

3rd March 1943

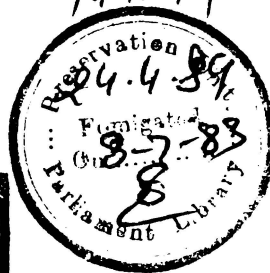
THE LEGISLATIVE ASSEMBLY DEBATES

Official Report

Volumes I to II, 1943

(10th February to 2nd April, 1943)

SEVENTEENTH SESSION OF THE FIFTH LEGISLATIVE ASSEMBLY, 1943



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LEGISLATIVE ASSEMBLY.

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LEGISLATIVE ASSEMBLY

Wednesday, 3rd March, 1943.

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

MEMBER SWORN.

Mr. Geoffrey Stephen Bozman, C.I.E., M.L.A., (Secretary, Indians Overseas Department).

STARRED QUESTIONS AND ANSWERS.

(a) ORAL ANSWERS.

EXTENSION OF THE PUNJAB ENTERTAINMENT DUTY ACT TO DELHI PROVINCE.

237. *Mr. Muhammad Azhar Ali: Will the Honourable the Finance Member please state if it is a fact that the Punjab Entertainments Duty Act, 1936, as extended to the Province of Delhi was brought into force from the 1st of January, 1940? If not, what is the fact?

The Honourable Sir Jeremy Raisman: The answer to the first part is in the affirmative; the second part does not arise.

Mr. Muhammad Azhar Ali: Does the Honourable Member know that the Cinemas here in the city of Delhi do not observe the provisions about the sale of tickets? They always sell tickets outside for more price than that prescribed.

The Honourable Sir Jeremy Raisman: So far as the Excise Authorities in Delhi have been able to ascertain there is no reason to believe that the Managers of any of the places of entertainment in Delhi are guilty of malpractices of the kinds suggested by the Honourable Member.

Mr. Muhammad Azhar Ali: Has the Honourable Member or the Department received any application or petition from the public on the subject?

The Honourable Sir Jeremy Raisman: I have not received any application, but it has been brought to my notice that it is suggested that certain mal-practices are taking place. I called for enquiries to be made by the local authorities and as far as we could discover it is not the management of any cinema which is responsible for these mal-practices; but it is possible that unauthorised persons obtained cinema tickets and then sold them again outside.

Mr. Muhammad Azhar Ali: Will the Government take any action against those people and make enquiries?

The Honourable Sir Jeremy Raisman: I am not sure what action could be taken but I will look into that.

WAR VACANCIES IN THE SECRETARIAT.

238. *Mr. Muhammad Azhar Ali: (a) Will the Honourable the Home Member please state the number of appointments created for the duration of the war for the Secretariat non-gazetted staff and Secretariat gazetted staff up to the rank of Assistant Secretaries?

(b) How many of these appointments have been filled by promotion of men from the lower grades, separately?

(c) What is the maximum and minimum amount of monetary gain involved for men in each grade, separately? What is the difference of pay of the persons concerned before and after the promotion?

Mr. V. Sahal: The information asked for is not readily available and its collection would involve an amount of time and labour that would not be justifiable in war time.

CRIMINAL INVESTIGATION DEPARTMENT SPECIAL STAFF ATTACHED TO THE DEFENCE
DEPARTMENT AT LAHORE.

239. *Bhai Parma Nand: Will the War Secretary be pleased to state:

- (a) the total number of officers (Hindus, Muslims, and other communities), including Deputy Inspectors General, Superintendents, Deputy Superintendents, Inspectors, Sub-Inspectors and Assistant Sub-Inspectors employed in the special staff of the C. I. D. attached to the Defence Department with their headquarters at Lahore;
- (b) the total number of *chalan*s filed by the special staff against Hindus, Muslims and other communities;
- (c) whether it is not a fact that the staff is shadowing mostly the Hindu employees of Government and Hindu contractors; and
- (d) whether he proposes to take steps to see that Muslim employees and Muslim contractors receive equivalent attention?

Mr. C. M. Trivedi: (a) The total staff is, at present, 27 of whom 11 are Hindus, 13 are Muslims and 4 are of other communities.

(b) The total number of *chalan*s filed by the special staff up to the 31st December, 1942 is 63 of which 31 have been against Hindus, 13 against Muslims and 12 against other communities. In addition seven cases have been put into court in which the accused belong to more than one community. In these seven cases, nine accused have been Hindus, nine Muslims and six of other communities.

(c) Government have no reason to believe that this is so.

(d) Does not arise.

DISTINCTION *re* SALARY BETWEEN THE RE-EMPLOYED RETIRED CLERKS OF DEFENCE
DEPARTMENT AND THE MILITARY ACCOUNTS DEPARTMENT.

240. *Bhai Parma Nand: (a) Will the War Secretary be pleased to state the idea underlying Army Instruction (India) No. 84 of 1941 regarding salary to be received by a retired civilian of the Defence Department on his re-employment as an Upper Division Clerk in the War Department?

(b) Is he aware that the retired civilian clerks of the Military Accounts Department, when re-employed, are getting their original pay consisting of pension *plus* the difference between the substantive pay and the pension, so as to make the total amount of their salary equal to their substantive pay at the time of retirement?

(c) If the answer to (b) be in the affirmative, why is a distinction made between the retired clerks who volunteered their services with long experience, and the Military Accounts Clerks?

Mr. C. M. Trivedi: (a) and (c). Army Instruction (India) No. 84 of 1941, which has since been superseded by Army Instruction (India) No. 412 of 1942 was designed to secure the services of the personnel required at the minimum cost to Government. I will examine the question whether the terms of re-employment of retired civilians in the Defence Services should not be assimilated to the terms sanctioned for the re-employment of retired civilians in the Military Accounts Department.

(b) Yes, Sir.

TRANSFER OF MAJOR HAZELLES FROM CAWNPORE TO THE ORDNANCE DEPOT,
DELHI FORT.

†**241. *Dr. Sir Zia Uddin Ahmad:** (a) Will the War Secretary please state the date of the transfer of Major Hazelles from Cawnpore to the Ordnance Depot, Delhi Fort?

(b) Was there any complaint regarding his work at Cawnpore?

(c) What was the percentage of rejection of the goods tendered for inspection before and after his posting in Delhi?

†Answer to this question laid on the table, the questioner being absent.

(d) Is the large percentage of rejection due to closer honest scrutiny or for other reasons?

(e) Is there any system by which the working of an officer can be checked?

(f) Is there any system for redressing the grievances of a contractor as far as inspection is concerned?

Mr. C. M. Trivedi: (a) Major Hazelles was transferred from Cawnpore to Delhi on the 15th of January, 1943.

(b) No, Sir.

(c) During the three months of October, November and December, 1942, the average percentage of rejections was 25.19. From the 20th of January, 1943 to the 20th of February, 1943, the average percentage was 25.42.

(d) The average percentage of rejections has only risen by .23 per cent. and this part of the question, therefore, hardly arises.

(e) Yes. India is divided into five areas for inspection purposes and each area is in charge of a senior officer whose duty it is to check the work of the officers under him. In addition a staff of standardisation officers is based on Headquarters at Cawnpore. The duty of these officers is to tour all Ordnance Depots and ensure that a uniform standard of quality is maintained.

(f) Yes. The contractors have a right of appeal first to the officer in charge of the area and then, if not satisfied, to the Controller General of Inspection who is frequently on tour and gives the contractors an opportunity of submitting their grievances.

THE DELHI MUSLIM WAKFS BILL.

Maulvi Muhammad Abdul Ghani (Tirhut Division: Muhammadan): Sir, I beg to move:

"That the Bill to provide for the better administration of Muslim Wakfs in the Province of Delhi, as reported by the Joint Committee, be taken into consideration."

Sir, in moving the motion I have to thank various personalities who helped me in the passage of this Bill, but I want to reserve this right for a later stage. I want to confine myself to the motion before the House. This Bill, as it has emerged from the Select Committee, has been much improved, but there has been some omission. There has been an overwhelming number of opinions that the Law of Limitation should not be applied to the Wakf properties. It has also been suggested that in this connection the Privy Council has held that the Law of Limitation, so far as the Wakf properties are concerned, does not apply. The Government has also made special provisions to safeguard their interests so far as their property is concerned. So it is necessary that this Bill should have some provision to the effect that the Law of Limitation, so far as the Wakfs are concerned, should not apply. As regards clause 65, suggestions have been made that no court fee should be charged from the Wakf properties, because these properties are the properties of God. So there should be no charge for court fees. There is another omission in this Bill. A wakf property situated in the Delhi province, if it happens to be out of the province, then in that case the authorities have got no power under this Bill to supervise that kind of wakf property. As for instance, there is a big property, say the Anarkali sarai situated in Lahore, in the Punjab and that is the property attached to the new *Idgah* for the upkeep of that *Idgah* and at present litigation is going on for the mutawalliship of that property. I find notices of amendments have been given to provide for this thing, so that such kind of property would be looked after by the Majlis. There was much agitation about the travelling allowance bills. The Select Committee has dropped this provision, and the Select Committee has also provided adequate representation for the interests in the Province of Delhi which was demanded. In the original Bill there was provision that if the mutawallis were found disobeying the orders of Majlis, then in that case, they would have to be proceeded against by the Majlis before a Magistrate and an ordinary fine would have served them right. But the Select Committee has provided it otherwise and that provision is a lengthy one and at the same time they have a

[Maulvi Muhammad Abdul Ghani.]

protracted provision, which will entail great hardship and also a heavy burden, of expenditure on the poor Majlis.

Take the case of audit. If the auditor goes to a mutawalli and the mutawalli defies the order of the auditor and does not produce accounts, then in that case, the Majlis would have no option but to see the help of the District Judge; not only that not for the first offence, but for repeated offences of a similar nature, that is, for repeated or persistent disobedience of the order of the Majlis, the Majlis shall seek the protection of the District Judge. You may judge very well, Sir, how this will stand in the way of the smooth working of the Majlis and the smooth relationship of the Majlis with mutawallis. No doubt the Select Committee has provided a very heavy punishment on the mutawallis for their disobeying the order of the Majlis, but an ordinary fine would have been preferred by the mutawallis than to undergo such a protracted trial before a District Judge. So, the Majlis and the mutawallis will both be put to a difficult and inconvenient position. However the majority did not favour this, and therefore we have to be satisfied with what is provided for the time being.

I find that notices of amendments have been given, about 15 in number. Out of these amendments, many suggest minor changes and I hope the Honourable the Law Member will accept those amendments in such a way as not to affect the position of wakfs, rather the Bill will be improved. In clause 25, I find that there is provision of general powers and duties of the Majlis concentrated in one place. But all such powers have provision in their support which are scattered in different places in the Act. There are certain provisions in clause 25(3) which have not the support of a specific provision of law. In part (h) of sub-clause (3) there is provision for depositing wakf money in the hands of the mutawalli in any bank approved by the Provincial Government. This is the sum and substance of any provision made anywhere else. I find there is no provision anywhere else except the summary given here. The same is the case with respect to part (c)—“to prepare and settle its budget and to furnish copy thereof to the Provincial Government or to such authority as the Provincial Government may direct”. Such is the case with respect to part (l)—“to furnish to the Provincial Government or to such officer as the Provincial Government may appoint in this behalf any statement, report, return or other document and any information which the Provincial Government or, as the case may be, such officer may require to be furnished”. Such is the case with respect to part (n) “to direct the mutawalli of a wakf to institute in a court of law, within such time as may be fixed by the Majlis, any suit or proceeding”. There is no specific provision for the Majlis to institute any enquiry and moreover there is mention in sections 26, 28 and 31 and part (m) of sub-clause (3) of clause 25 that certain enquiries will be necessary for the Majlis before it comes to a definite decision. But there is no specific provision in the Bill to empower the Majlis to summon witnesses, to compel the attendance of witnesses and to compel the production of documents, as is clearly provided in section 27 of the N.-W. F. P. Wakf Act, in section 33 of the Bengal Wakf Act and in section 46 of the U. P. Wakf Act. Similar provision is also in the Gurdwara Act and also in the Madras Hindu Endowment Acts and also in section 14 of the Land Acquisition Act. So, I do not think that if the same power in the same words be given to the Majlis, there will be any harm. I think an amendment has been given in this respect and I hope the Honourable the Law Member will consider it and accept the same.

Clause 36, of the original Bill provided that in cases where any object of a wakf is vague or uncertain or if the object of that wakf has ceased to exist, the funds relating to that object may, with the previous sanction of the District Judge, be utilized for the purpose of imparting education to Muslims. Here in Delhi uptil now this has been the practice, and schools have been

opened and are existing on the grant given by the Fatehpuri Mosque and other wakfs although there are no specific provisions in those Acts, because Fatehpuri Masjid is only a Masjid and it will stop giving such aid when money is required to be spent on the mosque itself, but if the surplus money is far beyond its requirements in that case the District Judge may consider the recommendation of the Majlis and may divert such funds for the purpose of imparting education to Muslims. These are the facts which require the consideration of the House.

