

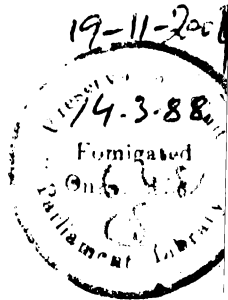
Wednesday, 24th February, 1937

THE
COUNCIL OF STATE DEBATES

VOLUME I, 1937

(16th February to 8th April, 1937)

FIRST SESSION
OF THE
FOURTH COUNCIL OF STATE, 1937



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COUNCIL OF STATE.

Wednesday, 24th February, 1937.

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

QUESTIONS AND ANSWERS.

INCOME FROM GOODS TRAFFIC IN THE EASTERN BENGAL RAILWAY.

12. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY : Will Government be pleased to state :

- (a) whether the income derived from goods traffic during the last five years in the Eastern Bengal Railway has been less than that from third class passenger traffic. If so, what is this due to and whether that is the case with other State-managed railways in India ;
- (b) whether traffic of goods is comparatively less in Bengal than in other provinces and what is the greatest vehicle of traffic in Bengal ;
- (c) whether it is in their contemplation to open steamer lines in conjunction with the E. B. Railway system to carry such goods ;
- (d) whether such steamer lines had been in existence before and, if so, why were they abandoned and what has been its effect upon the goods traffic on the railway line ?

THE HONOURABLE SIR GUTHRIE RUSSELL : (a) The reply to the first part is in the negative and the second part does not, therefore, arise.

(b) Such statistics as are available do not permit of a comparison between provinces and between the various means of transport.

(c) No.

(d) Yes : the steamer services were abandoned, as it was found that they were unremunerative. It is not possible to say what the effect has been on the traffic carried by the railway.

METHOD OF RECRUITMENT TO THE HIGHER GRADE SERVICES ON THE STATE RAILWAYS.

13. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY : What is the method of recruitment of the higher grade services in the State railways and the scale of pay granted to them in comparison with such services in the Company-managed railways and other State services and what training facilities are afforded in India for the recruitment of such services and what scheme, if any, has been adopted for Indianising the services as soon as possible?

THE HONOURABLE SIR GUTHRIE RUSSELL: Presumably the Honourable Member is referring to superior services. If so, recruitment to these services on the State-managed Railways is made through the Public Service Commission. On the Company-managed Railways recruitment to such services is made by the Board of Directors of those companies.

The scales of pay for the superior services of the State-managed Railways are given in the Revised Rates of Pay (Superior State Railway Services) Rules published in the Railway Department notification No. 807-E. G./L. dated the 12th October, 1933, a copy of which is in the library of the House. The scales of pay for other All-India and Central Services will be found in the Superior Civil Service Rules, the Pay and Cadre Schedules of Central Services and the Revised Rates of Pay Rules, copies of which are also in the library of the House.

The revised scales of pay on Company-managed Railways are generally similar to those in force on the State-managed Railways.

Officers recruited to Superior Services on the State-managed Railways are given a certain amount of training to enable them to learn the work of the department to which they are appointed. In the Transportation (Power) and Mechanical Engineering Department special class apprentices are selected through the Public Service Commission to the extent of 25 per cent. over and above the number of vacancies to be filled each year. Four years' training is given to these apprentices in India, at the end of which period apprentices to the number of vacancies for which the selection was made in the first instance are selected in direct order of merit for further training of two years in the United Kingdom.

As regards Indianisation, Indians are recruited to the extent of 75 per cent. of the total number of vacancies in the superior services in the Railway Department as a whole provided suitable candidates with requisite qualifications are forthcoming.

RECRUITMENT OF STAFF UNDER COMPANY-MANAGED RAILWAYS IN INDIA.

14. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY: What control, if any, do Government exercise over the recruitment of employees under Company-managed railways in India?

THE HONOURABLE SIR GUTHRIE RUSSELL: Under the terms of their contracts Company-managed Railways have full powers in regard to recruitment of staff, both superior and non-superior, and the Government of India do not interfere in such matters.

TAKING OVER OF THE BENGAL AND NORTH WESTERN RAILWAY AND THE ROHILKHUND AND KUMAUN RAILWAY BY THE GOVERNMENT.

15. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY: Will Government be pleased to state whether the Bengal and North Western Railway and the Rohilkhund and Kumaun Railway will be taken over by the State? If not, why and for how long are they still to be managed by the Companies and on what terms?

THE HONOURABLE SIR GUTHRIE RUSSELL: It has been decided not to terminate the contracts with the Bengal and North Western and Rohilkhund and Kumaun Railway Companies in 1937. Government are of opinion,

after a full investigation, that the purchase of the Railways at the present time will be unremunerative. A fresh option to purchase will be available on the 31st December, 1942.

INDIAN REPRESENTATIVE IN THE RAILWAY ENQUIRY COMMITTEE.

16. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY : Why was no Indian representative of public interest appointed to serve as a member of the Railway Enquiry Committee and what is the scope and object of the enquiry ?

THE HONOURABLE SIR GUTHRIE RUSSELL : With regard to the first part of the question, the Government of India after careful consideration were convinced of the need of appointing to this Committee acknowledged railway experts and deliberately selected these from other parts of the Empire to ensure that the whole matter might be examined from an entirely detached view point. As regards the second part, the Committee has been appointed to examine the position of State-owned railways and to suggest such measures as may, otherwise than at the expense of the general budget, (i) secure an improvement in net earnings, due regard being paid to the question of establishing such effective co-ordination between road and rail transport as will safeguard public investment in railways while providing adequate services by both means of transport ; and (ii) at a reasonably early date place railway finance on a sound and remunerative basis.

THE HONOURABLE MR. P. N. SAPRU : Is one of the members appointed a South African gentleman ?

THE HONOURABLE SIR GUTHRIE RUSSELL : Yes, Mr. Cheadle was a gentleman from South Africa.

THE HONOURABLE MR. P. N. SAPRU : Has any Indian or British expert from India ever been appointed by the South African Government ?

THE HONOURABLE SIR GUTHRIE RUSSELL : Not to my knowledge.

RESIGNATION OF SIR OSBOBNE SMITH FROM THE GOVERNORSHIP OF THE RESERVE BANK OF INDIA.

17. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY : Will Government please state the cause of the resignation of Sir Osborn Smith from the post of the Governorship of the Reserve Bank of India ?

THE HONOURABLE MR. J. C. NIXON : I would refer the Honourable Member to the Press Communique issued on the 30th October 1936 to which Government have nothing to add.

LINKING OF THE RUPEE WITH THE STERLING.

18. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY : Will Government please state whether they contemplate abandoning the linking of the Rupee with the Sterling in India ?

THE HONOURABLE MR. J. C. NIXON : No.

RESERVE BANK OF INDIA'S SCHEME FOR AGRICULTURAL LOAN OPERATIONS.

19. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY : Will Government please state whether the Reserve Bank authorities have submitted any scheme for agricultural loan operations. If so, what is the scheme and what effect do Government propose to give to it ?

THE HONOURABLE MR. J. C. NIXON : I refer the Honourable Member to the report of the Reserve Bank on the subject published on the 30th December, 1936.

LAND MORTGAGE BANKS.

20. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY : Will Government please state how many, if any, land mortgage banks have been established in each province and with what capital and on what relationship or control or help of Government ?

THE HONOURABLE KUNWAR SIB JAGDISH PRASAD : Information is being collected and will be furnished to the House in due course.

FACTORIES IN INDIA FOR THE CONSTRUCTION OF LOCOMOTIVE ENGINES, ETC.

21. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY : What plans, if any, have been adopted for the opening of factories in India for the construction of locomotive engines and wheels and axles for railway requirements of the State railways ; if none, why ?

THE HONOURABLE SIB GUTHRIE RUSSELL : As regards the manufacture of locomotives in India, I would invite the attention of the Honourable Member to the reply given by the Honourable Sir Muhammad Zafrullah Khan to question No. 368, asked by Mr. Mohan Lal Saxena in the Legislative Assembly on 14th September, 1936.

Government propose to leave to private enterprise the manufacture of wheels and axles for railway requirements in India.

PREFERENCE GRANTED TO INDIAN MANUFACTURERS FOR THE PURCHASE OF STORES.

22. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY : What preference, if any, is granted under the provision of the Store rules for the purchase of stores to Indian manufacturers ?

THE HONOURABLE MR. A. G. CLOW : The degree of price preference that may be allowed to Indian products is not specifically laid down. Each case is considered on its merits.

INDIANS ENGAGED IN THE CLOVE TRADE IN ZANZIBAR.

23. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY :

(a) What are the restrictions imposed upon Indians engaged in the Clove Trade in Zanzibar ?

(b) How many Indians are employed in such trade ?

(c) What is the quantity of cloves and its value annually imported in India during the last five years ?

(d) Has any investigation been made about the suitability of growing clove trees in India ? If so, with what result and by whom and when ?

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD : (a) The Honourable Member probably has in mind the provisions of the Clove Growers' Association Decree, 1934. The Indian contention is that this has adversely affected both Indian exporters and middlemen.

(b) Precise information regarding Indian middlemen engaged in the trade is not available ; Indian exporters number three out of a total of five.

(c) I lay on the table a statement containing the required information.

(d) No comprehensive investigation has been made.

Statement showing the imports of cloves into India during the five years ending 1934-35.

Year.	Quantity. Cwts.	Value. Rs.
1930-31	64,148	37,48,780
1931-32	83,870	42,49,215
1932-33	68,561	34,81,704
1933-34	76,763	34,41,844
1934-35	84,191	30,96,742

TRADE CONVENTION BETWEEN GREAT BRITAIN AND INDIA.

24. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY : Will Government be pleased to state whether they contemplate entering into a trade convention with Great Britain as contemplated in the Government of India Act at an early date, and, if so, when and whether the Indian Legislature will be given an opportunity to discuss its terms before it is finally settled ?

THE HONOURABLE MR. H. DOW : I am not sure what the Honourable Member means by "entering into a trade convention with Great Britain as contemplated in the Government of India Act". If he has in mind the provisions of Chapter III in Part V of the Government of India Act, 1935, and is referring to a Convention of the nature contemplated in section 118 thereof concerning reciprocal treatment of subjects domiciled and companies incorporated in the United Kingdom and British India, the question of concluding such a Convention will not arise before the establishment of the Federation.

RAISED PLATFORM AT SANTAHAR ON THE EASTERN BENGAL RAILWAY.

25. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY : Will Government be pleased to state :

(a) whether Santahar is an important railway centre connecting east Bengal and north Bengal on the Eastern Bengal Railway ;

(b) whether it has a raised platform ? If not, do Government propose to construct one at an early date? If not, why ?

THE HONOURABLE SIR GUTHRIE RUSSELL : (a) Yes.

(b) The policy of the Government is to leave to the discretion of the Railway Administration such matters as the provision of raised platforms where the traffic justifies them. The question, therefore, is one best referred to the Agent of the Railway concerned.

OSCILLATING FANS IN RAILWAY CARRIAGES.

26. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY : Will Government be pleased to state whether they contemplate using oscillating fans in railway carriages for distributing breeze to all passengers equally ?

THE HONOURABLE SIR GUTHRIE RUSSELL : The answer is in the negative.

ILLNESS CONTRACTED BY DETENUS DURING DETENTION.

27. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY : Will Government please state in a tabular form the various illnesses contracted by detenues during detention without trial for the last five years and the result of their treatment by Government ?

THE HONOURABLE MR. R. M. MAXWELL : The Government of India are concerned only with detenues confined in the Deoli Camp Jail.

The Government have not the information and consider that the labour involved in the compilation of it would be incommensurate with the value of the results.

REMEDY FOR ACCIDENTS AT COLLIERIES.

28. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY : What is the cause, effect and remedy suggested for such accidents as happened recently at Poidih Colliery ?

THE HONOURABLE MR. A. G. CLOW : The cause of the accident has not yet been ascertained definitely. It is under investigation by a Court of Inquiry appointed under section 21 of the Indian Mines Act. The effect of the accident is too well known to need repetition. Until the results of the inquiry are available, it is not possible to suggest any remedial measures. It is also impossible to make any generalisation regarding the causes and effects of, or remedial measures for, mining accidents, as these usually vary from case to case. I may, however, mention in this connection that the greater part of the Coal Mines Regulations is designed with a view to minimizing the risk of accidents in collieries and a large part of the work of the Mines Inspectorate is devoted to this task. The whole question of safety in mines is now under investigation by an expert committee.

COLLISION BETWEEN KARULLA ROAD AND JARANWALLA ON THE NORTH WESTERN RAILWAY.

29. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY : What is the cause and effect of the collision between Karulla Road and Jaranwalla on the North Western Railway on the 20th January, 1937 ?

THE HONOURABLE SIR GUTHRIE RUSSELL : The Agent, North Western Railway, states that the driver of a lorry attempted to cross a level crossing between Kuralla Road and Jaranwalla stations in the face of an on-coming train, resulting in the death of three and injuries to seven passengers in the lorry, one of whom subsequently died in the hospital.

PROTECTION TO THE SILK INDUSTRY IN INDIA.

30. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY : Have Government received any representation from the Silk producers of India for the grant of protection to the Silk industry in India and whether they contemplate granting any protection ? If so, in what shape and when ?

THE HONOURABLE MR. H. DOW : The Indian Sericultural Industry is protected already. Such protection was granted by the Indian Tariff (Textile Protection) Amendment Act, 1934, and supplemented by the Indian Tariff (Second Amendment) Act, 1936. The Government of India are also making an annual grant to assist the industry.

RESERVATION OF A PORTION OF THE CARRYING OF TRADE BETWEEN INDIA AND JAPAN FOR EMPIRE SHIPPING.

31. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY : Will Government be pleased to state whether any representation and, if so, what, has been received from the shipping traders of Great Britain for reserving certain portion of the carrying of trade between India and Japan to Empire shipping and what effect do Government propose to give to it ?

THE HONOURABLE MR. H. DOW : Government have received representations on the subject both from British and Indian shipping interests. The matter is under consideration.

RESERVATION OF LOWER CLASS SEATS IN EAST INDIAN RAILWAY.

32. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY : Will Government be pleased to state whether the attention of Government has been drawn to an article headed 'East Indian Railway Reservation of lower class seats' signed by one Mr. M. N. Dutt, Secretary, Indian Passengers' Association, appearing in the *Amrita Bazar Patrika* of January 23, 1937 ? If so, what steps do Government propose to take on it ?

THE HONOURABLE SIR GUTHRIE RUSSELL : Yes. I am sending a copy of the Honourable Member's question and of my reply to the Agent, East Indian Railway, for consideration.

**RETENTION OF THE PORTFOLIO FOR INTERNAL WATER COMMUNICATIONS
BY THE COMMERCE MEMBER.**

33. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY : Whether the attention of Government has been drawn to the resolution passed by the Chamber of Commerce at Calcutta for the retention of the portfolio for internal water communications by the Commerce Member instead of the same being handed over to the Member in charge of Other Communications ; if so, what steps do Government propose to take in the matter ?

THE HONOURABLE MR. A. G. CLOW : Yes ; the matter is under consideration.

IMPORTATION OF CLOCKS, WATCHES AND MOSQUITO NETS IN INDIA.

34. THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY : What quantity of clocks, watches and mosquito nets are imported into India and purchased by Government respectively during the last five years and where will information for the starting of factories in India for their manufacture be available ?

THE HONOURABLE MR. A. G. CLOW : Information has been called for and a reply will be placed on the table of the House in due course.

STANDING COMMITTEE ON EMIGRATION.

THE HONOURABLE THE PRESIDENT : With reference to the announcement made by me on the 20th February regarding nominations to the various Committees, I have to inform the House that the Honourable Mr. P. N. Sapro has withdrawn his candidature for election to the Standing Committee on Emigration. As there now remain the following four candidates for the four seats, I declare them to be duly elected :—

The Honourable Sir Phiroze Sethna,

The Honourable Mr. B. K. Basu,

The Honourable Rai Bahadur Lala Ram Saran Das, and

The Honourable Kumar Nripendra Narayan Sinha.

STANDING COMMITTEE FOR THE DEPARTMENT OF COMMERCE.

THE HONOURABLE THE PRESIDENT : The Honourable Sir K. Ramunni Menon and the Honourable Mr. V. V. Kalikar have also withdrawn their candidature for election to the Standing Committee to advise on subjects in the Department of Commerce. There now remain the following two candidates for two seats and I declare them to be duly elected :—

The Honourable Sir Phiroze Sethna, and

The Honourable Rao Bahadur K. Govindachari.

STANDING COMMITTEE ON PILGRIMAGE TO THE HEJAZ.

THE HONOURABLE THE PRESIDENT : The Honourable Khan Bahadur Shams-ud-Din Haidar has withdrawn his candidature for election to the

Standing Committee on Pilgrimage to the Hejaz. As there now remain the following two Muslim candidates for two seats, I declare them to be duly elected :—

The Honourable Khan Bahadur Syed Ihtisham Hyder Chaudhury, and
The Honourable Haji Syed Muhammad Husain.

INDIAN INCOME-TAX (AMENDMENT) BILL.

THE HONOURABLE 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, as passed by the Legislative Assembly, be taken into consideration.”

The proposals contained in this Bill have as their starting point certain recommendations made by the writers of the Income-tax Inquiry Report, 1936, copies of which are in the hands of all Members of the Council. (*Some Honourable Members* : “ No.”)

Well, Sir, I can only express the greatest regret for any such inadvertence, but copies were sent to the private addresses of all Members of the Council as soon as the Report was published in January and I also gave instructions a few days ago that copies were again to be sent to the Delhi addresses of all Members.

THE HONOURABLE SIR DAVID DEVADOSS : The nominated Members were nominated long afterwards.

