Sir Girja Shankar Bajpai: The Tobacco Research Station was opened in July, 1936, at village Lalipuram, 2½ miles from Guntur; the annual recurring expenditure is estimated at Rs. 16,000.

IMPLEMENTING OF THE ASSURANCE OF THE HOME MEMBERS REGARDING LEGISLATION TO EXEMPT AGRICULTURISTS FROM BEING ARRESTED FOR CIVIL DECREES.

388. *Prof. N. G. Ranga: Will Government be pleased to state:

- (a) what they have done to implement the assurance given by the Honourable Sir Henry Craik in the Simla Session of 1936 that he would consult the Provincial Governments in regard to the advisability of so amending section 61 of the Civil Procedure Code Act of 1908 as to exempt agriculturists from liability to be arrested for civil decrees;
- (b) whether they have received the replies of the Provincial Governments; and
- (c) if so, from which Governments, and what is the nature of their replies; if not, whether they propose to address the new Provincial Ministries to be formed at an early date and try to implement their assurance?

The Honourable Sir Henry Craik: (a) and (b). The Local Governments have been consulted, but no replies have yet been received.

(c) It is open to any Local Government to defer a definite reply, if it so wishes, till after the commencement of Part III of the Government of India Act, 1935.

EXPLOSION AT SUTARALI NEAR THE BASSIEN TOWN IN THE THANA DISTRICT.

389. *Mr. N. M. Joshi: (a) Are Government aware that on the 4th November, 1936, an explosion occurred at Sutarali near the town of Bassien in the Thana District of the Bombay Presidency?

(b) Is it true that the explosion was result of the storage of combustible and explosive material in the midst of residential area without being properly guarded?

(c) Is it a fact that various persons living in the neighbourhood suffered a loss of Rs. 4,000 as the result of the explosion?

(d) Will Government state why no police guard was present on the spot, although they were in possession of the explosive material since August 31st, 1936?

(e) Do Government propose to pay compensation to those who have suffered loss as a result of the negligence of the police authorities?

The Honourable Sir Frank Noyce: Information has been called for and a reply will be placed on the table of the House in due course.

THE INDIAN BOILERS (AMENDMENT) BILL.

PRESENTATION OF THE REPORT OF THE SELECT COMMITTEE.

The Honourable Sir Frank Noyce (Member for Industries and Labour): Sir, I present the Report of the Select Committee on the Bill further to amend the Indian Boilers Act, 1923, for certain purposes.

THE INDIAN ELECTRICITY (AMENDMENT) BILL.

PRESENTATION OF THE REPORT OF THE SELECT COMMITTEE.

The Honourable Sir Frank Noyce (Member for Industries and Labour): Sir, I also present the Report of the Select Committee on the Bill further to amend the Indian Electricity Act, 1910, for certain purposes.

AMENDMENT OF THE INDIAN LEGISLATIVE RULES.

Mr. President (The Honourable Sir Abdur Rahim): The question before the House is:

"That in the proposed sub-rule (6), after the word 'day' where it occurs for the second time, the following be inserted:

'and the member asking the question has not before the questions are disposed of signified his desire to postpone the question'."

Sir Muhammad Yakub (Rohilkund and Kumaon Divisions: Muhammadan Rural): Sir, the provisions contained in the proposed sub-rule (6) are the most important and most contentious of all the rules that have been framed by the Honourable the Law Member. The discussion that took place in the House yesterday must have clearly shown that the non-Official Members are unanimously opposed to any restriction being imposed on the privilege and right of Honourable Members to put supplementary questions; and, therefore, although we, on this side of the House, did not like the new sub-rule (6) at all, still, as there is no chance, in the present state of the House, of its being rejected, I think, something is better than nothing, and the amendment which is now being discussed gives some relief to Honourable Members in respect of questions which may not be reached on a particular date. There is some chance that by adopting this amendment Honourable Members will get the opportunity to have their questions postponed for which a fresh notice may be given and we may get an oral reply on some other date. This is really a very important matter and I think, considering the opinions of the Non-Official Members of the House, the Government should not insist on rejecting this

amendment, and relying upon the fact that they have got a very big majority, I hope they will not misuse their majority and will accept the amendment which has been moved. I support the amendment.

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): Sir, I feel that this is the last leaf that is being asked and I hope the Honourable the Law Member will see his way to accepting this amendment. If a choice is not being given to the Members to send their questions as unstarred, then this is a way of forcing the questions to be made unstarred. That is a wrong move altogether. Therefore, what is now being asked is only this that in case a Member were to say, of course honestly—not that any dishonesty or any wrong tactics can be expected from Honourable Members—that his question is a very important one and it must be discussed in the House, then, what is asked is this that supplementary questions should be allowed to be put, and if the Member feels rightly that it is so, why should he not be allowed to give notice, and, then, have that question postponed to some other day when on that day he may have his chance? If he has no chance, then of course, it will have its own course; but a chance should be given and I hope the Law Member will accept this amendment.

Mr. N. M. Joshi (Nominated Non-Official): Sir, I rise to support the amendment moved on behalf of the European Group. The only difference between the Government's proposal and the amendment is that Government are willing to have the question postponed before 11 o'clock on the day on which the question is to be replied to, while the amendment asks for permission for postponing the question till say about twelve on that very day. I fail to understand what inconvenience will be caused to Government or even to other Members if this amendment is accepted. It may be said that if Members are permitted to withdraw questions just before twelve, that is, just before the question time is over almost every Member whose questions are not likely to come up that day will ask for the postponement of his questions. But I think this may not happen. A Member may be very anxious to have early some reply and information to his question, and, in that case, he would prefer that his question be made unstarred so that he may get the information sooner than wait for an opportunity which may come after either a long period, but in any case, he will not be able to get his reply very soon. By the time he thinks of postponing, the other days perhaps may also be full up, and if he is anxious to get a reply soon, he will prefer to get a reply on that very day by way of an unstarred question than wait for a longer time. I do not think there is any reason why Government should oppose this amendment and I hope they will accept it.

Mr. Akhil Chandra Datta (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I want to support this motion, and for this reason. A Member will be in a better position at the end of question hour to decide for himself as to whether he should give notice of withdrawal or not, because it is impossible to make any correct estimate as to whether any particular question will be reached or not. It is more or less difficult to anticipate what time is likely to be taken up by the preceding question or questions. If a straight answer is given to a straight question, it does not take much time at all. But if it is difficult to bring out

[Mr. Akhil Chandra Datta.]

certain facts and the Member is unwilling to give facts, it takes a long time. We have got the same experience in law courts. A fact which ought to be elicited in half a minute sometimes takes as much as half an hour. Therefore, it is only at the end of the question hour that one can decide for himself as to whether he should give notice for withdrawal or not. Otherwise the position may possibly be this. Supposing I make a wrong estimate and I feel that my question may not be reached, but at the end of the hour, I find that the preceding questions have been disposed of earlier than I had expected and there is yet time left for my questions, the result will be, if this amendment is negatived, that, although there is time left, I shall not have the opportunity to have an oral answer that day, because I had already given notice of withdrawal. For these reasons, I think that this amendment ought to be accepted.

The Honourable Sir Nripendra Sircar (Law Member): Sir, I maintain the attitude which I did yesterday, which means that I support the motion to the extent of nine-tenths and oppose the balance. I was told by Sir Muhammad Yakub that the Law Member has realised that the elected Members should lose the privilege of putting supplementary questions. I repeat again that it is not the desire of the Government nor is it intended by the Rules to deprive Members of the power of putting supplementary questions, and there is no justification for this suspicion. As I visualise the working of the Rules, I do not see that the right of supplementary questions will in any way be affected. Then, we come to the practical question as to what is the objection to accepting the amendment which means that questions may be withdrawn up to 12 o'clock. Let us see what reasons have been put forward by my Honourable friend, Sir Leslie Hudson. The case which he put forward was this that on a particular day by reason of a miscalculation, he finds that a question which he has not withdrawn by 11 o'clock and which he expected to be answered that day has not been reached and gets unstarred. It is always easy to take up exceptional cases happening in exceptional circumstances. Whatever may happen in Parliament for there they hand over questions, I am told, the previous day whereas here we require five days' notice, we can legitimately say and it has already been said in the House that we cannot possibly follow Parliament in all the details of its procedure. We were following it strictly; why increase three to five? Sir, as I visualise what will happen will be—I will talk now in seconds just as my friend, Mr. Datta, did—that within the last 30 seconds Mr. Rafi will be surrounded by a number of Members with slips of papers asking that certain questions be put after a certain date, certain questions may be withdrawn, etc.

Mr. N. M. Joshi: No, they will make that request on the floor of the House.

The Honourable Sir Nripendra Sircar: That is far worse. Within the last 30 seconds, a dozen or half a dozen Members will all rise in their seats instead of sending in slip of paper.

Mr. N. M. Joshi: We can change that and make a request to the Honourable the President.

The Honourable Sir Nripendra Sircar: Mr. Joshi's suggestion will cause more confusion. As I said, it is a question of balancing or opposing the considerations and much can be said on either side. But, I do think that it will safeguard the rights of Members completely if they are allowed the right to withdraw or get questions postponed till the sitting of that day. One word more about Sir Muhammad Yakub's statement that we may not misuse the majority which may be in the House today. I can give him the assurance that even if the amendment is completely lost, I shall not go back on what I have said, namely, take it to the extent of its nine-tenths.

Mr. President (The Honourable Sir Abdur Rahim): The Chair would like to have one matter cleared up by the Honourable the Leader of the House. He appears to have said that he expected no difficulty in having all the questions that are on the list of the day being answered in the House. The Chair does not quite understand how that would be brought about.

The Honourable Sir Nripendra Sircar: I do not think I said so. What I said was that the number of questions for a particular day will depend on the Members. If the Members choose to fix 300 questions for a particular day, of course, they will not be answered.

Sir Muhammad Yakub: It will not be the Members who will put questions for a day but it will be the office and the President who will fix the number of questions to be asked on any day.

The Honourable Sir Nripendra Sircar: I am sorry that I have not been able to clear up the misunderstanding in spite of my repeated statements to the contrary. It is the Member who has got to choose the day. The discussion makes it clear that in the final draft we shall have to expressly provide for Member fixing the date and addressing the question to someone.

Sir Muhammad Yakub: He will choose the day but he will not select the number of questions.

Mr. President (The Honourable Sir Abdur Rahim): Then, the Chair takes it that there cannot be any sort of guarantee or certainty as to what will be the number of questions on any particular day.

The Honourable Sir Nripendra Sircar: That is so, Sir. That will depend on Members.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

"That in the proposed sub-rule (6), after the word 'day' where it occurs for the second time, the following be inserted:

'and the member asking the question has not before the questions are disposed of signified his desire to postpone the question'."

The Assembly divided:

AYES—18.

Aikman, Mr. A.
Bajoria, Babu Baijnath.
Bhagchand Soni, Rai Bahadur Seth.
Buss, Mr. L. C.
Chapman-Mortimer, Mr. T.
Datta, Mr. Akhil Chandra.
DeSouza, Dr. F. X.
Hudson, Sir Leslie.
James, Mr. F. E.

Joshi, Mr. N. M.
Lalchand Navalrai, Mr.
Morgan, Mr. G.
Parma Nand, Bhai.
Scott, Mr. J. Ramsay.
Witherington, Mr. C. H.
Yakub, Sir Muhammad.
Yamin Khan, Sir Muhammad.
Ziauddin Ahmad, Dr.

NOES—31.

Abdul Hamid, Khan Bahadur Sir.
Anderson, Mr. J. D.
Bajpai, Sir Girja Shankar.
Bansidhar, Rai Sahib.
Bhide, Mr. V. S.
Chanda, Mr. A. K.
Craik, The Honourable Sir Henry.
Dalal, Dr. R. D.
Griffiths, Mr. P. J.
Grigg, The Honourable Sir James.
Jawahar Singh, Sardar Bahadur
Sardar Sir.
Lalit Chand, Thakur.
Lloyd, Mr. A. H.
Mehta, Mr. S. L.
Menon, Mr. K. R.
Mitchell, Mr. K. G.
Mukherjee, Rai Bahadur Sir Satya
Charan.

Nagarkar, Mr. C. B.
Naydu, Diwan Bahadur B. V. Sri
Hari Rao.
Noyce, The Honourable Sir Frank.
Rau, Sir Raghavendra.
Roy, Mr. S. N.
Sale, Mr. J. F.
Sarma, Sir Srinivasa.
Sher Muhammad Khan, Captain
Sardar Sir.
Sircar, The Honourable Sir
Nripendra.
Thorne, Mr. J. A.
Tottenham, Mr. G. R. F.
Verma, Rai Sahib Hira Lal.
Williams, Mr. A. deC.
Zafrullah Khan, The Honourable Sir
Muhammad.

The motion was negatived.

Sir Leslie Hudson (Bombay: European): Sir, I beg to move:

"That in the proposed sub-rule (6), for the words 'upon the next day available for the answering of questions' the words 'on the same day' be substituted."

The Honourable Sir Nripendra Sircar: Sir, to shorten further discussion, I may say that I accept this amendment.

Mr. President (the Honourable Sir Abdur Rahim): The question is:

"That in the proposed sub-rule (6), for the words 'upon the next day available for the answering of questions' the words 'on the same day' be substituted."

The motion was adopted.

THE INDIAN INCOME-TAX (AMENDMENT) BILL.

Mr. A. H. Lloyd (Government of India: Nominated Official): Sir, I move:

"That the Bill further to amend the Indian Income-tax Act, 1922, for certain purposes, be taken into consideration."