The number of wakfs is very great. A list has been prepared by the Special Officer in which he says that notwithstanding any legal sanction, we ascertained the number to be 600; but the archæological report prepared by the Government of India gives the number as 971 as far back as in 1916. From that report we find that the condition of some of the wakfs is very hopeless here. Take the case of certain mosques. On the upper storey the prayers are offered and just below the upper storey—on the ground floor—there are shops and those shops have become the property of encroachers. It is very regrettable that some of the property has passed to other hands about which no action can be taken. I am thankful to the Select Committee that they have made a provision in this Bill that steps will be taken to regain the lost property. Most of the cases—rather almost all—are between Muslims.

Income from wakfs of above Rs. 500, as has been found out, comes to Rs. 2,17,387 at present, but the income in my opinion is far more than that which has been estimated, because nobody pointed out to the Special Officer to correct the amount or correct the number of wakfs. Sir, I hope that the amendments which are few in number will be accepted by the Government and the House.

There is one more omission in the Bill. There is a provision under clause 37 which says that if there is a suit or any proceeding pending in the Court, the Court will give notice to the Majlis to look after it. But there are other kinds of proceedings started by the Collector and by the Land Acquisition Officer. The Collector, in cases of land acquisition, starts proceedings and it is not clear there that the Land Acquisition Collector will be bound to give information to the Majlis. Also if the Majlis have got no knowledge of any proceedings going on in the Court of the Land Acquisition Collector, the case may be decided *ex parte*, and in that case the Collector may very well say "Well, the Majlis should have taken the sanction of the Advocate General and then I would have allowed." In that case there will be no reply on the part of the Majlis and the interest of the public will suffer much. I hope this very modest amendment will be accepted by the House and the Government. With these few observations I move my motion that the Bill be reconsidered.

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

"That the Bill to provide for the better administration of Muslim Wakfs in the Province of Delhi, as reported by the Joint Committee, be taken into consideration."

Maulvi Syed Murtuza Sahib Bahadur (South Madras: Muhammadan): Mr. President, I wholeheartedly support the consideration of the Bill before the House and also the amendment tabled by my Honourable friend, Maulvi Abdul Ghani Sahib.

The Honourable Sir Sultan Ahmed (Law Member): There is no amendment by him.

Maulvi Syed Murtuza Sahib Bahadur: According to his speech there is an amendment.

Mr. President (The Honourable Sir Abdur Rahim): There are amendments in the name of Maulvi Abdul Ghani. The Honourable Member can make any general comments on them, if he likes.

Maulvi Syed Murtuza Sahib Bahadur: Thank you, Sir. It is admitted on all hands that our endowed properties are being mismanaged, nay they are being misappropriated by some of the mutawallis at least. So far as Hindus are concerned, they have fortified themselves against these things. They have passed

- [Maulvi Syed Murtūza Sahib Bahadur.]

measures so that they may prove conducive to their endowments. As regards the Sikh community, they have succeeded in passing the well-known Gurdwara Act and everything is going on very smoothly. Unfortunately for us, our endowed properties throughout India are being mismanaged. Unfortunately for us again, the Muslim Members of Madras Legislative Assembly brought forward a measure on the same lines as that of Maulvi Abdul Ghani but it was thrown out for want of proper support.

Here, Sir, we know how things are being mismanaged. It was in connection with the mismanagement of the Committee, called the Fatehpuri Mosque Committee, that we came to realise these difficulties very well. There the Committee—we do not know when it was constituted and under what rules and regulations it was functioning—had life members to attend to its management. And what was the result? Whenever there was a vacancy the other members used to fill up that vacancy, and the Muslim public had no voice in the administration. So it was that matters went from bad to worse, so much so that a non-Muslim neighbour of the Fatehpuri Mosque has almost disfigured the mosque. When it was brought to our notice, some of us took an active part in it, brought the matter to the notice of Government, and had our meetings every Friday in that mosque. Then only the Muslims of Delhi opened their eyes. Till then, they were sleeping over the question.

Now, the other Committee, though it is functioning satisfactorily only to a certain extent, should also be improved upon a good deal. And this measure, Sir, when passed into law is surely calculated to improve not only those mosques but also all other mosques, tombs, orphanages and even burial grounds. Sir, unfortunately for us, so far as Delhi is concerned, we cannot but shed tears on the graves of our co-religionists. Though we form only seven per cent. of the population in Madras, we would not have tolerated this kind of desecration of burial grounds. I may assure the House such is the case here, and I have here cases in which mutawallis have gone to the extent of selling away burial grounds, not fearing God, not realising that they will have to face God and His Holy Prophet. These things are being done.

Now, Sir, I may sum up my speech. The endowments addressing the mutawallis say:

"Mara ba Khair-i-to ummid nest, bad ma rasān."

"Oh! Mutawallis, I do not expect of you any good. I will be quite satisfied if you do not do me any harm."

When developed it means: "I cannot expect you to enhance the income of the property, to make improvements as regards the better management of the property, but I will be quite contented if you can leave me alone, if you can leave me in my normal condition". That is the appeal which every endowment, be it of Shias, be it of Sunnis, makes to the mutawallis thereof. Sir, with these few remarks,—I will of course have an opportunity of having my say in the third stage of the Bill—I resume my seat as I am not keeping well and consequently I cannot prolong my speech.

The Honourable Sir Sultan Ahmed: Sir, before I say anything on the Bill, I think it is fair that I should offer my heartiest congratulations on the great work that has been done by the Mover of this Bill. He has worked hard and brought forward a Bill which, after the necessary modifications made by the Select Committee, I hope will turn out to be a model Bill for the whole of India. Sir, I have known the Honourable Member for over 35 years, and I have always associated him with hard work, honesty of purpose and devotion to duty. But he has in this matter surpassed all my expectations. When the Bill was circulated it evoked criticisms of all kinds from different parts of India. But all were unanimous as to the necessity of such a Bill, and it is to his everlasting credit that he, coming from the province from which I come, should have been the first to have taken interest in the Wakfs of Delhi. I think he is entitled to our gratitude for the work that has been done by him.

Sir, as regards the Bill itself, there were three or four serious defects found by those who had to examine the Bill in different parts of the country. The first was that the Majlis proposed in the original Bill was composed of 2/3 members coming from outside Delhi. This was naturally received with a certain amount of, not only, opposition, but hostility. That I am glad to say has been put right by the Select Committee. Another objection was that the Shias were not treated fairly. That also, I am glad to say, has now been set at rest. The third was that the Bill provided a top-heavy administration. That also has been put right because the Sadr is going to be an Honorary Sadr. Similar defects in the Bill were removed by the Select Committee, and I feel confident that the Bill as it has emerged from the Select Committee will commend itself to the House as one of the finest measures that has been brought forward by the Mussalmans in this country.

As regards the amendments which have been tabled, all that I can say at present is this. With the exception of two, which are more or less printing amendments, all the other amendments have been due to misconception, and misunderstandings which I will clear up when those amendments are moved. I therefore hope and trust that while we are dealing with big things, we will not spoil a Bill like this by unnecessary and trivial amendments. It must be realized that there are various parties to a proceeding in court in this country. It is not only the Muslims who will be affected, but others also will be affected and we will have to be very careful that nothing is done by us which may rouse any suspicion in the minds of those who are not primarily concerned with the Muslim Wakfs covered by the Bill. Minor amendments which may not be necessary need not be moved, for the simple reason that if you move these amendments they will have to go to the Upper House and there some other consequential amendments may be moved and the Bill may have to be returned to this House for further consideration. I would therefore appeal to those who are going to move their amendments to confine themselves to a few which they consider important, which I may be able to explain as really covered by the other clauses of the Bill. At this stage, I do not want to say anything further.

Mr. President (The Honourable Sir Abdur Rahim) : The question is : "That the Bill to provide for the better administration of Muslim Wakfs in the Province of Delhi, as reported by the Joint Committee, be taken into consideration."

The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim) : The House will now consider the Bill clause by clause. I see there are no amendments to clauses 2 to 6. The question is :

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clauses 3 to 6 were added to the Bill.

Maulvi Muhammad Abdul Ghani: Sir, I beg to move

The Honourable Sir Sultan Ahmed: Sir, can he move an amendment to his own Bill?

Mr. President (The Honourable Sir Abdur Rahim) : There is no ruling to that effect. I know that one of my predecessors did make a remark that perhaps it is more desirable that the Mover of a motion for consideration of a Bill should leave it to some other to move any amendment which he thinks it necessary to be made. It is not that the member in charge of a Bill is in any way disabled from moving an amendment to his Bill, and I do not find any provision in the Standing Order or Rules which debars him from moving any amendment he likes, and I do not see any good reason why he should be so debarred. It may be that in some cases he may find it inconvenient to move particular amendments himself; in those cases, the Member may probably consider it more desirable that it should be moved by some other person who also has given notice of that amendment. Anyway; I do not think that Maulvi Abdul Ghani

[Mr. President.]

is debarred from moving any amendment standing in his name; but it is left to him whether he will do it himself or leave it to some other Member who also has given notice of the same amendment.

Maulvi Muhammad Abdul Ghani: Sir, notice of the amendment in my name has been given by other Members also, but I am afraid that some objection may be raised that notice on their behalf was not given in time. If no such objection is taken, then there will be no necessity for me to move. Sir, I move:

"That in part (c) of sub-clause (1) of clause 7 of the Bill, for the word 'school' the word 'schools' be substituted."

There is no necessity for a speech on this: the society is known as the schools society.

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

"That in part (c) of sub-clause (1) of clause 7 of the Bill, for the word 'school' the word 'schools' be substituted."

The Honourable Sir Sultan Ahmed: I accept the amendment.

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

"That in part (c) of sub-clause (1) of clause 7 of the Bill, for the word 'school' the word 'schools' be substituted."

The motion was adopted.

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

Clauses 8 to 21 were added to the Bill.

Maulvi Syed Murtuza Sahib Bahadur: With your permission, I may invite attention to one verbal change here in clause 8

Mr. President (The Honourable Sir Abdur Rahim): I cannot follow what the Honourable Member says.

Maulvi Syed Murtuza Sahib Bahadur: The word "members" should be "member".

Mr. President (The Honourable Sir Abdur Rahim): There is no amendment to that effect. If it is a printing error, it can be rectified afterwards. Clause 22.

Maulvi Muhammad Abdul Ghani: I move:

"That for sub-clause (1) of clause 22 of the Bill, the following be substituted:

"(1) No person shall be eligible for appointment as Nazir, if such person—

- (a) is not a Sunni Muslim in case of Sunni Majlis-e-Awkaf or is not a Shia Muslim in case of Shia Majlis-e-Awkaf;
- (b) has applied for being adjudged an insolvent or is an undischarged insolvent;
- (c) has been convicted of any offence under this Act;
- (d) has been convicted of any offence involving moral turpitude;
- (e) has been guilty of breach of trust;
- (f) has on any previous occasion, been removed from office under any of the provisions of this Act, or by the order of a Court for corruption or mismanagement in respect of any trust property;
- (g) is less than 25 years of age; or
- (h) holds any office of profit under, or is a Mutawalli of, any wakf."

The Nazir will be the chief executive officer of the Majlis. The Sadr will not be a salaried Sadr and therefore the only qualification hitherto provided in the clause 22 is that the Nazir should be a Sunni Muslim. I think this will not suffice, when the charge of onerous duties will be entrusted to an officer of the position and rank of Nazir. I think these qualifications will be for the guidance of the appointing authority. With these observations I move my amendment.

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

"That for sub-clause (1) of clause 22 of the Bill, the following be substituted:

"(1) No person shall be eligible for appointment as Nazir, if such person—

- (a) is not a Sunni Muslim in case of Sunni Majlis-e-Awkaf or is not a Shia Muslim in case of Shia Majlis-e-Awkaf;
- (b) has applied for being adjudged an insolvent or is an undischarged insolvent;
- (c) has been convicted of any offence under this Act;
- (d) has been convicted of any offence involving moral turpitude;
- (e) has been guilty of breach of trust;
- (f) has on any previous occasion, been removed from office under any of the provisions of this Act, or by the order of a Court for corruption or mismanagement in respect of any trust property;

(g) is less than 25 years of age; or

(h) holds any office of profit under, or is a Mutawalli of, any wakf."

The Honourable Sir Sultan Ahmed: Sir, I am afraid I cannot accept this amendment. By clause 21 the Majlis may appoint a person to be a Nazir. The constitution of the Majlis has been mentioned already. If you see clause 24, you will find that it is the Majlis which will from time to time determine the number, designations, grades and scales of salary and other conditions of service of its officers and servants. All that will be done by the Majlis itself, and if you have got men of responsibility, surely you will not expect your Majlis to go and appoint men of the type you want to disqualify. Of course, they will not appoint a man like that. This amendment is absolutely unnecessary. You are not giving credit to your Majlis. It is a responsible body and the only disqualification which should be mentioned is what is provided for in sub-clause (1).

Maulvi Muhammad Abdul Ghani: May I seek some information from the Honourable the Law Member? The first Nazir is going to be appointed by the Chief Commissioner of the Provincial Government of Delhi and the Majlis will not be in existence then. What will happen so far as the conditions of service of the Nazir are concerned? What will be the guiding principle for the Deputy Commissioner or the Chief Commissioner when they appoint the Nazir?

The Honourable Sir Sultan Ahmed: I can give that assurance that the Chief Commissioner will not appoint anybody who is disqualified.