THE HONOURABLE THE PRESIDENT : Very probably the copies were sent to the old Members.

THE HONOURABLE MR. A. H. LLOYD : Well, I must express my regret. It is the first I have heard of this failure. I did hear that certain Members had not received copies and I assumed they had been posted and had not yet reached their addresses, and I took measures to have copies distributed in Delhi. Well, Sir, those who are fortunate enough to have copies of this Report—and would any one who wishes to have a copy kindly ask me for another one—will find on page 19 the sentence :

“ 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.”

Then again on page 20 they say :

“ 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 partnership is not real.”

That, Sir, was the starting point, and the experts having begun at that point—and it was a most serious one from the revenue point of view—proceeded to make their proposals, which in the case of husband and wife were the full-blooded adoption of what I might call the English principle of aggregating the incomes of husband and wife, whatever the sources of those incomes, subject to a certain relief in the case of a wife who earned income by her own work. The Government of India were not prepared at short notice to go the whole hog in that way. They felt that that was introducing a new principle

[Mr. A. H. Lloyd.]

which ought not to be introduced until public opinion had been received and considered on the Report. But the particular evils at which this Bill is aimed have grown to very serious dimensions and immediate action is necessary unless the revenue is to be very adversely affected. The Government therefore confined their proposals within the narrowest limits that seemed to them to be consistent with securing the immediate end. So far as husband and wife are concerned, they have confined their proposal to the case of partnerships and to transfer of assets to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart. So far as minor children are concerned, they follow up to a point the recommendation of the Report but do not go as far as the Report went. The recommendation of the Report was that the income of the minor should be deemed to be the income of the father (i) if it arises from the benefits of partnership in a business in which the father is a partner, (ii) if, being the income of a minor other than a married daughter, it is derived from assets transferred directly or indirectly to the minor by his or her father or mother, or (iii) if it is derived from assets apportioned to him in the partition of a Hindu undivided family. We have adopted in this Bill items (i) and (ii), but we have at this stage refrained from proceeding with item (iii) of those recommendations because we feel that all matters connected with the taxation of Hindu undivided families should be reserved to be dealt with together when we have to deal with the general subject of the taxation of such families. Honourable Members will no doubt have observed that there is a special section on page 24 of the Report devoted to the assessment of Hindu undivided families. This Bill therefore studiously refrains from making any allusion to Hindu undivided families and it will be noticed of course that the clause, clause 2, only refers to assessment of individuals and not of such families. Now, Sir, that is the history of the origin of these proposals.

I do not think I need say any more in support of my statement that the matter is extremely urgent than to mention that according to the best estimates that we can obtain the practices in question are already causing us a loss of revenue, which has been put at varying figures, from 25 to 35 lakhs a year. I have made my own conservative estimate of 20 lakhs a year; but such a loss is a very serious matter. That urgency must be our answer to the criticism which has been made in certain quarters that we ought not to have picked out one particular proposal of the experts for incorporation in the law before we have obtained public opinion upon and examined ourselves in detail the Report as a whole. Some colour has been lent to this criticism by the very words of the introduction to the Report which says "that many of these recommendations are inter-related and should be read together, rejection or modification of one necessitating rejection or modification of others." We have given very serious thought to that point, but it appears to us that this particular proposal is not one to which those words apply. This proposal does not affect the computation of income nor does it affect the kinds of income which are liable to tax. It merely decides in whose names certain income which is already liable to tax and which has been computed in accordance with our existing principles should be assessed. Another criticism which has been made of this Bill is that since it is avowedly aimed at bogus transactions—what I call bogus transactions may have an element of reality, they are bogus in this sense that the transactions would not have taken place had it not been for the intention to avoid or reduce the amount of income-tax incurred—it has been so drafted that it may be that in occasional cases

it may cover transactions which are not bogus in that sense, that is to say, the transfer of property from a husband to a wife, from a parent to a minor child, which happens to have been made for some other reason than merely to avoid income-tax. Now, Sir, my answer to that criticism is that it would be quite unworkable if we attempted to apply a subjective test, the subjective test of what was the intention of the husband or parent as the case may be in making the transfer. To attempt to apply such a test would be to put an intolerable burden on Income-tax Officers and would flood the appellate courts of Assistant Commissioners and perhaps reference Benches of High Courts to see whether or not the Income-tax Officer was right in his attempt at thought-reading. That is what it comes to. We cannot provide a complete service of thought-readers throughout British India. Therefore we have to fall back upon the objective test—whether the property was in fact transferred by the husband or parent as the case may be and not what was the motive for doing so. We feel that by making the measure workable it will not cause hardship or if it does it will only be in exceptional cases and we feel also that to attempt to introduce in the letter of the law safeguards against any conceivable hardship that might be involved would inevitably postpone the introduction of this measure while we were examining from an academic point of view every conceivable suggestion that might be put up. While, on the other hand, if in certain cases it really did not fall within the ambit of our immediate intention, we can answer that we shall within a year or two, probably within a year, have to consider the more extreme measures proposed by the Income-tax Enquiry Report and it is quite conceivable that this is only one step towards a more extreme measure. Therefore if that step is a little longer than what might be regarded as the ordinary pace, it does not much matter.

Finally, the Finance Member in another place gave an assurance that the actual working of this Act would be closely watched and if any cases of real hardship could be brought to notice and the Government were satisfied that there were cases of real hardship, it was not out of the question for the powers vested in the Government of India by section 60 of the Indian Income-tax Act to be used, pending the revision of the whole subject which must happen within a year or two when the complete proposals of the rest of the Report are before the Government and the Legislature. We have therefore resisted any attempt to narrow the limits of our proposals. I would also like to point out two further facts in that connection, firstly, that there is nothing in this to prevent anybody transferring assets to his wife or to his minor child; nothing at all. It does not interfere with anybody's right to do so. It merely says that if he does so in certain circumstances, then there will be no difference in his income-tax assessment. Secondly, it will only apply to cases where assets are transferred to persons whom he has the duty to maintain so that in effect the income will remain within his control. That I think is really the gist of the matter. That is what to my mind reduces the possibility of hardship to a minimum.

If I might now turn to the clauses of the Bill for one moment, I would point out that this is to all intents and purposes a one clause Bill. The substance of the Bill is in clause 2. Clauses 3 and 4 are merely consequential. Clause 5 has been introduced in order to guard against any risk that Income-tax Officers might apply this measure to assessments which were due to have been made in an earlier year but which happen to be completed when this Bill, if passed, becomes law. Sir, I move.

THE HONOURABLE THE PRESIDENT : Motion made :

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

[The Honourable the President.]

To this, I see that in connection with this Act the Honourable Lala Ram Saran Das proposes to move an amendment. I presume copies of the amendment have been circulated to all the Members and therefore it is unnecessary to read that amendment. The amendment in purport seeks to effect that nothing in this sub-section should operate so as to include in the total income of any individual for the purposes of assessment such part of the income of the wife or minor child of such individual as arises directly or indirectly from property which, under the personal or religious law applicable to the wife or child, is the separate personal property of the wife or child.

I am afraid the Honourable Member is under some misapprehension in framing this clause. This Bill does not affect any property which under the personal or religious law applicable to the wife or child is their separate personal property. But it does operate in cases where that property is transferred for inadequate consideration from a person to a wife or child or where nominal partnerships or even proper partnerships between husband and wife, parent and child, are formed. You are all aware that now-a-days among Hindu families a good many families form not only partnerships in matters of transaction but also convert their assets into joint stock private limited companies. But personal property which a wife holds or a *stridhanam* or dowry or anything like that is not affected by this Bill at all. The property is affected in this way. If a woman has *stridhanams* and converts it into money and forms a partnership, certainly that property would be liable; otherwise it does not come within the operation of the Bill at all. Only in cases where the trading is done by the wife jointly with her personal property amalgamated with her husband's property or a private joint stock company has been formed can the Bill be applied. Therefore, subject to what I hear from Rai Bahadur Lala Ram Saran Das I am not prepared to allow this amendment to be moved. I have referred to this amendment at this stage to shorten the debate. After you have spoken I will move the consideration Motion.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : May I explain, Sir, why I put this amendment before this Honourable House. The object of my amendment is to avoid hardship, e.g., in cases where for instance there are step brothers and the grandfather of the one brother from his mother's side makes a gift. After all, whether they be members of a joint family or a divided family, Sir, the argument that has been put forward by the Honourable Mr. Lloyd does not convince the House at all as to whether it affects the divided family and not the other. It does not protect the other also, because in an undivided family a similar case can happen that if a step brother who inherits property from his maternal grandfather's side, income on that property will be aggregated with his father and made liable to tax. The Honourable the President has observed that in case the wife converts her personal property into money and puts it into the trade—(*The Honourable the President* : "Trade jointly with the husband by the formation of a partnership") yes—with her husband the partnership will be liable to tax on aggregate profits. (*The Honourable the President* : "The husband will be liable.") Sir, with due deference to the remarks of the Honourable the President, the wife puts her personal money into the business of her husband and she gets her personal share of the profits. My question is, Sir, whether the profits accrued by such partnership will be separately assessed or assessed on the joint family or the divided family basis ?

THE HONOURABLE THE PRESIDENT : It will be assessed as the property of the husband and liable certainly to supertax as well.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : But, Sir, that portion of the private capital subscribed by the wife ought not to be taken as the property of the husband. That is my point, Sir. The reason why I moved this amendment is, because the present Bill is so wide and so vague, that people will be put to a lot of difficulty by the income-tax officers who will interpret it differently.

THE HONOURABLE THE PRESIDENT : Income-tax officers are always obnoxious men.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Sir, I will not call them obnoxious—after all they are also human beings, but they have the option to interpret the present vague wording of the clause in the way they like.

THE HONOURABLE THE PRESIDENT : But as Mr. Lloyd pointed out, you have the right of appeal to the Assistant Commissioner or the High Court if any injustice is done in construing the clause.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : But, Sir, our duty as Members of this Legislature is to avoid litigation as far as possible and to save the public from unnecessary going in for appeals; indeed the general experience in the income-tax department is that appeals are generally overruled and rejected and so, Sir, we do not want that the law should be so defectively framed as to be liable to a number of interpretations.

THE HONOURABLE THE PRESIDENT : No law is perfect. I have practised for 30 years.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : But I am not a lawyer, Sir. Of course, the general public are not lawyers and it is our duty to make the enactments as clear as possible to avoid unnecessary litigation.

In the case of members of a joint family also, Sir, the personal money of a step brother ought not to be regarded collectively with the income which is taxable for supertax. The money should be divided and the individuals who form the partnership ought to be taxed on the divided share of each. The Honourable the President observed that in case the wife converts her earnings and puts it into business, that will also be liable to tax. What will happen if her *Stridhan* is composed of rent yielding property,—house property or landed property? Will that be considered as an investment in business? The realisation of rent on house property is not business as far as that lady is concerned. Therefore, Sir, I wish that in order to clear the matter, my amendment deserves your consideration and I request that it should be allowed.

My last point is that in case this amendment is disallowed and in case the language of the clause is not made clear, it will mean that Government is violating its pledges in interfering with the religious laws of the people. Therefore I request that I may be allowed to put forward this amendment although the amendment may have the fate that it is likely to meet with.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (United Provinces Northern Non-Muhammadan) : Sir, will you allow me to make a few observations ?

THE HONOURABLE THE PRESIDENT : If the amendment is allowed, you will all have an opportunity of speaking on it.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I want to speak with regard to the admissibility of the amendment so that you may have different views before giving your ruling. There are, it seems to me, two questions to be considered in connection with the amendment which the Honourable Rai Bahadur Lala Ram Saran Das has given notice of—(1) whether it is in order, and (2) whether it is sound. In order to decide whether it is in order....

THE HONOURABLE THE PRESIDENT : I am only concerned whether it is in order. I am not concerned whether it is sound. That is for the House to say. It is beyond my province.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : If I may presume to say so, I am in entire agreement with the view just now expressed by you. If the amendment complies with the rules and standing orders, it ought to be allowed to go through. It may be highly unsound but it will be for the Honourable Mr. Lloyd to deal with the arguments that are brought forward by the Honourable Rai Bahadur Lala Ram Saran Das. To judge from the remarks made by the Chair a little while ago, it does not seem that the amendment contravenes any of the rules or regulations which govern the discussion of Bills in this House. It may be that the amendment runs counter to the policy embodied in the Bill before the House. It may even render the Bill nugatory, but that is entirely beside the point.....

THE HONOURABLE THE PRESIDENT : You have just made the proper remark that it will render the Bill nugatory. The effect of the amendment will be that it will neutralise clause 2. Government on the one hand wish to prevent these evasions of tax and this amendment on the other hand vetoes altogether the provisions of clause 2 of the Bill.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Sir, devices are not unknown to Members of a Legislature which make it difficult for Government to pursue policies on which they have set their heart. So long as these devices do not contravene the established rules and regulations, I submit that they cannot be objected to howsoever inconvenient they may be to Government. In this particular instance, my Honourable friend does not merely say that something which this Bill is opposed to should be done. His amendment is not a direct negative of any proposal made by Government in the Bill although its indirect effect may be to kill the Bill but this is doubtful. I submit, however, that the amendment ought to be allowed to be discussed, even on the assumption that its effect, if it is carried, will be to make the whole of the Bill useless. That is a point that has to be discussed. This is exactly a question which ought to come before the House and the Honourable Mr. Lloyd ought to deal with it in the House. If he convinces the House that the amendment will make his Bill useless, and if the House agrees with him.....

THE HONOURABLE THE PRESIDENT : The whole thing could be discussed also at the consideration stage.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : But I submit, Sir, that this amendment should be discussed by the House and that the Chair should not take upon itself the responsibility of not allowing the amendment to be moved and the House to have an opportunity of expressing its opinion on it.

THE HONOURABLE THE PRESIDENT : I was just going to answer that point. The President has the power to disallow an amendment if it is merely of a negative character.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : May I submit that the amendment is not a direct negative of the proposal of Government? In form at least it is not so, and this is all that the rules and regulations of the House are concerned with. In the Legislative Assembly, repeatedly devices are resorted to by Members which has the effect of enabling them to win on a point on which they have been defeated before. They are not prevented from following this procedure simply because it is inconvenient to Government. It is for the Government to put their case.....

THE HONOURABLE THE PRESIDENT : I have not yet heard the Government here on this subject.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I submit, Sir, that considering merely the rules and regulations of this House, it is fair, it is desirable, it is the right of this House, that an amendment of the character sought to be moved by my Honourable friend, Rai Bahadur Lala Ram Saran Das, should be discussed in the House so that the pros and cons might be made known to the Members. They are free agents. They may be expected to vote in accordance with the facts placed before them. I hope therefore that you will see your way to allow the Honourable Member to move his amendment even though you personally may hold that it is unnecessary or goes counter to the proposals made by the Government.

THE HONOURABLE SIR DAVID DEVADOSS (Nominated : Indian Christians) : Sir, may I make one observation merely on the legal point? So far as this clause goes, it does not affect the separate property of the wife. Evidently there has been a misapprehension as regards that. What is intended to be brought within the ambit of this Bill is this—

“ So much of the income of a wife or minor child of such individual as arises directly or indirectly—

(i) from the membership of the wife in a firm of which her husband is a partner ”

—that is, if she becomes a partner, she will be liable—

“ (ii) from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner ”

—if he becomes a partner, then he is liable. Then comes (iii)—

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

It is not the separate property of the wife. Supposing the grandfather or the father gives some property to the wife, that income does not come within this sub-clause. Therefore, the separate property is not affected.

THE HONOURABLE THE PRESIDENT : That is what I said before, that the Honourable Member was under some misapprehension about this.

THE HONOURABLE SIR DAVID DEVADOSS : If the minor has some property, which may have come from, say, the maternal grandfather, the income on that also could not be covered by this sub-clause, because, sub-clause (iv) says—

“ from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual.”

So, if a minor gets property from his maternal grandfather the income of that property would not be assessable under this clause.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : If Lala Ram Saran Das is under a misapprehension the House will throw his amendment out ; but the House ought to be given an opportunity of seeing whether the contention put forward by the Honourable Mr. Devadoss is right or Lala Ram Saran Das is in the right. Why should the Chair decide the issue ?

THE HONOURABLE THE PRESIDENT : Because the Standing Order says that any proposal that neutralises the effect of legislation proposed is not allowable. You can vote against the particular clause but you cannot move a negative amendment.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : You are the guardian of our rights and privileges, and if you can stretch a point in our favour I would request you to do so. That is the last argument I have to urge.

THE HONOURABLE THE PRESIDENT : If the Government Member has no objection I will allow it, though it will be a waste of public time.

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD : We have no objection.

THE HONOURABLE THE PRESIDENT : As the Leader of the House has no objection I will allow it. When I take up the clauses you can move the amendment. At present the discussion will proceed on the main motion.

THE HONOURABLE HAJI MUHAMMAD HUSAIN (United Provinces West : Muhammadan) : In considering this legislation one has to see whether it is in conformity with the aims and objects as put down by the Government. It is for this House to consider the provisions of the Bill and compare them with those objects. Once it is passed and becomes an Act then, at the time of interpretation by a court of law, the aims and objects and the report of the Select Committee, etc., are out of the question. Therefore it is for this House to consider whether the provisions of this Bill are really in conformity with the objects and reasons set out here. Sir, I will draw your attention to those objects :

“ Reference is made in sections 1 and 4 of Chapter III of the Income Tax Enquiry Report, 1936, to the practices of avoiding taxation by means of nominal partnerships between husband and wife or parent and minor child or by the nominal transfer of assets to a wife or 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 practices are reported to have become very widespread already, with considerable detriment to the revenue, and there is little doubt that if they are not checked there will be progressive deterioration. The proposals in the Report regarding the aggregation of the incomes of husband and wife go beyond the immediate necessities of the case and to that extent their adoption would involve the admission of a new principle which the Government of India do not desire to establish in advance of the general public discussion of the Report, etc.”