As all Honourable Members are aware, we have recently had the whole field of the income-tax administration and law surveyed by a Committee of expert advisers whose report has been published and

copies have been distributed to Honourable Members. This makes my task in moving for the consideration of this Bill somewhat simpler than it might otherwise have been, because I begin by drawing their attention to those passages in the report which have been quoted in the Statement of Objects and Reasons attached to the Bill. The substantive provision of this Bill is contained in clause 2. Clauses 3 and 4 are purely consequential and I shall not take up the time of the House by saying anything about them. As regards the proposals in clause 2, we can make these fall into two parts,—provisions relating to husband and wife and provisions relating to parents and minor children. On the first subject the report says on page 19:

"Our attention has been drawn to the extent to which taxation is avoided by nominal partnerships between husband and wife and minor children. In some parts of the country, avoidance of taxation by this means has attained very serious dimensions. The obvious remedy for this state of affairs so far as husband and wife are concerned is the aggregation for assessment of their incomes, but such a course would involve aggregation in a quite different class of case, i.e., where the wife's income arises from sources quite unconnected with the husband."

The report then goes on to argue that on the "ability-to-pay" principle such aggregation, even in cases where the income arises from a source unconnected with the husband, is legitimate and desirable, and they make that their proposal in connection with husband and wife. We, Sir, at this juncture have not followed the report to that extent. We have confined our proposals to the case, where the income of the wife arises from a source which is connected with the husband, and, in fact, is derived from the husband. The question whether the matter should be carried further as recommended by the report involves a question of principle which we think should be considered by all those whose opinions on this report are being obtained before we propose any legislation. We do not see, however, that any really important question of principle is involved in putting a stop to the practice of subdividing the husband's income so as to reduce the rate by the process of transferring the source of the income to the wife, although the domestic circumstances of the family as a whole are in no way changed, which is usually the position.

I think I have perhaps said enough to show why we have singled out this particular matter for treatment in the present Bill. As I have indicated, wherever a really new question of principle is involved, Government feel that it is important that general public opinion should be consulted before action is taken. Then, again it is true that all the various devices for avoiding taxation, and not only this one, do not, within my meaning of the expression, involve a question of principle. But in all other cases which are of importance, so far as we can see, these devices for avoiding taxation under cover of the law affect the computation of income, and they have ramifications which make it necessary to give the proposals the most careful scrutiny, in order that before any legislation is undertaken, we may satisfy ourselves that in hitting at the tax-dodger we have not adopted a weapon which will also inflict injustice on, or dislocate the business of those who have organised their affairs in a particular way for genuine reasons other than the desire to avoid taxation. In this case, Sir, we are merely dealing not with the computation of income nor with the question of what income is to be liable to taxation; but taking the present basis of liability and taking the present method of computation, the simple question is, in whose hands

[Mr. A. H. Lloyd.]

is the income so ascertained to be taxed. That is why I say it is essentially a simple proposal compared with the others. That it is urgent I shall have to ask Honourable Member to take from the report itself as well as from the knowledge of the department. It is indeed a very widespread device at which we are aiming and one which is causing us very serious loss of revenue. I can only give an estimate of the figure, but my estimate which is conservative compared with what has been given to me unofficially by the writers of the report is that by passing this measure we shall increase the tax in the first year by something like 20 lakhs of rupees. That, Sir, indicates how very widespread this practice has become, particularly in those places where the so-called income-tax "experts" have got really busy,—I think I should withdraw the word "so-called", because they are expert in helping the public to avoid the liabilities which it was intended by the Legislature should fall upon them.

Now, Sir, I have pointed out that we have not gone the whole length of the report in the matter of husband and wife. We have preferred to follow, generally speaking, what the report has said of minor children and apply it to the case of the husband and wife also. The report says on page 20:

"There is also a growing and serious tendency to avoid taxation by the admission of minor children to the benefits of partnership in the father's business. Moreover, the admission is, as a rule, merely nominal, but being supported by entries in the firm's books, the Income-tax Officer is rarely in a position to prove that the alleged participation in the benefits of partnership is unreal."

Sir, the gist of our proposal is this: we do not want to be in a position of having to prove it but we ask the Legislature to let us assume that in a case, where the husband admits the wife and minor children to partnership, a position is being created in which it is no less fair than it was before to tax the father and husband on the whole of the income which the family as a whole might be deriving from that partnership. If this is not done, we shall have a continuance of cases which I can only call grotesque, such as recently came out before the Bombay High Court. The history of that case was that there was a Hindu undivided family of two brothers. They separated and there was a regular partition. They became, like any of the rest of us, liable to taxation as individuals. If a Hindu undivided family chooses to separate like that we can have no complaint and nobody can have any complaint. But what was the next step? One of the brothers died. That was, of course, a pure accident. The widow of that brother and the surviving brother proceeded to execute a deed purporting to take in as partners the wives of the surviving brother and the minor children of both. I think there were one or two others but these were the predominant elements; and this group of persons which originally started as one and then legitimately divided into two was now divided into as many as 20 parts. That, of course, must have the most catastrophic effect upon the contribution which they are called upon to pay to the state, and I think that the House will agree that it is an unfair result—unfair to the rest of us who prefer to live our lives and arrange our affairs in an ordinary way or perhaps cannot help doing so, without making special arrangements to avoid liability to income-tax. It may be said that this might be done for some other reason than avoiding taxation. But we cannot be put into the position of having to prove that that is not so: that would be an impossible task for the Income-tax

Department to circumvent all the subterfuges which might be adopted in order to avoid liability. If in a rare case—and I submit it would be an extremely rare case—there is some other motive for the wife and minor child to enter into partnership with the husband or father as the case may be, then I would merely say not only that hard cases make bad law,—but also that I do not admit that this is a really hard case. After all, we can always get back to the argument which has much validity—“ability to pay”—although we are not pressing that argument to the extent of bringing in under sub-clause (iii) the case of property derived by the wife from some entirely independent source. As regards sub-clause (iii) itself, it is perhaps a little more likely than in the case of admission to partnership, that there may be cases where the avoidance of liability to income-tax was a minor consideration, or perhaps was not a consideration at all. We have recognised that in making two obvious exceptions, (1) where the wife had money from some entirely different source and it was found convenient for the husband to sell some of his property to the wife in return for the wife's own money which is derived from an independent source, and (2) if a settlement is made in connection with an agreement to live apart; there we do say that domestic circumstances of the couple having changed there is a clear case for making an exception and not bringing the whole liability upon the husband. But in other cases, so far as I can see, if there has been any other reason than the desire to avoid income-tax, for the transfer of property from the husband to the wife, it will have been either because the husband is engaged, say, in some speculative enterprise and wishes to have some of the family property out of the reach of his creditors in case he comes down: I do not think that that is a motive which really deserves much more sympathy than the motive of trying to evade income-tax liability: or there may be a question of avoiding succession duties or probate duties and the like. There again, I do not think that the House as a whole will feel that it deserves much more sympathy than the case where the transfer has been nakedly and unashamedly made for the purpose of avoiding income-tax. There may remain a case where out of sheer generosity, sheer kindness of heart, the husband wishes to transfer something to his wife. To that extent I say, do not spoil the credit of your generous impulse by asking the State to contribute to the cost of it.

I think that perhaps I had better not detain the House much longer at this stage. There may be points on which I have not touched which will be raised in debate and I shall do my best to attempt to meet them. The proposals really are, as I say, of a simple nature. They are of an extremely urgent nature and I commend them to the approval of the House.

Mr. President (The Honourable Sir Abdur Rahim): Motion moved:

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

Mr. Akhli Chandra Datta (Chittagong and Rajshahi Divisions: Non-Muhammadian Rural): Sir, I beg to move:

“That the Bill be referred to a Select Committee consisting of the Honourable Sir Nripendra Sircar, the Honourable Sir James Grigg, Mr. A. H. Lloyd, Mr. N. M. Joshi, Mr. A. Aikman, Babu Baijnath Bajoria, Sir Muhammad Yakub, Pandit Lakshmi Kanta Majtra and the Mover, with instructions to report on or before the 15th February, 1937, and that the number of Members whose presence shall be necessary to constitute a meeting of the committee shall be five.”

[Mr. Akhil Chandra Datta.]

I am very anxious to say this at the outset, that my object is not to obstruct or delay this Bill. That will be perfectly clear from the date that I have put in, namely, the 15th February, 1937,—that is about six days from today. I have put in the 15th; because as I want to have the advantage of a Saturday and Sunday. If necessary, the Select Committee can meet earlier. From that point of view, the Government can have no objection at all. I invite the attention of the Honourable the Mover of the Bill particularly to the date and to consider whether the motion should not be accepted. Am I to understand, that even after I have put in that date, it is still the intention of Government to oppose the motion?

The Honourable Sir James Grigg (Finance Member): Yes.

Mr. Akhil Chandra Datta: It will not affect any party: if necessary we can meet earlier.

The Honourable Sir James Grigg: I will give my reasons.

Mr. Akhil Chandra Datta: Then I will proceed. This is a piece of legislation to prevent fraudulent evasion and what is called legal avoidance. It appears from the Statement of Objects and Reasons that the underlying object of this Bill is to prevent some malpractices, for instance, "the practices of avoiding taxation by means of nominal partnerships between husband and wife or parent and minor child". This is one class of malpractice. Then, the second class of malpractice is:

"the nominal transfer of assets to the wife and minor child, (or to an 'association' consisting of husband and wife when there is no substantial separation of the interests of the assessee and the wife or child."

These are the malpractices which this short Bill seeks to prevent. I shall at once concede that, so far as the principle goes, I have no quarrel with it at all. I accept it, but my grievance is that that principle has not been correctly applied to the provisions of the Bill. That principle has been over-stressed and over-stretched. More assesses are sought to be roped in than is justified by the principle laid down in the Statement of Objects and Reasons. These provisions go far beyond the purpose mentioned in the Statement of Objects and Reasons. We are told that at this stage this Bill does not deal with the question of the aggregation of the income of the husband and wife for the purpose of assessment. That, I take it, is not the scope of this Bill. That question will come up only when we proceed on the footing that the income of the wife is really the income of the wife

Mr. A. H. Lolyd: I did admit that to a very limited extent this might involve the principle of aggregation in cases where it could not be proved that it is not a transfer purely made for the purposes of avoiding taxation.

Mr. Akhil Chandra Datta: Precisely so, but there we can express the whole thing by one short word "aggregation"; but the real position is this,—that where the income of the wife is really not the income of the wife, where she is made a *binamdar* in order to avoid taxation, I take it that such class of cases are sought to be dealt with by this Bill: I do not deny

for a moment that there are subterfuges like that adopted to avoid taxation, and, therefore, I say that I accept the principle of the Bill, but the whole question is, what are these provisions? According to the principle laid down in the Statement of Objects and Reasons, we must have these things,—one is that the partnership must be a nominal partnership, and not a real partnership; and as regards the other class, namely, transfer of assets, that transfer again must be a nominal transfer, and not a real transfer, and then the real test of the matter is given in the Statement of Objects and Reasons, and that is, there must be no substantial separation of interests. The same thing is expressed in another language more emphatically, by saying that the separation of interests must not be nominal and fraudulent, but must be real and substantial. If these are the principles, let us see whether the provisions in clause 2 are justified. There the provision is this—“from the membership of the wife in a firm of which her husband is a partner”. Here we altogether ignore the real test, namely, whether that membership is a real membership or a nominal membership. Then, as regards the second item, namely, “from the admission of the minor to the benefit of partnership in a firm of which such individual is a partner”,—here again we have the same fallacy,—and we overlook the question of real membership.

Then, Sir, in the next two items relating to the transfer of the assets,—it is said here “from assets transferred directly or indirectly to the wife by the husband” excepting these two cases, namely, for adequate consideration or in connection with an agreement to live apart,—except on these two grounds it is directed against the transfer of assets indiscriminately and without reference to the question whether that transfer is real *bond fide* transfer or a *mala fide binami* transaction.

Mr. A. H. Lloyd: Might I ask you if what you are mentioning is not a particular exception?

Mr. Akhil Chandra Dutta: I am not disputing that in sub-clause (iii) you say that “from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart”. I am not quarrelling with that at all. These are exceptions which have been rightly made. Then, again with regard to the last clause which says “from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual”, this is also an indiscriminate provision made without reference to the question whether that transfer by the father is a *bond fide* transfer, or whether it is a mere *binami* transaction resorted to for avoiding taxation. The whole question is, whether the transfer is *bond fide* and if separation of interests is real and substantial. All the provisions laid down in these four sub-clauses of clause 2 proceed on the assumption that any and every transfer is *mala fide*, and fraudulent, that every membership, merely because the husband and wife are members of a certain partnership form, is fraudulent, and, therefore, it follows necessarily that it must be a fraudulent membership. That is the basis on which the whole provision proceeds; that is the foundation of this provision. I don't think even the Honourable the Mover will say, after what I say, that it is a correct assumption to make. I shall give concrete instances to show that these provisions go far beyond the necessities of the case and even attack the transfer of *bond fide* membership. Let me take one

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instance of the membership of the wife in a firm where the husband is a partner. Suppose in a firm a father-in-law and a son-in-law are partners. Suppose later on the father-in-law finds that the son-in-law does not give proper attention to his wife, and the father-in-law feels inclined to give some property to his daughter; he wishes to make a real transfer of some property to his daughter intending that she should be the real owner of the property, and with that end in view he transfers his interests in the firm to his daughter, with the result that the husband and wife become members of the partnership business. Under the provisions laid down here which says that the income of the wife should also be included in the computation of assessable income of the husband, the aggregate income of the husband and wife will be included for purposes of income-tax.

Let us take another instance with regard to item No. 2—"from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner". Let us consider the case of a family consisting of two or more step-brothers. The father-in-law of one of these brothers wants to make a gift of certain property to his son-in-law intending that the son-in-law alone should be the owner of the property and not the other step-brothers, and with that money he becomes a partner in his father's firm. Is it a case where it should be held that the child's income also should be taxed merely because the child is admitted to the benefits—of course, he cannot be a partner under the law—of the partnership? That is again another case in which the provision is extremely inequitable. Taking the third case, the transfer of assets from the husband to the wife, we can well conceive of cases in which an old husband finding that his sons are not very kind to their mother may feel inclined to make a provision for his wife after his death. His object is really to make a *bond fide* transfer of property. There may be *mala fide* transfers, I am not speaking of those cases, but I am considering those cases in which there is a real and a *bond fide* desire to make a transfer of assets in favour of the wife. That class of case is also roped in by sub-clause (iii). Take the last case, "from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual". We can have cases where a father may find that of his two sons,—one is an adult and the other is a minor—the adult is very cruel to his younger brother, and the old man, thinking that after his death there is no knowing whether the adult son will maintain the younger boy, makes a *bond fide* transfer of some of the assets in favour of the younger son. Under the provision as laid down here, the income of that child will also be assessable. These things have been considered by the Enquiry Committee when they say:

"There is the genuine case which is intended to be relieved by the Income-tax (Second Amendment) Act, 1933, and the question arises as to the nature and extent of the restriction which will exclude from relief only the case in which a father is attempting to obtain an allowance for what is, in effect, merely the cost of maintenance of his children."