Maulvi Muhammad Abdul Ghani: I beg leave of the House to withdraw my amendment.

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

Clause 22 was added to the Bill.

Clauses 23 and 24 were added to the Bill.

Mr. President (The Honourable Sir Abdur Rahim): Clause 25.

Maulvi Muhammad Abdul Ghani: I beg to move:

"That in sub-clause (1) of clause 25 of the Bill, after the word 'Province' the words 'and of property of certain wakfs situated beyond the limits of the Delhi Province' be inserted."

I have already explained during the consideration stage that there may be some wakf properties situated outside the Delhi Province and I think that these words, if inserted in sub-clause (1) of clause 25, will help the Majlis to control and administer such wakfs situated outside the limits of the Delhi Province. For instance, there is a big wakf property, a big *Sarai* called Anarkali Sarai which is part of the wakf property of the new *Idgah*. For the upkeep and maintenance of that *Idgah*, it was gifted by a late merchant Mian Muhammad Shafi of Lahore. I hope that this amendment will be accepted.

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

"That in sub-clause (1) of clause 25 of the Bill, after the word 'Province' the words 'and of property of' certain wakfs situated beyond the limits of the Delhi Province' be inserted."

The Honourable Sir Sultan Ahmed: I am afraid I cannot accept this amendment. The language of the amendment is "and of property of certain wakfs situated beyond the limits of the Delhi Province". If it means property of certain wakfs which are situated outside the Delhi Province, then this amendment is *ultra vires*.

Maulvi Muhammad Abdul Ghani: The wakfs are here.

The Honourable Sir Sultan Ahmed: But the amendment as it stands will mean that. It cannot deal with wakfs situated beyond the limits of the Delhi Province. But apart from that, if it means, of property situated outside the limits of Delhi Province of certain wakfs here, then the law is that you can certainly superintend from here. What is the difficulty? There are many wakfs in one district having property in another district but the management is from the centre. What is the difficulty?

Mr. H. A. Sathar H. Essak Sait (West Coast and Nilgiris: Muhammadan): The words in the clause are "in the province".

The Honourable Sir Sultan Ahmed: The administration of wakfs is vested in the Majlis. You must not confuse between the subject of the wakf and the object of the wakf. The object of the wakf is here; the subject of the wakf, property and others, may be outside. It makes no difference.

Maulvi Muhammad Abdul Ghani: May I point out one difficulty? Section 92 has been repealed here, but if the property happens to be in the Punjab Province, then for that province section 92 has not been repealed and therefore the Majlis will be put in a difficulty to take the sanction of the Advocate General of that place. Therefore, I thought it necessary to bring in this amendment so that such kind of difficulty may not be placed in the way of the Majlis and the Majlis may not suffer a heavy burden of expenditure.

The Honourable Sir Sultan Ahmed: I am afraid I cannot accept this amendment for the simple reason that the Honourable Member is confusing "the subject" with "the object". That is the whole trouble. There is no difficulty in getting sanction here with respect to properties outside provided the object of the wakf is here.

Maulvi Muhammad Abdul Ghani: In view of the explanation given by the Honourable the Law Member, I beg leave to withdraw my amendment.

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

Clause 25 was added to the Bill.

Clauses 26 to 28 were added to the Bill.

Maulvi Muhammad Abdul Ghani: I beg to move:

"That after clause 28 of the Bill, the following new clause be inserted:

"28A. For the purpose of any enquiry under this Act, the Majlis or any officer or committee authorised by the Majlis in this behalf shall have power to summon and enforce the attendance of witnesses including the parties interested, or any of them, and to compel production of documents by the same means, and so far as may be, in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure of 1908, and the provision relating to the service of summons shall apply to the service of notices thereunder."

These are not my words, these are the words of the Legislature in Bengal, in the U. P., in the N.-W. F. Province, so far as the various wakfs in those provinces are concerned. Section 27 of the N.-W. F. Province, section 38 of the Bengal Wakf Act and section 46 of the U. P. Wakf Act say the same thing. Such provision is also to be found in the case of measures dealing with other wakfs or charitable properties. I hope there will be no harm done if a similar provision is made for this Majlis also, especially when it is going to serve as a model Bill for the whole of India. Such Majlis should get some special facilities, but this is not asking for special facilities. This facility is being enjoyed under various Provincial Acts and also the Hindu Religious Endowments Act of Madras and section 14 of the Land Acquisition Act of 1894.

12 Noon.

Everywhere such a provision is to be found and the Wakf Act which was passed in 1920 also contains a provision of a similar nature. If this power is not given to the Majlis, the Majlis will have, on each occasion, to seek the help of the district officials for every disobedience of orders. So, I hope that this facility will not be denied to the Majlis, and the Law Member will agree to this amendment.

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

"That after Clause 28 of the Bill, the following new clause be inserted:

"28A. For the purpose of any enquiry under this Act, the Majlis or any officer or committee authorised by the Majlis in this behalf shall have power to summon and enforce the attendance of witnesses including the parties interested, or any of them, and to compel production of documents by the same means, and so far as may be, in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure of 1908, and the provision relating to the service of summons shall apply to the service of notices thereunder."

Maulvi Sved Murtaza Sahib Bahadur: I strongly support the amendment moved by Maulvi Abdul Ghani. We have got precedents for this in four provinces. So far as my own Presidency is concerned, the Hindu Religious

Endowments Act is very liberal in this respect. As regards other provinces, in Bengal, where Muslims form the majority, we have got similar provisions and in U. P. the same thing takes place and also in the N.-W. F. P. where also the Muslims predominate. That being so, we will be quite just in appealing to the Law Member to kindly see his way to accept this amendment. If it is not passed, we will not be able to enforce so many things connected with the wakf. In other words, in many respects, our action will be null and void. Therefore, it is quite necessary that this amendment should be accepted by Government and I hope that my appeal will find favour with the Law Member.

The Honourable Sir Sultan Ahmed: I am afraid I cannot accept this amendment. If the Bill is going to be a model Bill, as I hope it will be, this provision is going to ruin the Bill altogether. First of all, if the Majlis has to call for papers and documents and summon witnesses connected with the wakf, that is the nazir or mutawalli or any other person, ample provision has been made in the Bill for that purpose. If it means that outsiders who have got nothing to do with the wakf should also be summoned. . . .

Maulvi Muhammad Abdul Ghani: No, Sir. Only persons interested.

The Honourable Sir Sultan Ahmed: Then there is ample provision here already. The Majlis has got the power to call for papers and documents and so on. If the mutawalli is defiant, he will be dismissed. I thought the idea was to call others to produce documents. If that is not intended, then why are you putting in this provision. It is unnecessary.

Maulvi Muhammad Abdul Ghani: Sir, I beg to withdraw my amendment.

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

Clauses 29 to 36 were added to the Bill.

Maulvi Muhammad Abdul Ghani: Sir, I move:

"That after sub-clause (1) of clause 37 of the Bill, the following be inserted and the existing sub-clauses (2) and (3) be re-numbered as (4) and (5):

- (2) Before any wakf property is notified for sale in execution of a decree, notice shall be given by the court to the Majlis;
- (3) Before any wakf property is notified for sale for the recovery of any revenue, cess, rates or taxes due to the Crown or to a local authority, notice shall be given to the Majlis by the Court or Collector or other person under whose order the sale is notified."

Clause 37 of the Bill speaks of a suit or proceeding pending in a court, which means the civil court but there is no mention of sale in arrears of land revenue or proceedings under the Land Acquisition Act. So, this necessary safeguard should be made here. With this view, we thought it proper to move this amendment, so that the ambiguity may be removed. I cannot say whether the word "court" includes the Collector. If it does, then well and good but it does not do so, as far as I understand it. Therefore this amendment becomes necessary. Sir, I move.

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

"That after sub-clause (1) of clause 37 of the Bill, the following be inserted and the existing sub-clauses (2) and (3) be re-numbered as (4) and (5):

- (2) Before any wakf property is notified for sale in execution of a decree, notice shall be given by the court to the Majlis;
- (3) Before any wakf property is notified for sale for the recovery of any revenue, cess, rates or taxes due to the Crown or to a local authority, notice shall be given to the Majlis by the Court or Collector or other person under whose order the sale is notified."

The Honourable Sir Sultan Ahmed: Sir, this amendment is due to mis-conception of the procedure. Sub-clause (1) of clause 37 provides:

"In every suit or proceeding * * * in respect of any wakf or property belonging to wakf * * * the Court shall issue a notice of the institution thereof to the Majlis"

Once the Majlis receives a notice and under the other clauses of the Bill becomes a party to the suit, the decree will be against the Majlis. In execution the Majlis therefore is bound to be a party and further notices of sale and attachment will all follow under the code. So, I do not see the necessity of a notice for the sale under this Bill. Notices of the sale must go to the Majlis if an execution is started against the Majlis

Sir Muhammad Yamin Khan (Agra Division: Muhammadan Itural): May I ask the Honourable Member what will be the position if any proceedings are pending now, before this Bill becomes an Act, because the wordings are that when a suit is instituted, then the Court is bound to give them notice? But supposing a suit has been filed and the execution proceedings are pending, what will be the position under this Bill?

The Honourable Sir Sultan Ahmed: The answer to that is obvious. If the sale takes place and the property which is affected by the wakf is sold, then the Majlis will have the right to bring a suit. That is usually done in all such cases and the Majlis will be treated on exactly the same lines as any other party.

Sir Muhammad Yamin Khan: The provisions in this Bill are that the Majlis may be informed when any suit is instituted in the court and the court will be bound to inform them, so that the Majlis may become possessed of the facts which they did not know. But the provisions of the Bill do not contemplate those cases which have already been finished but contemplates only those cases the executions of which are pending. In those cases the court is not bound under the provisions of this Bill. So, this amendment seeks only to remove this difficulty. How will they be affected?

The Honourable Sir Sultan Ahmed: The answer to that is this. If the proceedings have already been started and the stage of sale has been reached, in that case no notice can be given, otherwise if you make the Majlis a party at that time you will have to go back to the stage, when the execution started. That cannot be done.

Sir Muhammad Yamin Khan: What about the proposed sub-clause (3)? You have not replied on that point.

The Honourable Sir Sultan Ahmed: There also the position is exactly the same. There is no difficulty at all because once proceedings have been taken against the Majlis from the very initiation. They can come in. But if the proceedings have already been started and the Majlis is not a party and wants to come in at the time of the sale, then the law has amply provided for that. There is a provision under Order XXI with regard to claims cases and so on. That procedure will apply.

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

Maulvi Muhammad Abdul Ghani: Sir, I do not want to move Amendment No. 8 but I move Amendment No. 9, which runs thus:

"That in sub-clause (3) of clause 37 of the Bill after the word 'passed' the words 'or sale held' be inserted."

In sub-clause (3) of clause 37 it is mentioned that "the decree or order passed in such suit or proceeding shall be voidable at the option of the Majlis". I think the order includes sale also but it should be put in clear words. Therefore, the words "or sale held" after the word "passed" are necessary. I think this is a consequential amendment and there will be no difficulty in its acceptance.

Sir, I move.

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

"That in sub-clause (3) of clause 37 of the Bill after the word 'passed' the words 'or sale held' be inserted."

The Honourable Sir Sultan Ahmed: Sir, I object to this amendment on the same ground. The words "or sale held" would have been appropriate, if the other amendments had been carried.

Maulvi Muhammad Abdul Ghani: This amendment is quite independent of other amendments, and it has nothing to do with other amendments.

The Honourable Sir Sultan Ahmed: I do not follow the Honourable Member. Sub-clause (3) runs as follows:

"If the notice required by sub-section (1) to be issued to the Majlis in respect of any suit or proceeding shall be voidable at the option of the Majlis."

Sale is in execution; that is the proceeding.

Maulvi Muhammad Abdul Ghani: Sir, in view of the explanation given by the Law Member, I withdraw my amendment.

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

Clause 37 was added to the Bill.

Maulvi Muhammad Abdul Ghani: Sir, I move:

"That after clause 37 of the Bill, the following new clause be added:

'37A. (1) In the course of a proceeding under the Land Acquisition Act, 1894, the Collector, before making an award in respect of a wakf property shall issue a notice to the Majlis and shall stay further proceedings to enable it to plead as a party to the proceedings at any time within three months from the date of the receipt of the notice.

(2) Where the Majlis has reason to believe that any property under acquisition is a wakf property it may at any time before the award is made appear and plead as party to the proceedings.

(3) When the Majlis has appeared under the provisions of sub-section (2) no order shall be passed under section 31, or section 32 of the Land Acquisition Act, 1894, without giving opportunity to the Majlis to be heard.

(4) The order passed under section 31 or section 32 of the Land Acquisition Act, 1894, without giving opportunity to the Majlis to be heard, shall be voidable at the option of the Majlis."

Sir, no provision is made regarding the land acquisition proceedings in the Bill or rather clause 37 is not so clear so far as the land acquisition proceedings are concerned. Here in Delhi every day the Improvement Trust makes encroachments on the property of the wakfs, particularly the grave-yards, and litigation has been going on in various cases. To avoid this difficulty, I think the better course would be to provide expressly in the Act that in such cases when the Majlis has knowledge, the Collector should give an opportunity to the Majlis to be heard and stay the proceedings until the Majlis files its objection. With these few words I move my amendment and I hope there will be no difficulty in its acceptance.