Sir, let us see whether the provisions are in conformity with these aims. I think the provisions go far beyond what the Government contemplates. Nobody can possibly quarrel with the principle of the Bill. No one desires that people by unfair means avoid taxation. At the same time it is very essential that for the sake of the guilty few, the innocent should not suffer. The object of the Government is to prevent dishonest people from avoiding taxation. The Government's proposal in clause (a) sub-clause (i) is to the effect that so much of the income of a wife or minor child of such individual as arises directly or indirectly from the membership of the wife in a firm of which her husband is a partner should be taxed on aggregate. Here we see that even the word "nominal", which is the main object of the Government, is omitted. What has been put down is that any partnership whether he is nominal or real makes the income liable to tax in aggregation. Similarly, if we proceed further, in sub-clause (ii) we find "from the admission of a minor to the benefits of partnership in a firm of which such individual is a partner". Here again we find the object of the Bill is absolutely disregarded. As regards transfers of assets in sub-clause (iv), all kinds of transfers, real and unreal, by registered deed or otherwise, come under the mischief of the law. Then sub-clause (iii) "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" entirely ignores the separate existence of the wife. Even discretion has not been given to the taxing officer in case if he finds that there is a very genuine transfer or that there is a genuine partnership, and even then he cannot do anything but tax on the aggregate. Even in appeal the point cannot be considered because the Act does not provide for this contingency. We have to see that injustice or unnecessary hardship is not done to those people who honestly want to benefit their children or wife and make a genuine transfer in their favour or make them a partner. You will find many families among Hindus, Muslims, Sikhs and all religions who live merely by trading and own no other property except their business and there you will find that by devolution the property passes from one partner to his heirs who become partner. I can quote many clear instances, which I can multiply if necessary, where injustice can be done, and they are not rare but happen every day. Take, for instance, a case in which A and B, two brothers, are members of a partnership. The son of one is married to the daughter of the other, as is allowed in Muhammadan Law. Both of them die, leaving the son of one and the daughter of the other as partners holding a half share each. Both husband and wife hold entirely separate property without the control of one over the other, and yet they will be taxed on the aggregate. Take another instance of a case in which a son inherits from his mother and becomes partner. In such a case it cannot be said that there is any unfair attempt to avoid taxation. It is the Almighty God who is responsible for the death of the mother

12 Noon. and consequently the property devolves upon the son. Even in a case like that this Act not only does not give any relief but it treats the property of the son as that of the father. Another instance I shall give. In a Muhammadan family a mother dies leaving a dower debt of, say, Rs. 50,000 against the father. The father has only a big firm and no other property and his minor children become entitled to a share in the dower debt left by their mother and the father takes them as partner by transferring the property in the firm in lieu of dower debt. In that case the minor children hold property absolutely separately. The father is responsible to the court of law to account for what he received on behalf of the children. It may be that, in some cases, if you take the income of a minor son separately it may not be taxable at all, yet by calculating his income along with his father's,

[Haji Muhammad Husain.]

he is taxed. In some cases he may have to pay supertax if joined with the income of his father and when the account is put before the District Judge a share on the basis of supertax is taken out of his small income of the property which he inherited from his mother. Take another instance of prompt dower of a Muhammadan wife which she is entitled to claim at any time and in consideration of her dower she becomes a partner in the firm of her husband. In that case it is her absolute property owned separately without the control of the husband and the result is that there is danger of supertax being charged on the income of both. It may be that the income of her share if taken separately may not be taxable at all. Then take another case. In case the father who is the sole owner of a firm dies leaving a widow and a few minor children. The widow becomes a partner in the firm with her minor children. What happens to them? Worse than in other cases. Take, for instance, the case of a gift to a son by father. The father deprives himself of the property which he gives to his son and the son has it as his separate property without the least control of the father, except to the extent that he is responsible to the District Judge for the better management of the property of his son and the son is taxed along with the income of the father. Then, another instance. . . .

THE HONOURABLE THE PRESIDENT : You need not multiply these instances.

THE HONOURABLE HAJI MUHAMMAD HUSAIN : If you are satisfied, Sir, that instances of such common occurrences can be found, it is not necessary for me to multiply them.

Now, this Bill absolutely ignores such cases which are too many in which hardship may be done. Clause 3 does make exception in certain cases, and why should there not be another exception in those real cases in which an honest man transfers property to his son or to his wife? Why has that not been done? The exceptions that are put down in clause 3 are only those which relate to property transferred to the wife for adequate consideration or in connection with an agreement to live apart. The provision not only renders certain cases very hard but it is directly, I say, against the objects that have been put down by the Government. It is quite clear that if the Bill had been drafted more carefully by adding a word or two here and there, it would have met the object. Even, if the word "nominal" had been put down or if *bona fide* transfers had been excluded, the Bill would have been harmless. It is said that the object is only to touch such transfers which are made with the intention of avoiding tax. We find, however, that every possible case has been included and it would be impossible for the wife or child who holds property to become a partner of any firm without the risk of payment of income-tax on a higher scale which is really not chargeable and which should never have been charged. Now, the Honourable the mover would agree that the object of the Government is not to charge in aggregation. That point has to be considered later. This Bill only provides for a particular contingency, namely, those people who want to avoid income-tax may not be able to do that by *benami* or nominal transfers. It was just now said that it would be very difficult for an Income-tax Officer to find out the difference between a *mala fide* and a *bona fide* transaction by going into the accounts. It will be exactly like a judge saying "I cannot differentiate on the evidence before me between the guilty and the innocent, but I am going to convict the innocent along with the guilty." If a judge is not able to form his opinion

as to which side has produced better evidence, usually the burden of proof being on the plaintiff, he should dismiss the suit. Here even that much is not given to the Income-tax Officer. My submission is that the Government wants to rush through this legislation. It may be that the 31st March is very near. It may be that the separation of Burma makes it necessary that this Act should be passed in such a great hurry. Then, in that case the provisions should have been drafted in such a way as to avoid the objections from almost every side. My submission is that in considering the Bill it is necessary to provide remedy for such cases of hardship which are real and genuine and without this it will be very unjust to tax such people and to acquire money in a way which no Government would like to do. I have just heard from an Honourable Member that in those cases these provisions will not apply. With due respect to him I submit that it applies to every case and it certainly applies to separate property either inherited or transferred genuinely. It applies equally to both. Therefore I would request the House to consider this aspect of this legislation very seriously and I would point out that the House knows under what peculiar circumstances this Bill was passed in the Assembly. There were hardly more than 2 elected Members present when it was passed in the teeth of their opposition, and it is our duty....

THE HONOURABLE THE PRESIDENT : Please do not refer to anything that has passed in the other House.

THE HONOURABLE HAJI MUHAMMAD HUSAIN : All right, Sir. I merely said it because we know the Bill was passed by the Legislative Assembly and certainly if a Bill is passed by one House it has a certain amount of respect in the other.

THE HONOURABLE THE PRESIDENT : You cannot make use of any speeches made in that House in this House.

THE HONOURABLE HAJI MUHAMMAD HUSAIN : That I am not doing, Sir.

THE HONOURABLE THE PRESIDENT : But you were about to refer to it.

THE HONOURABLE HAJI MUHAMMAD HUSAIN : No, Sir. To meet the object of the Government or the contingency of fraudulent cases it is proper to penalise a person if he is found either to have admitted his child or wife as a member nominally to avoid income-tax or to have kept his accounts in such a manner as to show that the property is separate when really it is not. That will have a deterrent effect and it will affect the guilty only and not the innocent. With these remarks I resume my seat.

THE HONOURABLE DIWAN BAHADUR SIR RAMUNNI MENON (Madras : Nominated Non-Official) : Sir, every honest tax-payer will sympathise with the desire of the Finance Department to stop the evasion of a legitimate tax. And when the evasion has assumed, as the Honourable Mover has told us, such large dimensions as to result in serious loss of revenue to the Government, full support should be accorded to any measure for adequately and speedily dealing with it. The Bill purports to deal with certain abuses specified in the Statement of Objects and Reasons. And to the extent to which its provisions are designed to achieve this object, I fully and cordially support it. But at the same time I am anxious that it should not even in its effect encroach upon a field of taxation which is excluded from its purview according

[Sir Ramunni Menon.]

to the Statement of Objects and Reasons and, if I may venture to say so, very properly excluded. But on perusing the clauses of the Bill—and here I may say that I am applying only a layman's mind to the understanding of these clauses—I have some apprehension as regards sub-clauses (ii) (a) and (iii) (a) of clause 2. My apprehension is whether these sub-clauses do not in fact travel far beyond the stated purpose of the Bill. I can make my point more clear by mentioning a class of cases where as far as I can see no evasion of tax can be presumed or established. Most Honourable Members will doubtless be aware that in Malabar marriage and inheritance do not follow the ordinary Hindu code. According to custom wife and children have no right to the property of the husband. They do not in fact either in law or by custom form a joint family with the husband. It is quite true that legislation in recent years has to a very large extent modified the incidence of custom, but I think I am right in saying that even at present the prevailing practice in regard to a husband's making provision for his wife and children is almost entirely determined by the influence of tradition and custom. The husband during his lifetime makes provision for his wife and children. In his lifetime, for example, he acquires property or invests in securities in the names of his wife and children. That is the practice. Now this practice I need hardly point out is not resorted to for the purpose of evading income-tax. It has been in existence from time immemorial. I rather imagine that this class of cases will be covered by the penal clauses of this Bill. I suppose they will be included in the category of cases of assets transferred directly or indirectly by the husband otherwise than for adequate consideration. I shall be glad if I am mistaken in my interpretation, but if I am not and my apprehension that they will be included in this category is correct, I should be thankful if the Honourable the Mover of the Bill would give some consideration to this class of cases. I was very glad to hear from him of the assurance given by the Finance Member in the other House that if in giving effect to this Bill any class of genuine cases of hardship arises due consideration will be given to such cases. I submit that I have mentioned a class of cases of genuine hardship and I hope that he will give them due consideration. Subject to these observations I give my full support to the Bill.

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR (Madras : Muhammadan): Sir, so far as the principle of the measure is concerned, I am at one with the Honourable Mover. It is but just and fair that incomes which in fact are liable to income-tax or to a particular rate of income-tax should not be allowed to go scot-free either by evading the income-tax or the higher rate to which they are liable by the employment of means which are not quite honest. But, Sir, if the scope of the Bill had been confined to such cases, none of us would have had any objection. But we find from the provisions that have been formulated in this measure, that the effect of these provisions will be to bring a number of cases within the ambit of this law, which it is not the intention or at least which was not the intention of the members of the Income-tax Inquiry Committee to bring within the purview of this measure. As has been pointed out by my Honourable friends who have preceded me, there are a number of transactions which are quite different from the transactions which originally it was proposed to bring within the operation of this law that are covered by the provisions of this measure as it has been framed.

Sir, as has been pointed out by my friend, the Honourable Mr. Muhammad Husain, there are only three tests by which these malpractices can be tested.

The first test is whether the partnership is nominal or real, and the second is whether the transfer of the assets to the wife of minor child is real or nominal and lastly whether there is any real and substantial separation of the interests of the assessee and the wife or child. Judged by these standards, Sir, we find that the class of cases that should be covered by this measure should be only such as offend against the actual principles involved. But, Sir, the provisions as they have been framed do not take any cognisance of the very quintessence of the offence which has got to be penalised. There is no reference whatever in the clauses as framed to the intention with which a transaction has been entered into. There is no attempt to distinguish between a *bona fide* transaction and a *mala fide* transaction. There is no mention whatever of even a transaction being nominal in order to come within the operation of this law. I do not wish to take up any time of this House by giving any instances of the way in which these provisions would affect several people who should otherwise have been kept outside its purview. All that I would say is that contrary to the Statement of Objects and Reasons, which has been appended to the measure, the provisions are calculated to affect transactions which are perfectly legitimate, thoroughly honest and altogether unobjectionable and do not in any way offend against the principle of this measure. I do realise, Sir, that it would be difficult to frame the law distinguishing between *bona fide* and *mala fide* transactions, but that difficulty should not have induced the Government to frame a law which would clearly affect adversely persons whom it ought not, in fairness, affect at all. I therefore submit that with the best of concessions in regard to the intentions of the Government, and having the fullest sympathy with the object with which this law has been framed, it is impossible for us to give our consent to this measure.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras: Non-Muhammadan): Sir, I would certainly have given my wholehearted support to any measure to avoid evasion of income-tax, provided it has been properly framed, specially having regard to the fact that hereafter the provinces are going to share in the benefits of an augmentation of income from income-tax to the Central Government. If this Bill had really given effect to the intentions of the Government as stated in the Statement of Objects and Reasons, it should certainly have been very easy for me to give my wholehearted support to the motion to take the Bill into consideration. But, Sir, I must have some information from the Honourable Mover before I can vote in favour of the motion. Sub-clause (3) of clause 2 says :

“ 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 or minor child of such individual as arises directly or indirectly—

- (i) from the membership of the wife in a firm of which her husband is a partner ;
- (ii) from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner.”

Will the Honourable Member tell us that in cases where the interests of the wife and child are distinctly separate from those of the husband or the father as disclosed by unimpeachable evidence of, say, a registered document or a decree of a Court, will those cases be excluded from this clause? I do not think they will be. Speaking as a member of the legal profession and applying not only my legal training but also my common sense, I should say that this clause will include cases of partnerships of which a wife or a

[Mr. Ramadas Pantulu.]

minor child of a person is a member, even though their interests are separate and even if the partnership is absolutely *bona fide*. These persons come within the mischief of the Statute merely by their relationship of being the wife or the child and nothing else, even though under the personal law or religious law or by means of an agreement between the two persons, they have been absolutely separated. The son and father may have become divided for all purposes under Hindu law and still, for the purpose of this partnership, their incomes will be aggregated. While the Statement of Objects and Reasons says that the Government at present has no intention of adopting the principle of aggregation of the incomes of husband and wife, I think they adopt that principle *in toto* so far as these particular transactions mentioned in the Bill are concerned. In effect, they do accept this principle of aggregation. Therefore, having regard to the fact that the Bill fails wholly to give effect to the intentions expressly stated in the Statement of Objects and Reasons, it is very difficult for us to vote in favour of the motion of the Honourable Member. I would not have taken the trouble to labour a very simple point like this, which must be apparent on the face of the Bill to any one who reads it, but for the fact that my Honourable friend, Sir David Devadoss, a very eminent retired Judge of the Madras High Court, told us that the Bill does not affect such cases.

THE HONOURABLE SIR DAVID DEVADOSS: I did not say that. I referred to the separate property.

THE HONOURABLE MR. V. RAMADAS PANTULU: If he did not say it then he supports me. I am glad to hear him say so. The observations which you made, Sir, when the original ruling was given about the Honourable Lala Ram Saran Das's amendment caused some difficulty in my mind as to the precise scope of the Bill. It seems to me now, from a further reading of it and listening to the Honourable Mr. Lloyd's speech that there is no escaping from accepting the view urged by my friend Lala Ram Saran Das. We are grateful to you Sir, for reconsidering your ruling and also to the Honourable the Leader of the House for having given this House an opportunity of discussing these questions, not only at this stage, but even later when my Honourable friend, Rai Bahadur Lala Ram Saran Das, will move his amendment. Reading the Bill as it stands, I think it entirely fails to give effect to the intentions expressed in the Statement of Objects and Reasons and has many dangerous implications of which this House should be aware before voting in favour of the motion.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non-Muhammadan): Sir, I should have been glad to give my wholehearted support to the Bill if the Bill was one which would have made it very difficult for income-tax to be avoided. But, as the Honourable Mr. Muhammad Husain has very rightly pointed out, the Bill goes beyond the Statement of Objects and Reasons. From that Statement I find that the object of the Bill is said to be to stop the "practices of avoiding taxation by means of nominal partnerships between husband and wife or parent and minor child (or by the nominal transfer of assets to a wife or 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". If we compare the Statement of Objects and Reasons with the statement of the law to be found in clause 2, we find that the word "nominal" does not occur there. That is, the Bill has been drafted in such a way as to make it possible for the

incomes of the husband and wife to be aggregated, and this would involve the admission of a new principle into our income-tax law. I do not say that that principle is necessarily wrong. We have our own opinions in regard to that principle, but if you are making a departure in that direction, then for heaven's sake be direct and straightforward. And our complaint in regard to the Bill is that the Bill is not direct and straightforward. It seeks to do something quite different from what it professes to do. You say that you are only attacking nominal partnerships, benami partnerships, but in fact you are doing something much more than that. You say that you are not going to give effect to the recommendations of the Income-tax Enquiry Committee in regard to substantial partnerships between husband and wife just yet, but when we read the clause as it is drafted we find that you have given effect to what you say you are not giving effect to, namely, the recommendations of the Enquiry Committee. I do not say that I am opposed to the recommendations of the Income-tax Enquiry Committee. I have my own views in regard to those recommendations, but it is not necessary for me to go into that question at this stage. But I do say that the Bill is not straightforwardly drafted. That the clauses of the Bill are open to the objections which have been raised by the Honourable Mr. Muhammad Husain is quite clear from the draft itself which reads :

“ So much of the income of a wife or minor child of such individual as arises directly or indirectly from the membership of the wife in a firm of which her husband is a partner.”

There is nothing to indicate that if the wife is a real partner her income will not be taken into consideration for the purpose of aggregate assessment of tax. Take again this : “ From the admission of a minor to the benefits of partnership in a firm of which such individual is a partner ”—the minor might have property of his own and the partnership might be a real partnership. But there is nothing to indicate that if the partnership is real the minor will be treated on a different footing. Therefore, Sir, having regard to the manner in which clause 2 has been drafted, it is impossible for us to vote for this Bill as it stands.