My motion for reference to a Select Committee is based really upon this ground. You must discriminate between partnership and partnership, between transfer of assets and transfer of assets, between *bond fide* transaction and *mala fide* transaction, and that discrimination has not been made in the provisions of the Bill, and those are matters which cannot

possibly be discussed on the floor of this House. They are matters of detail which must be determined in a Select Committee, and that is my reason why I move for a reference of the Bill to a Select Committee. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim): Amendment moved:

"That the Bill be referred to a Select Committee consisting of the Honourable Sir Nripendra Sircar, the Honourable Sir James Grigg, Mr. A. H. Lloyd, Mr. N. M. Joshi, Mr. A. Aikman, Babu Baijnath Bajoria, Sir Muhammad Yakub, Pandit Lakshmi Kanta Maitra and the Mover, with instructions to report on or before the 15th February, 1937, and that the number of Members whose presence shall be necessary to constitute a meeting of the committee shall be five."

Babu Baijnath Bajoria (Marwari Association: Indian Commerce): I suggest that the name of Sir Muhammad Yamin Khan be added.

Mr. Akhil Chandra Datta: I accept.

Mr. President (The Honourable Sir Abdur Rahim): The Chair takes it that there is no objection.

The Honourable Sir James Grigg: I am not opposing any particular name. I am opposing the whole Committee.

Mr. President (The Honourable Sir Abdur Rahim): The name of Sir Muhammad Yamin Khan is added.

Sir Muhammad Yamin Khan (Agra Division: Muhammadan Rural): We have got full sympathy with the points made by the Honourable the Mover of the Bill and I think that those people who want to avoid income-tax by the methods enumerated by the Honourable the Mover cannot expect any sympathy from this House. But while my Honourable friend's anxiety is to stop all bogus transactions—if that were the only point of view which he has kept before himself I am ready to give my whole-hearted support,—I am afraid the proposed legislation may injure a lot of people who cannot be taxed according to the principles of income-tax. First of all, taking (iii) I do not understand what is meant by "adequate" in "from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration".

The Honourable Sir Nripendra Sircar (Law Member): That means transfer for full value.

Sir Muhammad Yamin Khan: How will it be interpreted? Suppose the Honourable the Law Member appeared for the assessee, would he not argue that there are other reasons than those enumerated by the Honourable the Mover, for the word "adequate", because that word is such a comprehensive word that all kinds of ingenious meanings can be given. . .

The Honourable Sir Nripendra Sircar: That one can do on any word.

Sir Muhammad Yamin Khan: Quite right. Therefore, if he wants to have this word, it ought to be fully explained.

The Honourable Sir James Grigg: If the Honourable Member thinks that it leaves a severe loophole in the Bill I am quite prepared to leave out those words.

Sir Muhammad Yamin Khan: That cannot be done here. That will have to be done in the Select Committee, and that is why I am supporting the motion for Select Committee. Then, again, we have, "from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual". This principle is all right as far as the Hindu Law is concerned, because the Hindu daughter, unless she is married, lives under the protection of the family, and she is a part and parcel of the family but a Muhammadan daughter is not a part and parcel of the family or a joint family. She can hold the property separately, even if she may be a minor child.

Mr. A. H. Lloyd: So can a Hindu.

The Honourable Sir Nripendra Sircar: Of course, a Hindu child can own property separately. The communal question does not come in there.

Sir Muhammad Yamin Khan: The question here is, whether you propose to tax the joint family property or tax the separate property. That is the only principle. It is said here that the property which has been transferred to a child by the father remains joint, because it brings the income into the hands of the father, but I say he is ignoring the principle that should be observed. Suppose a minor child inherits from its mother and this income also comes into the hands of the father, then why do you not propose to tax that income also. Suppose my child inherits from the mother, then that income will not form part and parcel of my income and he cannot tax my income plus the income which my child has got from the mother. Why should he tax the property which the child gets from me in her life time as a separate property. If one joint family property cannot be taxed, then why should the other property, which is inherited only from the father, be taxed. His argument is that the father is still getting the money in his hands and, therefore, that money must be taxed, because it comes into the hands of the father. I say 'No'. You should not tax the money which comes into the hands of the father on behalf of the child. Therefore, you should not tax the property which the child gets through the father also. There is no reason, why one income should be taxed and not the other. If my friend wanted to move this, that the income which comes into the hands of the father as the property of the child from whatever source that child gets must form part of the whole unit of the income of the father, then his argument would have been consistent, but here his argument is inconsistent, leaving one income and taxing the other. I am now chiefly concerned with the Muhammadan Law. According to the Muhammadan Law, if the property is given to the child by the father, the child, whether it be he or she, becomes the full owner and the gift cannot be revoked.

The Honourable Sir Nripendra Sircar: That is also Hindu Law, English Law, French and German Law.

Sir Muhammad Yamin Khan: I am taking only the Muhammadan Law. I will show why I am taking Muhammadan Law. That child

becomes the full owner of the property. Now, what my Honourable friend wants is not to tax the property of the child separately but he wants to consider this property to be the father's property for the purposes of income-tax.

The Honourable Sir Nripendra Sircar: Not unless she is a member of the firm according to one clause, while another clause is general.

Sir Muhammad Yamin Khan: If the wording had been such that it applied only to business firms, I would not mind much, but here the words do not cover only a firm, but the wording also covers property like house, shops, buildings and lands from which he is deriving the income. I say that these innocent people should not be taxed. I will refer again to Muhammadan Law. My friend, the Law Member, will say that it applies to other communities also. I am not concerned with other laws at present. I am concerned only with Muhammadan Law, especially the Hanafi law. According to this law, if a man has got only one daughter, she does not inherit the full property after the death of the father and if there are two daughters, they get only two thirds of the property, not the whole property. The balance of one third will have to go to the reversioners of the father. There is no will allowed under Muhammadan Law in favour of a successor. The father is bound to transfer the property in his life time, because no "will" will be operative and if he has got small children, he gives them in his life time, so that they may not be disinherited by the distant relations. Therefore, this property once given to them belongs to them apart. A girl is not major until she is 18. If the daughter is 17 and is not married, she is getting all the property in her hand for the purpose of her education and her living. The father cannot touch the money, once the property is transferred. He has to give an account to the judge every year. Once he has been appointed a guardian, he has to submit a full account of the income and expenditure. You cannot call that man the owner of the property under those circumstances. According to Muhammadan Law, no joint family is recognised but you are going to tax this property as a joint family property. That is why I am citing the case of the Muhammadan Law. Joint family property may be property in which every member of the firm is a co-sharer but here the property is owned by different individual members of the family, so that although they may be living and eating together, they are owning the property separately and you are going to tax it. That is against the principle of the taxation of income and violates the principles of equity and if this principle is once accepted by this House, that might be stretched further in other cases too. I do not think, under these circumstances, that we can support this amendment. Of course, if it be a bogus transaction, like the starting of companies and so on, and, if it is like a father purchasing some shares in the name of his minor children or in the name of his wife while he is the real person who is carrying on and benefitting from it, that may be different, and this might be called a *benami* transaction. Such transactions can be disputed later on, but where this concerns income from immoveable property, the proposal violates the income-tax law altogether, because you cannot tax one man for property owned by another person; although he may be getting the income from such property, he may be spending all that for the benefit of that person; you cannot say, "give me the full account, have you spent the income from that property which

[Sir Muhammad Yamin Khan.]

you have transferred to your child, on your child or not?" "Supposing my friend has transferred property worth an income of Rs. 400 a month to one child and property worth an income of Rs. 400 a month to another child and he has kept property worth Rs. 400 a month for himself, then my friend wants to tax him for the income of Rs. 1,200 a month. My friend will want to say, "show me your personal accounts so that I may see whether you have been spending the income from the transferred property upon the child or not". He is thus asking for the income of the child to be shown, he wants to see the account of the child's income, which he is not entitled to see. I have given figures of Rs. 400, but these may be further reduced to the extent that they really cannot be assessed to income-tax, and, then, he is asking to see the private accounts of the child which he is not entitled to see at all. Under these circumstances, I think that these proposed provisions, as drafted, are not in accordance with the real wishes which my Honourable friend has got in view; they go far beyond that. If my friend would confine himself only to what he had in view, we would not mind at all, but he cannot ask for return of income from immovable property which has been transferred into the name of another person and is no longer really property which is owned by the transferor. Therefore, I think the best course which the Government can take is to send this Bill to Select Committee, so that, all these matters may be discussed there and the provisions amended in the manner desired by my friend. Therefore, Sir, I support the motion for reference to a Select Committee.

Mr. A. Aikman (Bengal: European): Mr. President, the Group for whom I speak are completely in accord with the Honourable the Finance Member in his desire to prevent advantage being taken of loop-holes in the existing Income-tax Acts. Taxation in these days leaves a man such a small proportion of his income that he cannot reasonably be blamed for arranging his affairs in such a way as to attract as little taxation as possible—so long as they do it legally. (Laughter.) But when avoidance, legally effected, as it may be, and contrary to the intention of the law becomes widespread, then it is necessary to amend existing legislation and in such cases we are anxious to support the Honourable the Finance Member.

The Bill, before the House, endeavours to prevent the undesirable practices referred to in the Statement of Objects and Reasons, and while from the same Statement we learn that it is not the desire of Government to adopt any proposals involving the admission of a new principle, the provision of the Bill would appear to go far beyond a simple effort to amend legislation in order to prevent legal avoidance of tax.

Indeed, these proposals come very near to creating a new principle. Take a case where a man, with justifiable prudence, makes provision for his wife by transferring to her certain property—ownership passes completely from the man to his wife.

Under this new Bill, the income of that property would be added to the income of the transferor for taxation purposes and taxed accordingly. This is a new principle. My Honourable friend, Mr. Lloyd, referred to exceptions in sub-clause (3): (a) transfers for adequate consideration, and (b) transfers under an agreement to live apart. If these exceptions are comparable, I would like him to consider what might well be another exception, viz., transfers under agreements to live together.

Under an *ante-nuptial* marriage settlement, the income of the property transferred to the wife by the husband would be taxed in the hands of the wife only and separately from her husband's income. But under a *post-nuptial* settlement (an equally reasonable transaction, and not one made in an effort to avoid taxation), would the income of the property transferred be similarly treated? If not, I submit that the hardship would be a grievous one. Another point arises: is it the intention that only the income of property transferred after the 1st of April, 1937, be subjected to the operations of the Bill—or the income of earlier gifts? If so, how far back may the Income-tax Officer go in his search for revenue? These and other hardships undoubtedly will arise.

We, therefore, feel that there are issues involved in addition to those contemplated by provisions which seek to regulate those undesirable practices. And because of this we feel disposed to support the amendment to refer the Bill to a Select Committee.

Legislation which tends to make for references to Courts is always undesirable, otherwise I might have asked for some limitation for dealing with income arising from assets transferred directly or indirectly to the wife by the husband,—a limitation in which for example the Income-tax Officer might have the power to demand that the assessee should show cause why the income of such transferred property should not be aggregated with the income of the husband. But this, I feel, would be contentious. We are anxious to support the Honourable the Finance Member in dealing with the wrong-doer, but there is little doubt that if this Bill were to become law, a very short experience of its application would bring to light cases of hardship to the honest assessee and further legislation would be necessary. The Honourable the Finance Member has already indicated that he proposes shortly to introduce a comprehensive Bill dealing with income-tax generally. He has further indicated to the Honourable the Mover that he is opposed to reference to a Select Committee; and if this matter is an urgent one, cannot he or the Honourable the Member in charge of the Bill give us an assurance that when this comprehensive measure is introduced, it will contain provisions designed to remedy any hardships which may have arisen under the present proposals, and that he will take executive action to grant relief in such cases pending the introduction of the new measures.

The Honourable Sir James Grigg: Sir, I do not propose to deal with the technical points. I merely propose to apply myself to the question of referring the Bill to the Select Committee. As regards the technical points, I would like to say, by way of parenthesis, that it seems to me that the dialectical or logical difficulties which Mr. Lloyd admitted, when moving the Bill, and which other Members of the House have emphasised would have completely disappeared and the whole of the cases which have been described as hard cases would have disappeared, as far as I can understand at present, if we had adopted the logical attitude of going straight for the recommendation contained in the report advocating the aggregation of the wife's and husband's income. However, I merely mention that in passing and, as I said, I propose to leave to Mr. Lloyd at a later stage the reply on the technical points and the points which have arisen on the merits of the proposal and I will deal solely with the question of referring the Bill to a Select Committee. I am curiously being reminded of the first experience that I had in connection with the

[Sir James Grigg.]

House of Commons 16 years ago. In the first Finance Bill with which I had any personal concern, there was a considerable number of measures for dealing with legal avoidance of taxation, and if I shut my eyes I can almost imagine myself there again. Every single Member of the House got up and said that he was entirely in favour of this proposal in principle and that he was all for trying to prevent *malâ fide* measures being taken for the avoidance of taxation, but—there was always this “but”—you are hitting a large number of worthy people whom you do not intend to hit and you are, therefore, going much too far, and we shall at a certain stage propose amendments to confine the operations of this Bill to the real malefactor and to let out the *bonâ fide* person who indulges in these transactions. In other words, what we get is the acceptance of the Bill in principle but its complete destruction in detail.