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

"That after clause 37 of the Bill, the following new clause be added:

'37A. (1) In the course of a proceeding under the Land Acquisition Act, 1894, the Collector, before making an award in respect of a wakf property shall issue a notice to the Majlis and shall stay further proceedings to enable it to plead as a party to the proceedings at any time within three months from the date of the receipt of the notice.

(2) Where the Majlis has reason to believe that any property under acquisition is a wakf property it may at any time before the award is made appear and plead as party to the proceedings.

(3) When the Majlis has appeared under the provisions of sub-section (2) no order shall be passed under section 31, or section 32 of the Land Acquisition Act, 1894, without giving opportunity to the Majlis to be heard.

(4) The order passed under section 31 or section 32 of the Land Acquisition Act, 1894, without giving opportunity to the Majlis to be heard, shall be voidable at the option of the Majlis."

Syed Ghulam Bhik Nairang (East Punjab: Muhammadan): Sir, although I am not in favour of making many amendments in the Bill as it has emerged from the Joint Committee, I feel I must support this amendment. The way in which land acquisition proceedings are carried on under the Land Acquisition Act has become a source of greatest hardship to certain sections of the public in India and especially to the Muslims. In this very province of Delhi a regular legalized scandal has been going on in the name of acquisition of property for public purposes under the proceedings undertaken under the Land Acquisition Act. We know, Sir, that a very large number of graveyards and a very large number of mosques, which even now stand as mosques and are used up to the present day as mosques—prayers are said and congregations are held—was acquired under the Land Acquisition Act and under circumstances when the Muslim community could not even dream of what was going on. They learnt it only too late when the work of laying out the Imperial Capital of India actually started, when the contractors probably acting under instructions started demolishing these buildings overnight, so that the public might not come to know what was going on. These things went on till the public was aroused to the gravity of the situation and people took steps to see that at least the mosques are not demolished. Later on very curious things have been going

[**Syed Ghulam Bhik Nairang.**]

on. There are quite a number of mosques all over New Delhi and scattered also over other parts of the Delhi Province which owing to their situation in uninhabited parts of the province are not very closely looked after and every now and then encroachments are made on those mosques and when anybody takes objection he is told that this was acquired by the Government of India under the Land Acquisition Act; it is Government property. This story is a long one and the number of instances that could be adduced are very large indeed. On one occasion during my Finance Bill speech I called pointed attention to this scandalous state of things and called upon Government to wake up to the gravity of the situation and cease to claim this property of God as their property. One of these instances is that about two years ago the authorities started executing and registering a number of leases purporting to lease out mosques and some graveyards and certain other wakf properties to the Managing Committee of the Jama Masjid and in these leases they had the cheek to describe Government as the sole owner of the property. We came to know what was going on and I and some of my friends sent a registered notice to the Managing Committee of the Jama Masjid pointing out that what the Committee was being made to do was highly objectionable and if they went on with this sort of thing they would not have a face to show to the public and calling upon them to cancel all the leases which had been so far executed and registered at Government expense: and clearly notify to the Government that they were not going to accept any lease unless it was clearly admitted in the document that those wakf properties and those houses of God were not claimed by Government to be their property and that Government did not claim to be the owner thereof. Well, of course, the Managing Committee of the Jama Masjid passed a resolution to that effect and sent a regular notice to the Government. Thereupon the Government being apprised of the situation took steps to open negotiations with us. Mr. Deen, who was I believe the Superintending Engineer at the time in the Central Public Works Department, sent for me and my colleagues and had a long conversation with us and admitted that Government did not claim to be the owner of these properties. All that Government wanted was to look after these properties properly and Government was prepared to hand over those properties to a properly constituted Muslim association. After that I wrote to Mr. Deen after consulting the Muslim League Party asking him to send me a draft of the proposed agreement which he wanted the Muslim association to execute and saying that after considering the draft we would be in a position to give a definite reply. Well, Sir, I have not heard from Mr. Deen or his successor for the last one year or more.

Now, Sir, I have mentioned these facts in order to illustrate the way in which the very summary and highly unjudicial powers conferred on the Land Acquisition Officers in the matter of acquiring property for public purposes are exercised and how they trespass on the rights of the community and ride roughshod over their most tender feelings and religious rights and sentiments. I say, Sir, the enactment of a provision like this will be highly beneficial, so that the most arbitrary procedure which is prescribed by the Land Acquisition Act may not prejudicially affect the rights of Mussalmans under the Wakf Law and may prevent the development of undesirable situations in future. Sir, I support the motion.

The Honourable Sir Sultan Ahmed: So far as the substance is concerned, I do not think there can be any disagreement between my Honourable friends and myself. The difficulty has arisen perhaps because in clause 37 (1) the word "court" does not cover the case of the Land Acquisition Deputy Collector.

Syed Ghulam Bhik Nairang: The proceedings contemplated by section 37 are proceedings in a court and the Land Acquisition Officer is not a court.

The Honourable Sir Sultan Ahmed: That is exactly what I said. The difficulty has arisen because the word "court" does not cover the case of the Land

Acquisition Deputy Collector and that is the reason that this amendment has been made.

Syed Ghulam Bhig Nairang: It is simply a question of drafting.

The Honourable Sir Sultan Ahmed: I am afraid I am not quite ready with it just now because I did not consider this before I came to the House.

Syed Ghulam Bhig Nairang: We shall be prepared to have the drafting improvement made by the Official Draftsman.

Mr. President (The Honourable Sir Abdur Rahim): I think the required amendment will have to be made in the other place.

The Honourable Sir Sultan Ahmed: Yes, Sir. In that case I accept the amendment.

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

"That after clause 37 of the Bill, the following new clause be added:

'37A. (2) In the course of a proceeding under the Land Acquisition Act, 1894, the Collector, before making an award in respect of a wakf property shall issue a notice to the Majlis and shall stay further proceedings to enable it to plead as a party to the proceedings at any time within three months from the date of the receipt of the notice.

(2) Where the Majlis has reason to believe that any property under acquisition is a wakf property it may at any time before the award is made appear and plead as party to the proceedings.

(3) When the Majlis has appeared under the provisions of sub-section (2) no order shall be passed under section 31, or section 32 of the Land Acquisition Act, 1894, without giving opportunity to the Majlis to be heard.

(4) The order passed under section 31 or section 32 of the Land Acquisition Act, 1894, without giving opportunity to the Majlis to be heard, shall be voidable at the option of the Majlis."

The motion was adopted.

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

"That clause 38 stand part of the Bill."

The motion was adopted.

Clause 38 was added to the Bill.

Mr. President (The Honourable Sir Abdur Rahim): Clause 39:

Maulvi Muhammad Abdul Ghani: Sir, I move:

"That in clause 39 of the Bill, after the figures '1908' the words 'or under the Land Acquisition Act, 1894' be inserted."

This is merely a consequential amendment.

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

"That in clause 39 of the Bill, after the figures '1908' the words 'or under the Land Acquisition Act, 1894' be inserted."

The Honourable Sir Sultan Ahmed: I accept the amendment.

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

"That in clause 39 of the Bill, after the figures '1908' the words 'or under the Land Acquisition Act, 1894' be inserted."

The motion was adopted.

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

"That clause 39, as amended, stand part of the Bill."

The motion was adopted.

Clause 39, as amended, was added to the Bill.

Clauses 40 to 69 were added to the Bill

Maulvi Muhammad Abdul Ghani: Sir, I move:

"That after clause 69 of the Bill, the following new clause be added:

'70. The Majlis may delegate its powers to the Sadr, member or any officer or servant and may likewise withdraw the same.'

Sir, we find that clause 68 empowers the Majlis to make bye-laws. Part (k) of sub-clause (2) of clause 68 says: "the allocation of duties to the Sadr and Members of the Majlis". There are also other subjects regarding which the Majlis can make bye-laws. But there is no specific provision here for the Majlis to delegate its power to the Sadr. It may be argued that one clause has been added giving power to the President, in case of emergency. But that is not in connection with any member. The Act provides everywhere that the Majlis will do all kinds of duties and the Majlis as expected will not be in session all along in Delhi. So, the power of delegation should be given to the Majlis. This

[Maulvi Muhammad Abdul Ghani.]

amendment provides that the Majlis may delegate power to the Sadr, member or any officer or servant and it may likewise withdraw the same. I think this amendment will not in any way affect the interests of the Government or any outside people. I hope the House will accept this amendment.

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

"That after clause 69 of the Bill, the following new clause be added:

'70. The Majlis may delegate its powers to the Sadr, member or any officer or servant and may likewise withdraw the same'."

The Honourable Sir Sultan Ahmed: Sir, I had hoped that some other Members who had signed the Report of the Select Committee would also speak on this amendment. This amendment raises a very big question. The Majlis is given power to delegate its powers to anybody, he may be a servant. This is asking too much. If it had been only to Sadr, I could have understood it. In a way this power is already given to Sadr under clause 32 where in case of emergency the Sadr is empowered to exercise any power that could be exercised by the Majlis. After all the Majlis is a very big body, a very important body having extraordinary executive powers. Surely the Majlis will not be doing its work properly, if it delegates its power to any servant to do its work. I would therefore respectfully urge the Honourable Member to withdraw the amendment.

Maulvi Muhammad Abdul Ghani: I beg leave to withdraw the amendment. The amendment was, by leave of the Assembly, withdrawn.

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

Maulvi Muhammad Abdul Ghani: Sir, I move that the Bill, as amended, be passed.

Sir, in moving this motion I owe a duty to thank all the Honourable Members who have helped in the easy passage of this Bill. First of all I should like to thank the Muslim League Party which accorded its sanction for this Bill; otherwise neither the Government nor anybody else was willing to hear my voice. That was the stepping-stone for the passage of this Bill. I am very much indebted to the Honourable the Home Member for his sympathetic attitude from the very beginning. He helped us and so did the Honourable Sir Feroz Khan Noon, and particularly the Honourable the Law Member who, although he has been fighting with me but after all he is a Syed and Syeds are melted soon, has helped a great deal in saving Muslim Wakfs and for that not only I but all the Muslims residing in the Province of Delhi will be indebted to him. He has helped us at the sacrifice of his health and convenience and it is due to his expert knowledge that we have been saved the trouble of adding many things to the Bill. I am also thankful to all the members of my Party who have ever supported and taken keen interest in the Bill and in the end it is the wholehearted support of most of the Honourable Members of this House which will no doubt save about two lakhs a year to the Muslim community here. Therefore the Muslim community will in future be very much indebted to all the Members of this House for such a big saving, and for improving the condition of wakf properties. Here the condition of Wakfs has been very very much dilapidated as has been explained by my friend the Deputy Leader of the Muslim League Party. I remember once that a Bill like the Talkotra Masjid Bill was introduced in this House which covered a sum of Rs. 39,000 deposited in the court of the District Judge and after enquiry it was found that that was the price exclusively for mosques which still existed. It was very good on the part of the Muslim Members not to accord sanction to that Bill, otherwise the position of Muslims would have become worse throughout. So, all these things now will not happen and I know that it is not the intention of the Government to acquire places of worship and burial places, but some times it so happens due to misunderstanding on the part of Government officials that such places are

acquired and difficulties arise thereafter. This measure, which is going to be passed just now will remove those difficulties, and I hope there will be no legitimate reason for murmur against the highhandedness of the officials working under the Government, particularly the Improvement Trust, which is every now and then out to disregard the sentiments and the feelings of Muslims. Sometimes they go to such an extent that although a mosque exists, or some place of worship exists, but they or other officials do not allow even necessary repairs of such mosques to be carried out. Now the custodian will be this Majlis and it will not be less powerful than the machinery of Government officials. I hope it will safeguard the interests of these grave-yards and darghas which are sometimes the property of Wakfs, and there are Muslims who never care for Islamic precepts and they come forward and take the lease of such places on the condition that they will pay three annas or four annas a year as hire of mosques.

Since I have introduced the Bill I find that the Hindu community is also very much perturbed and they also want that the same kind of protection should be given to their temples and other charitable properties. I hope this House will give the same support to that community also. I cannot bring forward such a Bill because I happen to be a Muslim. That will be introduced by a Hindu Member and I hope there will be no difficulty in getting it passed. With these few observations I thank the Chair which has kindly heard my feeble voice and has given an opportunity to a Back Bencher like myself to see this Bill through.

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

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

Syed Ghulam Bhik Nairang: Sir, I shall be very brief because I know we have a long agenda to get through. I must offer my heartiest congratulations to my Honourable friend, Maulvi Abdul Ghani, for successfully accomplishing the very arduous task which he had set himself. I cannot claim such long acquaintance and comradeship with him as the Honourable Sir Sultan Ahmed can, but from the beginning of his career in this House I have noticed that Maulvi Abdul Ghani is always after some practical work. He has done, there is no doubt, a very valuable amount of work as a Member of this House, but the most valuable and, I may say, the monumental work which he succeeded in doing is the introduction and piloting of this measure for the better administration of Muslim Wakfs in the Province of Delhi which we are happy to see at a successful termination today. He has worked very hard, very conscientiously and very devotedly, and any amount of praise that one may bestow on him for his sincere devotion to duty will be only small. I am afraid, Sir, the lion's share of the credit which remains after allotting what is due to Maulvi Muhammad Abdul Ghani, will again go to the province of Bihar, because, if anybody else has not said it, I must say that the success of the deliberations of the Joint Committee, which were long and even tiresome, was certainly due to the presence of the Honourable the Law Member in the Joint Committee. His vast knowledge of law and varied experience of its working were most valuable assets to us and our task in the Committee was very greatly facilitated by his presence, and I certainly think that if credit has to be apportioned very little remains for anybody else to claim. The major portion of it goes to the gentleman who has worked to bring the Bill into existence and to get it passed into an Act, and the remainder goes to the Honourable the Law Member.