THE HONOURABLE MR. R. H. PARKER (Bombay Chamber of Commerce) : Sir, I rise to approve the underlying intentions of this Bill. I think they are definitely on the right side. The general tendency of the existing income-tax laws is to favour those who have capital as opposed to those who have not. As it stands now, if you have two individuals, one of whom earns Rs. 50,000 a year from his own labours and another who receives the same amount from securities or investments of one kind or another, the one can and very often does transfer part of those securities or property to a wife or child and obtains the same income as the other and pays less tax than the individual who merely relies on his own labours who necessarily has to pay on the full amount of his earnings. I think that the amendment to be moved by the Honourable Leader of the Opposition aims really at destroying the whole underlying intentions of the Bill. I admit that there are cases and there always will be cases where you do not get entire equity as a result of a law. But my definite opinion is that most of the cases mentioned this morning are in the nature of special pleading and that in 99 per cent. of cases affected the result will be an equitable result. I am glad that Government in another place did undertake to do their best to avoid inequities or hardship.

THE HONOURABLE SIR DAVID DEVADOSS: Sir, I welcome this measure. It is a well known fact that some people put a portion of their property in the name of their wives or children in order to avoid super-tax. So far as clause 2 is concerned, I thought I made it quite clear that in the case of a wife who has got separate property and a separate income that income would not be brought into the joint income. But clause (i) makes the income of a wife or child of a partnership liable to be assessed as the income of the husband or father. That I thought I made quite clear. My Honourable friend Mr. Ramadas thought that I had made a mistake. Whether it be the separate property of the wife or the separate property of a minor child, if it is brought into partnership with the husband's or father's property, then the income arising from that partnership is assessable as the income of the husband or father. That I took to be the meaning of sub-clause (1) of 2 (a), for it reads "from the membership of the wife in a firm of which her husband is a partner" and (ii) reads "from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner". It does not take into consideration the source of the capital of either the wife or of the son.

THE HONOURABLE MR. V. RAMADAS PANTULU: Is it right?

THE HONOURABLE SIR DAVID DEVADOSS: I am not concerned with the rights or wrongs of the measure. I am only trying to interpret what the clause means. Therefore I submit that my learned friend Mr. Ramadas is not justified in saying that I said something which was not quite correct. As regards the principle whether such income should be assessed or not, it is not for me to say. It is for the Government to consider.

Then as regards the question whether a partnership is nominal or not, it would be very difficult for an income-tax officer to decide that point. I think the Government have very properly omitted the word "nominal". Suppose there is a partnership between husband and wife, where the husband has put in Rs. 50,000 and the wife Rs. 20,000, is it possible for the Income-tax Officer to go into the question whether that Rs. 20,000 was her separate property or not or whether the husband has nominally put it in her name? Even in civil courts where such questions are fought out very elaborately opinions differ. What one court holds as nominal, another on appeal holds as real. Therefore I think in a statute like this such considerations ought not to be brought in. No doubt if the Government thinks that the separate property of the wife when it is put into the partnership ought not to be assessed as the property of the husband, they will frame a measure to that effect. Sir, my difficulty with regard to sub-clause (iii) is this. It is said "from assets transferred directly or indirectly to the wife by the husband otherwise than by adequate consideration". Now marriage is held to be very good consideration, and in the case of a transfer for such consideration, if the man becomes insolvent, that portion cannot be touched. Now the expression "adequate consideration" will I think be liable to misconstruction. "To live apart", that does not affect the question. If the wife lives apart and the husband makes provision for that, that does not come within the ambit of this section. But property transferred "for adequate consideration" is liable to be interpreted in more ways than one. I would ask the Honourable the Mover to consider this question, to see whether it could not be improved. If, for instance, she gives actual value for the transfer of property, then it will become her separate property. This only means . . .

THE HONOURABLE THE PRESIDENT: "Valid" would be more appropriate.

THE HONOURABLE SIR DAVID DEVADOSS: Marriage is a valid consideration. Otherwise as I submitted it will be liable to more than one construction. Again when a man puts property in the name of his wife, where it is not for the purpose of evading income-tax, I do not think that ought to be assessable, for in India, as you know well, we have not got marriage settlements as in England. In England wherever there is any property to be settled, there is always a marriage settlement; but in India we very seldom have marriage settlements, at least so far as Hindus or Indians are concerned. When a man marries a second time and he has children by the first wife, he generally wants to settle some property on the second wife. At least the people who are interested in the second wife insist upon the husband putting some property upon the second wife as a provision for her in case he does not make provision for her afterwards, especially among Hindus. Should the income of such property be assessed as the income of the husband? That is a point which the Government will have to consider. As this stands, the income will be assessable, but I should consider that such income should not be assessable, because it is a provision made to the wife for her maintenance in case he dies without making proper provision for her. Especially in Hindu families this will affect them very much. When property is put in the name of the second wife, at the time of marriage or soon after, the income from that is her separate property and should not be considered as the property of the husband for the purpose of income-tax. It stands in the same position as her property which has been given her by her father, or by her mother or which she inherits from her maternal side—her *stri-dhanam*. With these observations, Sir, I have much pleasure in supporting this measure.

THE HONOURABLE MR. V. V. KALIKAR (Central Provinces: General): Sir, I have also my own doubts about this Bill. The Statement of Objects and Reasons differ materially with the Bill. One finds that the Bill is quite different from the Statement of Objects and Reasons. The Statement says that the Bill is framed for taxing those transactions which are *mala fide* or *binami* transactions. I am at one with the Government on this point. But the Bill as drafted will cover so many cases where there are no *mala fide* transactions but where there are *bona fide* transactions and the principle on which our system of income-tax is based will be to some extent deviated from. I have before me a case of a maternal grandfather making a gift to a minor child and supposing that minor child under that gift becomes a partner in the firm in which the father is also a partner. If I understand rightly the provisions in clause 2, sub-clause (2), then under this sub-clause the father's income and the income accrued from the share of this minor son and the father's income will be taxed, which I think is inequitable. A similar case might arise in case of a Hindu daughter. Supposing a father makes a gift to a Hindu daughter and fortunately she happens to have a husband who is also a partner and that money is invested in that firm by the father of the daughter, then under the present Bill, if I am correct, I think the husband's income will be increased to the extent of the share of his wife which is quite separate from the husband's share and which has been gifted to her by her father. Similar cases may occur also of real transactions which my Honourable friend Sir David Devadoss has just related. An attempt I understand was made in the Lower House to refer the Bill to Select Committee, so that this Bill may be properly drafted and the intention of the

[Mr. V. V. Kalikar.]

Government to tax those transactions which are *mala fide* should be covered by it ; but that attempt was opposed in the Lower House and the Bill has come before us in the same form. As I said in the beginning, I do want to defend those people who want to avoid tax by *mala fide* transactions, and a measure of that sort should be there, so that the State must receive taxes from these *mala fide* transactions. But at the same time I do want that no hardship should be caused to those persons who are under the benefit of really genuine transactions, who do get benefit from gifts and whom it will not be equitable to tax under our present system of taxation. I therefore think that I cannot lend my support to the Bill in its present form.

THE HONOURABLE SIR PRABHASHANKAR D. PATTANI (Bombay : Non-Muhammadan) : Sir, I had no intention to speak on this Bill generally ; because I thought that when the sections would be taken up in their proper place there would be an occasion to suggest proper amendments with a view to make this Bill acceptable to the principle that no attempt should be allowed, no facility should be given for evasion of taxes. But if any section omits this precaution, and the intentions of the Bill and the Bill itself are inconsistent, then I think in the interests of saving time, in the interests of giving right interpretation when cases arise in future, this inconsistency should be removed, not only with regard to one Bill, but with regard to every Bill that comes before any House. I do not wish to go into the details of discussions that have been carried on in this House by the several Members. I am much impressed by the speech of the Honourable Member from Allahabad and I should think that the Honourable Member in charge of the Bill, when the sections are taken one by one, will be good enough to consider that no unnecessary hardship should fall on *bona fide* transactions. I do not mind that ample discretion should not be left to the income-tax collector. Whether he should have any discretion or not mainly depends upon the amount and the quality of confidence that Government may have in their officers. I leave this question to them, but I do object to the attempt to take away from the law courts the right to inquire into these things. It would always be wise and legitimate for people who are to be affected by them to desire that facilities for a case being proved in their favour in the law courts should be available to them.

With these few remarks I am inclined to support the view put forward here mainly by the majority of those who have spoken, namely, that this Bill will require a great deal of amendment to prevent unnecessary hardship and unnecessary suspicion.

THE HONOURABLE MR. A. H. LLOYD : Sir, the gravamen of the attack which has been developed upon this Bill in the course of this debate is really an attack upon the drafting of the Statement of Objects and Reasons. I attempted in my opening speech to explain that the reference to nominal partnerships *mala fide* bogus transactions was made rather with a view to elucidate the history of the development of this proposal than to suggest that we had found it possible to confine our proposals to transactions which fall under that category. I have explained already, Sir, why we regard it as impossible to limit the provisions of this Bill to cases which may be described as proved cases of dishonest or, shall we say, at least sharp practices in order to avoid income-tax liabilities because if we were to attempt to introduce safeguarding clauses to exclude transactions of which that had not been proved we should impose upon the taxing officers, upon the appellate officers

and upon the courts an amount of disputes to settle which would render the whole Act quite unworkable. As I said before, we must have an objective test and not a subjective test. The taxing authorities cannot undertake the responsibility of proving good or bad motive. The Statement of Objects and Reasons attempted to explain that we have drafted the Bill within as narrow limits as was possible without making the Bill unworkable. That is to say, at this stage we have not taken up the complete proposal for the aggregation of income ; but it has to be admitted that up to a point this Bill as drafted does admit that principle, but only up to the point short of which we could not stop without making the Bill unworkable.

THE HONOURABLE MR. P. N. SAPRU : Then why did you not say so in your Statement of Objects and Reasons ?

THE HONOURABLE MR. A. H. LLOYD : I have already said, Sir, that the gravamen in the attack upon this Bill is really upon the drafting of the Statement of Objects and Reasons. I myself was not unconcerned with the drafting and if I had foreseen that it would attract attention in this particular way I should have been very careful to word it so as to show that while this was our primary object it had to be admitted that for practical reasons we had to go a little beyond that object. But I still claim, Sir, that it is only a question of going a little beyond that object and that in a great majority of cases we shall achieve the minimum intention that we had in view while in other cases it is not right to talk about penalising or punishment. After all, nothing worse can happen than leaving the rate of the tax at the level at which it would have stood if the particular transactions in question had not taken place.

Then finally I must repeat the assurance that we are prepared to examine genuine cases of hardship where it is possible to arrive at a satisfactory definition which will not create quite impracticable subjects for dispute.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Why not incorporate it in the clauses of the Bill ?

THE HONOURABLE MR. A. H. LLOYD : To the question that has just been asked the answer is that if we were to attempt to find out every exception possible, every exception that arguably ought to be made, we should never have got the Bill ready and I have shown that there are very substantial financial reasons for urging on this Bill immediately. But I do wish to point out again that within the next 4 months there will be every opportunity for every one concerned to go into the details as fully as they like in every direction. This whole subject must come up again for review in a very short time apart from the re-examination which the Honourable the Finance Member has undertaken to consider if experience of the working of the measure shows it to be called for.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Are you prepared to confine the age of this Bill to 2 months ?

THE HONOURABLE MR. A. H. LLOYD : Now, Sir, these remarks really cover the attack which has been made upon the Bill from almost all the speakers. I have to thank one or two speakers for their support but I would like to say with regard to what the Honourable Sir David Devadoss observed

[Mr. A. H. Lloyd.]

that I would not consider the continuance of a person in a married state as adequate consideration but I think any court would consider an agreement incidental to entry into marriage as a matter of adequate consideration and I think as I said today that the making of a marriage settlement in consequence of an agreement which had to be entered into in order to bring the marriage about would be a transfer for adequate consideration. If the transfer was made actually before the marriage took place, of course, there could be no doubt at all. I think it will be found that his doubts will be resolved in practice, but if they are not, I think they form one of these cases which we shall have to study closely in order to see whether any action could be taken pending the whole revision of the law upon this subject.

That, Sir, really, I think is all that I need say. The objection that we adopt the principle of aggregation is mainly confined to cases of income arising from business, that is, income from a partnership. I am convinced that the vast majority of the cases that we have to consider are cases that are

1 P. M.

not deserving of any consideration. Where the arrangements have been made, as I have seen in practical examples, they are entirely and solely for the avoidance of income-tax. In this connection I would remind Honourable Members of one fact, that a minor child cannot be a partner in a firm. He must be admitted to the benefits by the partners. He cannot subscribe capital himself. It is not legally possible. Where one of the partners is the father, then the presumption is pretty obvious that he is the one who has admitted the minor to the partnership.

Finally, before leaving the Statement of Objects and Reasons, I would like to emphasise these words—and this is really the substance of my defence of our position—“when there is no substantial separation of the interests of the assessee and the wife or child”. In those circumstances, we feel that there can be no real hardship in most cases from the operation of this law even if we are unable to prove that there has been absence of good faith on the part of those who have formed the partnership which has resulted in this law being operative.

THE HONOURABLE MR. V. RAMADAS PANTULU: Will not cases of a wife and child with separate property of their own fall under clause (a) of clause 3 (2)? Supposing the wife's or child's interests are separate from those of the husband or father. Even then, they will come under this clause.

THE HONOURABLE MR. A. H. LLOYD: I can only say that there seems to be a very remote possibility of a wife who has been unable to get on with her husband and who has got to the stage of living apart continuing in partnership with the husband in a business. Actually I should say that an almost certain result of that will be that the partnership will be dissolved and a new partnership will be created.

THE HONOURABLE MR. V. RAMADAS PANTULU: It is not a legal assumption.

THE HONOURABLE THE PRESIDENT: Motion made :

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

The Question is :

“That that Motion be adopted”.

The Council divided.

AYES—27.

Akram Husain Bahadur, The Honourable Prince Afsar-ul-Mulk Mirza Muhammad.
Arthur, The Honourable Sir Charles.
Basu, The Honourable Mr. Bijay Kumar.
Bradfield, The Honourable Major-General E. W. C.
Charanjit Singh, The Honourable Raja.
Clow, The Honourable Mr. A. G.
Devadoss, The Honourable Sir David.
Dow, The Honourable Mr. H.
Ghosal, The Honourable Sir Josna.
Haidar, The Honourable Khan Bahadur Shams-ud-Din,
Intisham Hyder Chaudhury, The Honourable Khan Bahadur Syed.
Jagdish Prasad, The Honourable Kunwar Sir.
Johnson, The Honourable Mr. J. N. G.

Khurshid Ali Khan, The Honourable Nawabzada.
Lal, The Honourable Mr. Shavax A.
Lloyd, The Honourable Mr. A. H.
Maxwell, The Honourable Mr. R. M.
Menon, The Honourable Diwan Bahadur Sir Ramunni.
Nihal Singh, the Honourable Sirdar.
Nixon, The Honourable Mr. J. C.
Parker, The Honourable Mr. R. H.
Russell, The Honourable Sir Guthrie.
Siddiqi, The Honourable Khan Bahadur Shaikh Muhammad Bashir.
Singh, The Honourable Raja Devaki Nandan Prasad.
Todd, The Honourable Mr. A. H. A.
Webb-Johnson, The Honourable Mr. S.
Williams, The Honourable Mr. A. deC.

NOES—19.

Abdus Sattar, The Honourable Mr. Abdur Razzak Hajee.
Ataullah Khan, The Honourable Chaudhri.
Banerjee, The Honourable Mr. Jatindra Chandra.
Buta Singh, The Honourable Sardar.
Chettiyar, The Honourable Mr. M. Chidambaram.
Govindachari, The Honourable Rao Bahadur K.
Kalikar, The Honourable Mr. V. V.
Kameshwar Singh of Darbhanga, The Honourable Maharajadhiraja Sir.
Kunzru, The Honourable Pandit Hirday Nath.
Mahtha, The Honourable Rai Bahadur Sri Narain.

Motilal, The Honourable Mr. Govindlal Shival.
Muhammad Hussain, The Honourable Haji.
Muhammad Hussain, The Honourable Khan Bahadur Mian Ali Baksh.
Padshah Sahib Bahadur, The Honourable Saiyed Mohamed.
Pantulu, The Honourable Mr. V. Ramadas.
Pattani, The Honourable Sir Prabhashankar D.
Ram Saran Das, The Honourable Rai Bahadur Lala.
Ray Chaudhury, The Honourable Mr. Kumarsankar.
Sapru, The Honourable Mr. P. N.

The Motion was adopted.

THE HONOURABLE THE PRESIDENT: The Question is :

“That clause 2 stand part of the Bill.”

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Before the discussion of the clause is taken up may I with your permission make an appeal to the Leader of the House and ask him whether he would not himself propose or consent to the reference of the Bill to a Select Committee. We cannot make a formal motion in that connection in virtue of the ruling you gave yesterday, but considering the feeling that there is on the subject in this House, considering the admissions made by the Government Member in charge of the Bill, it is open to the Government to take this opportunity of so drafting the Bill as to meet if possible the objections raised in quarters of the House. The Honourable Mr. Lloyd himself admitted that the Statement of Objects and Reasons does not represent quite correctly the scope of the Bill. He also admitted that the scope of the Bill was not confined to *mala fide* transactions.

[Pandit Hirday Nath Kunzru.]

and in dealing with the objection urged by our Honourable colleague Sir David Devadoss, he said that, while he imagined that the case referred to by him would be exempt from the operation of this law, he could give no guarantee....