To deal with the question of the Select Committee, the Honourable the Mover is quite willing that the Committee should be instructed to report in five days. I will leave out of account the fact that it would not take five days to come to a satisfactory definition which would discriminate infallibly between *bonâ fides* and *malâ fides* or between bogus and genuine but about five centuries. We leave that out of account and assume that the Select Committee could report in four or five days. Even that would mean that there would be no certainty and, indeed, practically no prospect whatever of getting this Bill passed into law by the 31st March. It would also mean that the Bill would not then have any application to Burma and that the Burma Government would be faced with the choice of either having to introduce corresponding legislation of their own or of acquiescing in different income-tax law in this respect for Burma and India and which would add one more complication to the work of operating the double income-tax relief arrangements and would emphasise in one more respect the consequences of separation. But, why do we want a Select Committee at all? In any case, the matter is admittedly urgent for Mr. Lloyd gave estimates of the loss of revenue which is occurring through the adoption of this practice and, as he said, he put the estimate at the lowest figure and I am sure that his figure might easily be doubled. Moreover the matter is quite simple. It would have become even simpler if we had gone a little further and spread our net a little wider so as to occupy a completely logical position. Our illogicality was designed in the interests of the tax-payer and in the interests of not jumping, if I may use a slang expression, the public in India in any matter in which there is no overwhelming argument of urgency. Everybody who spoke said that they accepted the principle of the Bill and they whole-heartedly support our efforts in getting at the tax dodger, but everybody wants exceptions. I may say that, after my experience at the Inland Revenue, I know exactly what that means. Every exception to tax avoidance legislation, which is designed to meet cases which are said to be hard, has invariably resulted in creating a door in the law through which a horse and cart can be driven, and I do not think I can remember a single exception to that general dictum. Therefore, for my part, I think I am bound to be extremely chary before admitting any exceptions at all in this legislation at this stage. The door has got to be shut and it is no good cutting out about nine-tenths of the door, and imagining that you have got a safe remedy against tax avoidance. It may be that, in the course of

the operation of this Bill, when it becomes an Act, genuine hard cases will arise, but in that connection I would say that, as Mr. Aikman has pointed out, if we are to do anything with this income-tax report, as I have every intention of proposing that we should do, then, there will have to be a pretty considerable piece of income-tax legislation in the course of the next year which will have to deal comprehensively with a large number of income-tax matters. I should certainly not regard the Assembly as committed towards repeating these particular provisions without change if it became obvious in the interval that changes were desirable and necessary. I should certainly not regard the House as precluded from proposing alterations in what we hope would be the permanent legislation. Indeed, I would go further and say that if in the course of the present year cases of real hardship arise and which can be satisfactorily and exclusively defined, then I have no objection in principle to dealing with these matters in the interim. Once we are convinced of the justice of the case and once we are convinced that they can be satisfactorily defined, we can issue a notification under section 60 of the Income-tax Act. But I do not want to mislead the House at all. At the moment, I am rather sceptical about most, if not all, of the cases of hardship which have been quoted here today and I do not include in cases of hardship the case of a man who, for reasons which seem to him to be sufficient, adopts a course which gets round the law in some other respects and then finds that as a result of that device he obtains an income-tax benefit. I do not regard it as a case of hardship at all that we should take away that benefit. A man can get round the Muhammadan, Hindu or any other law, the Talmudic law or anything like that. He can do that and quite often he can at the same time derive income-tax benefit from it. If it is to be regarded as hardship that they are to be prevented from realising the income-tax benefit, I do not agree. But subject to that warning which I most earnestly repeat, I have no objection whatever to giving the undertaking which Mr. Aikman asked, if genuine cases of hardship arise of which we are convinced and which can be satisfactorily defined, I have no objection to deal with them by the issue of a notification. That being so, I think the last argument for delaying matters by referring this Bill to a Select Committee has disappeared and I hope very much that the House will agree to take the Bill into consideration at once.

Babu Baljnath Bajoria: Sir, I rise to support this motion to refer this Bill to a Select Committee as proposed by my Honourable friend, Mr. Akhil Chandra Datta. The issues involved in this Bill are great deviations from the existing principles of taxation in income-tax and this Bill in my opinion if passed, as it is, into law will cause great hardship to the Indians generally and to the Indian business community in particular. This Bill is the result and is the first bitter fruit of the Income-tax Enquiry Committee report. The whole idea underlying this Bill is to get more revenue and even though the Honourable the Finance Member and the Honourable the Mover of this Bill agreed that there will be cases and real cases of hardship, and yet they are not prepared to agree.

The Honourable Sir James Grigg: Did the Honourable Member say that I admitted that there would be cases of hardship. I said nothing of the sort, I said if that was his contention.

Babu Baijnath Bajoria: I understood that way.

The Honourable Sir James Grigg: I said if they did arise and we were convinced that they arose, there would be an opportunity of dealing with them.

Babu Baijnath Bajoria: In my opinion true cases of hardship will undoubtedly arise.

The Honourable Sir James Grigg: Then don't say it is mine.

Babu Baijnath Bajoria: We should make provision in this Bill so that the *bona fide* taxpayer is not harassed. Four cases have been given where the wife and the minor son are not to be assessed separately. I will deal with the first point first, that is "from the membership of a wife in a firm of which her husband is a partner". I want to know what will happen if the wife has got money from her father and that money is invested in business. In that business, there are other coparceners and also her husband. Will the wife not be entitled to a separate share in that firm, because she has invested money which she has inherited from her father? I think such cases occur very often and they deserve consideration of the Honourable the Finance Member and the Mover of this Bill. The second point is about minors. A minor may get money from his maternal grandfather. In cases where a person has got no son and he has got a daughter and that daughter has got sons, he gives a lot of money to his maternal grandson. If that money is invested in business and that business also comprises of other coparceners, is the minor to be excluded altogether? Is he not to be considered a partner at all? Is his income not to be assessed separately? I cannot understand this point. The third point is:

"from the assets transferred directly or indirectly to the wife by the husband."

It is a well known fact that in many cases, Indians make gifts to their wives with a view to make provision for them in their old age just to provide that she may not be improperly treated by her children or other coparceners. If these gifts are invested separately in some shares or in some immovable properties and the income is given to the wife for her maintenance, then I do not understand why those gifts or such transfers should not be treated as separate income of the wife. These gifts are made not for the purpose of avoiding taxes.

Mr. N. M. Joshi (Nominated Non-Official): Then, pay up the taxes.

Babu Baijnath Bajoria: Yes, one should go on paying all through his life and keep nothing for oneself. I think there are real cases of hardship which will have to be discussed in the Select Committee and some provision should be made to give relief in cases of hardship. The whole idea of this Bill is not to tax income which is avoided but to raise the rate of income-tax. The income is shown separately in the name of a wife, or a minor son, but what the present Bill proposes is that all these incomes should be consolidated and to be taxed as one income so

that a higher rate of income-tax should be levied. I think this is most unjust. In India no provision is made for the maintenance of one's wife and children as is done under the English Income-tax Act. There is a great deal of difference between the income-tax law of India and that of England. In my opinion this Bill should be referred to a Select Committee so that suitable amendments may be made giving relief in cases of hardship. Sir, I support the motion for referring the Bill to the Select Committee.

Dr. Ziauddin Ahmad (United Provinces Southern Divisions: Muhammadan Rural): Sir, in spite of the warning of the Honourable the Finance Member about the manner in which such Bills are treated in the House of Commons, every Member there says he has full sympathy with the Bill but afterwards he begins to oppose the provision of the Bill in individual sections. I should like to repeat the same kind of warning. I may have personal sympathy with the Bill that persons should not avoid taxation under false excuses, and I begin with a 'but' also but there are some genuine cases to which I should like to draw his attention. One case is this: it is usually done in this country that we provide for the maintenance of a child who is really weak and who is not likely to earn a living later on. We practically set aside some income for him so that he may live in a comfortable manner. In this case if the Bill becomes law, though it was not the intention, I think these cases will be taxed. The provisions contained in the Bill really go far wider than what is really intended to provide. If a gift is made with the intention of avoiding income-tax, then it is not really a gift, but the gift should be a permanent separation so that if a father gives some money to his weak son, he will not be able to take it back. It is a kind of endowment which is not really temporary separation of money or mere account in book-keeping. It is really a gift, it is an endowment which he makes in favour of his son who is physically defective and he is not likely to have this income. This Bill practically stops such legitimate transfer and I think in this case it would be a hardship. Therefore, the wording given here may be misconstrued and may go further than the Honourable Member really had in view. Then as regards clause 2 (a)(iv), they say it is clear that if the married daughter or the minor child receives some money from the maternal grandfather, this will not be taxed. But to my mind the wording of this clause is such that it can be misconstrued unless it is explicitly stated in the negative at the end of the clause that such income will be excluded from the purview of this sub-clause. Therefore, I have only two things to point out; firstly, that the wording goes much further than the Honourable Member had in mind; and secondly, that it will discourage, which is not desirable, the father to make an endowment or gift to those minor sons and daughters who are physically defective and who ought to be provided during the lifetime of their parents. These are the two observations that I have to make.

Mr. A. H. Lloyd: Sir, the Honourable the Finance Member said that I would deal with a number of technical points, but I am afraid when he made that remark, he did not foresee how fully he would cover the ground himself in the remainder of his speech, and I do not find that he has left very much for me to say in detail. The Honourable the Deputy President moved for a Select Committee mainly in order to have an opportunity of

[Mr. A. H. Lloyd.]

inserting provisions in the Bill which would require the Income-tax Officer to distinguish between what he would call *bona fide* and *mala fide* transfer of property or admission into partnership in the case of a wife or minor child. I began by saying in my opening speech, and the point has been repeated by the Finance Member, that we regard that as an impossible task; and also even if a form of words could be devised it would be placing an impossible task upon the Income-tax Officers and upon the Courts, to which countless references would be made to ask them to administer those provisions. The position is, as has been admitted by the Finance Member, that we have gone, just as far as is necessary, to avoid that task which I have called an impossible task without going further and adopting generally the principle of aggregation of incomes. We might have gone further. The report recommended such aggregation in the case of the husband and wife. It is the practice in the United Kingdom; and if the benches before me had not been empty, I might have appealed to them in the hope that they would support the views of a newspaper which is an organ of their party, namely, the Calcutta paper "FORWARD", which in an article on the report says:

"We have no hesitation in according our approval to the proposal of taxing the earnings of a wife beyond a certain amount. A wife's income is generally an addition to the income of the husband and goes to increase the standard of living of the family as a whole. There can be no justification for exempting that income from income-tax."

Well, Sir, we fall short of that ideal which we might perhaps have been able to press with the assistance of the benches opposite if we had chosen to bring it forward.

Sir Muhammad Yakub (Rohilkund and Kumaon Divisions: Muhammadan Rural): Then why not wait for them and get their support?

Mr. A. H. Lloyd: We do not regard that of equal urgency because there is not the slightest doubt that the amount of income which is being diverted by husbands and fathers to the names of their wives and minor children is very much greater at the moment than any separate income of wives or minor children from other sources can be. Therefore, we have tried to keep the present measure,—and only the present measure, because I say nothing as to what our next proposal will be,—within the narrowest limits possible, subject to the necessity of having something that will work without putting an intolerable burden on the administration.

My Honourable friend, Sir Muhammad Yamin Khan, was rather disposed, so far as I could make out, at least in the earlier part of his speech, to complain that we had not gone far enough and that we ought to have gone the whole hog. I have attempted to give our reasons for not doing that at the present stage. Then, he proceeded to give what he called a hard case of a father who has made a transfer of assets to his minor child because of the fear that if he dies before he has done such a thing, the whole assets would under the Muhammadan Law go to some reversionary. I am not going to admit that that is a hard case, although it may be a

case where action is not taken with a view to defeat the Income-Tax Officer. But I am not going to admit that it is a case deserving of very much more sympathy than I am prepared to extend, as I said in my opening speech.

Sir Muhammad Yamin Khan: Sir, on a point of explanation, my point was not only this but that you are taxing some other person's property, and you are taxing a man for property which does not belong to him. Therefore, you are going against the principle.

Mr. A. H. Lloyd: I am coming to that. As I was saying, I do not regard that as a case deserving of much more sympathy than the case of the man who transfers property to his wife, because he is afraid he may come down in a speculative venture. Then, Sir Yamin Khan has reminded me that whatever questions of sympathy or hard cases or anything else are concerned, he goes on the principle that you should not tax one person for another person's property. Surely, that is the principle which underlies this Bill, that in certain cases you should do so. And if I may refer again to Sir Yamin Khan's speech, he gave an example of the case of a father with an income of Rs. 1,200 a month, who divided his assets so that he kept an income of Rs. 400 a month and each of his two minor children has an income of Rs. 400 a month; and he said that that would cause great trouble because the Income-Tax Officer would want to see all the private accounts of the family. Surely, our proposal is one which is designed to prevent the need for seeing the private accounts, because we go to the father who by his own action created this situation. And the point really is,—and this is a point of principle,—that the father who is the natural guardian of his children still has Rs. 1,200 a month at his disposal. That is why our case is that there is no reason why the rate of income-tax on the aggregate sum should be reduced.

I think the Finance Member has dealt fully with what Mr. Aikman said. He has given an explanation as regards the intentions of Government and an assurance regarding the consideration of possible hard cases. There is only one point that I might perhaps refer to, and that is the question whether this will apply to gifts made before the 1st April, 1937. This is the plain meaning of the Bill; it is intended to apply to the income of gifts made at any time. We shall see in practice whether there is any real difficulty in administering that. But of course the income of past years from such gifts will not be taxed, as clause 5 says quite clearly. The Honourable Member from Calcutta gave various examples of what he regarded as possible hard cases. One was the conceivable case where a husband and wife may, apart from the voluntary act of the husband, live together after there had been an admission of the wife to partnership. I beg leave to doubt whether in practice that will occur in any but the rarest occasions, and I do not think that it is reasonable that we should be asked to make amplifications of these provisions with all the inevitable loopholes which such amplifications would create, in order to deal with such an unusual state of affairs, when we still have the fact that the taxation, even in that case, for the husband and wife together is in accordance with a very arguable principle which has had the support of the report of the expert inquiry.