I, of course, do not mean that the gentlemen who devoted so much thought and labour to this work in the Joint Committee are not entitled to credit, but as I happened to be one of them I should not talk of that. I congratulate the House as well, Sir, on putting this measure on the Statute Book, and I hope that posterity will thank Maulvi Muhammad Abdul Ghani the Honourable Sir Sultan Ahmed and this House for enacting such a beneficial measure for the province of Delhi.

Sir Muhammad Yamin Khan: Sir, in supporting the motion which has been moved by the Honourable the Mover of the Bill, I have to say only two words. All credit is certainly due to Maulvi Abdul Ghani Saheb who brought forward this Bill. I found that in the Select Committee not only was he ready with his Bill but he was daily always ready with a lot of amendments to his own Bill whenever he found them necessary. He was untiring in his efforts and one very good thing about him was that whenever he was reasonably opposed he always accepted the opposite view. At the same time, great credit is due to the Honourable the Law Member. Without his great knowledge and his sympathetic attitude, I do not think this Bill could have been amended as it has been. If this Bill had not been handled by him in the Select Committee, probably it would never have seen the light of day. With these few words, and thanking all who were concerned with the Bill and the Members of this House, I support the motion.

Maulvi Syed Murtuza Sahib Bahadur: Mr. President, I will of course be very brief in tendering my heart-felt congratulations to my friend, Maulvi Abdul Ghani Saheb, on his having so successfully and smoothly piloted this Bill, which is surely calculated to improve the present condition of our Wakfs in Delhi Province. I may simply address him in Persian:

"Ajereen bad barin himmat-i-mardan-i-to."

Sir, I have known him for the last 20 years or so. Though he was not a Member of this Assembly he was connected with us as a staunch Khilafat worker. Though he belongs to a different province altogether, we have been as members of one and the same province. Maulana Zafar Ali Khan will bear me out when I say that Maulvi Abdul Ghani Saheb, though he was not keeping well and fit when this work was being done by him, he applied himself wholeheartedly to it. I know he was suffering from asthma and had a cough. He had restless nights. With all that, he did not mind his sufferings and applied himself heart and soul to the work and that is why we have been offering him congratulations:

"In Kar az to aeyedo mardán chuneen Kunand."

"You have Mr. Abdul Ghani Saheb conducted yourself beautifully well as regards this Bill. Your work has been attended with success and you have got credit for ever". Sir, in this respect I have to thank one officer of the head of the Local Department here. I mean the Chief Commissioner. At the outset, Sir, he was not favourably disposed towards this, when Maulana Zafar Ali Khan, Maulvi Abdul Ghani Saheb and myself waited on him in deputation. When convincing arguments were advanced by us, he was satisfied and I have every reason to say that he made a very favourable report on this Bill. So far as all other Members, European and Indian, are concerned, I have to associate myself in thanking them for having supported this measure, which is surely very beneficial to our interests.

Maulana Zafar Ali Khan (East Central Punjab: Muhammadan): Sir, my friend, Maulvi Syed Murtuza, has forced me to say a few words. All the vocabulary has been exhausted in showering well deserved praise upon my friend, Maulvi Abdul Ghani, for the great task that he has accomplished, and for which all those who have been connected with this measure that is going to be placed on the Statute Book are to be congratulated.

Mr. President (The Honourable Sir Abdur Rahim): That is really outside the Bill. A good deal has been said already.

Maulana Zafar Ali Khan: I can bear out my friend, Maulvi Syed Murtuza, when he says that Maulvi Abdul Ghani is an indefatigable worker. He has been suffering from asthma, and while he was lying in his cot with high fever all night, I have seen him with a pencil in his hand and piles of paper in front of him, scribbling notes on the Bill, which was a hobby with him. This question of the protection of Muslim monuments in Delhi has been exercising not only the Muslims of Delhi but the Muslims of the whole of India and the first time we came here the question of the Masjid of Fatehpuri came before

us. All the Mussalmans of Delhi were clamouring for something to be done to eradicate the evils in regard to the management of the Fatehpuri Mosque. Everybody knows that that grand Wakf was being exploited by dishonest and inefficient individuals who had actually sold the house of God to non-Muslims. The matter came before the Court and the Court adjudged those who were responsible for the administration of the Trust guilty of embezzlement and misappropriation. The case is still going on, and we hope those who plead on their behalf will succeed.

This Bill that is being passed now owes its success to Maulvi Abdul Ghani and the Honourable Sir Sultan Ahmed who fortunately both of them come from Bihar. The land of Bihar is a fertile land; it has produced great men; Syed Ali Imam was from Bihar

Mr. President (The Honourable Sir Abdur Rahim): I think the Honourable Member had better confine himself to the Bill.

Maulana Zafar Ali Khan: . . . and the Honourable President himself comes also from Bihar

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member will confine himself to the Bill.

Maulana Zafar Ali Khan: so that Bihar has the right to call upon us to proclaim with one voice "Long live Bihar." With these words, I wholeheartedly support the Bill.

Mr. President (The Honourable Sir Abdur Rahim): The question is: "That the Bill, as amended, be passed."
The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim): Before I pass on to the next item on the List of Business, I wish to bring to the notice of the House what is the practice in the House of Commons regarding amendments which stand in the name of the sponsor of a Bill. As a matter of fact, the practice there goes even farther than what I have laid down this morning. Redlich in his book on Parliamentary Procedure says as follows:

"The notice paper always states in proper order the amendments of which notice has been given, priority being always granted *ceteris paribus* to those proposed by the member in charge of the Bill."

This confirms the ruling which I have given, that it is entirely open to the Member in charge of a Bill to move any amendments he chooses.

THE RECIPROCITY BILL.

Mr. Govind V. Deshmukh (Nagpur Division: Non-Muhammadan): Sir, I beg to move:

"That the Bill to make provisions in regard to entry, residence, the acquisition, holding or disposal of property, franchise, the holding of public office, or the carrying on of any occupation, trade, business or profession in British India by persons domiciled in the British Possessions on a basis of reciprocity, as reported by the Select Committee, be taken into consideration."

There are certain circumstances which are very favourable for the adoption of this motion for consideration of the Bill. The first is that the report is a unanimous report, that there is not the slightest dissenting voice. Another favourable circumstance is that there are no amendments to the Bill as it has emerged from the Select Committee. These are very favourable circumstances.

Before I proceed further, I should like to point out certain amendments which are important and some which are merely drafting. A few additions have been made—one about entry by air, which was not included in the original Bill. Other additions are the enjoyment of educational facilities which was not included in the original Bill. These are two important additions in the operative part of the Bill. Then there is one omission. We have omitted the words "United Kingdom" in clause 2. When the Bill was originally drafted, I had seen that the principle of reciprocity was acknowledged by section 111 of the Government of India Act,

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and therefore it was not necessary to make this Act applicable to United Kingdom; but as it was thought to have a comprehensive Bill on the Statute Book independent of other Acts the words were omitted, and this Bill has now been made a very comprehensive Bill, so that the statute by itself is applicable to the United Kingdom and its possessions.

The most important part to which I wish to draw the attention of the House and which I wish to emphasise is this: in clause 3 we have a proviso in the amended Bill. The clause reads:

"Persons, not being of Indian origin, domiciled in any British possession to which this Act has been applied under section 5, shall be entitled only to such rights and privileges as regards entry, travel, residence, the acquisition, holding or disposal of property, educational facilities, franchise, the holding of public office, or the carrying on of any occupation, trade, business or profession in British India as are accorded by the law, or administration of such Possession to persons of Indian origin."

We have now added a proviso, which says:

"Provided that the provisions of this section relating to entry, travel and residence shall not apply to any person in the armed forces of a British Possession until the expiry of one year after the termination of the present hostilities."

This proviso was included to get over the difficulties that would crop up because of the presence of British soldiers or colonial soldiers in this land. But let us remember that when we adopted this proviso there was some sort of understanding to which I shall make a specific reference. The Report of the Select Committee says:

"The Committee when accepting this qualification of the clause desires to impress on Government their anxiety that all possible action should at once be taken to secure during the war for Indians the same rights, treatment and privileges as are accorded to members of the home forces or the forces of any other Government."

When I am emphasising this part of the clause, I hope that the Government will carry out our wishes which have been mentioned in the passage I have just read.

Another matter which I wish to emphasise and on which I want the Members of this House to focus their attention is this: while making certain amendments in clause 6, we have said:

"Except for the provision that rules made under the Act shall be made only after previous publication, the changes made are of drafting significance only. 'But the Committee is anxious that effective rules should be framed for application, if and when any need arises, and recommends to Government that with a view to giving the Legislature an annual opportunity of expressing its views on the working of the Act the annual review published by Government on events affecting Indians overseas, which will include details of the operation of the Act, should be presented to the Assembly by a motion in the name of the Honourable Member for the Department, made on somewhat the same lines as are followed in relation to the Report of Public Accounts Committee'."

This recommendation has been made and anxiety was expressed by the Committee because, even when there are certain statutes which required rules to bring them into effect, the rules are not framed and they are postponed. Our desire is, the desire of the House would be, that the rules should be framed as early as possible so that they can be made applicable whenever a case arises, the administrative rules which have been referred to also in this Bill which would be necessary to enforce against Colonies which make discriminatory legislation or which make discrimination on account of certain administrative rules,—that we will have our rules ready. It should not be a case like this, that whenever the opportunity presents itself, then we will start making rules, or the House may by some motion or other require, if not compel, at least induce the Government to make rules. As a matter of fact, we are helping the Government to raise its own status and put itself in that attitude which is observed in ordinary dealings. We say to them, give them what they give us; do not give them anything which they do not give us. In other words, the word that has been used is "reciprocity". These are the principal and most important parts of this Report which I wish to bring to the notice of the House and I hope that other Honourable Members

also will make it a point to emphasise those portions to which I have referred. Sir, I move.

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

"That the Bill to make provisions in regard to entry, residence, the acquisition, holding or disposal of property, franchise, the holding of public office, or the carrying on of any occupation, trade, business or profession in British India by persons domiciled in the British Possessions on a basis of reciprocity, as reported by the Select Committee, be taken into consideration."

(At this stage, Mr. Hooseinbhoj A. Lalljee rose in his place.)

I think the Honourable Member had better begin his speech after luncheon adjournment.

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

The Assembly re-assembled after Lunch at Half Past Two of the Clock, Sir Cowasjee Jehangir (one of the Panel of Chairmen) in the Chair.

Mr. Hooseinbhoj A. Lalljee (Bombay Central Division: Muhammadan Rival): Sir, I feel that today is a very lucky day. Just before this Bill, we passed a most important Bill, known as the Muslim Wakfs Bill for the province of Delhi. You know very well that some years ago it was well nigh impossible to talk about Muslim Wakf in the Bombay Presidency or other places and today in the city of Delhi we have been also fortunate to pass that Bill. Similarly, Sir, for 25 years we have been talking about the treatment of Indians in British dominions, colonies and other places and although many a time the Government of India has been with the popular sentiment, it was well nigh impossible for them to take action because of the fact that there was no such Bill as fortunately we have today. It is no use now going into the difficulties and heart burning and the improper treatment that has been meted out to Indians in British dominions, colonies and other places, although they are subjects of His Majesty the King Emperor. It was a great pleasure for us to see that in the Select Committee we found all members present and I must specially mention the name of Sir F. E. James who was true to what his Leader said in this House. In fact, he volunteered to help us in passing this Bill and he said that the Britishers do not like any more discrimination anywhere in the British Empire. I have many times had some hard words to say about their not co-operating with us in our rights but I now readily acknowledge the good feeling that has been shown towards the rights of Indians overseas.

From the Bill, it would be seen that in every walk of life, namely, entry, travel, residence, there has been discrimination against Indians, so also in the matter of acquisition, holding and disposal of property. In some places, this has been so much prevalent that it was out of the question for Indians, whether they be great men or multi-millionaires. They could not trade or invest any of their capital in those places for the welfare of the people there or for themselves. Then with regard to enjoyment of educational facilities that question was nowhere. In the case of some of our foreign friends who have come into this country as refugees, our Government have tried their level best to accord them all educational facilities. That was quite fair and honourable but so far as the Indians in many of the colonies and dominions are concerned, this facility has been denied to them. The question of holding public office has been absolutely out of the question for any Indians, howsoever eminent and efficient they may be. In the matter of carrying on trade and business, we have lot of difficulties and recently further difficulties even now have been created. The war has not ended but all these things are still existing even when we are fighting such a great war; and so far as the franchise rights are concerned, the less said the better.