THE HONOURABLE MR. J. C. NIXON : On a point of order, Sir, is it in order for the Honourable Member to move for a Select Committee at this stage ?

THE HONOURABLE THE PRESIDENT : I have allowed him to make his submission before I proceed further with the Bill.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : If the Honourable Member had listened to me he would not have urged this objection. I have not asked that the Bill be referred to a Select Committee. I have asked the Honourable Leader of the House whether he would, in view of the admissions made by the Honourable Mr. Lloyd, take this opportunity of having the Bill better drafted. Government can at any stage come forward and say that they will take steps to see that an injustice unwittingly done is remedied. Surely, Sir, the admissions made by the Honourable Member could not be stronger ; the objections to the Bill could not be more strongly supported than by the admissions made by the Honourable Mr. Lloyd. This is a fit opportunity for Government of their own motion to come to the House and say, " Although we did not allow this Bill to be referred to a Select Committee in another place, yet, having considered the matter more fully, we are willing to wait to give Honourable Members an opportunity of placing their views before a Select Committee and so ensuring that the Bill does not exceed the requirements of the case ". The principle of the criminal law, Sir, is that, while a hundred guilty men may escape, not one innocent man should be punished. If the same principle were to be followed in this case, the reply of the Honourable Mr. Lloyd that the Bill could not be so drafted as not to do injustice to legitimate interests ought to destroy this Bill. When the Honourable Member makes that statement Government ought really to withdraw.....

THE HONOURABLE THE PRESIDENT : You are not entitled to make a speech. You can only make a suggestion to the Government Member in charge.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I know it, Sir, I am thankful to you for the indulgence you have extended to me, and I hope the same indulgence will be extended to my proposal by the Honourable Leader of the House.

THE HONOURABLE THE PRESIDENT : In the first place the Honourable Mr. Kunzru is labouring under some misapprehension when he says that yesterday I objected to a motion for reference to Select Committee. In fact what I ruled out of order was the motion for circulation of the Bill and I permitted the motion for reference to Select Committee and actually made suggestions to the Honourable mover to amend his motion to bring it within the ambit of the rules, which he did. So he is wrong on that point.

Now as regards the proposal now made, that after the Bill has passed the consideration stage the Government should interfere and make a motion

to refer it to a Select Committee, is altogether unprecedented. During 30 years of public life, in this Council and elsewhere, I have never known such a request to be made, nor has it ever been made in the Legislative Assembly when the motion for consideration has been passed. Further, the rules and Standing Orders on this point are clear. A motion for reference to Select Committee can only be made when the Member in charge brings in the motion for consideration. The Government Member himself has no right whatsoever to bring such a motion for reference to Select Committee after the motion for consideration has been passed. Of course, if the Government does not want to proceed with the Bill at the third reading, when I call upon the Honourable Member in charge to make his next motion, he may if he likes refuse to move the third reading, and in that case the Bill automatically drops. Both under Standing Orders 37 and 38 the request of the Honourable Mr. Kunzru cannot possibly be allowed.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: It is still possible to adjourn the discussion if the Government want to do it and to bring up this Bill four or five days later. Government can consult the Honourable Members of this House informally and see whether they can move any amendments which will meet our views.

THE HONOURABLE THE PRESIDENT: You are labouring under a further misapprehension. At this stage the Government if they wish can drop the Bill altogether. Once the consideration stage is passed I am bound to proceed with the passing of the clauses.

The Question is :

“ That clause 2 stand part of the Bill.”

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Sir, I rise to move the amendment which stands in my name and which reads as follows :

“ That in clause 2, to the proposed sub-section (3) of section 16 the following proviso shall be added, namely :—

‘ Provided that nothing in this sub-section shall operate so as to include in the total income of any individual for the purposes of assessment such part of the income of the wife or minor child of such individual as arises directly or indirectly from property which, under the personal or religious law applicable to the wife or child, is the separate personal property of the wife or child.’ ”

THE HONOURABLE THE PRESIDENT: I think this is a convenient stage to adjourn the House. The Honourable Member will speak on his motion when the Council meets again after adjournment. I adjourn the House till 2-30 in the afternoon.

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

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

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Sir, on the general discussion of the Bill the Honourable Members who have spoken have made my task easier. The Honourable Haji Muhammad Husain, the Honourable Ramadas Pantulu, the Honourable Mr. Kunzru and the Honourable Mr. Sapru have practically supported the underlying object of my amendment. If I rightly remember, the Honourable Mover of the Bill himself

[Lala Ram Saran Das.]

admitted that the Bill goes beyond what is said in the Statement of Objects and Reasons. He also admitted that the Bill has not been rightly drafted.

THE HONOURABLE MR. A. H. LLOYD : Sir, on a point of personal explanation, I must disclaim any such statement.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : That is anyhow what I understood you to say.

THE HONOURABLE MR. P. N. SAPRU : What is the reporter's version ? Because we understood Mr. Lloyd to say that the Bill did go beyond the Statement of Objects and Reasons

THE HONOURABLE THE PRESIDENT : Order, order, we must take the Honourable Member's statement. We cannot refer to the reporter's notes at any time or in the middle of the debate.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Sir, we shall take the Honourable Member's statement of his intention from him but the question is, what were the actual words used by him at the time and the impression he created in the minds of others.

THE HONOURABLE MR. A. H. LLOYD : Sir, I did not take exception to my Honourable friend the Rai Bahadur's statement that I admitted that the Bill as drafted went, up to a point, beyond the Statement of Objects and Reasons. I did not question that. What I objected to was his further statement that I admitted that the Bill was not rightly drafted. That I never admitted.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Whatever it may be, Sir, the opinion on this side of the House is that a Bill which does not convey the true sense of the object behind the framing of the Bill ought not to be considered here at all. Sir, a remark was made that in case there be any mistake regarding the right interpretation of the clause, reference can be made to the courts. But, Sir, it is a saying " that legislation which tends to make for references to courts is always undesirable ".

Sir, this Bill is defectively drafted. We cannot understand from the Bill that, if it is passed, from what date the new clauses will apply,—whether the clauses will apply from the 1st April 1937, which is the beginning of the new financial year, or it will throw the public to the mercy of the income-tax officers in giving it a retrospective effect, and whether giving that retrospective effect at this time and in this Bill is legitimate and applicable. I will also say, Sir, that to give a taxation retrospective effect is not just.

THE HONOURABLE THE PRESIDENT : Why do you assume that it is going to have retrospective effect ?

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Because the Honourable Member in charge did not contradict my assumption.

THE HONOURABLE MR. A. H. LLOYD : Then, Sir, may I draw his attention to clause 5 of the Bill ?

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Very well, Sir. I must say that to refuse a safeguard and to force a vague clause

without a safeguard which this House presses for creates a suspicion in our minds. In so far as Government wants to prevent legal avoidance or fraudulent escaping from income-tax, I am with them. But I strongly resent the Government going indirectly against the provisions of the various religious laws of the people in this country and taxing income which can be established as personal and separate. As my Honourable friend Mr. Muhammad Hussain has pointed out, the word "nominal" is not used in sub-clauses (ii) and (iii) of section 2 (3). The Honourable Mr. Lloyd, when replying to the debate, as far as I can see, did not impress the House at all with his arguments. His conscience seemed to be with us. When the division was called, he said "No", but later on corrected it presumably because, as an official, he had to vote otherwise. Later on, Sir, in his defence, he did not meet the criticism of hardship which this Bill indirectly will impose upon those people who are honest and who do not want to commit a fraud by evasion of income-tax dues. My amendment proposes to clear the position by a proviso which we consider essential and equitable and just. The Honourable Mr. Lloyd gave a reply that undivided families will not be affected by this Bill. This Bill of course seems the thin end of the wedge, and further legislation will follow in another two months' time, as the Honourable the Finance Member observed in another place. Sir, this House was intended to function to stop hurried legislation of the other Chamber. Sir, on the day on which this was passed through the other House, I understand that there were very few elected Members present and the Bill was rushed through notwithstanding this fact.

THE HONOURABLE THE PRESIDENT : We are not concerned here with that House at all.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Very well, Sir. But I must say that the way in which it is the intention of the Government to rope in those who are honest and whose property could be proved to be personal and separate does not meet with our valid objections. By putting in this clause in the Bill they force the people to go in references to higher courts and so put them to unnecessary expense and worry. No adequate reply has been given as to how the safeguard which I want to put in by my amendment can be met. Unless and until the proviso I suggest is adopted, the clauses as they now stand are very vague and defective and are liable to impose hardship on the public; the wording of those clauses need redrafting. Sir, when the House divided this forenoon on the point whether this Bill should be considered or not, from the experience that I have and the privilege that I enjoy of being the Member of this Council from its very inception, I hold, Sir, that this was the first time when the elected Members voted practically *en bloc* against the Government, barring one elected Member

THE HONOURABLE MR. BIJAY KUMAR BASU : What about the two elected European Members ?

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : I said, barring a few Members. The majority voted against the Government. The opposition never showed this strength before. In case other Honourable Members of the Progressive Party had been present, perhaps it would have been possible to win in the division today. However, Sir, Government must realise from the voting that took place this morning what the elected Members, the true representatives of the people at large, think of this important measure. To flout the opinion of those true representatives of the country is, I consider, most inadvisable on the part of the Government of India. In case they mean

[Lala Ram Saran Das.]

what they say, and in case they want to act rightly, why should they not accept the safeguard which I propose and which safeguard is based on equity and justice? Sir, the Honourable Mr. Basu referred to the fact that two of our European colleagues did not vote with us. But I must say that one of the European Members in the Assembly did object to the Bill in its present form. However, Sir, this is a matter which concerns mainly the Indians, and particularly the Hindus and Musalmans, so our European colleagues may not have given due thought to the points raised by me. Therefore, I can say that so far as elected Indian Members are concerned, barring one exception, they are *en bloc* against the Bill in its present form. In view of the circumstances in which the Bill was piloted through the other House and of the position taken up here by all the elected Indian Members but one, we expect that the Government will give serious consideration to the opposition views that have been voiced here. We are glad the Honourable Finance Member is present here and we appeal to him to consider this most serious matter and not to pass the Bill on the strength of the official block.

Sir, the arguments which I gave in favour of my amendment need not be repeated but one point which I missed before is this. When a transfer is made under agreement to live together between the wife and husband, will that constitute a partnership in which the wife has a separate independent personal share or will the husband and wife be taxed on the aggregate income, and will the separated income of the wife be or not be subject to super-tax? I must also express my regret that the modest request made to the Honourable Leader of the House in view of the defective drafting of the Bill has not met with any response. We deplore that attitude of the Government and we again respectfully request them to bring in this Bill rightly drafted and not to proceed with it today. If our request in this connection is flouted I have no alternative but to ask Honourable Members to support my amendment. It is just and it is not in the interests of those who want to evade lawful assessment of income-tax. Therefore, Sir, I commend this amendment to the favourable consideration of this Chamber.

THE HONOURABLE HAJI MUHAMMAD HUSAIN: Sir, this clause has put both sides in an awkward position. Although we all agree to the principle and we very much desire to vote for this measure, we cannot do so on account of this clause having been drafted in a manner which does not conform with the aims and objects of the Bill. The other side acknowledge the fairness of the argument and do not deny that the provision is not in conformity with the aims and objects, and yet persist in leaving the clause as it is. This amendment, if accepted, will relieve both. It will bring the provision into conformity with the aims and objects and will meet the real intention of the Government in framing this measure. In the Legislatures the aims and objects for which legislation is proposed are the first consideration, and the provisions of the legislation next.

THE HONOURABLE THE PRESIDENT: Courts do not attach any importance to what is set out in the Statement of Objects and Reasons.

THE HONOURABLE HAJI MUHAMMAD HUSAIN: That is what I said this morning and I am glad that the Honourable the President acknowledges the fact that courts do not recognize the aims and objects of legislation. That is very much in my favour in saying that it is here in this House that we have to look to it and pass the legislation strictly in accordance with the objects.

and reasons for which the legislation is proposed. Once the Bill becomes an Act, the courts cannot recognize intentions which are expressed in it. Therefore it is very necessary for us to stick to the aims and objects and see to it that the intentions of Government are carried out faithfully. But in this case it is admitted that the Bill does not conform with the aims and objects set down and the Bill as drafted is being rushed through. My appeal to the whole House is that by accepting the amendment we keep the dignity of this House, because it is no good passing a measure when we feel in our heart of hearts that there are flaws in it. Flaws may be technical or on merits. I say they are on merits, because the very intention behind this legislation has been disregarded. Not only that, but this legislation will adversely affect many innocent people, and there will be many more innocent than dishonest people who will suffer by it. The curious thing is that even if a taxing officer is convinced to his entire satisfaction that the income of the wife or the child is genuinely and substantially separate, he is helpless. I must take it, and I believe it to be the correct reading of the Bill, that while the aims and objects point to one thing, the provisions of this section lay down entirely another. Although it is said that the Government do not want at present to force the principle of aggregation nor do they desire to tax the people who are honest and that they only want to introduce the measure to stop fraud by people who ought to pay a certain amount of tax but are avoiding it, yet we find that not even a discretion is given to the taxing officer to decide or to judge which is

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a *bona fide* and which is a *mala fide* case. It was said that it is very difficult for a taxing officer to go into the question and say which is *mala fide* and which is *bona fide*. Well, the officers and the courts are to give relief and to do justice to His Majesty's subjects. I do not see any reason why it should be difficult for them more than it would be difficult for a court of law. If you want to tax correctly you can only do so by deciding which is a genuine and which is not a genuine case. Then the taxation will be just. But if you tax indiscriminately, taking the innocent and the guilty both together, the very taxation will be unjustified. In conclusion I would appeal to Honourable Members of this House, after what has been said on both sides, the admissions from the other side and the appeal from this side, to take into consideration this amendment, which will put the whole Act in conformity with the aims and objects.

THE HONOURABLE MR. V. RAMADAS PANTULU : Sir I rise to support most heartily the amendment moved by my Honourable friend Lala Ram Saran Das. It is now very clear that cases covered by the amendment will come within the scope of the Bill. Whatever doubt there may have been at one stage whether cases of a wife or child whose separate personal property under the personal or religious law of the land is brought into partnership do or do not come within the scope of the Bill ; the matter is now put beyond dispute after the speech made by the Honourable Mr. Lloyd. The mere relationship of a lady as wife and of a minor as child of the person in whose name the partnership is conducted is enough to bring the transaction within the scope of this Bill. Nothing else matters. Whatever may be the nature of the property, whatever may be the interest which the wife or child owns in the property which is put into the partnership, the person in whose name the partnership is conducted is liable to be taxed as if the entire income arising from the personal property of the wife or child were also his. It will lead to very serious consequences. Incomes which will not be otherwise taxable will become taxable. If a man's income is below Rs. 2,000 it will not be taxed, but if it comes to more than Rs. 2,000 by so aggregating, it will be taxed. So all the beneficent provisions of the Income-tax Act whereby

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small incomes are exempted from taxation will be abrogated by putting together the incomes of a man, his wife and child. There may be possible cases of not only a wife but also of a child being in the partnership. Therefore the incomes of all the three will have to be put together under this Bill and it will work great hardship. Again incomes which will not be liable to super-tax if separately treated will become liable to super tax if they are put together. The Honourable Mr. Lloyd has frankly conceded, as he could not but concede, that the principle of aggregation has been adopted in so far as partnerships transactions of the nature contained in clause 3 are concerned. Therefore while making such a wide departure from the existing law, in spite of the very clear statement in the Statement of Objects and Reasons that it is not the intention of the Government to accept any new principle or to depart from the existing principles of the Income-tax Act, they deny to this side of the House adequate facilities to discuss the effects of the present Bill which ought to be fully realised. They make incomes, not liable to tax if separately treated, liable to taxation. They would make incomes not liable to super tax under the existing law liable to super-tax if clubbed together. This aggregation is going to lead to very serious consequences so far as certain classes of assessee are concerned. Now whether it is right to treat these incomes as belonging to a particular individual when in law and in fact they would be held by any court of justice or equity and good conscience to belong to separate individuals, is a matter of wide policy and I do not see any justification for the Government to deny a relief which people now have under the Income-tax Act by the passing of this Bill. Mr. Lloyd has assured this House that every possible care will be taken to see that no hardship arises in the administration of the Act and that the Commissioners of Income-tax and other officers will be instructed, if necessary, to see that such hardship is avoided as far as possible. But my answer to him is that it will not be competent for him or his Government to do so. The provisions of the Act are so clear, they are so unambiguous and so wide as not to give any discretion to any officer of income-tax even if he wants to be humane and wishes to be generous, because he is bound to treat the income arising from a partnership business in which a wife and child are admitted, though the properties belong to the wife and child as separate individuals having their own property, as a single income and levy tax on the aggregate of the incomes of all these people put together. Therefore it is not possible for him to give by executive action any relief in respect of a business which comes clearly within the unequivocal and unambiguous terms of this statute. Secondly, Sir, in originally asking my Honourable friend, Lala Ram Saran Das, to state why his amendment should not be ruled out, you were pleased to observe that the relief open to the assessee through courts will still be available and that if there was any doubt about the interpretation of any provision of the Income-tax Act he might take it on appeal to the Commissioner or even ask for a reference to the High Court under the existing Income-tax Act. But with a provision like this there is nothing to interpret, the interpretation is so clear. Mr. Lloyd has admitted that all the cases covered by the amendment of the Honourable Lala Ram Saran Das do come within the scope of the Bill, though they have stated the other thing, for reasons best known to themselves, in the Statement of Objects and Reasons. One can hardly believe that the Drafting section of the Legislative Department here is so poor in intellect as not to perceive the very grave and material difference between the Bill and the Statement of Objects and Reasons. Whatever may be the reason, he now admits that the Bill does not in any way carry