[Mr. A. H. Lloyd.]

Then, my Honourable friend, Dr. Ziauddin Ahmad, referred to what is the usual practice of providing for the maintenance of a child who is weak and unlikely to get on in the world. I think my Honourable friend forgot that whether or not he transfers assets to the name of such child while the child is a minor, he has got to provide under the ordinary law for that child: that child is his dependent and he is responsible for his maintenance and I do not see why, because he chooses one particular method of making that provision rather than another, he should reduce the amount of income-tax which has to be paid to the State or why the contribution of himself and his child to the State should be lower than if he pursues the more normal method of providing maintenance for his child in a straightforward way without transfer of assets. My Honourable friend's doubts as to the interpretation of sub-clause (a) (iv) of the proposed sub-section to be introduced in section 16 of the Indian Income-tax Act also raises, I am afraid, a point where I can agree with him. I have attempted to explain that there was no possibility of the misunderstanding which he foreshadowed. I have assured him outside the House that I shall be at pains to circularise Income-tax Officers to make it quite clear that they do not misunderstand what are in fact the plain provisions of the law in this regard, and I do not think that we can possibly consider the introduction into the measure of words which in our opinion are entirely unnecessary in order to safeguard a position which is fully safeguarded by the Bill as it stands. I am referring to property which is given to a minor child from, say, the maternal grandfather. I do not think there is anything more I have to say except the general remark that the object of this Bill will not be to discourage the making of transfers of assets and similar transactions where there is any reason to make them without reference to income-tax liability. It will be merely removing an encouragement to such transactions, an encouragement which experience shows it is very desirable that we should remove if we are to safeguard the revenue. I, therefore, oppose the motion for reference to Select Committee.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

"That the Bill be referred to a Select Committee consisting of the Honourable Sir Nripendra Sircar, the Honourable Sir James Grigg, Mr. A. H. Lloyd, Mr. N. M. Joshi, Mr. A. Aikman, Babu Baijnath Bajoria, Sir Muhammad Yakub, Pandit Lakshmi Kanta Maitra, Sir Muhammad Yamin Khan, and the Mover, with instructions to report on or before the 15th February, 1937; and that the number of Members whose presence shall be necessary to constitute a meeting of the committee shall be five."

The Assembly divided.

AYES—10.

Bajoria, Babu Baijnath.
Bhagchand Soni, Rai Bahadur Seth.
Datta, Mr. Akhil Chandra.
Fazl-i-Haq Piracha, Khan Bahadur
Shaikh.
Ghiasuddin, Mr. M.

Parma Nand, Bhai.
Rajab, Raja Sir Vasudeva.
Yakub, Sir Muhammad.
Yamin Khan, Sir Muhammad.
Ziauddin Ahmad, Dr.

NOES—44.

Abdul Hamid, Khan Bahadur Sir.	Mehta, Mr. S. L.
Ahmad Nawaz Khan, Major Nawab Sir.	Menon, Mr. K. R.
Aikman, Mr. A.	Metcalf, Sir Aubrey.
Anderson, Mr. J. D.	Mitchell, Mr. K. G.
Bajpai, Sir Girja Shankar.	Morgan, Mr. G.
Bansidhar, Rai Sahib.	Mukherjee, Rai Bahadur Sir Satya Charan.
Bhide, Mr. V. S.	Nagarkar, Mr. C. B.
Buss, Mr. L. C.	Naydu, Diwan Bahadur B. V. Sri Hari Rao.
Chanda, Mr. A. K.	Noye, The Honourable Sir Frank.
Chapman-Mortimer, Mr. T.	Rau, Sir Raghavendra.
Craik, The Honourable Sir Henry.	Roy, Mr. S. N.
Dalal, Dr. R. D.	Sale, Mr. J. F.
DeSouza, Dr. F. X.	Scott, Mr. J. Ramsay.
Gidney, Lieut.-Colonel Sir Henry.	Sher Muhammad Khan, Captain Sardar Sir.
Griffiths, Mr. P. J.	Sircar, The Honourable Sir Nripendra.
Grigg, The Honourable Sir James.	Thorne, Mr. J. A.
Hudson, Sir Leslie.	Tottenham, Mr. G. R. F.
James, Mr. F. E.	Verma, Rai Sahib Hira Lal.
Jawahar Singh, Sardar Bahadur Sardar Sir.	Williams, Mr. A. de C.
Joishi, Mr. N. M.	Witherington, Mr. C. H.
Lal Chand, Captain Rao Bahadur Chaudhri.	Zaftrullah Khan, The Honourable Sir, Muhammad.
Lalit Chand, Thakur.	
Lloyd, Mr. A. H.	

The motion was negatived.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

"That the Bill further to amend the Indian Income-tax Act, 1922, for certain purposes, be taken into consideration."

The motion was adopted.

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

The Assembly re-assembled after Lunch at Half Past Two of the Clock, Mr. Deputy President (Mr. Akhil Chandra Datta) in the Chair.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is:

"That clause 2 stand part of the Bill."

Mr. J. D. Anderson (Secretary, Legislative Department): Sir, I beg to move the following amendment:

"That in clause 2 of the Bill, in clause (a) of the proposed new sub-section (3) of section 16 of the Indian Income-tax Act, 1922, after the words 'of such individual as arises' the words 'directly or indirectly' be inserted."

This amendment is intended to make clear beyond any reasonable doubt the intention of the draftsman and to remove what may be a possible omission in the draft. To explain my meaning, I will with your permission read the relevant words of the draft as it stands. The proposed new sub-section (3) reads:

"In computing the total income of any individual for the purpose of assessment, there shall be included—

(a) so much of the income of a wife of such individual as arises —"

[Mr. J. D. Anderson.]

May I ask Honourable Members to turn to the third sub-clause?

"— from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration . . .".

It is possible if those words stand as they are, that some income-tax expert will take advantage of them in some such way as the following. A husband will give to his wife a sum of money, clearly that would be for the purposes of this provision a colourable transaction and there will be no adequate consideration, no consideration at all. The wife with this money will then buy from her husband shares to the value of the amount which he has already given her. If this measure ever comes on the Statute-book, it would be a taxing Act and as such the Court will construe it with the greatest strictness in favour of the subject. It might be possible to argue that the taxing authority would not be entitled to reopen the whole transaction between the wife and the husband, that he would be entitled only to deal with the sale, a transaction in which there is adequate consideration and that he would not be entitled to go back to the gift, a colourable transaction, which is the one which it is intended to hit. The intention of the amendment which stands in my name is to remove any possible doubt about the meaning of this section.

Mr. Deputy President (Mr. Akhil Chandra Datta): Amendment moved:

"That in clause 2 of the Bill, in clause (a) of the proposed new sub-section (3) of section 16 of the Indian Income-tax Act, 1922, after the words 'of such individual as arises' the words 'directly or indirectly' be inserted."

Sir Muhammad Yakub: On a point of order, Sir. We find that there are only two Indian elected Members present in the whole House, and I submit to you whether the House as such can discuss any measure, and, particularly, an important measure like the one which we are discussing now, which touches the pockets of the people of this country.

Mr. N. M. Joshi: Raise this point of order when the President is here.

Sir Muhammad Yakub: The Deputy President is the President—when he is in the Chair. We have got a precedent. On a similar occasion when Honourable Members had left the House, the late Mr. Patel, who was then occupying the Chair, ruled that the House was not competent to deal with important measures and he adjourned the House. I submit that the present occasion is more important than that, and, therefore, the House should now be adjourned. There are only two Indian elected Members present.

[At this stage, Mr. President (The Honourable Sir Abdur Rahim) resumed the Chair.]

Mr. President (The Honourable Sir Abdur Rahim): A point of order has been raised, it is understood that since there are only two Indian elected Members, the debate should be adjourned. It appears to have been pointed out before, that so long as there is a quorum, it is not within the power of the President to adjourn the House on a ground like this. The Chair may also point out that in this House no distinction can be made in a matter like this between one Member and another Indian or European, and whether he is elected or nominated, official or non-official.

Mr. Akhil Chandra Datta: I think that the change introduced proves that, on matters of detail, it is necessary to go to the Select Committee. They themselves think that there is room for amendment. However, apart from that, I may say that this is tightening up of the tightening law all the more by the addition of these two simple words "directly or indirectly". It has been said "Oh, it is very difficult to distinguish between what is a *mala-fide* transaction and what is a *bona-fide* transaction". I fail to appreciate this attitude and this difficulty. The question of *bona-fide*, *mala-fide* and *benami* transactions comes up in our Indian Courts almost daily, and this will be borne out, I am sure, by the Honourable the Law Member. This question does not arise merely in civil Courts but also in criminal Courts, because there is a section in the Penal Code punishing fraudulent transactions. If you want to tax people, you ought to be able to distinguish between the guilty and the not guilty.

The Honourable Sir James Grigg: If I may rise to a point of order, the Honourable Member is arguing the whole question over again instead of the narrow point raised by the amendment.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member must confine himself to the amendment. The stage of consideration is over.

Mr. Akhil Chandra Datta: Subject to your ruling, this is not a narrow point. The point is very large. It throws open a floodgate for roping in *bona fide* transactions by the addition of these three simple words. In the guise of a narrow question, a very large question has been opened. I was going to say that it is something like the Court saying "I find it difficult to distinguish between the guilty and the non-guilty. Therefore, I punish the non-guilty also". This comes practically to that. It is said that if any genuine hard cases arise later on, there will be an exemption by notification under the special powers in section 60. While dealing with the promise of such notification, I may be pardoned for saying that I was awfully disappointed with the attitude of the European Group. Their spokesman made a speech in consonance with my motion but towards the end, he said that if he got an undertaking he would be satisfied. That is a sort of attitude which it is difficult to appreciate. It is simply placing the cart before the horse. You might as well say to a man "You had better go to jail. Later on, I shall consider the remission of your sentence. I shall ask the Governor General to exercise his prerogative for mercy". Then, Sir, about the observations of the Honourable the Finance Member, we have by now been reconciled to his habitual and characteristic contempt of public opinion and the opinion of this House. I, therefore, choose not to take any notice of his remarks.

Mr. A. H. HUGHES: All I have to say is this. As the remarks of the Honourable Member who has just sat down do not appear to have been addressed to the amendment which is before the House, there is really nothing for me to say in reply.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

"That in clause 2 of the Bill, in clause (a) of the proposed new sub-section (3) of section 16 of the Indian Income-tax Act, 1922, after the words 'of such individual as aforesaid' the words 'directly or indirectly' be inserted."

The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

"That clause 2, as amended, stand part of the Bill."

The motion was adopted.

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

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

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

Mr. A. H. Lloyd: Sir, I move:

"That the Bill, as amended, be passed."

Mr. President (The Honourable Sir Abdur Rahim): The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

THE CONTEMPT OF COURTS (AMENDMENT) BILL.

The Honourable Sir Nripendra Sircar (Law Member): Sir, I beg to move:

"That the Bill to amend the Contempt of Courts Act, 1926, for a certain purpose, be taken into consideration."

I would like to tell the House that this Bill does not raise any comprehensive question dealing generally with contempt of court but is confined to a very narrow point and that is this. In 1926, this House passed an Act which is now known as the Contempt of Courts Act, Act No. XII of 1926. The House passed that Bill on the assumption that after the passing of the Bill the High Court will have no power to sentence a man indefinitely to be kept in detention. It was stated by the then Home Member, I believe, Sir Alexander Muddiman, that that was the object of the Bill, and I find also that in his final speech that was repeated. The House thought that it had passed a Bill as the result of which the High Court will be prevented from keeping a man in detention for more than six months for contempt of court. Recently, Sir, this matter came up before the Lahore High Court in connection with an application made by Lala Harkishen Lal, who had been ordered to be kept in jail indefinitely. It was argued for him that the High Court had no power to detain him for more than six months, by reason of Act XII of 1926. That contention was not accepted by the learned Judges. Of course, they were quite right in ignoring statements which had been made in the House, and also it is an accepted principle that, the unexpressed intention of the House does not matter in the least; the question is whether, as expressed, that intention has been carried out. They came to the conclusion that it had not been carried out and that they still have got the power to keep men in jail indefinitely as a result of summary proceedings. This Bill has now been brought forward by me for making good the assurance which had been given to the House and the *raison d'être* of the decision of the Lahore High Court is that the superior Courts are not affected unless their power is expressly taken away; and that is what the Bill now proposes to do, because we are omitting the word "subordinate" from section 2, which

means that this will apply not merely when the High Court is dealing with contempt of subordinate Courts but also with cases of contempt before itself, and clause 3 makes it perfectly clear—that is at least what we think:

“Provided further that notwithstanding anything elsewhere contained in any law no High Court shall impose a sentence in excess of that specified in this section for any contempt either in respect of itself or of a Court subordinate to it.”

We have tried to make the position perfectly clear; we are trying it a second time, and I hope that this time the intention will be carried out. Sir, as I said as regards the legal question of contempt of court generally I have no desire to enter into it. On the one hand—I may be excused if I say a few sentences—it has been said that law still exists, of summary procedure for contempt of court, and it has been felt that such a power must be retained by the Court. On the other hand, eminent English judges have also remarked that this is an archaic procedure and the situation is really an incongruous one, *viz.*, the prosecutor taking upon himself the role of the judge; but, as I said, Honourable Members need not be troubled, so far as this Bill is concerned, with any of those bigger problems. What is intended to be done by this Bill is to carry out a promise which was made to this House, *viz.*, that after the Bill was passed, it would not be possible for any High Court to inflict any longer sentence than six months. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim): Motion moved:

“That the Bill to amend the Contempt of Courts Act, 1926, for a certain purpose, be taken into consideration.”