I feel that today a great change of heart has taken place here among the occupants of the Government Benches and also in the British Cabinet and the

[Mr. Hooseinbhoj A. Lalljee.]

British Parliament and this I can say as we know very well the position of our Government. I, therefore, welcome this change of policy. Let us hope that the passing of this Bill will enable our Government to see that Indians are not treated as inferior beings in any of the colonies or dominions in the matter of trade, business, etc., etc. My friend, Mr. Deshmukh, has rightly drawn attention to the proviso in section 3. Here it is provided that the provisions of this section relating to entry, travel and residence shall not apply to any person in the armed forces of a British Possession until the expiry of one year after the termination of the present hostilities. We have always shown consideration and we will always show consideration for those who come into this country and specially at the present moment when we are fighting this great war and surely we will never do anything which will show that we have been vindictive or unfair. I think my friend, Mr. Deshmukh, rightly voiced the feelings of all those present in the Select Committee when he said that the Government will take note of the fact that, if we have been willing to show consideration to those who have come into this country for the duration of the war for war purposes, our soldiers who are fighting in those places for the defence of the Empire and for the defence of the rights of all the people there will be shown the same consideration as we show here and they should ask those colonies and dominions to extend the same consideration to our people fighting the war in those places, as they are there for their protection. Sir, it is but right that our soldiers and our youngmen should not have the least impression on their minds when they are prepared to die that they have been or that they would be or that they are actually being treated as inferior beings in those countries for whose protection they are prepared to shed their blood. I think it is but fair and honourable that our Government should insist upon these considerations if those people have not already thought of conceding to them before now.

Another thing which my Honourable friend, Mr. Deshmukh, desired to place before this House and which was also agreed to and to which I accord my hearty support is this that it is due to the people of India that this question of treatment of Indians in colonies and dominions and other places should come before this House at least once a year. Sir, you know very well how often this question has worried the whole country; you know very well how often has this House and the Council of State dealt with the question of the treatment of Indians overseas; and you know very well how many times both these Houses have passed Resolutions on that subject but it has been very painful to observe that they have been without any good effect. Now, Sir, times have changed and we do not wish that when we are prepared to stand by the side of all the civilised people in all walks of life to sacrifice and do everything, our people outside this country, should meet anything but equal treatment, and it is the duty not only of this House but of the Government as well to be very careful to see what the condition of Indians overseas is. If we are asking the Government to assure us and to tell us in plain words that they will certainly place the condition of Indians overseas once at least before this House, I think we are asking nothing but something which they are bound to do and is only fair and we are, I say, asking them to do what is uppermost in our minds that they should do.

Then, Sir, the rule-making is another point on which I must say a few words. It has taken to pass this Reciprocity Bill as many as 20 years but let us hope Government will not take 20 months at the most to make rules. So efficient is our Government that if they really wish to make the rules they can do it in a very short space of time. Our feeling is that these rules should be made as soon as possible. In regard to these rules, our desire is and has been that, if ever an occasion arose, our Government can be able to use them at once. Even, the passing of this Bill will have such a salutary effect that

I hope the occasions for the use of the rules will be few and far between hereafter, unless, of course, the present mentality which has been exhibited all over that we are all equals and are fighting for the freedom of everybody unfortunately changes. Therefore, it is necessary and I request the Government to be good enough to make rules as soon as possible and keep them with the Bill to be used when necessary. I am sure if this is done this House will certainly consider itself very lucky today that after 25 years of agitation this humble but honourable request of the people to be put on terms of equality with all the civilised people has been conceded and that our Government has also been given the power to do so. With these words I support the motion.

Mr. Lalchand Navarai (Sind: Non-Muhammadan Rural): Sir, I must congratulate Mr. Deshmukh on having succeeded in having this measure passed. Sir, this is a measure which is, I may say, too much overdue. I came to this House in 1928 and from that day up till now we have been hearing complaints of unfair treatment of our nationals outside. Deputations have often come to the Members of this Assembly and to the Government from those countries which are in the possession of the British Government but they have returned hopeless and they have not been successful in removing the ill-treatment of the Indian nationals who have settled abroad. Resolutions asking for their fair treatment have been moved in this House from time to time but without any good effect. It has been proved to this House and also to the public that those Indian nationals who are working outside and who are domiciled there are being very much troubled. As the public was not able to do anything for them, Members of this House moved Resolutions but the Government was feeling absolutely helpless. Whenever the Government was asked to do anything, they always said they had no weapon in their hands and so they contented themselves by saying that they would ask the British Government to do something. Promises were being given to us that they were going to find out some remedy which would be used when the Indians are badly treated there. Nothing was done, no motion was made, no Bill was passed and no remedy was provided for this trouble. When Sir Girja Shankar Bajpai was holding this portfolio, certain recommendations were made to the British Government but they received no response from the Government there. Even when those people who have gone overseas showed their discontent by certain methods of strike and other methods, they have not succeeded in getting their position improved there. So far as the property is concerned, they are not allowed to purchase it there. They are told that this is highland and this is lowland and you cannot have this and you cannot have that. But if people of those British possessions come here and ask for land in New Delhi or in Simla, will it be refused to them? The British Government will then ask the Indian Government to let them have it. But this state of things continued as we had no weapon in our hands. There ought to be some weapon in our hands and I am very glad that Mr. Deshmukh has come forward and brought this very important Bill. Sir, I am also glad that in the Select Committee we were all at one and we passed it unanimously. Of course, suggestions were made and, I think, they were fully considered by the Select Committee. We have now come to the conclusion that this Bill be placed before the House for its consideration.

So far as the education is concerned there are difficulties there. These difficulties are not only as regards education, but they are there even in the case of citizenship. Indians are not recognised as full citizens. Sir, these colonies are made with Indian labour. It was the Indian labour that made these colonies and it was the Indian capital which was used for the purpose. What are they doing now? They say walk out from here. We have got a recent instance of Ceylon. What was done there? Ceylonese told the Indians "no jobs to be given to you, you should go back to India". Sir, they even asked the Indian labour to vacate Ceylon. I think the Indian Government should realize that we Indians have also certain rights. Indians have their rights and these rights

[Mr. Lalchand Navalrai.]

are to be vouchsafed by whom—the British Government and the Indian Government who are ruling the country. If we do not get help from them at this time, when will they help us. The British Government and Indian Government are not helping us in this connection. Now, this Bill has been passed. I see the attitude of the Government is changed. I am very thankful to the Government for that. After all they have come to realize that these weapons should be used. I hope they will not be left alone to become rusty. Use these weapons as in these War days the British Government may ask the Indian Government to do this thing and that thing for them. In that case the Indian Government will be in a position to ask the British Government to safeguard the Indian interests in colonies. They should not say that the demands of the Indian nationals will be considered hereafter. Everything should be mutual.

Now, Sir I do not want to take any more time of the House, as the Bill has come out from the Select Committee unanimously passed. I must lay emphasis again on two things which we urged before the Select Committee as well. The first is: power has been given by a notification to the Central Government to make and apply rules to any British possession. Now, this power which has been given to the Central Government should be utilized. The Central Government should now realize the position and they should investigate and find out which are the places where this ill-treatment is meted out to the Indians, and they should apply these rules to the persons of those countries. Power has also been given under clause 6 to the Central Government to make rules. Now, we know how these rules are made. I have at least a grievance with regard to the rules that have been made under the Defence of India Act and the manner in which they are being used. Why it is so? Because these rules were not placed before this House. They were passed by the Government of India without consultation of the Members of this House. Many of these rules are such as should not have been made at all. I am suggesting that these rules should be made in a manner which should not be detrimental to any individual case. The power to make rules has been given. In this case at least I hope the Government will make rules and will not leave them unused.

The second thing is that we should also know what are the rules and whether they are being applied or not. As a matter of fact the Select Committee is of the opinion that:

‘except for the provisions that rules made under the Act shall be made only after previous publication, the changes made are of drafting significance only. But the Committee is anxious—(this is most important and here I want to lay emphasis)—that effective rules should be framed for application, if and when any need arises, and recommends to Government that with a view to giving the Legislature an annual opportunity to express its views on the working of the Act the annual review published by Government on events affecting Indians overseas, which will include details of the operation of the Act, should be presented to the Assembly by a motion in the name of the Honourable Member for the Department, made on somewhat the same lines as are followed in relation to the Report of Public Accounts.’

Great stress was laid upon it that the House should be kept informed from time to time of the events that are happening in the colonies. The Government of India should be vigilant to see if there are any inconveniences experienced by Indians overseas and when the rules are made they should be placed before the House to enable it to consider whether they have been properly made and to see whether sufficient and proper use is made of them. I think Government would not allow this Act to remain a dead letter. I should think that the Government have got the experience and from their experience they have learnt what is being done with Indians, what difficulties and inconveniences they are put to and what rights are being refused to Indians. In view of all this I think the Government will not take much time to make these rules and also enquire into the events that are happening and which are detrimental to the Indians. And thereafter the whole case with full details should be placed before the House.

Maulana Zafar Ali Khan (East Central Punjab: Muhammadan): Sir, I associate myself with the views expressed by the previous speakers in regard to the Reciprocity Bill which has been placed on the legislative anvil. The treatment meted out to Indians by the people in the various possessions of England throughout the world has been disgraceful. The bar sinister of colour divides the people of India from those colonies and territories which are dominated by the white race. It is a long long story of woe and misery. We were being treated like goods and chattel in South Africa which is the worst sinner in this respect. We went to Kenya, and invested millions and millions of rupees in developing the resources of that country. But a few Englishmen thought that they were God-chosen people and had the right to inhabit the healthy and fertile highlands in that country. We were turned out from there. We went to Australia, settled down there and with our labour and with our money made it a land flowing with milk and honey. But the Australians made a law that no outsider—when they speak of the outsider they mean Indian—will be permitted to settle down there. The same story may be repeated with regard to other parts of the British Empire. This war is being fought for making this world a fit place to live for decent men. Although this is a war between two civiliza-

3 P.M. tions, the civilization of Germany and the civilization of America and England, there is very little difference between them. They tell us however that they are not only fighting for the freedom and liberty of the white races but also for the freedom and liberty of dark races. It remains to be seen after the war is over what the value of these professions is. But so far as our treatment in these British possessions is concerned, by those who dominate these lands, there is no course left open to India but to treat the South Africans, the Australians and the Kenyawallahs and others in the same way in which they treat us there. For 25 years, this war has been waged. Gandhiji suffered and suffered, but nothing came out of it in South Africa till he had to get out of it and come back to India, to carry on the struggle. The late Maulana Muhammad Ali of blessed memory fought for the rights, prerogatives and privileges of Indians in British possessions, but he died without the consolation that something is being done after all. After these 25 years, today a Bill is introduced into the Legislative Assembly and this will be passed and we will have the consolation of seeing the measure on the Statute Book, which will place some remedy at least in our hands. But as pointed out by my Honourable friend, Mr. Lalchand Navalrai, this law must not be allowed to become or to remain a dead letter. Laws are passed and measures are placed on the Statute Book, but when it comes to the question of practice, we realise that, there is no effective sanction behind it. I am afraid that this Bill when passed will still produce no change in the mentality of those who live in South Africa, of all the white magnates in Kenya, and of even those who live in Ceylon. All of them will still remain what they are and the Indians there will continue in their old position. However, it is some consolation that there is an Act of that kind. So, let me warn the Treasury Benches that Indians are not temperamentally the same today as they were yesterday. The Indians are fighting for their rights, they are fighting for their freedom, they want to be enfranchised, they want to be emancipated from foreign bondage. They expect that the world shall treat them as civilised human beings. We refuse to be treated as goods and chattels and slaves. The time has come for us to achieve independence and liberty. We shall get that freedom, we shall achieve our objective, we shall attain our goal, God willing. With these words, I support wholeheartedly the Bill moved by my Honourable friend, Mr. Deshmukh.

Mr. G. S. Borman (Secretary, Indians Overseas Department): Sir, this appears to be a day of congratulations and perhaps I might add one to those that have been distributed in the House today by congratulating Mr. Deshmukh on the very concise and clear way in which he moved his motion today.

[Mr. G. S. Bozman.]

Possibly the reason for it has been explained by my Honourable friend, Mr. Hooseinbhoj Lalljee, and that is that Mr. Deshmukh has already been talking for 25 years and has come to the end of what he wishes to say. I think there never has been any difference between the Government and Honourable Members of this House with regard to the principle which is embodied in this Bill, namely, the principle of reciprocity. That principle has been enshrined elsewhere, as was mentioned by my Honourable friend, Mr. Deshmukh. There is no difficulty on the part of the Government in accepting that. The difference, such as it has been, has always been with regard to the practice and not with regard to the principle. Now, Sir, in the Bill which we have before us today, there are defined certain matters upon which it is desired that we should put the principle of reciprocity into practice. I do not think that the Government have any quarrel with the matters which have been defined. The only point I should like to make is that Government's attitude with regard to this Bill has been already stated in this House and that is simply this: as a reciprocity Bill, it is entirely unobjectionable. As a retaliatory Bill, it is a Bill to be regarded with care and, when it becomes an Act, to be administered with care. It cannot be denied that a measure which is purely retaliatory in its object not only puts an end to possible negotiations, but may, in certain circumstances, have a boomerang effect which was not originally intended. It must, I submit, be Government's care to see that when this Act is applied, no such adverse effect shall be caused to India by its application.