out the expression of intentions as stated in the Statement of Objects and Reasons ; he admits that all the cases for which the amendment seeks exemption do come within the Bill. Therefore where is the question, I ask, of giving relief by executive action from hardship arising from the provisions of this Bill ? It is not possible ; no reference to the High Court will be of the slightest use in the case of any partnership composed of a man, his wife and child who own separate properties and who are separate individuals in the eye of the law, because the Act is very clear. Similarly with regard to various other transactions which I need not deal with individually—transfers and so on. Therefore any assurance that subsequently relief by executive action will be forthcoming is of no value, because it cannot be given in the face of the clear provisions of this Bill. Therefore I think the Bill if we pass it must be accepted as it is with all its implications and with the full knowledge that all the cases referred to in the amendment are within the scope of the Bill. Therefore if we vote for it we must do so with our eyes open and with a full knowledge that though we agree with the principle of the amendment on its merits, still we defeat it when we vote for the Bill. Referring to my Honourable friend Sir David Devadoss's suggestion that marriage settlements may be put out of the scope of the Bill the Honourable Mr. Lloyd said that the Government would be pleased to consider that question and added that a marriage settlement might perhaps be supported on the ground of "adequate" consideration because marriage itself was adequate consideration for making a settlement, though the word "valid" might be more appropriate. I do not know whether he is right because the clause as it stands seems to apply to cases of transfer to a married woman after marriage. I do not know whether anti-nuptial settlements can be brought by any stretch of language within the meaning of this clause. Therefore, Sir, his assurance that he would take these various suggestions into consideration is absolutely of no use. And in opposing us he also said that this legislation is of a temporary character because when the report of the Income-tax Inquiry Committee is fully discussed another measure may perhaps be brought up and so this may be treated as a temporary measure. I ask in all humility whether there is such an urgent need, especially as this Bill is not being given retrospective effect because no incomes arising before April 1937 are being brought within the scope of the Bill, whether there is any emergency for putting this very defective and improperly drafted Bill on the Statute Book in the interval. I do not think there is. While Mr. Lloyd conceded in this House that the Statement of Objects and Reasons did not exactly correspond to the intentions of the Government in the matter of drafting the Bill itself. The Finance Member said in another place that the Statement of Objects and Reasons represented the intentions of the Government and that the Bill was brought forward to give effect to these intentions. If I am quoting Sir James Grigg against the Honourable Mr. Lloyd, I may be pardoned for doing so ; but between them they have to explain who is right and who is wrong. Therefore, Sir, I feel that this is not a proper measure and if the Statement of Objects and Reasons and the Bill are read together I do not think it is a straightforward, honest method of giving effect to the aim of the Government to prevent evasions by nominal partnerships or *mala fide* transfers. If they wanted to do so they should have brought forward a Bill with proper provisions. Seeing that there is no urgency for the passing of this Bill and having regard to the difficulty of giving any relief by executive action or through law courts in cases of improper assessment, as the clauses of the Bill, if passed into law, do not provide any loophole for a generous interpretation—it is so wide, so drastic and so severe—I hope the Government will either draft the Bill or accede to the amendment of my Honourable friend, Lala Ram

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Saran Das. I only wish to make one more appeal, Sir, before I sit down, namely, that we in this House should not be considered to be merely in the position of those who put a seal of approval on everything done in the Assembly. Of course, Bills come here after a full debate there and I do not wish to belittle the value of the debates in the other House—for to that extent they elucidate the position taken up by the Honourable Members there. But I think we must act as an independent body and this House as a second Chamber must be allowed full latitude and liberty to discuss once over such important measures on their own merits, even if it involved their going back to the Legislative Assembly with our amendments. I hope, Sir, you won't mind it and I know you always wish to guard very jealously the privileges of this House. I would, therefore, appeal to this House not to put their seal of approval on this very defective measure or at least to modify it to the extent of the Honourable Lala Ram Saran Das's amendment, so as to mitigate the mischief of the Bill to a considerable extent. Therefore, Sir, I wholeheartedly support this amendment.

THE HONOURABLE SIR JAMES GRIGG (Finance Member): Sir, I cannot help but be a little struck at the attitude of the last speaker. The two earlier speakers on this amendment took the more normal line that the object of this Bill is a proper one and one with which every Member in the House sympathises. When they said "every Member" they appear to have been not quite accurate because the Member representing the Congress Party does not even sympathise with the object of the Bill and says there is no urgency for it and asks: Why do you want it at all? In other words, there is no urgency for dealing with a particularly gross form of tax-dodging. The other Members who spoke on this amendment admit the urgency, admit the evil which has to be remedied but, unless I am misunderstanding him or doing him an injustice, the Member of the Congress Party says that this measure for dealing with tax-dodging of a particularly gross form is not a matter of urgency.

But leaving that aside, may I say at once that I on behalf of Government cannot accept the amendment which has been put forward, and I say that because I am quite clear that the acceptance of the amendment would completely destroy the Bill. Let me also admit, as I admitted in the Lower House, that the Government are in a dialectical difficulty in this matter because they have not gone further. If they had accepted out of hand the recommendation of the Income-tax Inquiry Committee to aggregate the income of husbands and wives the dialectical difficulty of which so much has been made would have disappeared completely. It is only because of the moderation of Government that we find ourselves in this dialectical difficulty and I must say that I take it a little hard that this moderation is chastised when the particular form of chastisement which has been meted out to us would not have been available if we had been a little more brutal—or shall I say a little brutal without admitting that we are brutal now.

Sir, if I may say so with respect, I have had a good deal of experience of this kind of legislation. For many years I have been associated in the United Kingdom with attempts at preventing the avoidance of tax and I have discovered what is invariably the discovery of people who seek to legislate that hard cases make bad law and there is no doubt that supremely in the sphere of income-tax avoidance legislation hard cases make bad law. I have never known a case where tax-avoidance legislation has been brought up in the House of Commons without dozens of Members getting up and saying that

they fully accepted the principle of the Bill but it goes too far, it covers innocent people who ought not to be covered and therefore we should in the committee stage move amendments which shall seek to exclude all the innocents who ought not to be included in it. I have also never known a case where the acceptance of these apparently innocuous amendments designed to exclude the innocent and exclude only the innocent have not in fact rendered the legislation completely ineffective, so that within one year or two years further legislation has had to be introduced to stop the hole which the Government have themselves made in their own legislation. It is the old story of the little rift within the lute, which ever widening will slowly silence all. There is no doubt that the acceptance of this amendment will render this legislation completely ineffective and almost from the start. But it seems to me from what the last speaker said that the nature of the assurance given him by Mr. Lloyd has been imperfectly understood. And perhaps I may be allowed to repeat the assurance very much in the form in which I gave them in the Lower House. In the first place, I say in all sincerity that this is not necessarily the permanent form which this legislation will take. When the full recommendations of the Income-tax Committee have been thoroughly examined in the light of the reactions of the public to them then will be the time for Government to undertake exhaustive legislation amending the Income-tax Act, and there will then be an opportunity to reconsider this particular Bill in the light of its working, so that it need not necessarily be the last word on the subject. It is quite possible that when the permanent legislation comes to be drafted, experience will show certain respects in which this Bill might be modified. And let me say in one respect that should the Government accept the proposal to aggregate incomes, a large part of the difficulties of definition will disappear. But even earlier than that, there is a remedy and it is not a remedy of the mere intervention of the Executive on behalf of individuals as the Honourable Member who spoke last seemed to think. It is a definite application of section 60, sub-section (1), of the Income-tax Act. Perhaps I might read it :

“ The Governor General in Council may, by notification in the Gazette of India, make an exemption, reduction in rate or other modification, in respect of income-tax in favour of any class of income, or in regard to the whole or any part of the income of any class of persons.”

I particularly emphasise the word “ class ” for reasons which will be obvious in a moment or two. As I said in the Lower House, should it appear in the course even of the current year that the working of this Bill produces real hardship—and when I say real hardship I am bound to add in a comment that a great many of the cases which have been quoted to me at any rate seem to me not to be cases of hardship at all but merely cases of the removal of an entirely uncovenanted advantage and I do not call that a hardship, if I may be allowed to say so. Supposing any class of cases of real hardship did turn up and that class of cases can be suitably defined, Government can and will, once they are satisfied of the hardship and that the case can be defined exclusively, consider seriously the question of using this particular sub-section of the Income-tax Act and I think.....

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Why not incorporate that safeguard now in this Bill ?

THE HONOURABLE SIR JAMES GRIGG : The safeguard is already in the Income-tax Act, and I was very careful to say that provided we were satisfied that a hardship existed and that the case of hardship can be suitably

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defined—satisfactorily and exclusively—so as not to make a hole in the rest of the Bill. It seems to me, Sir, that with that assurance the House might very well refrain from pressing this particular amendment.

THE HONOURABLE MR. P. N. SAPRU: May I ask a question, Sir, in order to elucidate a point?

THE HONOURABLE SIR JAMES GRIGG: May I finish my speech first?

THE HONOURABLE MR. P. N. SAPRU: It might help you to answer that question now.

THE HONOURABLE SIR JAMES GRIGG: I would rather finish my speech first. I will answer it at the end, if I can. As I say, if during the course of the year, genuine cases of hardship—and I repeat I do not include in “cases of hardship” the mere removal of an uncovenanted benefit—genuine cases of hardship which ought to be dealt with and can be suitably defined arise, we shall have no hesitation in issuing a notification under section 60, sub-section (1), of the Income-tax Act. But, beyond that, I am afraid I cannot go. There is, in spite of what the representative of the Congress Party said, a real urgency in this matter. The degree to which these particular devices have been resorted to has become a little short of a scandal. At the lowest computation, we shall realise from this Bill Rs. 20 lakhs in the course of the year which is almost immediately upon us. It may be even a great deal more than that, and certainly, if we do not take action now to stop this particular hole in the Income-tax Act, it will be not a question of 20 lakhs, but of many times 20 lakhs. Therefore, this is a matter of urgency, and I cannot possibly agree to having any amendment made in the Bill which runs the slightest danger of destroying the object of the Bill, and I say in regard to this particular amendment that not only shall we run the risk of destroying, but it would most certainly destroy it almost completely. Sir, I must oppose the amendment.

THE HONOURABLE MR. P. N. SAPRU: Sir, I rise to give my general support to the amendment of the Honourable Rai Bahadur Lala Ram Saran Das. So far as we, on this side of the House, are concerned, we have ceased to expect any consideration from the Honourable the Finance Member, and therefore we are not surprised at the attitude that he has taken up in regard to this amendment. He has told us his experience of the House of Commons. He is a very distinguished treasury official, but I wonder, Sir, if we can credit him with great Parliamentary experience or with knowledge of handling Parliamentary situations. Sir, I should like to ask certain straight questions. I will read the concluding sentences of the Statement of Objects and Reasons for Sir James Grigg's benefit:

“The proposals in the Report regarding the aggregation of the incomes of husband and wife go beyond the immediate necessities of the case and to that extent their adoption would involve the admission of a new principle which the Government of India do not desire to establish in advance of the general public discussion of the Report which has been arranged; and the present Bill has been so drafted as to deal only with the abuses to which I have referred.”

The question that I should like to ask Sir James Grigg is this: “Can Government say that the Bill has been so drafted as to deal only with the abuses to which Government have referred? Can Government say that they are not establishing any new principle, in advance of the general public discussion.

of the Report?" Sir, having regard to the wording of clause 2, and having regard to the admissions which were made by the Honourable Mr. Lloyd about clause 2, can Government say that they are not establishing, in advance of the general discussion, certain principles which are to be found enunciated by the Income-tax Enquiry Committee?

Then, Sir, the Honourable Sir James Grigg has not told us how it would not be possible to deal with the abuses if the amendment of the Honourable Rai Bahadur Lala Ram Saran Das is accepted. If the amendment is accepted, the case of nominal partnerships at all events should not give any trouble. You will be able to deal with cases of nominal partnerships. You will not be able to deal with cases of genuine partnerships, but you will be able to deal with cases of nominal partnerships. Sir James Grigg has not told us how this amendment would make the Bill ineffective. There is a wider question also involved in this Bill, and it has become necessary to say just one or two words about that wider principle also. Are you going to treat husband and wife as one person? Women can hold property separately. The position of the married woman, her status in life—all these are affected by this Bill, and these are wider considerations which we cannot ignore in coming to a correct conclusion in regard to this Bill. Also, Sir, my sympathies are always with the poor. I do not look at questions from the point of view of the rich at all, and to be absolutely true to my principles I want to ask this question how will the Bill affect the poor? The difficulty that I find in the Bill as it is framed is this, that it is not only in the case of the higher incomes that this principle of aggregation is going to be applied. It will be applied in the case of high and low incomes alike. That is, the Bill is not going to affect the more fortunately situated people only but will also affect the poor hard-working middle class people who find it difficult to eke out a miserable existence in this land. Sir James Grigg has told us that the Income-tax Department will be prepared to consider on their merits individual cases of hardship.

THE HONOURABLE SIR JAMES GRIGG : No, Sir, I said nothing of the sort. I said that if classes of cases of real hardship arose which could be satisfactorily defined, section 60, sub-section (1) of the Income-tax Act was available.

THE HONOURABLE MR. P. N. SAPRU : Well, Sir, how will those classes of cases be dealt with? How can they be dealt with, having regard to the specific language of this Act? All that the Income-tax Officer will have to see is whether the income comes within the definition of clause 2, and if he finds that it does he can give no relief. Sir James Grigg might have explained to us what relief he contemplated and how that relief was going to be given. But he has not told us what relief is possible having regard to the specific provisions of section 2.

Sir, the attitude of the Opposition was not unreasonable. I have no right to speak for the Congress Party. They can look after themselves very well through their esteemed Leader, the Honourable Mr. Ramadas Pantulu. He will be able to answer Sir James Grigg all right. Sir James Grigg suffers from a Congress complex, but so far as we are concerned we have no complexes and we find that in this particular matter the attitude of the Government has been most unreasonable. Admissions have been made from their side in regard to this Bill. Our attitude has been throughout very fair. We suggested all possible alternatives to them. We wanted a little time to be given to us for a full consideration of the Bill; we wanted the Bill to be

[Mr. P. N. Saprū.]

referred, if it was possible to do so, to a Select Committee; we have suggested one amendment which was proposed by the Honourable Lala Ram Saran Das. We on this side of the House have shown every desire to co-operate with the Government in regard to this measure, but Government has been absolutely unresponsive, and there is only one course which we as self-respecting Members of the Opposition can take, and that is to oppose this Bill at all stages.

THE HONOURABLE MR. R. H. PARKER: Sir, I really have been shocked to listen to the Members of the Opposition pleading the cause of the rich. What are we discussing? We are discussing people who have money. In the first place, if you have no money you cannot transfer it to your wife and you cannot transfer it to your minor son. The Honourable Lala Ram Saran Das said that he was trying to get equity and justice. Now, what is there unjust about the proposals? I can see nothing whatever unjust about these proposals. It is just and proper that the income should be aggregated. They ought never to have been allowed to go on as they have been, not aggregated. I submit that the Honourable Members of the Opposition are not taking a rational view at all. They are thinking about their constituents who pay super-tax, and they are thinking about those who have some money. As to the Congress Member, how he can say the things he has said I do not know. The Honourable Mr. Saprū put forward certain arguments. He said that this was going to affect the small man as well as the big man. That is quite true. But there again, take the case of the small salaried man, say with an income of Rs. 4,000, and one who has some money and who transfers some to his wife as a result of which their joint income is Rs. 4,000. Why should they not pay on that? There is no answer to it. The Honourable Mr. Saprū was only contending that income-tax ought to be reduced, and that is a different point altogether. (*An Honourable Member*: "But should they pay on aggregate income?") Certainly, of course they ought to pay on aggregate income. There is no question about it. The principle is perfectly right and I strongly oppose this amendment.

THE HONOURABLE MR. GOVINDLAL SHIVLAL MOTILAL (Bombay: Non-Muhammadan): I rise to support the amendment moved by my Honourable friend Lala Ram Saran Das. Sir, I am free to admit that there have been cases in which there has been evasion of income-tax by division of the income between the assessee and his wife and sometime his child. At the same time I find that the Member in charge of the Bill has been fair enough to admit that the provisions of the Bill as they stand go beyond the objects of the Bill. Reference has been made in this connection to the Income-tax Enquiry Committee's Report and that reference is very pertinent. I had expected that the Government Member would be equally fair and say that as the Bill requires drafting improvement, we are prepared to meet and put our heads together and achieve the object which is in the minds of us all. But that has not been done and therefore the only course left open to me is to support the amendment of Mr. Ram Saran Das.

THE HONOURABLE THE PRESIDENT: I have not up till now heard a single word about any drafting improvements from any Honourable Member.

THE HONOURABLE MR. GOVINDLAL SHIVLAL MOTILAL : I will come to it in a minute, but before doing so I will refer you to the Report of that Enquiry Committee. The Committee in their introduction to the Report say :

" Our recommendations are designed to secure the fairest possible treatment of the honest tax-payer, and at the same time to strengthen the Department in dealing with fraudulent evasion and what is known as legal avoidance. It cannot be too strongly emphasised that many of these recommendations are inter-related and should be read together. Rejection or modification of one necessitating rejection or modification of others."