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): Sir, I will say a few words with regard to this Bill. I am very glad that the intention of the former Act is being made very clear to the High Court. People will be very much thankful for this Bill having been brought forward for barring these mistakes from being committed any more, but, Sir, I would like to know from the Honourable the Law Member, when that intention was wrongly carried out and when powers were assumed in sending people to jail for an indefinite time, what is the remedy available to such people? The Statement of Objects and Reasons made it clear, but, of course, the High Court Judges may not be bound by that. However, a wrong has been done and I would like to know what the Honourable the Law Member would suggest: what is the remedy for the wrong done to those who have suffered? I will not call it a mistake, I would call it a wrong done to the people, and, therefore, I would like that some light should be thrown upon my question.

Mr. Akhil Chandra Datta (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I rise not to oppose the Bill, but to support it.

3 P.M. Sir, I was very unlucky yesterday, and I had some unkind words from the Honourable the Law Member yesterday. Today, I propose to retaliate by giving my whole-hearted and unqualified and enthusiastic support to his Bill. Now, Sir, ordinarily the Legislature makes the law, and it is for the Courts to administer the law, and for administering the law the Courts have got to interpret the law. But

[Mr. Akhil Chandra Datta.]

curiously enough, here is a case in which it has become necessary for the Legislature itself to interpret its own law. I do not know,—I have not thought over the matter,—I cannot re-call to my mind another instance in which it became necessary for the Legislature itself to interpret the law.

Now, one reason why we welcome this legislation is this. Most of these contempt cases are cases directed against the press—there are, of course, other kinds of contempt cases, but in the majority of instances proceedings are directed against the press for comments upon judges, their judgments, and their procedure. In fact, this Act of 1926 curtails the freedom of the press, and in view of that the Bill was opposed by the Opposition at the time, but, Sir, all the same, there was this great redeeming feature of the Act of 1926 that it did put a restriction upon the maximum period for which the High Court could imprison the party in contempt. Before the Act of 1926 which the Bill before us seeks to interpret, the powers of the High Courts were unlimited. They could pass any sentence of imprisonment, and award any amount of fine. Now, one of the principles of that Bill was as declared by the then Home Member who piloted the Bill, to define and to limit the power of the High Court as regards the maximum sentence and that limit was put at six months in section 3 of that Act. That was the limit, but, Sir, as we have been told by the Honourable the Law Member, one High Court, in spite of that clear language in section 3, was of the opinion that they had the power to give a higher sentence than six months and that is the reason why it has become necessary to make clear the intention. I have no manner of doubt—and speaking for myself I have examined the provisions and the language of the Act of 1926—I do not find the slightest difficulty in the interpretation of that Act and in finding out the intention of that Act. I do not, however, think I shall be justified in taking up the time of the House because it appears to me that it is a non-controversial measure and I believe that is the feeling of the House. That being the position, I do not think I shall be justified in taking up the time of the House. I whole-heartedly support this Bill.

The Honourable Sir Nripendra Sircar: Sir, I have got only a few words to add. My Honourable friend, Mr. Lalchand Navalrai, wanted to know what is the remedy of the persons to whom a wrong has been done. Now, the question is—has any wrong been done? This House cannot criticise the judgment of the High Court Judges as nobody has taken it up to the Judicial Committee. If, as a matter of fact, their construction is right and if one assumes that they are right. . . .

Mr. Lalchand Navalrai: Why assume?

The Honourable Sir Nripendra Sircar: Because there is the judgment and it has not been upset by a court of appeal. I assume it is correct.

Mr. Lalchand Navalrai: That is nothing.

The Honourable Sir Nripendra Sircar: At any rate, we cannot discuss the High Court Judges here. In the judgment, no wrong has been done to them. Now, what is the remedy that my friend suggests. I was inquiring if my friend, Mr. Lalchand Navalrai, was a Member of the House in 1926.

Mr. Lalchand Navalrai: I was not.

The Honourable Sir Nripendra Sircar: If he was, then I would have seriously considered whether I could advise somebody to sue him for damages for neglecting and not putting the Bill right.

Mr. Lalchand Navalrai: Who is responsible for it now?

The Honourable Sir Nripendra Sircar: Their successors are not responsible for it. There is no cause of action against anybody.

Mr. Lalchand Navalrai: The Bill was right but the interpretation of it was wrong, a point with which even the Honourable the Law Member agrees.

The Honourable Sir Nripendra Sircar: I hope my friend will appear in that Court and convince them that they are wrong. My friend, Mr. Datta, said that some unkind words were used yesterday. I do not remember having used any unkind words against him.

Mr. Akhil Chandra Datta: Never mind.

The Honourable Sir Nripendra Sircar: If I have, I am extremely sorry for it, but I am sure I did not. I find that all sections of the House are supporting the Bill, and, therefore, I should not take up more time.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

"That the Bill to amend the Contempt of Courts Act, 1926, for a certain purpose, be taken into consideration."

The motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Sir Nripendra Sircar: Sir, I move:

"That the Bill be passed."

Mr. President (The Honourable Sir Abdur Rahim): The question is:

"That the Bill be passed."

The motion was adopted.

THE CODE OF CIVIL PROCEDURE (SECOND AMENDMENT) BILL.

(INSERTION OF NEW SECTION 44A.)

The Honourable Sir Nripendra Sircar (Law Member): Sir, I beg to move:

"That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes, (*insertion of new section 44A*), as reported by the second Select Committee, be taken into consideration."

[Sir Nripendra Sircar.]

Sir, the report of the Select Committee will show that there has been no difference between the Members of the Committee. Besides, the object of the Bill is a very narrow one. As Honourable Members may possibly remember, in the case of a foreign judgment there was no procedure by which that judgment could be executed in India with the result that a suit had to be brought which is known as a suit on a foreign judgment, and the whole idea of this Bill is to expedite procedure and to cheapen the cost by making the decree executable here. Honourable Members will find if they go through the Bill that that is the whole object of this Bill. I may explain to the House as to why a second reference to the Select Committee was necessary. It was not rendered necessary by reason of any difference of opinion or any serious contentions raised—there were certain minor points certainly,—but because an allied matter which is the subject of the next Bill came up, and we were relieved from considering whether awards should be included in the first Bill. The second Bill related to arbitration award and the House accepted the idea because it was a convenient one that the two Bills should go before the same Committee. That was done. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

“That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes, (*insertion of new section 44A*), as reported by the second Select Committee, be taken into consideration.”

The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

“That clause 2 stand part of the Bill.”

Mr. F. E. James (Madras: European): Sir, I beg to move:

“That in clause 2 of the Bill, in the proposed section 44A, for sub-section (3) the following be substituted:

(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.”

I think I ought to explain that I did attach a note to the report of the Select Committee to the effect that I reserved to myself the right to move minor amendments in order to clarify the intentions of the Select Committee. For some reason or other, my note has not been printed along with the report of the Select Committee. It was the intention of the Select Committee that these proceedings which are referred to in this clause should be subject to the provisions of section 13, and that the judgment-debtor should have the right to oppose the proceedings on any grounds specified in that section. The Bill provides that the decree of a foreign court may be executed, as if it had been passed by the District Court. Consequently, notice will not be issued except under Rules 21 or 37 of Order XXII. Section 13 of the Civil Procedure Code was intended to stipulate what defences might be raised in a suit brought to endorse a foreign judgment and the Select Committee intended

that the judgment-debtor should be allowed to raise these defences in opposition to an application for execution. If he should succeed in his arguments before the Court he should also have the right to have execution refused under any of the circumstances specified in section 13 of the Civil Procedure Code. That is, I believe, substantially the procedure in England. Misgivings have been expressed as to whether the clause as now drafted does put clearly, and beyond a shadow of doubt, the intention of the Select Committee. Therefore, my amendment has been drafted with the assistance of one of the Government Departments in order to make perfectly clear what was in fact the intention of the Select Committee. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim): Amendment moved:

"That in clause 2 of the Bill, in the proposed section 44A, for sub-section (5) the following be substituted :

(5) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13."

The Honourable Sir Nripendra Sircar: Sir, I would accept this amendment, but I do not want to put it on the ground that it was the real intention of the Select Committee, because, after all, the intention of the Select Committee, so far as this House is concerned, must be judged by what they have expressed and not what they have not cared to express. But the position simply is this. It was certainly my impression, on the reading of the authorities, that the defences stated in the amendment would be open even if this amendment were not added. As I told the House if this Bill is dropped, suits will have to be brought on foreign judgments. When such a suit is brought on foreign judgment under section 18, these defences are open. For instance, take the clause (e) of section 18 "where it has been obtained by fraud", surely it is neither the intention of the Select Committee nor is it borne out by the authorities that when a judgment has been obtained in British courts by fraud and when the decree comes here for execution, the judgment-debtor should not have the liberty of showing that this decree has been obtained by fraud. That cannot be. Therefore, I have doubts whether this is really necessary, but if my Honourable friend wants to make it clear and for the sake of better caution, I have no objection to this amendment being accepted.

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): Is it as clear as mud?

The Honourable Sir Nripendra Sircar: Without your assistance that cannot be done.

Mr. President (The Honourable Sir Abdur Rahim): The question is :

"That in clause 2 of the Bill, in the proposed section 44A, for sub-section (5) the following be substituted :

(5) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree

[Mr. President.]

under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13."

The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

"That clause 2, as amended, stand part of the Bill."

The motion was adopted.

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

Mr. F. E. James: Sir, I beg to move:

"That after clause 2 of the Bill, the following new clause be added:

"3 In Rule 22 of Order XXI of the First Schedule of the Code of Civil Procedure, 1908, in 1(b) after the words 'party to the decree' the following shall be inserted, namely:

'or where an application is made for execution of a decree filed under the provisions of section 44-A'."

Order XXI, Rule 22 would, therefore, read as follows if this amendment were made:

"Where an application for execution is made more than one year after the date of the decree or against the legal representative of a party to the decree or where an application is made for execution of a decree filed under the provisions of section 44-A, the Court executing the decree"

Notice will have to be issued to the judgment-debtor to show why the foreign judgment should not be executed and that execution will not issue until the lapse of time specified in the notice or the dismissal of the objections raised by the judgment-debtor under section 18, Code of Civil Procedure. In the Rules as they stand now under Order XXI, no notice is required to be issued to the judgment-debtor except under rule 22 when the decree is one year old or the execution is against the legal representative of a party to the decree or by rule 37 when the application is for personal arrest. In all other cases, the executing Court orders the issue of execution without notice of any kind to the judgment-debtor. The Bill provides that a decree of a foreign Court may be executed as if it had been passed by a District Court and consequently notice will not be issued except under rules 31 or 37. The Select Committee obviously, and in fact the Bill, intended that the judgment-debtor should be allowed to raise the defences in section 18 of the C. P. C. in opposition to the application for execution. It can, therefore, be suggested to us that it is necessary to provide that notice of the application for execution must be given in every case and that the judgment-debtor shall have the opportunity of raising the defence before execution is actually issued. That is the purpose of this amendment, which I think is clear when the amendment is read together with the rule as it stands at present. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim): Amendment moved:

"That after clause 2 of the Bill, the following new clause be added:

'3 In Rule 22 of Order XXI of the First Schedule of the Code of Civil Procedure, 1908, in 1(b) after the words 'party to the decree' the following shall be inserted, namely:

'or where an application is made for execution of a decree filed under the provisions of section 44-A.'

The Honourable Sir Nripendra Sircar: Sir, I have great doubts whether the House ought to accept this amendment because it will be realised that our Bill was introduced only for amending section 44 by putting in section 44-A. This amendment proposes a change in rule 22 of Order XXI. I do not want to press the technical point that this is outside the scope of our Bill, there being no intention to amend any of the orders. While not pressing the technical objection, I think it is not right that a matter which was not considered by the Select Committee should really now be moved. Now, let us see what are the reasons why my Honourable friend wants this rule. Under the Code of Civil Procedure a notice has got to be given if the decree is more than one year old or if the decree is going to be executed not against the original judgment-debtor but against the legal representative. Now, why is that really wanted for a judgment of a foreign Court. These cannot be executed in complete ignorance of the judgment-debtor because execution will lead to some process whether for his arrest or attachment of the moveable or immoveable property and so on. Obviously, he does not lose the opportunity of presenting his case and coming forward and urging that this decree ought not to be executed for the following reasons. Therefore, on the merits I see no strong objection to the amendment and had I felt any over-powering necessity for introducing this change in Order XXI, rule 22, I might have been prepared to consider the matter with more alacrity, but my real difficulty is that, as I said, apart from the technical considerations I do not think it right that a matter which has not been considered by the Select Committee should now be introduced. I am afraid I cannot support this amendment.

Mr. Lalchand Navalrai: Sir, I had no intention of speaking on this. I was also a party to the Select Committee on this Bill. But when the Honourable the Law Member is so kind as to say that he is not pressing his technical point, I think the other argument of his does not appeal to me at all, and I do not think it should appeal to the House. The Honourable Member says that the man will not be taken unawares with regard to this foreign decree of judgment because some process will be issued against him and he will come to know. Sir, I think that will be punishing the man first and then giving him an opportunity to put his objections before the Court. He will come under arrest before the Court and then he will be asked to put in his objections or whatever else it may be.

The Honourable Sir Nripendra Sircar: No, because under the section relating to notice, he is entitled to notice except when the Court on affidavit has reason to believe that he is about to abscond.

Mr. Lalchand Navarai: But then his property will be attached all the same at once. Therefore, I am submitting that it will be a hardship, and, in that sense, I would request the Honourable Member to consider this question very seriously. Of course, it was not brought before the Select Committee but that is no defect at all because many things come to notice afterwards. If the Honourable Member had said that this was not a matter for the Select Committee and, therefore, the Honourable Member had opposed it on the ground that it was out of scope, that would have been a ground which perhaps I would have yielded to. But now as the Honourable Member has been kind enough, once in a way at least, to say that he is not pressing the legal technicality, I would request the House to consider this question. This is a matter which should not be taken lightly and I hope the House will give due consideration to this and accept this amendment.