Now, Sir, there were two or three points which were raised by various speakers with regard to the Bill and with regard to the Select Committee Report. The point was raised first with regard to the treatment of Indian troops in other parts of the Empire during the war. That has been covered in this Bill by the suggestion that India will accord full freedom of action to troops from other parts of the Empire while in India, and the wish has been expressed in the Select Committee's Report that Indian troops should be accorded the same treatment elsewhere. So far as I am aware, the only part of the Empire where Indian troops are liable to a treatment different from that which is accorded to other British troops in India is South Africa. That question has already been taken up by the Government. We have been in correspondence with the Government of the Union of South Africa and every possible arrangement has been made, with the willing co-operation of the Union Government, to see that Indian troops are treated there as well as other visitors.

The next point was with regard to the rules to be framed under clause 8 of the Bill. I am afraid I am unable to accept the bouquet which my Honourable friend, Mr. Lalchand Navalrai, threw at us. He said that we knew so much already about the whole of the British Empire that we could frame rules within a week which would cover all possible cases. I should like to point out that the disabilities under which Indians suffer in other parts of the Empire vary enormously both in quantity and in quality and it must, therefore, be our task to frame rules so as to provide for all different kinds of disabilities which Indians may experience in different parts of the Empire. That is not a matter which can be reduced to the form of rules within a short space of time.

Mr. Lalchand Navalrai: Within how much time at the most will the Government be able to deal with this?

Mr. G. S. Bozman: I am quite unable to say, there might, of course, appear a British colony in the middle of the Atlantic which would bring with it further problems of discrimination, and, therefore, we must be prepared for all eventualities. I can only say that we shall undertake the framing of these rules and we shall reduce them to form as quickly as we are able.

One more point was raised and that is the request of the Select Committee that a motion be made each year in this House by the Honourable Member in

charge of this Department on the presentation of the Annual Review of events affecting Indians overseas. I think the House will probably agree that the Government have never been slow in affording facilities for discussions of matters affecting Indians overseas, and this Annual Review was the result of one such discussion and has now been issued for a few years. I am very willing to place that Review on the table of the House every year. At the moment it is merely placed in the Library. I am not able, at the moment, to give an undertaking that a motion will be made on the presentation of that Review each year. It is quite clear that that is a matter upon which not merely the Government should give an opinion, but Leaders of Parties and others concerned must be consulted, but the suggestion of the Select Committee is before us and we shall most certainly give it our consideration.

I should like, Sir, before I sit down to reiterate what I said about the possible boomerang effect of retaliatory measures. I was a little disappointed that my friend, Mr. Navalrai's speech was a speech on retaliation whereas the Bill is a Bill for reciprocity, and I submit that there is a very real distinction between the two. Retaliation, at the present time, as Members in their speeches suggested, is subject to certain limitations, but let us look a little way ahead when these limitations may not be there. I would like to suggest that at that time when India's responsibilities towards her nationals overseas will be wider and perhaps weightier even than they are today that the dangers of a purely retaliatory action will require even more and more careful consideration.

Maulana Zafar Ali Khan: What is to prevent the Indians being persecuted in the colonies under British control except the fear of retaliation in India?

Mr. G. S. Bozman: My Honourable friend has made exactly the point that I was making, that is that the fear of retaliation is probably very much more effective than retaliation itself.

There was one small point on which, I think, I should make an explanation: Two Honourable Members—I think it was two, certainly one—mentioned the fact that educational facilities, which is one of the matters dealt with in this Bill, are not provided for Indians overseas. That I found a very remarkable statement and it shows, I think, the danger of discussing these overseas problems at large. The fact is that in nearly every country of which I am aware, in which Indians are settled in considerable numbers, educational facilities are available. They may not be the educational facilities that we should like to see, but educational facilities do exist and, therefore, I should urge on the House that when considering these overseas questions we should not talk at large about failures of Colonial and Dominion Governments to provide certain amenities and social services for Indians, but we should so far as it is possible bring ourselves down to earth by describing the particular country which we have in mind and by suggesting the practical measures which will produce the result we want in that particular country. Government, as you are aware, Sir, are quite willing to accept this Bill.

Mr. Chairman (Sir Cowasjee Jehangir): The question is:

"That the Bill to make provisions in regard to entry, residence, the acquisition, holding or disposal of property, franchise, the holding of public office, or the carrying on of any occupation, trade, business or profession in British India by persons domiciled in the British Possessions on a basis of reciprocity, as reported by the Select Committee, be taken into consideration."

The motion was adopted.

Clauses 2 to 6 were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

Mr. Govind V. Deshmukh: Sir, I move that the Bill, as amended, be passed. In making this motion, I wish to thank those who have helped to bring this Bill in the form in which it has emerged from the Select Committee, and for that I must thank all the Members who were on the Select Committee and particularly I should thank Mr. M. S. Aney, who was then in charge of the

[Mr. Govind V. Deshmukh.]

portfolio of Indians Overseas, in this connection. When I expressed my anxiety that the Bill may be on the Statute book but it may remain a dead letter like an armour that is rusting in the armoury whereas we should like to see that the Bill when it is passed into Act is given proper effect to, it was he who suggested the form in which it has been put, and read by me, namely, that there should be an annual report and the matter should be discussed so that we will be able to learn whether the Bill has been administered or not, and if it has not been administered in regard to a particular colony, why not. I have also to thank him for rendering a valuable service in making other suggestions.

I may say, Sir, that the attitude of the Secretary was also sympathetic. After having thanked him for that and also for congratulating me, I wish to say a few words. My Honourable friend has said that it would be a laborious process to frame rules and it may take a very long time because there may be new islands in Atlantic or Pacific which he hoped would be colonized—why not, it is an enterprising and colonizing race. If that contingency arises you can take up those colonies later. But so far as South Africa, Natal, Cape Colony and Australia and other Colonies are concerned, the matter has been discussed and disqualifications have been pointed out times out of number by Resolutions, by Questions and so on. I have been taking the greatest interest from the day I have come to this House and I have made it a point always to bring these things to the notice of the Honourable Member in charge of the Department. Therefore, I say that the colonies in respect of which all the disabilities under which Indians are suffering there are well known to us, there should be no delay in framing rules in regard to them.

I am glad to learn, Sir, that the Government is in communication with the South African Government regarding the reciprocal treatment to the Indian soldiers over there. I hope the answer will be favourable. I do hope that my friend will see that, when we accepted that clause and expressed our wish that the Government should try its best to get reciprocal treatment, they incurred an obligation when they made us accept that particular clause, and it is for them to discharge that obligation, and I hope that my friend will be vigilant to see that he gets the proper sort of treatment—I will go so far as to say—that generous treatment which the forces of the Colonies receive in India.

Now, Sir, as regards educational facilities. It is rather surprising that we should be told that educational facilities are not denied. As a matter of fact I think it was a complaint of the Indians in Natal that there were no educational facilities. The Indians referred to a Convention also. I forget its name. It was in connection with a particular grant which was marked out for education and which was not utilised for the education of Indians, and it may be that there is a college to which everybody can go. But the rules of admission are such as to prevent Indian boys taking advantage of it. Of course, these particular demands regarding educational facilities, which I said were not in the Bill, were made on the suggestion of Sir Syed Raza Ali. That gentleman, it will not be denied, has very wide experience. He was in South Africa and rendered valuable service. It was on his suggestion that this particular privilege or common right was claimed by us for our Indian nationalists over there.

In conclusion, I hope, Sir, that when the rules are framed they become really effective. It may be that they may be made applicable only so far as the known colonies are concerned. They may not be made applicable to unknown colonies, and I do not desire, and it is not my contention for the present, that we should be in a retaliatory mood. All that I claim is that we should give them what they give us, and do not give them what they do not give us. That is natural. With these few remarks, I recommend that this Bill be passed.

Mr. Chairman (Sir Cowasjee Jehangir): Motion moved:

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

Syed Ghulam Bhik Nairang (East Punjab: Muhammadan): Mr. Chairman, while I offer my congratulations to the mover of the Bill, Mr. Deshmukh, I think I shall be justified in offering congratulations to the Government of India as well for lending their support to the passage of this Bill. The complaints, Sir, which are received every now and then from overseas about the treatment meted out to Indians by Colonial Governments have been many and serious. On many occasions questions were put in this House, and debates were held on the floor of this House, in which it was pointed out that neither the Government of India nor His Majesty's Government were taking any effective steps to secure for Indians equitable and fair treatment in the Colonies, and on many such occasions confessions had to be made by the Government of India that they were powerless; that they had been carrying on negotiations with such and such a Government, but their representations had not been accepted by that Government and they were helpless. Now, I say, Sir, that on every such occasion there is an explicit or implicit admission of helplessness, of inferiority complex, and I think on each such occasion the sense of self-respect of the Government of India must have been hurt. Now it was due not only to Indians but also to the self-respect of the Government of India which was subjected to humiliation on such occasions that a measure like this should be passed, and to the extent to which it is possible to do so, this Government should arm itself with power to enforce such fair treatment of Indians abroad as can humanly be possible. Mr. Bozman was quite right when he tried to draw a distinction between reciprocity and retaliation, and I do hope that it is not the intention of anyone of us in this House to exercise such a thing as retaliation. Perhaps we are not in a position to do so. We know our limitations. But even if the amount of reciprocity which is aimed at by this Act becomes possible, if the Government of India exert themselves in the matter, first by framing the proper rules and next by keeping a vigilant look out for occasions when those rules should be enforced against any British possession, I think we shall have achieved at least a large measure of the desired object. With these few words, Sir, I support the motion that has been moved.

Mr. Hoosenbhoj A. Lalljee: Having just spoken, I have very little to say, but I do wish to congratulate Mr. Deshmukh and the Government. Benches for according us this response for the great grievances that we have suffered for the last 25 years. Sir, I will only mention one thing with regard to the statement that the Honourable the Secretary for the Department made, *viz.*, that the condition of Indians overseas was, as I understood him to say, not known fully to that Department.

Mr. G. S. Bozman: I did not say that.

Mr. Hoosenbhoj A. Lalljee: I am speaking subject to correction. Since he said that there were enormous difficulties to get the necessary information, I took it to mean that he did not know, or his Department did not know, what were the disabilities of Indians in various colonies and dominions where at present they were residing.

Mr. G. S. Bozman: What I said was that we are well aware of the difficulties in different countries. We have, however, to determine how the rules which are to be framed are going to apply to the people concerned in those countries.

Mr. Hoosenbhoj A. Lalljee: Sir, I am very glad that this statement has been made. Three or four years ago when I put a similar question I was told by the then Secretary, Sir G. S. Bajpai, that the task involved would mean a lot of uphill work and Government did not think it worth while collecting the information required. But I am very glad that Government now has got all the information and it is but right that they should have it, because we find all over that the British Consuls and Ambassadors, as well as those of

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Foreign States, are well aware of the conditions of their nationals in every nook and corner of the world. In fact, Sir, the Japanese, when they were in India, used to get all their peoples from different centres brought together once every year to find out what were their difficulties and condition, though at that time they were one of the nations enjoying the most favoured nation treaty advantages. Well, so far as this is concerned, I am glad that the Government of India are also now taking the condition of Indians into their consideration together with the disabilities from which they are suffering, and I am sure, after we have passed this Bill, they will certainly do the needful as soon as possible.

Regarding educational facilities, I have had something to do, for the last twenty years, with this aspect of colonial administration in various places. It is a fact, as you know, Sir, that we have what are called small schools in villages—where a postmaster can teach about 50 or 100 children for Rs. 4 a month—that also is an educational facility; but what I wish to point out is this, that the educational facilities we have now been giving even to refugees from countries which had nothing to do with Great Britain or the British Empire in joining in first class schools and colleges—better in some respects than even those which most of the Indians can get in India—if that can be given to our people in those countries, then I say our people there are entitled to have it.

Whatever it may be now, I have every hope that after Government have got these powers, they will use them well. Finally I congratulate all for the good will they have shown; I take it that really and honestly a great change has taken place and let me once again on behalf of overseas Indians congratulate the Government and the Mover, my friend, Mr. Deshmukh, and wish that this Bill be passed unanimously.

Mr. Chairman (Sir Cowasjee Jehangir): The question is:

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

The motion was adopted.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

(AMENDMENT OF SECTIONS 269, 272, ETC.)

Qazi Muhammad Ahmad Kazmi (Meerut Division: Muhammadan Rural): Sir, I am now moving motion No. 5, Civil Procedure Code (Amendment) Bill—and No. 6 Muslim Personal Law (*Shariat*) Application (Second Amendment) Bill—on the List of Business. I move:

"That the Bill further to amend the Code of Criminal Procedure, 1898, for the abolition of Session trials with the aid of assessors (*Amendment of sections 269, 272, etc.*) be referred to a Select Committee consisting of the Honourable Sir Sultan Ahmed, Sir George Spence, Khan Bahadur Sir Abdul Hamid, Mr. Govind V. Deshmukh, Sir Syed Raza Ali, Sir Muhammad Yamin Khan, Mr. Lalchand Navalrai, Sardar Sant Singh, Mr. P. J. Griffiths, Mr. K. C. Neogy, Raja T. Manavedan, Maulvi Abdur Rasheed Choudhury and the Mover and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

This Bill is intended to abolish trials with the aid of assessors. At the outset I may say a few words as to how this system of assessors came into vogue.