We have to bear in mind, Sir, that in making their recommendations the Committee warned all those concerned that they must take them together and not take one part and leave the other parts out. That would cause real hardship and I will point out to you how that hardship arises. I shall mention it for the information of the House. This Report came into my hands while I was in Bombay. We were discussing this question with several friends not only of any particular community, but of all communities, Hindus, Mussalmans and Parsees. Members of all communities are affected by this and they are taking equal interest. I am unable to say what the feeling of the European community, with which I am not much in contact, in this matter is. I leave it to their representative to say what they have to say. Let us take, Sir, that the starting point for this Bill is the recommendation of the Committee. I will read the recommendation of the Committee to show why they suggest that there should be aggregation of income. They say :

" Our attention has been drawn to the extent to which taxation is avoided by nominal partnerships between the husband and wife and minor children "

—and therefore they recommend—

" that the incomes of a wife should be deemed to be for income-tax purposes the income of her husband."

Sir, they do not say that on a wider principle, on some principle other than this, it should be aggregated. Even they do not go, as the Bill now goes, to the extent that it does not matter whether the tax is avoided or not, the income of the wife and the husband must be put together so that the rich may be taxed more because those who can afford to pay more must be taxed. If that is so, then it must be made quite clear. It is on this assurance that the Assembly has adopted this Bill and sent it to this House. Even the recommendations of the Committee do not go to the extent of accepting and adopting a principle which has been enunciated here by the Honourable Mr. Parker. He says certainly the wife's income should be aggregated. My friend, the Honourable Mr. Sapru, would probably take the same view. But I do not know whether he is prepared to take it on this occasion. The Income-tax Enquiry Report does not go to that length. I will show why they should not be aggregated. Sir, there are many other recommendations. Businessmen try to understand why sometimes this practice is adopted. Sir James Grigg will admit that if some firm makes losses in one year and makes profits in another year, they are not allowed to carry their losses to the next year. Now, the Income-tax Enquiry Report suggests that they should be allowed to carry their losses to the succeeding years. If these were put together, probably the hardship would not be so great as it would be if that part of the Report is separated and only one part is proceeded with. In this Bill it is not only the income derived from business. . . .

THE HONOURABLE THE PRESIDENT : The Honourable the Finance Member has told us that shortly another Bill will be coming forward incorporating other recommendations.

THE HONOURABLE MR. GOVINDLAL SHIVLAL MOTILAL: Then there is all the greater reason that this Bill which does not carry out the purpose and does not secure the same treatment which the Committee was disposed to give should not be rushed through but brought forward with other legislation. Sir, you very pertinently asked whether any drafting improvements had been suggested. Sir, it does require a little time, but apart from that, as I heard the Member in charge, he was of the opinion, if I understood him correctly—I am speaking subject to correction—that he would be prepared to include income which arises from business. There are several heads of income. I understood him to say that the income which arises from the head of business, not of investment, not of property, but from the head of business alone, that was in his mind. If that is so, some amendment is necessary to say that so much of the income as arises from business only. I am referring to sub-section 1 (a) of clause 2.

THE HONOURABLE MR. A. H. LLOYD: May I say that I did not intend to convey that impression at all—that there was any question of Government's attention being confined to income from business?

THE HONOURABLE MR. GOVINDLAL SHIVLAL MOTILAL: I now take that that was not the intention. If an amendment of this character is considered, it will probably help the House and the Government Members also in considering the question properly. Take the case of Hindu women. By personal law they are entitled on partition to have a share. Are they to be deprived of their share by this Bill? Is it an unfair evasion? If a man wants to divide his property as some Hindu fathers do and give a share to his wife and to his sons—which she is entitled to in law—if that property is divided, is it unfair evasion?

THE HONOURABLE MR. R. H. PARKER: Certainly.

THE HONOURABLE THE PRESIDENT: Apart from that this section does not prevent your handing over your property to your wife or child.

THE HONOURABLE MR. GOVINDLAL SHIVLAL MOTILAL: It does not; but I do not think that Government intend to go so far as to say that property is not to be transferred to somebody. But if this property is transferred....

THE HONOURABLE SIR JAMES GRIGG: Perhaps I can make the intention of Government quite clear. It is not in the least to prevent transfers of property. It is merely to prevent such transfers of property attracting to them an unnecessary and uncovenanted Income-tax advantage.

THE HONOURABLE MR. GOVINDLAL SHIVLAL MOTILAL: I myself had hardly any misgivings on the point that Government think of having recourse to such a preposterous proposition of saying that property is not to be transferred by the husband to his wife. I was clear in my mind about it. But when he divides the property and hands it over, then she holds her property in her right. The Hindu law gives her the right to hold property and if he divided the property with his sons and if he refuses to give the wife her share, it would be open to the wife to go to court and ask that a share should be allotted to her. Where is the evasion in this case? Take, Sir, another case. A Hindu woman gets some cash from her father and she puts that money in partnership business with her husband. Now, the effect of this

legislation will be that instead of using that money for the business of partnership with her husband, she will have to say, "I shall not have any partnership with my husband, but with some outsider". If she can do that, the law will permit it. But if she uses those funds for the purpose of business in which she and her husband will both participate, then the law imposes additional tax upon both of them. Then, Sir, go to the next point, the case of a minor child. Here the partnership with all children is not excluded. It is only where a minor is concerned and if he has any profit from the firm then that profit is aggregated and the higher rate of interest is charged. But if the child is not a minor child, if he is an adult, he is not penalised—only the minors are penalised. It is hardly fair, Sir. I should have expected that Government having realised the force of the objections raised would take a little time and bring a redrafted Bill, but as they do not do so, all that we shall do in this House is to oppose this Bill.

THE HONOURABLE MR. A. H. LLOYD: I think, Sir, the discussion has shown a tendency to become a little diffuse. If attention is concentrated upon the more important points in the attack upon Government in this debate I can say with some assurance that I can find nothing to add to what has been so well expressed by the Honourable the Finance Member. Therefore, with your permission, Sir, I shall waive my right of reply.

THE HONOURABLE THE PRESIDENT: Amendment moved :

"That in clause 2, to the proposed sub-section (3) of section 16 the following proviso shall be added, namely:—

"Provided that nothing in this sub-section shall operate so as to include in the total income of any individual for the purposes of assessment such part of the income of the wife or minor child of such individual as arises directly or indirectly from property which, under the personal or religious law applicable to the wife or child, is the separate personal property of the wife or child."

The Question is :

"That this amendment be adopted."

The Motion was negatived.

THE HONOURABLE THE PRESIDENT: The Question is :

"That clause 2 stand part of the Bill."

THE HONOURABLE MR. V. RAMADAS PANTULU: Sir, normally it would not have been necessary to again speak on this clause because I have practically said all that I wanted to say against the scope of this clause when I spoke on previous occasions. But what has induced me to get up is that some observations were made in some quarter of the House as to how I as a Congressman could object to this Bill which affects only the rich and why I was trying to protect the interests of the rich. I would like to say that I oppose this Bill with my full responsibility as a Congressman and if there is any impression in any quarter of this House that Congressmen will allow injustice to the rich capitalists and landlords go unchallenged, they are mistaken. Congressmen are as much interested in seeing that justice is done to landlords and capitalists as to peasants and workers. We do not make such distinctions in securing justice. The only question we have to deal with is whether this Bill is just and right. If it unjustly penalises a rich man I am here to oppose it. Sir, I want to make it perfectly clear that the Honourable Mr. Parker is wrong in thinking that we Congressmen are only champions of the rights of the poor and not of the rich.

[Mr. V. Ramadas Pantulu.]

The only other point is that, with all respect to the Finance Member, I do not think any class of cases can arise under this Bill for him to give relief under section 16 (1) because the very class of hard cases to which we object are those which are specifically brought within the scope of this Act. The class of cases under the amendment of the Honourable Lala Ram Saran Das which are sought to be brought within the mischief of this Bill are those to which we object. Therefore, so far as this very class of cases are concerned there is no question of giving relief. Therefore, for the reasons which I have already stated and because, as the Honourable Mr. Sapru has pointed, it touches not only the rich but also the poor, I enter my protest against this clause.

Clause 2 was added to the Bill.

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

Clause 1 and the Title and Preamble were added to the Bill.

THE HONOURABLE MR. A. H. LLOYD : Sir, I move :

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

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Mr. President, I rise to oppose the motion which has been placed before the House by the Honourable Mr. Lloyd. Sir, the Honourable the Finance Member cast doubts on the sincerity of the statements of those Members on this side who while expressing general sympathy with the efforts of the Government to stop the improper evasion of income-tax found themselves unable to support the Bill in the exact form in which it stands. Notwithstanding his derision, however, I hope that no Member of this House on the opposite side will, because of this, question the motives of Members on this side of the House who have thought it their duty to support the amendment moved by the Honourable Lala Ram Saran Das in order to remedy an injustice which any impartial man will admit. Government generally find themselves more often in the position in which we are placed today. If I were asked to give instances to prove this I would refer to the many cases in which Government while expressing sympathy with the labourers have opposed the conventions and recommendations passed at the International Labour Conferences. I should have thought that the knowledge of the position which Government have taken up very often would in this respect impose some caution on the Honourable the Finance Member. If, however, he did not do so, that is his own business and that of the Government of which he is a member. So far as we are concerned we have to see whether, in spite of the explanations given this afternoon by him we can change the attitude which we have taken up with regard to the Bill now before the House.

It has been admitted, Sir, that the Bill is not merely an attempt to improve the income-tax machinery. It has been made clear that notwithstanding the claim made in the Statement of Objects and Reasons the Bill seeks to establish a new principle. If that is so, should anything further be needed to induce Government, if they were to proceed merely on grounds of justice and equity, to postpone the discussion of this Bill, or even to withdraw it just now in order to amend its language ? But apart from this, there are cases which may come within the purview of this Bill which according to the Honourable Mr. Lloyd it is not the intention of Government to bring under it. I will first refer to the speech of my

4 P.M.

Honourable friend, Sir David Devadoss. He wondered whether the case of a *bona fide* marriage settlement would not come under the provisions of the Bill as it is before us. The Honourable Mr. Lloyd could only say that he thought that a marriage settlement would come within the exemptions provided for in the Bill, but he could not be certain of it. I can give another instance to show that the Bill is not as simple a measure as it appears to be. If we admit the principle underlying this Bill, what is there to prevent Government from coming to us on a subsequent day and saying that as the mother in Hindu families lives with her sons, it is necessary to introduce legislation in order to make her income jointly assessable with that of her sons should she become a partner in their business? It is thus not merely the dangers involved in the provisions of this Bill but also the danger of its wide extension hereafter that ought to give pause to Honourable Members and induce them to wait a little and see whether the Bill cannot be so improved as to be free from the objections urged on this side of the House.

Sir, the Honourable the Finance Member was good enough to say that it was not the intention of Government that unnecessary hardships should be caused to any class of taxpayers. But I am afraid that it will be very difficult to convince Government that their legislation bears heavily on any class of people in this country. The Income-tax officials will apply the law as it will be hereafter. It may be possible for us to bring certain individual cases of injustice to the notice of Government, but it will be impossible to prove that there is any large *class* of persons adversely affected by the new legislation. The promise made by the Honourable the Finance Member does not, therefore, carry us very far. It cannot modify our opposition to the Bill. Sir, the position of Government in effect is this: "We said to you that the Bill was not intended to establish any new principle; it is true that we have not fulfilled that undertaking; we also admit that it may cause genuine hardship in some cases; nevertheless, we cannot accept your proposal to amend the Bill as it stands. If we consider your amendment we do not know where it will land us; but while we cannot trust you, we ask you to trust us; leave it to us to deal fairly by the tax-payer and believe us that we shall do so." I am sure that the Honourable the Finance Member and the Members who sit behind him are not children. They know very well that the attitude taken up by them is not such as to invite the confidence of this House. We should have liked to help Government in stopping the legal but immoral evasion of income-tax, but they refuse our co-operation. They think that they must have the last word on every subject and that their measures are the quintessence of perfection. They are welcome to hold this belief as long as they like or as long as they can. But our duty is clear, and that is to put forward our view as strongly as we can to give expression to it in a clear and emphatic manner and to challenge the action of Government at every suitable stage.

THE HONOURABLE THE PRESIDENT: Motion made:

"That the Bill further to amend the Indian Income-tax Act, 1922, for certain purposes, as passed by the Legislative Assembly, be passed."

The Question is:

"That that Motion be adopted."

The Motion was adopted.

INDIAN LAC CESS (AMENDMENT) BILL.

THE HONOURABLE KUNWAR SIB JAGDISH PRASAD (Education, Health and Lands Member): Sir, I move:

"That the Bill further to amend the Indian Lac Cess Act, 1930, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration."

Sir, the reason for bringing in this Bill has been given in the Statement of Objects and Reasons. When the first Lac Cess Act Amending Bill was introduced, there was the province of Bihar and Orissa. By the time that it passed through this House, the new province of Orissa had been created. It is therefore necessary to bring in this Bill in order to take note of that fact. Cultivation of lac is mostly confined to the province of Bihar; there is very little cultivation of lac in Orissa and it was never the intention of Government that representatives of the cultivators or officials from Orissa should be on the Governing Body or the Advisory Board. The reason for bringing in this Bill is to make that point clear. This is the simple object of this Bill and I have no doubt that there will be no objection to it from any part of the House. Sir, I move.

The Motion was adopted.

Clause 2 was added to the Bill.

Clause 1 and the Title and Preamble were added to the Bill.

THE HONOURABLE KUNWAR SIB JAGDISH PRASAD: Sir, I move:

"That the Bill, as passed by the Legislative Assembly, be passed."

The Motion was adopted.

ARBITRATION (PROTOCOL AND CONVENTION) BILL.

THE HONOURABLE MR. SHAVEX A. LAL (Government of India: Nominated Official): Sir, I beg to move:

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

Honourable Members must have noticed from the provisions of this Bill and the Statement of Objects and Reasons accompanying it that this is a measure which should have the approval of all sections of this House. I need not therefore detain Honourable Members for more than a minute. One of the essential needs of commerce is an efficient and comparatively inexpensive machinery for the settlement of debts and disputes arising in commercial contracts. The need is even greater in the case of international commerce because the trouble and expense involved in litigating in a foreign country are immense, if not prohibitive. Arbitration is recognized to be a relatively cheap and efficient mode of settling such disputes; but unfortunately under the law as it stands, it is not possible to enforce in one country arbitration awards made in another country. This defect is detrimental to international commerce, and consequently several countries came to an agreement some years ago whereby they undertook to enforce within their own borders arbitration awards made in any country which was a party to the agreement. India was not originally a party to the agreement, but after mature consideration and consultation with the commercial interests in this country it was decided to signify India's adherence to that international agreement and this

Bill has been brought to honour the obligations India has assumed under that agreement. I am sure Honourable Members will readily accept this measure and pass it into law.

The Motion was adopted.

THE HONOURABLE THE PRESIDENT: As the clauses of the Bill refer to the two Schedules I will put the two Schedules first.

The First Schedule was added to the Bill.

The Second Schedule was added to the Bill.

Clauses 2 to 5 and 6 to 10 were added to the Bill.

Clause 1 and the Title and Preamble were added to the Bill.

THE HONOURABLE MR. SHAVEX A. LAL: Sir, I beg to move:

"That the Bill, as passed by the Legislative Assembly, be passed."

The Motion was adopted.

WORKMEN'S COMPENSATION (AMENDMENT) BILL.

THE HONOURABLE MR. A. G. CLOW (Industries and Labour Secretary): Sir, I move:

"That the Bill further to amend the Workmen's Compensation Act, 1923, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration."

This Bill has a single and a simple object. It seeks to amend only one section of the Workmen's Compensation Act. Honourable Members will find that section appended to the copies of the Bill in their hands. The section is one providing for the transfer of money due as compensation from India to other countries and *vice versa*; but as it is at present worded it limits such transfers to sums that have been actually found due as compensation to specified persons. Now it frequently happens in the case of fatal accidents that a sum of money is deposited under our law and under the laws of certain other countries which resemble our own, and it is the duty of the Commissioner to determine to whom that compensation is payable, in other words, to judge of the claims of the dependants in what is known as a "distribution proceeding". To that proceeding the employer very often does not desire to be a party. Now, obviously, where the workman is killed in one country and his dependants reside in another, it is convenient for all parties, except the employer sometimes, that the proceedings should take place where the dependants live and not where the accident occurred; and the object of this Bill is to enable both the money and the proceedings to be transferred to India or from India to the country concerned if the employer consents.

The immediate need of the Bill arises out of the impending separation of Burma, for at present distribution proceedings can be transferred under another section of the Act as Burma is part of India. That section will no longer be applicable after the 1st April, and this Bill, which has also the consent of the Government of Burma, has been put forward in order to remedy the position.

The Motion was adopted.

Clause 2 was added to the Bill.

Clause 1 and the Title and Preamble were added to the Bill.

THE HONOURABLE MR. A. G. CLOW : Sir I move :

"That the Bill, as passed by the Legislative Assembly, be passed."

The Motion was adopted.

CODE OF CIVIL PROCEDURE (SECOND AMENDMENT) BILL.

THE HONOURABLE MR. A. G. CLOW (Industries and Labour Secretary) :
Sir, I move :

"That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes (*amendment of section 60*), as passed by the Legislative Assembly, be taken into consideration."

This Bill resembles the Bill which concluded our legislative programme last Session in three respects. In the first place, it seeks to amend the Code of Civil Procedure ; in the second place, it arises out of the Whitley Commission's recommendations ; and in the third place, it is aimed at indebtedness. The provisions of the Code with which the Bill deals are those which concern the attachment of wages and salaries, and as they are by no means easy to follow, at least to a layman like myself, and as the Bill is unintelligible without the original provisions of the Code, it may perhaps assist Honourable Members if before discussing the merits of the Bill I gave a very brief description of the law as it stands at this moment.