Mr. F. E. James: Sir, may I rise to a point of personal explanation, because I am put in a rather difficult position? I am not of course able to reply to the Honourable the Law Member's arguments, but I think it is my duty to explain that this matter is one that we took up with the Honourable Member's own department last May, and it was the subject of correspondence with that department. At the time of the Select Committee which met during this Session I raised matters which had been the subject of correspondence with the Honourable Member's department, but it was generally agreed, an agreement in which I acquiesced, that in the absence of certain members of the Select Committee who had been of great assistance it would not be proper to deal with these in the Select Committee. And, therefore, it was suggested that I should deal with them directly by way of amendments on the floor of this House. Under the circumstances, therefore, I find it just a little bit difficult to understand the argument of my Honourable friend who opposed this on the ground that it is new matter which should have been brought before the Select Committee and which the House should not now agree to accept after the report of the Select Committee stage. I am not able to say any more than that because of the rules of debate but I think I ought to make it perfectly clear that this is not a matter which has been brought up at the last moment but one which has been under correspondence with the Honourable Member's own department ever since last May.

Mr. President (The Honourable Sir Abdur Rahim): The Chair thought the Honourable Member was giving a personal explanation, because he has no right of reply.

The Honourable Sir Nripendra Sircar: Sir, may I just put in a word? I should like to know whether other Members who are present really press for this amendment. I made it perfectly clear in my speech that I really have no serious objection, but I thought it was rather unnecessary. If every one wants it, I have no objection to it.

Mr. N. M. Joshi (Nominated Non-Official): No, we are not interested.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

"That after clause 2 of the Bill, the following new clause be added :

'3 In Rule 22 of Order XXI of the First Schedule of the Code of Civil Procedure, 1908, in 1(b) after the words 'party to the decree' the following shall be inserted, namely :

'or where an application is made for execution of a decree filed under the provisions of section 44-A.'

The motion was adopted.

New clause 3 was added to the Bill.

Mr. President (The Honourable Sir Abdur Rahim): With reference to the complaint that was made by Mr. James that he put in a note which has not been printed, what happened was that the reports on the two Bills relating to the Civil Procedure Code were sent to the office at the same time, but the Honourable Member's note did not specify to which of these two Bills the note was intended to be attached. As a matter of fact, it has been printed to another Bill which relates to arbitration in British India. This was due to the fact that the reports on the two Bills came in at the same time.

The question is:

"That clause 1 stand part of the Bill."

Mr. J. D. Anderson (Secretary, Legislative Department): Sir, I beg to move:

"That in sub-clause (1) of the clause 1 of the Bill, for the brackets, words and figures '(Second Amendment) Act, 1935' the brackets, words and figures '(Amendment) Act, 1937' be substituted."

Sir, I do not think I need say anything on this.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

"That in sub-clause (1) of the clause 1 of the Bill, for the brackets, words and figures '(Second Amendment) Act, 1935' the brackets, words and figures '(Amendment) Act, 1937' be substituted."

The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

"That clause 1, as amended, stand part of the Bill."

The motion was adopted.

Clause 1, as amended, was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Sir Nripendra Sircar: Sir, I beg to move:

"That the Bill, as amended, be passed."

Mr. President (The Honourable Sir Abdur Rahim): The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

THE ARBITRATION (PROTOCOL AND CONVENTION) BILL.

The Honourable Sir Nripendra Sircar (Law Member): Sir, I beg to move:

"That the Bill to make certain further provisions respecting the law of arbitration in British India, as reported by the Select Committee, be taken into consideration."

[Sir Nripendra Sircar.]

The report of the Select Committee on this Bill is unanimous and, as you pointed out, the note of Mr. James has been printed by mistake. The whole object of this Bill will be found in the first five lines, namely, the Preamble:

"Whereas India was a State signatory to the Protocol on Arbitration Clauses set forth in the First Schedule, and to the Convention on the Executive of Foreign Arbitral Awards set forth in the Second Schedule, subject in each case to a reservation of the right to limit its obligations in respect thereof to contracts which are considered as commercial under the law in force in British India "

We are bound by these obligations; we had not much of a free hand in drafting the Bill. We had to follow the language and the substance of these documents and that explains why the Bill has been drafted in this particular form. The Bill was placed before the Select Committee. There has been no objection to any of the clauses, and I move.

Mr. President (The Honourable Sir Abdur Rahim): Motion moved:

"That the Bill to make certain further provisions respecting the law of arbitration in British India, as reported by the Select Committee, be taken into consideration."

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): Sir, my intention in getting up is only to ask something to be cleared up. In clause 2, I find the words:

"In this Act 'foreign award' means an award on differences relating to matters considered as commercial under the law in force in British India."

I would like to know if there is any statutory law dealing with commercial questions or it would be any common law or any inherent power, or it is left to the judges to find out for themselves how to decide or if there is actually any statutory law in India. In England, there are customs and manners and also certain conventions called there common law, law of equity, and also parliamentary law that govern these commercial questions. In India I do not find any Act specifically applicable to commercial questions. It may be that we have Companies Act here or some other Acts which may give some help, but there is no exclusive commercial law. I would like to be enlightened on that.

The Honourable Sir Nripendra Sircar: Sir, I will throw as much light as possible to enlighten my Honourable friend. I would like to know first in what sense he agreed to it when he signed the report of the Select Committee. My friend will notice that the words "commercial law" are not used in that section. Nowhere do you find the words "commercial law". The words used are "matters considered as commercial under law in force". The law in force includes, apart from statutory law, judge-made law, decisions of Courts which are binding on parties and that is also law. Therefore, it is quite true that we have got the Indian Penal Code, but we have not got a commercial Code. But there is no difficulty among judges dealing with commercial matters to find out what cases come under that description. I may tell the House that the question has come up very often in the Calcutta and Bombay High Courts in these circumstances. Under the rules of both the Courts, which rules again are copied from the rules of the Supreme Court of England, a particular judge is allocated for hearing commercial cases. There are special rules applicable to commercial cases directed to expedite the hearing of the suit. For

instance, shorter time is given for inspection and things of that kind. Now the question has often arisen whether a particular case is a commercial case or not. There are some reported cases; for instance, before Honourable Mr. Justice Harrington the question was raised whether an ordinary partnership dispute between the members of a firm was a commercial case. That was answered in the negative. It was not. Similarly, there are numerous decisions of the English Courts as to what is regarded as a commercial case. I do not remember the exact language—but it is something like this: principally matters arising out of dealings between merchants and traders relating to trade and so on. If the matter comes up before Court they will have no difficulty in getting light from these reported decisions of the Calcutta High Court, the Bombay High Court and the English High Courts to decide whether a particular matter is a commercial case or not. But my Honourable friend is quite right. If he thinks that it will be open to a person who is resisting the award to say that this is not a commercial matter, then that will be a matter for the Court.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

“That the Bill to make certain further provisions respecting the law of arbitration in British India, as reported by the Select Committee, be taken into consideration.”

The motion was adopted.

Clauses 2, 3, 4, 5, 6, 7, 8 and 9 were added to the Bill.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

“That clause 10 stand part of the Bill.”

Mr. F. E. James (Madras: European): Sir, may I ask a question on this? Clause 10 lays down:

“The High Court may make rules consistent with this Act as to:

- (a) the filing of foreign awards and all proceedings consequent thereon or incidental thereto;
- (b) the evidence which must be furnished by a party seeking to enforce a foreign award under this Act; and
- (c) generally, all proceedings in Court under this Act.”

Some of our constituents have represented that this making of the rules is a very important matter both in regard to the evidence which is to be admissible in cases under the Bill and also in regard to the procedure relating to the filing of foreign awards; and although I am aware that the making of the rules will be within the competence of the High Courts, I would like to ask the Honourable the Law Member whether there is any way in which the High Courts may be induced, before notifying the rules which they have drawn up, to consult mercantile organisations of standing as to the rules which are to be promulgated under the Bill. It is an important matter, and although, as I say, we do fully realise that it is entirely within the cognisance of the High Courts to make what rules they wish, we should like to know whether there is any way in which mercantile opinion may be solicited before the rules are finally notified.

The Honourable Sir Nripendra Sircar: Sir, as my friend has appreciated, the matter is for the High Courts. I agree that the matter of framing these rules is important, and I was wondering whether there was any way in which the attention of the High Court can be drawn to the fact that

[Sir Nripendra Sircar.]

mercantile opinion attaches great importance to the rules being framed under section 10. I should have thought that it was open to the mercantile bodies to communicate direct with the High Courts. But in addition to that possibly it will be of help if the Government undertakes to send copies of the speech of my friend, Mr. James, and of my reply to the different High Courts drawing their attention to the fact that this matter is considered to be of great importance by the mercantile communities. If that is of any help, I am quite willing to do it.

Mr. President (The Honourable Sir Abdur Rahim): The question is:—

“That clause 10 stand part of the Bill.”

The motion was adopted.

Clause 10 was added to the Bill.

The First and the Second Schedules were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Sir Nripendra Sircar: Sir, I move:

“That the Bill, as reported by the Select Committee, be passed.”

Mr. President (The Honourable Sir Abdur Rahim): The question is:

“That the Bill, as reported by the Select Committee, be passed.”

The motion was adopted.

THE CODE OF CIVIL PROCEDURE (THIRD AMENDMENT) BILL.

AMENDMENT OF SECTION 60.

The Honourable Sir Henry Craik (Home Member): Sir, I move:

“That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes (*Amendment of section 60*), as reported by the Select Committee, be taken into consideration.”

The House will recollect that, as a result of the recommendations of the Royal Commission on Labour, Government prepared two Bills designed to amend the Code of Civil Procedure. One of those Bills was intended to prevent any but dishonest or recalcitrant debtors from being sent to prison, and that Bill was passed in the Simla Session. The present Bill the one with which we are now concerned, will, I hope, receive equally favourable treatment. I need only remind the House briefly of the objects of this Bill. Section 60 of the Code provides, among other things, that the salary of public officers is wholly exempt from attachment in the execution of decrees if the salary does not exceed Rs. 40 a month. If it does exceed Rs. 40, but not Rs. 80, then Rs. 40 is exempt. If it is more than Rs. 80, then one half of the total is exempt. Now, the Royal Commission on Labour came to the conclusion that in the case of workmen, which was of course the only class with which that Commission was concerned, indebtedness was very heavy, largely because of the ease with which wages can be attached. The Commission, therefore, proposed that exemption should be given in regard to the attachment of wages up to a limit

of Rs. 300 a month, instead of Rs. 40 a month, as provided by the Code. The Government of India after consulting opinion in the provinces came to the conclusion that Rs. 100 was a more suitable limit than Rs. 300, and they also considered that the recommendations made by the Royal Commission which, as I say, applied to workmen, were equally necessary for public officers as well, and this Bill as introduced made provision to that effect.

It contains another important provision relating to what is known as continuous attachment. I think it is a fact not generally appreciated that the salary of a public officer is the only form of salary, or rather I should say that a public officer is the only class of wage earner whose pay can be effectively attached. That results from a rule contained in the Civil Procedure Code under which such salary can be made attachable by the simple device of requiring the disbursing authority to withhold a stated amount month after month and to remit that amount to the Court. There is at present no limit to the period for which this process can continue, and it may continue for periods which are, it is a matter of common knowledge, beyond all reason, and give the debtor no chance whatever of ever retrieving his position.

Now, Sir, I come to the Bill as reported by the Select Committee. The Select Committee reduced the limit of wages or salary to be exempt from attachment from Rs. 100, which was the figure Government originally proposed, to Rs. 60, and Honourable Members will observe that the Government Members of the Select Committee recorded a minute of dissent on that point. But I am glad to see that my friend, Mr. Joshi, has got an amendment on the paper to restore the original figure of Rs. 100.

Another change made by the Select Committee was in regard to the question of continuous attachment. Our original draft Bill on this point was in some respects unsatisfactory, and the Select Committee altered it by omitting all reference to intermittent attachment, that is, attachment for intermittent periods. On further consideration, however, since the Select Committee reported, Government came to the conclusion that something more was necessary, and an amendment on this point will be moved by Mr. Thorne which I hope the House will accept. Mr. Thorne will explain that particular point more fully when he moves his amendment.

Apart from these two points, the only other change introduced by the Select Committee was to provide that the Bill is not to have retrospective effect. It will only apply to suits arising in the future.

There is only one other matter to which I need refer before I sit down, and that is the one which appeared in the last Session to interest a large number of Members of this House, but I notice in the present Session other interests have commanded more attention on their part. During the last Session a good many Members interested in agricultural conditions appealed to me to make special provision in this Bill so as to exempt from attachment a certain area of agricultural land. Opinions differed, and I imagine they still differ very widely as to what area should be exempted. I think one Honourable Member mentioned 5 acres, another Member mentioned 10 acres, and yet a third Member mentioned 15 and so on. I regret Government find themselves unable to accept this suggestion, not, I may say, for lack of sympathy for agriculturists, but for a very practical reason. There are other provisions of section 60 of the Code which give agriculturists certain protection from attachment, but it has undoubtedly

[Sir Henry Craik.]

been felt in many parts of India that the existing protection is inadequate, and already in some provinces that protection has been supplemented by special local legislation by means of provisions which local experience has shown to be suitable and desirable. We have also received notices of Bills which private Members propose to introduce in this House and also of certain Resolutions on the subject. But Government are of opinion that this matter of giving protection to agriculturists in the matter of attachment is primarily and indeed solely a matter for the provinces. The provinces have power to legislate and some of them have passed legislation, and only the provinces have the special knowledge which enables them to decide what particular form of additional protection is suitable to local circumstances. What may be suitable in one province may, for obvious reasons, be ill-adapted to the conditions of another province. The scope of the Bill which we are taking into consideration today is limited. It applies only to salaries and wages. It would introduce great complication, delay and controversy if we were to include in it a provision regarding the exemption of agricultural land. To introduce such legislation would indeed entirely alter the whole character of this Bill. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim): Motion moved:

"That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes (*Amendment of section 60*), as reported by the Select Committee, be taken into consideration."