The Code treats different classes of debtors in respect of attachment of their wages and salaries in a different manner. (I omit reference to minor exceptions with which I will not trouble the House.) It first exempts altogether the wages of labourers and of domestic servants. In respect of other private persons, that is, persons who are not in Government employment and are not railway servants—it leaves the whole of their salary open to attachment, but that attachment can only be effected after the salary or wages are due. In other words, attachment can only be made of these as a debt ; so that anyone who sought to attach salary would first have to wait until the amount was actually payable and he would then have to attempt to enforce a decree—an extremely difficult, if not impossible, proceeding and one which is very rarely resorted to, except when substantial arrears of salary are for some particular reason due to an individual. So that while in appearance the Code gives very little protection or no protection to persons in private employment, in actual practice the protection is very nearly absolute. But when we come to Government servants and Railway servants, the provisions are different. Here the first Rs. 40 of salary is exempt and thereafter half the salary is exempt, subject to a minimum of Rs. 40. The remainder is liable to a process known as continuous attachment. In other words, the creditor can secure from the Court an order served on the head of the Department or the head of the Railway Administration by which that officer is bound to deduct from the salary payable to the Government or Railway servant the proportion specified month by month, so that it may be made over to the creditor. That briefly is the position of the law as it stands, except that allowances which are less than salary are totally exempt.

Now, these provisions are sought to be replaced almost entirely by the provisions which Honourable Members will find in the Bill. The new clause (h), which they will find at the head of clause 2 of the Bill, continues the total exemption of wages for labourers and domestic servants and it adds a new exemption for the salary of other private individuals in respect of the first

Rs. 100 and half the remainder thereafter. For the reasons which I have already indicated, I cannot claim that that clause is of any substantial importance. The important clause, which I will reserve to the last, is the following clause, clause (i). The amendment in clause 2(b) is of a purely formal character. The amendment in clause 2(c) read with the second Explanation is designed to remove an unintentional effect of the Code. I referred a moment ago to the fact that allowances being less than salary are totally exempt. That was intended to protect special allowances, such as subsistence allowance. But since the introduction of time-scales, the great majority of Government servants go on leave on a pay which is slightly lower than their regular salary, with the rather anomalous result that although part of their salary may have been attached up to the moment of their going on leave, as soon as they go on leave they get the whole of the pay. That result, as I said, was not anticipated by the framers of the Code and is not based on any equity, and these amendments seek to remedy the defect. The last clause, clause 3, allows a small period of grace for the filing of suit.

I return now to the only really important clause and that is the new clause (i). This proposes to raise the limit of...

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (United Provinces Northern: Non-Muhammadian): Which clause?

THE HONOURABLE MR. A. G. CLOW: The clause which takes the place of clause (i) in section 60 of the Code; it is included in clause 2(a) of our Bill—the one beginning with “the salary of any public officer.”

This seeks to change the present position in two directions. In the first place, by the main part of the clause, Rs. 100 of salary is totally exempted from attachment, whether before or after it is due, and half the remainder of an official's salary is also exempted similarly. The remainder, if this Bill is passed, will still be liable to continuous attachment; but the proviso limits the power of continuous attachment. In the first place, the creditor will not be able to secure for any one decree continuous attachment for a period exceeding 24 months either continuously or intermittently. In the second place, after the salary of an official, or rather the portion attachable of it, has been attached for a period of 24 months, he will have a respite of at least a year from all attachment. Now these provisions enhance appreciably, as Honourable Members will recognize, the protection given to public servants from this power of continuous attachment and the justification for them is to be found in the effect which that particular system has on indebtedness. The Whitley Commission were impressed by the fact that undue credit was a danger; it afforded a strong force working for indebtedness. And investigations since have shown that those Government servants whom this Bill seeks mainly to protect are very often gravely indebted. I may mention that the heads of all Railway Administrations and of the Posts and Telegraphs Department were in favour of an amendment of the law. It is our hope that by restricting the power of continuous attachment in this manner we will restrict the attraction of that class of persons for those who wish to lend them sums which are beyond their capacity to pay without hardship. I trust, Sir, that the Bill will commend itself to the House.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras: Non-Muhammadian): Sir, I rise to support the Motion to consider this Bill and welcome it as a very beneficial measure. It has been long overdue and I think many classes of people in this country will stand benefited by this measure.

[Mr. V. Ramadas Pantulu.]

I wish it had been liberalised in two or three directions. Firstly, while the Whitley Commission recommended that incomes up to a limit of Rs. 300 should be totally exempted from attachment, the present Bill brings down the minimum to Rs. 100. I wish the Government had maintained the minimum recommended by the Whitley Commission. There are very many weighty reasons for doing so and Rs. 100 is a very small minimum which will not give adequate relief to a large section of public servants and other people. But I do not wish to labour that point. I only hope that when a suitable occasion occurs and after they watch the effects of this measure Government will take action in that direction. There is one other direction in which they might have liberalised the Bill, namely, small agricultural incomes might have been exempted. Section 60 of the Code of Civil Procedure now contains certain exemptions in favour of agriculturists. I am aware that Agriculture is mainly a Provincial Subject and that the Provincial Legislatures are at liberty to legislate where local conditions require; but here are certain broad principles of an all-India application. If the Government of India had extended the exemptions which agriculturists now enjoy to very low incomes of a specified minimum it would have been a welcome measure. I also think that the words "labourers and domestic servants" might have been explained a little more carefully so as to include agricultural labourers as well. It is doubtful whether the words now used in the Bill "labourers and domestic servants" will include farm servants as opposed to domestic servants. I am not quite certain. Anyhow it should have been made clear.

There is, however, one clause of this Bill to which I have serious objection—clause 3. I feel that the clause nullifies much of the benefit which this Bill seeks to confer on many classes of employees in this country. Clause 3 is objectionable from more than one point of view and with your permission, Sir, I will reserve what I have to say on the subject till I speak when the clause is put to vote. With these observations, Sir, I support the Motion for consideration.

THE HONOURABLE MR. P. N. SAPRU* (United Provinces, Southern : Non-Muhammadan): Sir, I should like to congratulate the Honourable Mr. Clow on the excellent measure which he has just introduced in this House. I consider it, Sir, to be a thoroughly good measure to which we in this House can give our cordial support. Sir, the Honourable Mr. Ramadas Pantulu has referred to certain points and I am more or less in agreement with his main criticisms. I think, Sir, that the exemption limit should have been Rs. 300. I do not say, Sir, that the Bill is not a very great advance from the present position. It is undoubtedly a very great advance but I agree with the view of the Whitley Commission that the exemption should have been Rs. 300. There is a great deal of indebtedness among our railway employees and others and if the exemption limit had been placed at Rs. 300 it would have been better. Anyway, Sir, the Bill represents an improvement in the right direction and I will not stress that point. Then, Sir, I am also inclined to agree with the view of the Honourable Mr. Ramadas Pantulu that the definition should have been so drafted as to include agricultural labourers also. I am not quite sure whether agricultural labourers and domestic servants will come within the purview of the present Bill. Then, Sir, so far as clause 3 is concerned, I should personally have preferred that retrospective effect should have been given to

* Speech not corrected by the Honourable Member.

the measure. I think, Sir, the Act will not apply to proceedings arising out of any suit instituted before the first day of June 1937. I do not like clause 3 and when clause 3 is taken up I shall say what I have got to say in regard to it. Finally, I should like to give my whole-hearted support to this very beneficial measure in the interests of the working classes of India.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan): Sir, being an employer of labour on a large scale I am always for the amelioration of the condition of the labourers. But I should like to ask the Honourable Mr. Clow whether or not this Bill will apply to private domestic servants and industrial labour.

THE HONOURABLE MR. A. G. CLOW : Yes, domestic servants are mentioned in the Bill.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Sir, there is one point I want to mention and I only mention it because perhaps it may entail hardship on the labourer. Owing to grave economic difficulties the labourers have no reserve at all with them although they had a little reserve with them some time back, and I would say that the hardship which there is a possibility of occurring is that sometimes for reasonable grounds, for instance, owing to sickness in the family, he may request his employer for an advance—it is human that that advance should be given but when the time of the payment of salary comes and in case the labourer refuses to pay back that advance the result will be that, although the employer may wipe out that loan, once still it will cause hardship to the labourer in case advances are not made in time of emergency. So, Sir, while I do not oppose the Bill and welcome it as a measure for the improvement of the condition and welfare of the working classes, I would like some sort of safeguard so that this Bill may not entail a hardship upon labour in the manner that I have indicated. I know that the intention underlying this Bill is not to give them advances for being misused or that it may cause spendthrift. But sometimes the advances demanded by the labourer are for emergency purposes, for instance, in case of sickness in his family or in case of some other urgent nature. So I wish, Sir, that some sort of protection should be given to the employer in such like emergencies so that there may be no hardship to the labour. With these remarks I support the Bill.

THE HONOURABLE THE PRESIDENT : Motion moved :

“ That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes (*amendment of section 60*), as passed by the Legislative Assembly, be taken into consideration.”

The Motion was adopted.

Clause 2 was added to the Bill.

THE HONOURABLE THE PRESIDENT : The Question is :

“ That clause 3 stand part of the Bill.”

THE HONOURABLE MR. V. RAMADAS PANTULU : Sir, I wish that the Government had not nullified the effect of a very good and beneficial measure by this very unfortunate clause. The effect of this clause is this ; Sir, all the decrees that are obtained hitherto and those that will be obtained in suits to be instituted before the 1st of June 1937 will continue to be executed in the manner in which they are now executed under the Code of Civil Procedure. Therefore, the various classes of persons to whom this Bill applies will not be benefited to the slightest extent by this Bill, so far as decrees that are outstanding now are concerned and also decrees in suits to be instituted before

[Mr. V. Ramadas Pantulu.]

the 1st June 1937; that covers a very large class of persons and they are all deprived of the benefits of this section. If the framers of the Bill had said nothing about this in the Bill and if this clause had not been there the Bill would have had a retrospective effect for the reason that it is an adjective and not a substantive measure. It is a matter relating to procedure of executing decrees. The rule is that a processual law will have retrospective effect unless expressly provided otherwise. Therefore, the benefits of this measure would have gone to all persons retrospectively. All decrees now outstanding would have been executed only in the manner in accordance with exemptions now made by the Bill. Now, Sir, there is another danger. Now that the Bill has given time till the 1st June for those intending to institute suits there will be a large number of suits filed between now and the 1st of June because it gives a distinct advantage to decree holders to execute them in the old manner. It may be said that since the commencement of legislative proceedings to implement the recommendations of the Royal Commission on Labour a certain number of suits have already been filed. I know there has been some rush in the courts. But many people hesitated to file suits in the hope that the Legislative Assembly and the Council of State might not perhaps pass such a measure of protection to debtors because the money-lending classes very largely predominate in both these Houses. As a matter of fact, the Select Committee to which the Bill was referred by the Assembly tried to bring down the minimum from Rs. 100 to Rs. 60 and other amendments made in the Select Committee showed distinct characteristics of the money-lender's mentality having been brought to bear upon this Bill. That is the hope in which the money-lenders in this country have been postponing their suits. Now you give them definitely four months' time for filing their suits. Now, I think people drawing salaries of Rs. 100 or less will all be sued because of the tremendous advantage that the creditors get thereby which will be denied to them after 1st June. I have received a certain number of telegrams and communications urging upon me to request the House not to accept clause 3 of the Bill. For instance, one telegram runs:—"Advocates, Madras. Please see Upper House rejects Thorne's last amendment to section 60 of Bill since it compels suits against people getting low salaries" and so on. I have received certain other communications to the same effect. I would ask this House and the Honourable Member in charge to pay some serious attention to what I have said. I am not ventilating imaginary grievances. I am pleading the cause of the poor people who will be harassed. The creditors in this country are given far too many facilities to recover their debts. The Railway Companies and Government Departments have been made the agents for the collection of decrees and debts due to money-lenders. The law of limitation, the law of procedure, all these unduly favour the creditors in this country and lead to accumulation of debts over long periods of years, and you have created agencies which are least expected to be agencies for collection of debts to money-lenders. I think the apprehension that any curtailment of the existing facilities to creditors might curtail the credit facilities of these people is really unfounded. My Honourable friend Rai Bahadur Lala Ram Saran Das pleaded for certain safeguards lest the credit of these people might suffer. I am sure it would not suffer. Nobody should lend these people moneys in the hope that the Government or Railway Companies will collect the moneys. They ought to lend them on the merits, having regard to the repaying capacity of the borrowers.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Not even in the case of an emergency.

THE HONOURABLE MR. V. RAMADAS PANTULU : You should not give undue facilities to money-lenders. I think the law should curtail those facilities. Any amount of legislation to deal with indebtedness will hardly have any effect unless the existing facilities are considerably curtailed. I hope this House will have some sympathy for these poor people. I am now pleading the cause of the poor, if I was pleading the cause of the rich people this morning, I hope the Honourable Mr. Parker will at least vote with a Congressman's Motion when he pleads the poor man's cause. If he votes with us, he will be helping to remove the injustice to which these people will be subjected. *I request him to put his sympathy for the poor man into action by voting with us. With these words, Sir, I oppose wholly clause 3.*

THE HONOURABLE MR. A. G. CLOW : Sir, I have a certain sympathy with my Honourable friend who has just sat down. Like him, perhaps, I have the same natural tendency in favour of debtors rather than creditors. But I think his speech illustrates how extraordinarily difficult it is to please everybody. When the Bill was introduced—I think it was introduced on the 8th February, 1935.—the date then inserted in this clause was the 1st February 1935; so that no opportunity was given to file suits at all. Then, in Select Committee, the change was made, and although I was not by then a Member of the Select Committee and could not, in any case, disclose what took place there, I think it is reasonable to infer that the change was made at the instance of gentlemen, who, in some matters at least, share the views of my Honourable friend opposite. The effect of that change was that whereas they reported in March of last year with every reason to anticipate that the Bill would be passed within a few weeks, creditors were allowed up to January of this year to file their suits—a period of nearly 9 months. The amendment made in the other House recently is a compromise and gives a period of a little more than 3 months to file suits.

It is extraordinarily difficult in these matters to hold the scales even between creditors and debtors. But there is one point to remember, and that is, that the sums for which suits will be filed were sums actually lent with the expectation that the Code as it now stands will be applicable, and I think that is a consideration that we cannot afford altogether to ignore. It is perfectly true that this clause may lead to the filing of an extra number of suits in the courts in the course of the next few months. But personally I should have thought, having great respect for the acumen of the money-lending profession, that any gentleman of that profession would have recognised at least two years ago that the probabilities were that this Bill would pass into law and they would have had ample opportunities of filing suits in the interval, and most of the suits they were going to file have probably already been filed.

THE HONOURABLE MR. V. RAMADAS PANTULU : You give them further opportunities.

THE HONOURABLE MR. A. G. CLOW : In view of the consideration that they have lent the sums on the expectation that the Code as it now stands will be applicable—probably most of them were lent before any question of amending the Code arose—it does seem fair to give a very brief respite to the creditors. I hope my Honourable friend will not press his objection.

THE HONOURABLE THE PRESIDENT : The Question is :

“That clause 3 stand part of the Bill.”

The Motion was adopted,

Clause 3 was added to the Bill.

Clause 1 and the Title and Preamble were added to the Bill.

THE HONOURABLE MR. A. G. CLOW : Sir, I move :

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

I would crave the indulgence of the House for a minute or two to refer to certain observations which fell from my Honourable friends opposite to which I had no opportunity of replying at an earlier stage. My Honourable friend Mr. Ramadas Pantulu suggested that we should have adhered to the Whitley Commission figure of Rs. 300. Well, I am not a likely person to criticise the views of the Whitley Commission of which I was myself a member. But I would ask him to recognise that there has been a good deal of consideration given to this matter since the Whitley Commission reported. We have had views canvassed from all over India and it is quite clear to my mind that at least in one respect, namely, as far as the figure went, the views of the Whitley Commission were not entirely in consonance with public opinion in this country. I would again remind my Honourable friend that in another place this figure of Rs. 100, which we have in the Bill, was reduced to Rs. 60, and had it not been for the combined efforts of the Honourable Mr. Joshi and Government, we would have been at Rs. 60 still, which I think is an indication that my Honourable friend in his pleadings for debtors has not at least unanimous support behind him. I would also point out that although the Whitley Commission figure has not been adopted, we have in the proviso here a very important safeguard which goes beyond what they recommended, so that I do not think that the effect on the whole is likely to be less favourable than the adoption of their recommendation would have been.

There has been a certain amount said about agricultural labour. Well, I am not a lawyer, but I should have thought that an agricultural labourer was a labourer, and in any case I have never heard of a case of an agricultural labourer having his wages attached by a process in the Civil court, and I imagine such cases are extraordinarily rare. As regards my Honourable friend Lala Ram Saran Das's apprehensions I can assure him that this Bill in respect of the classes of whom he was particularly speaking makes absolutely no change. Labourers and domestic servants both have their wages equally exempt under the Code as it stands, and the Bill ; and the provisions to which he was referring are a reproduction of the existing provisions.

THE HONOURABLE MR. RAMADAS PANTULU : I am thankful to the Honourable Mr. Clow for the assurance of Government's sympathy in this matter. I will only remind him that if the Government want to translate their sympathy into action, amendments by Government in this House have a much better chance of being carried than in the other House. Therefore whenever the Government feels that their sympathy for the poor has not been given effect to in the other House, I would advise them to bring their motion in this House.

THE HONOURABLE THE PRESIDENT : The Question is :

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

The Motion was adopted.

The Council then adjourned till Eleven of the Clock on Thursday, the 25th February, 1937.

CORRIGENDUM.

Council of State Debates, Vol. I, No. 17, dated the 3rd April, 1937.—
In the "Contents" on the cover and in the headings which occur twice
on page 655, for the words "Indian Red Cross (Amendment) Bill"
substitute the words "Indian Red Cross Society (Amendment) Bill".