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): Sir, I was not a party to the Select Committee on this Bill and I would, therefore, like to know from the Honourable the Mover of this motion one question. It is said that the majority of the Select Committee came to the conclusion that the exemption from attachment of Rs. 40 should be raised to Rs. 60 and not to Rs. 100. I find, in the Select Committee's Report no reasons for that, and as I was not a party to that, I expect the Honourable the Mover of the Bill or some other Members to enlighten me on this point, namely, what were the reasons of theirs not to raise the limit to Rs. 100. Was it that they did not like that from Rs. 40 a jump should be made to Rs. 100 at once, or was there any other reason given? I am sorry that those Members are not in the House; otherwise, they would have thrown light on this and also opposed the idea of the Government to raise it to the higher figure of Rs. 100. There are the Minutes of Dissent, and it would be only fair to have brought this Bill in the House at a time when those Members, who were of opinion that it should be Rs. 60 and not more than that, had an opportunity of placing the matter before the House, and to have then obtained a mature judgment on the point. At present only one side puts its case and the Government wish the exemption to be extended to Rs. 100. The consideration thus would not be complete and if possible, this Bill should not be pressed to a conclusion before the other side Members are in.

The Honourable Sir Nripendra Sircar: May I point out to such an experienced Member as Mr. Lalchand Navalrai. . .

Mr. Lalchand Navalrai: I expected that preface.

The Honourable Sir Nripendra Sircar: . . . that it is not open to tell the House what discussions took place in the Select Committee. I thought my Honourable friend would know that.

Mr. President (The Honourable Sir Abdur Rahim): There are the Minutes of Dissent attached to the Report.

The Honourable Sir Nripendra Sircar: Beyond that, what discussions took place we are not permitted to tell you, not even to satisfy the curiosity of my Honourable friend. We cannot do it, these are the rulings of the Chair.

(Mr. Lalchand Navalrai rose in his seat.)

I am not giving way. The second point is, it is now becoming a daily feature, mourning over absent friends, and asking why this or that Bill is discussed when they are not here to say what they want to say. My Honourable friend very often asks questions, "May I get this information?" May I ask him this question, "May I get information why one of the absentees, Pandit Lakshmi Kanta Maitra, who was here yesterday, who has been all the time in Delhi—why he is not here?" He could explain his dissent.

Mr. Lalchand Navalrai: Ask him.

The Honourable Sir Nripendra Sircar: He belongs to your Party.

Mr. Lalchand Navalrai: Never mind if he belongs to my Party. Ask him yourself personally.

The Honourable Sir Nripendra Sircar: If my Honourable friend has not got sufficient courage to ask him I am far more timid than he. I cannot possibly tell him what discussion took place in the Select Committee. That must be judged from the Minutes and from the Report.

Mr. Lalchand Navalrai: I want only the reasons.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

"That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes (*Amendment of section 60*), as reported by the Select Committee, be taken into consideration."

The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

"That clause 2 stand part of the Bill."

Mr. N. M. Joshi (Nominated Non-Official): Sir, I beg to move:

"That in sub-clause (a) of clause 2 of the Bill, for the word 'sixty', wherever it occurs, the word 'hundred' be substituted."

The word "sixty" occurs in sub-clause (a) of clause 2 in two places. First it occurs in the new sub-clause (h) which says, "the wages of labourers and domestic servants whether payable in money or in kind, and salary to the extent of the first sixty rupees and one-half the remainder of such salary". Again it occurs in sub-clause (i) which runs as follows, "the salary of any public officer or of any servant of railway company or local authority, to the extent of the first sixty rupees and one-half the remainder of such salary". The Honourable the Home Member has explained that

[Mr. N. M. Joshi.]

the Royal Commission on Indian Labour proposed that the salaries of persons who are employed up to Rs. 300 should be totally exempt from attachment.

The Honourable Sir Henry Craik: Workmen.

Mr. N. M. Joshi: If the Honourable Member would read the paragraph, he will find that the Royal Commission thought that on the whole it would be better if the salaries of all employed persons were free from attachment. In that connection the Commission said this:

"If on examination there are found to be objections to applying this exemption to every one employed on a salary less than Rs. 300 a month, the definition of workmen under the Workmen's Compensation Act might be suitable."

It makes it quite clear that the Royal Commission thought that the total exemption of salaries up to Rs. 300 should be made applicable to all persons, but if it was thought objectionable, then it should be restricted only to workmen. The Royal Commission fixed this limit at Rs. 300 with a definite object. The Bill, as it is before us, frees the wages of labourers and domestic servants from attachment altogether. It was also intended by this Bill that the salaries of persons getting Rs. 100 be totally exempted. The Royal Commission found that there are a number of persons who may not come within the definition of the word "labourer" but who are workmen in the proper sense of the term whose salaries should be made free from the attachment process. During the examination of this problem they found out that besides the ordinary labourers in factories there are the railway men who for practical purposes may be termed workmen,—drivers, guards and others. They get salaries which are more than Rs. 100 or the salary generally received by workmen. They also found that on account of the fact that continuous attachment is made applicable to railway servants the extent of indebtedness among the railway servants was very large, more than proportionate to the other classes of workmen.

An Honourable Member: Why?

Mr. N. M. Joshi: Somebody asks me "why". The reason is that
4 P. M. in this country the law makes the employer the interest gatherer and the debt gatherer. The law makes this employer do this work—which should not be the case. Therefore, Sir, the Royal Commission thought that if the railway men are to be protected the limit must be higher than the ordinary limit which may be fixed for ordinary workmen. Unfortunately, the Government of India somehow came to the conclusion that the limit should be 100. It has never been explained here why that figure was reduced from 300 to 100. The Honourable the Home Member stated that on examination they came to the conclusion they arrived at. It would have been much better if he had explained why they fixed the figure at 100. Now, the Select Committee reduces that figure of 100 to 60. I feel that the objects which the Royal Commission had in view in making its proposal will not be achieved by reducing the figure to 60. Leaving aside the case of railway employees, even if we take the case of ordinary workmen, there are people who get salaries larger than Rs. 60. Some fitters and carpenters and people of that type in some factories get wages or salaries higher than

Rs. 60. Even they will be excluded from complete protection from attachment of their wages and salaries. Moreover, the word 'labourer' is not defined in this Bill at all and it is quite possible that some judges may not include men like carpenters and fitters in the word 'labourers', with the result that even carpenters and fitters will not get complete protection against attachment of their wages and salaries. The intentions of the Royal Commission were to fix the figure at 300, the Government reduced it to 100 and this House should not reduce it still further. I hope that the House would accept my amendment. I am sorry for one thing today. My friend, Sir Henry Gidney, is not present on account of his ill-health. I know he is keenly interested in the subject. If he had been here, I am sure he would have given me his fullest support. I hope, Sir, the House would accept my amendment.

Mr. President (The Honourable Sir Abdur Rahim): Amendment moved:

"That in sub-clause (a) of clause 2 of the Bill, for the word 'sixty', wherever it occurs, the word 'hundred' be substituted."

Mr. Lalchand Navarai: If my friend, Mr. Joshi, will excuse me, I will say that I am not satisfied that the opinion of the majority of the Select Committee should be overridden and that the figure sixty should be raised to Rs. 100. (*An Honourable Member*: "The persons who were in the Select Committee are not here.") Don't say so, the mere mention of their presence or non-presence is annoying to people in this House. Now no reasons have been given which would convince the House that the figure 40 which is being raised to 60 should be at once raised to 100. I expected that the Honourable the Law Member would say that what was said in the Select Committee should not be repeated in this House but what I ask is that the Government should have given their own reasons to rebut those reasons mentioned there so that it would serve to show at least something of the reasons of the majority. One thing is very clear. That from Rs. 40 a jump is being given to raise it to Rs. 100. The only reason disclosed is that some fitters and carpenters who get more than Rs. 60 a month will be affected. What of that? Let us try Rs. 60 being exempted and see how it works.

Mr. N. M. Joshi: They recommended 300.

Mr. Lalchand Navarai: I know that. That was still more unreasonable. What I would like to know is whether it is really objectionable that the Honourable Members, if they were to give certain reasons in the Select Committee in support of their opinion, they should not mention them in the House. For instance, supposing the members, who are in a majority and who record an opinion, were to enter their reasons in the Select Committee's report, will it be read in the House or not? Will those reasons be discussed?

Mr. President (The Honourable Sir Abdur Rahim): The rule regarding that is that the discussions in the Select Committee cannot be repeated here. The reasons for that are obvious—there will be recriminations in the House that a certain Member said this or that in the Select Committee and now he is going back and the like. But whatever reasons are given in the minutes of dissent or in the report can be discussed in the House.

Mr. Lalchand Navalrai: I bow to what the President says. But my point was that they need no names of those Members but the grounds which actuated the report itself may be given.

The Honourable Sir Frank Noyce (Member for Industries and Labour): I find it difficult to follow the Honourable Member's point. If he would only turn over the page, he will find that the reasons why the Government Members dissented are fully reported.

Mr. Lalchand Navalrai: I am not saying about the dissent but the reverse, I am not convinced that this amendment should be accepted and I oppose it.

The Honourable Sir Henry Craik: I welcome this amendment on behalf of Government. I failed to understand two consecutive sentences of the speech of my Honourable friend, Mr. Lalchand Navalrai. I should have thought it was obvious even to his intelligence that the reasons why we want to raise the limit of exempted salaries

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member used the expression "even to his intelligence". This is not a proper expression, and he should withdraw it.

The Honourable Sir Henry Craik: I withdraw it. I apologize to the Honourable Member for any reflections I may have cast on his intelligence.

Mr. Lalchand Navalrai: Thank you for this. I hope it would not occur hereafter.

The Honourable Sir Henry Craik: I hope there will be no occasion for it. I should have thought that the reason would have been obvious to anyone. The reason why we want to raise the limit of exemptible salaries and wages is that we consider that too many people get into debt, because their salaries and wages are at present so easily attached, and we hope that this measure will do something towards releasing them from the slough of debt in which they are at present involved.

Several Honourable Members: The question may now be put.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

"That in sub-clause (a) of clause 2 of the Bill, for the word 'sixty', wherever it occurs, the word 'hundred' be substituted."

The motion was adopted.

Mr. J. A. Thorne (Government of India: Nominated Official): Sir, I move:

"That in sub-clause (a) of clause 2 of the Bill, for the proviso to proposed clause (i) of section 60, the following be substituted:

'Provided that, where the whole or any part of the portion of such salary liable to attachment has been under attachment, whether continuously or intermittently for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months and, where such attachment has been made in execution of one and the same decree, shall be finally exempt from attachment in execution of that decree.'

Sir, the corresponding proviso in the Bill as amended by the Select Committee gives certain protection where the attachment has been continuous for a total period of twenty-four months. It has occurred to us that that provision is defective: it would be possible for the decree-holder to attach a man's salary for 23 months, then to lift the attachment for a short period, say for a month or two, then to start again and attach for 23 months or any period he likes short of 24 months, then to lift the attachment, then to start again and so on *ad infinitum*. It is necessary to stop that gap and the amendment which I move does, I think, have that effect. Not having drafted it myself, I may be permitted to say that it has been drafted with considerable care. It will effect three things. The first is—where a salary has been attached under various decrees whether continuously or intermittently for 24 months, the debtor gets a respite for twelve months. Secondly, it ensures that every decree-holder will be able to attach a salary in execution of his decree up to a total period of 24 months whether continuously or intermittently; and, thirdly, where the attachment in respect of any one decree has gone on for the full 24 months whether at one stretch or intermittently, then the debt under that decree is totally wiped out. That, Sir, is the effect of the proviso as now worded, and I think the House will agree that it meets all the needs which this proviso originally set out to serve. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

“That in sub-clause (a) of clause 2 of the Bill, for the proviso to proposed clause (i) of section 60, the following be substituted:

‘Provided that, where the whole or any part of the portion of such salary liable to attachment has been under attachment, whether continuously or intermittently for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months and, where such attachment has been made in execution of one and the same decree, shall be finally exempt from attachment in execution of that decree.’”

The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim): The question is:

“That clause 2, as amended, stand part of the Bill.”

The motion was adopted.

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

Mr. President (The Honourable Sir Abdur Rahim): The question is:

“That clause 3 stand part of the Bill.”

Mr. J. A. Thorne: Sir, I move:

“That in clause 3 of the Bill, for the word ‘January’ the word ‘June’ be substituted.”

The intention of the Select Committee was that the Bill should not have retrospective effect, and they altered the clause so as to postpone the effect of the changes until after the 1st day of January, 1937. But as, since the Select Committee reported, we have now passed the 1st day of January, 1937, this amendment is moved to substitute the 1st of June, 1937. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim): The question is: "That in clause 3 of the Bill, for the word 'January' the word 'June' be substituted." The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim): The question is: "That clause 3, as amended, stand part of the Bill." The motion was adopted.

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

Mr. President (The Honourable Sir Abdur Rahim): The question is: "That clause 1 stand part of the Bill."

Mr. J. D. Anderson (Secretary, Legislative Department): Sir, I beg to move:

"That in clause 1 of the Bill, for the figures '1936' the figures '1937' be substituted."

Mr. President (The Honourable Sir Abdur Rahim): The question is: "That in clause 1 of the Bill, for the figures '1936' the figures '1937' be substituted." The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim): The question is: "That clause 1, as amended, stand part of the Bill."

The motion was adopted.

Clause 1, as amended, was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Sir Henry Craik: Sir, I move:

"That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes (*Amendment of section 60*), as reported by the Select Committee, and as amended, be passed."

Mr. President (The Honourable Sir Abdur Rahim): The question is:

"That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes (*Amendment of section 60*), as reported by the Select Committee, and as amended, be passed."

The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim): Sir Frank Noyce,

[At this stage (4-20 p.m.), the Honourable Sir Frank Noyce rose to move the Resolution standing in his name *re* the Road Fund.]

Several Honourable Members: Postpone till to-morrow, to-morrow.

The Honourable Sir Frank Noyce (Member for Industries and Labour): I am in the hands of the House, Sir.

Some Honourable Members: To-morrow, to-morrow.

Mr. President (The Honourable Sir Abdur Rahim): If that is the desire of Honourable Members, I shall adjourn the House now.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 10th February, 1937.