In the last part of the 18th century, when the East India Company codified the laws, it was the Muslim criminal jurisprudence that was prevalent in India and it was applied by all the criminal courts. At that time the East India Company found it necessary that for the English judges who were trying the cases, the help of *Mufti* and *Kazi* should be requisitioned. So it was provided in 1793 in the Regulation of that year, that in all criminal cases and trials, every judge shall sit along with a *Mufti* and a *Kazi*, and the function of the *Mufti* and *Kazi* was not only to give their opinion on the facts of the case, but to prescribe the punishment also and it was for the judge either to accept the decision of the *Mufti* and *Kazi* and act upon it or, if he did not agree, he was to report to the Nazir. That system ruled for a very very long

time in practice; but gradually as times advanced and English ideas of criminal law and jurisprudence came to have their sway in this country, and also as the English judges learned the law, it was felt that it was not necessary to have either *Kazis* or *Muftis* or Hindu and Muslim law officers: there used to be Hindu and Muslim law officers who were to give their decision through *fatwas* according to Hindu and Muhammadan law.

About the year 1830 we find that the old Muhammadan criminal jurisprudence was absolutely changed or gradually converted into the law of the land with necessary amendments which were considered by the legislatures at that time. In 1864 it was considered by the Government of that time that the retention of Hindu and Muhammadan law officers and of the *Kazis* was an unnecessary expense on the state; and from that time onwards those law officers were abolished, and the judges remained to administer the law as they found it on the Statute Book. A little before that, the Code of Criminal Procedure of 1862 was enacted, and in that Code, two gentlemen who were called assessors were kept for helping the court in arriving at a decision; but the strange thing was that their opinion was not to be considered as binding on the judge either on points of fact or on points of law.

Now, the jury system is well known and I need not dilate on it at this stage. The finding of the jury on points of fact was accepted by the judge who had to apply the law. We can understand the sense of the jury system; but as I will show in the course of my submission, some Governments and judges have opposed the abolition of this system of assessors merely on the ground that if we abolish these assessors the public would probably demand the substitution by a jury and because they do not want this jury system they want the retention of this system of assessors which means nothing in practice at all. From 1862 onwards we have got this system of two gentlemen sitting along with the judge, yawning all the time, while the evidence is recorded, some of them sleeping owing to the hot weather and when called upon by the District Judge after the close of the trial as to what opinion they have got about the persons under trial, most of them saying, just as my learned friend said, "*Jo husoor ki rai wahi hamara rai*". Not only that, but I have seen people attending as assessors who have got absolutely no opinions of their own, and as regards people who have got some opinions of their own and considered the matter seriously—they are also treated in the same way because their opinion is not final. From 1862, we come to the Code of Criminal Procedure, 1882, when the same old two assessors were kept. Then we come to the Code of Criminal Procedure Amendment that was effected in 1928. To my astonishment, instead of giving any power to the assessors, the amendment provided for three or more assessors instead of two. The idea might have been that the presence of three or more assessors would be more effective, but in actual practice, three or more is as worthless and useless as two or less. My submission is that we have arrived at a stage when we should not keep up a farce of that type, for which there can be no justification whatever either in law or in justice.

What is the general class of people from which assessors are derived to-day? In order to pay as little as possible, a set of people in the cities are enrolled as assessors, and for convenience's sake, people from the cities are got hold of so that they may have to be paid no fare, no expenses, but only their daily allowance which may come to one rupee. How many intelligent persons, how many persons of standing, how many persons who can be expected to have any opinion of their own can be obtained in this way by paying one rupee per day?

An Honourable Member: Make it Rs. 1-8-0.

Qazi Muhammad Ahmad Kazmi: I remember the case of an assessor who during the course of trial just occasionally stood from his seat and was peeping out of the door. The Judge was offended at this and asked the assessor why he did so. The latter replied, "Excuse me, Sir. I have got one donkey, and I have got no one to look after it in my absence. So I have brought it with me. It is grazing outside and I am just peeping out to see that it does not go astray".

Mr. Lalchand Navarai (Sind: Non-Muhammadan Rural): Then there were two donkeys, one inside and one outside!

Qazi Muhammad Ahmad Kazmi: There is another instance which I will mention at this stage. Just before the trial the assessors were called by name. One of the villagers who was also called—even persons of the highest standing who do not answer when their names are called but are absent owing to urgent reasons, even they are prosecuted. So, ordinary persons fear the law much more and, therefore, make it a point to reach the place. This assessor happened to be ill, but he was so poor to get a medical certificate for not presenting himself at the time of being called, that he came in a cart. When he was called by the peon of the Court his relatives tied his hands and feet and passed a bamboo in between and carried him on their shoulders, before the Court. The Judge who saw that, asked what all that was. The answer was, "An assessor". The Judge said, "Go away." This is the type of assessor that we get. The House may think that I am exaggerating. But I may say there are many other Honourable Members in this House who belong to the profession of law, and also the Honourable the Law Member is here, who, I am afraid, is not going to support me. I would ask my Honourable friend whether the type of people who are made to attend the Court of Sessions is not of the kind which I have just mentioned. So far as I personally know—probably our Law Member is not satisfied with the system of jury also and he may have some bad words to say of jurors, the same as I have been saying about assessors. But it is not the jury system that I want to abolish, and for the simple reason that jurors may be improved by proper selection, by taking persons of responsibility, by throwing responsibility on the people, and you may be able to attach some value to their opinion. But about those gentlemen who have neither got an opinion of their own, nor are they selected from such a class, and even if they are selected from a class which can give an opinion, the Judge can simply brush away that opinion by saying, I differ from such and such an assessor, I agree with such and such an assessor. In most cases the Judge says the opinion of the assessor is such and such, I hold such and such an opinion and in court of appeal no value is to be attached to the opinions that are given by these gentlemen and nobody cares as to what they have said. What is the justification for this waste of time, what is the justification for this waste of money, what is the justification for continuing a system which has no sound legal basis at all?

One strange thing is that this Bill was circulated for eliciting opinion and we have got a large number of opinions in favour of this Bill. But the point is, though the people understand, our Government finds it difficult to understand. The difficulty is not that people outside do not appreciate the deficiencies, but the present Government do not seem to understand them, once they are convinced that their line is correct. The Government say this is not the proper time. Then what is the proper time for taking up such a legislation? They say, when there is peace outside. May I know what the present Government is doing when there is no peace outside? Have not the functions of the Legislature been almost wholly abandoned? Are we considering any legislation worth the name for which persons should be assembled from such long distances? It is only for dealing with measures for a few barracks here and an expansion of the coffee marketing board there that we have been called up here. Is that the function of this Legislature? You have abolished the functions of the courts. High Courts have been absolutely disabled. No case can be heard or reviewed by the High Courts which have been established in this country for dealing out justice. The people who are being tried by the present day laws are untouchables to the High Courts. A High Court Judge has no power to review or revise or hear an appeal from a special court. Who has made those laws? Is it the present Government? No. It is only the Governor General, not the Governor General in Council. The Executive Council is said to be a very important thing but when the

question of the maintenance of law and order comes in, the whole of the Council is considered to be an incompetent body who cannot even touch or consider any Bill connected with the maintenance of law and order. Probably, it is so on account of the inclusion of a large body of Indian members. That may be a reason. (*An Honourable Member*: "How is that connected with assessors?") It is connected in this way. The Government says that this is a time of war and we cannot consider an amendment to the Code of Criminal Procedure. I say, what are you doing? You are not enacting any law by means of legislation. What is the use of keeping this Legislative Assembly and dragging people from long distances only to ask us whether the coffee board should be expanded or not, or whether certain wages should be allowed to the coolies or not, or whether certain amendments should be made in the Motor Vehicle Rules. Is that the only advice to be taken from us? Are these the things for which this Assembly is meant? Have we got to abandon all sort of power over the legislation of this country, meant and intended for the maintenance of law and order? If the Governor General in Council is incompetent and if the Governor General alone should enact all this legislation, as some Members of this House seem to think, then it is better to wind up this whole business and hand over everything to the Governor General himself.

My submission is this—What are the difficulties of the Government in the way of accepting this Bill and sending it to the Select Committee. Now, the question is what support I have got for the proposition I have placed before this House. There is a very large body of opinions which have been printed and I do not propose to read all those opinions but I want to say that of all the Governments that have been consulted, the first is the Government of Panth Piploda. Without meaning any disrespect to that Government, this is the first Government which sends its opinion. I have seen every other Government to be lethargic in this respect but this Panth Piploda Government is the first to send in its opinion and it is mostly favourable opinion. Now, the next is the Government of Baluchistan and that Government has fully supported this Bill. They say:

"I have the honour to say that the Judicial Commissioner in Baluchistan and other officers and persons who have been consulted are in agreement with the Mover of the Bill. In practice, assessors in sessions trials prove of little help either to the prosecution or to the Defence and are an unnecessary burden on the public exchequer. This system of sessions trial should, therefore, be abolished and this Administration agrees with this opinion."

My friends may belittle the Governments which have supported my Bill. I will now take some of the bigger provinces. I will take the Punjab first. The Government of the Punjab is the Government which is most seriously concerned with the war effort and they have not been perplexed at all at the enactment of this legislation at this time of war. The plea of the Central Government is that these are times of war and, therefore, we should not undertake any legislation of this kind. That this view is not sound and correct is shown by the fact that the Government of the Punjab does not hold that view. Now, Sir, the Government of the Punjab says: The Government of the Punjab on the whole agrees with the general body of opinion in favour of the Bill.

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

Now, I will come to the important opinions of those persons whose views are of value in matters of this kind. I mean the Judges of the High Court. Justice Din Muhammad, Chief Justice Douglas Young and Justice Tek Chand say:

"We entirely agree with the sponsor of this Bill that the institution of assessors should be altogether abolished as it does more harm than good. Their opinion carries no weight and is generally misleading."

They think that the institution of assessors in its present form is not of much use and may be abolished. I come now to the province which is near

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the Punjab—the U. P. Out of the eight judges of the High Court at Allahabad who have given their opinions on this subject, six have agreed with the object of this Bill and two have differed. It is unfortunate that two judges have differed but there is a clear majority in favour of the Bill. Collister J. says "I would abolish assessors". Allsop J. says "I agree with the principle of the Bill". Muhammad Ismaïl J. says "I am in favour of the abolition of sessions trials with the aid of assessors. The system has proved a failure and involves unnecessary expenditure of time and money". Now, Ismail J. has not been only a High Court Judge. He has acted as a Government Advocate in U. P. for a very long time and has acted as the Government Pleader also in his earlier days. He is a gentleman who knows the thing not only in the

4 P.M. capacity of a Judge but also in various other capacities. Mulla J. says:

"I entirely agree with the proposed amendment which, in my opinion, has been overdue for years. It will save a great deal of useless expenditure of public money."

Hamilton, J., an I.C.S., gentleman, says:

"It has been my experience from the very early stages of administering justice in the United Provinces. I am in favour of this Bill with the assessors provided they are not to be replaced by the jurors."

Now, this is a point which requires the consideration of the House. Some of the Judges who have expressed their views on this Bill thought that I wanted to replace these assessors with jurors. However much I may like to replace assessors by jurors, I do not know if the Government can ever agree to that because they are as much in favour of the policy of jurors as they are in their heart of hearts for the abolition of the assessors. But they are always afraid that as soon as the system of assessors is abolished, there will be a demand from the public that the system of jurors may be substituted. Now, Sir, I personally have not got much experience of the jurors. The Honourable the Law Member who will be speaking on this subject has got much more experience of the jury trials and I shall be glad to know when he replies whether he is satisfied with that system of trial, not because he is an Indian and he has been practising at the bar and also not because he was a Government Advocate whose function is to see that the people go to the gallows but as a person who must have got an experience of the jury. Personally, so far as I know, he is disappointed with that system because of the quality of the people, because of the approachability of the persons and also because it is apprehended that it is not only the question of the jurors or of the accused that weighs with the jury but there are so many other considerations which weigh with them in arriving at a decision, for it is always risky both for the defence and for the Government to leave the decision of the matter in the hands of persons who have got no experience either of criminal trials or of the procedure that is adopted in courts. That is the reason and not because he thinks that jury system is a bad system. And so far as the question of the jury system in England is concerned, people have got much to say in favour of it and I will have not the least hesitation in supporting the Government if they adopt the jury trials and pay the people for that purpose. But the question is how far, because they want to save their skin from the public by establishing jury trials, can they keep up this farce and this body of people who are absolutely of no use to us and yet we will go on with the present practice of law. I say you must be plain and you must carry on the functions of an honest man. Don't you realise that the system is doing you no good, is unnecessarily expensive to the State, and is very inconvenient to the persons who are selected as assessors. As I said before, when the annual list of assessors is prepared, every responsible man in the district would be going to his pleader to take his advice to have his name removed from the list because nobody is pleased with this system. It is a system under which persons have suffered a lot in their business. These assessors go on hearing for months and days those stories which can only appeal to the prosecution or to the defence and the complicated

points of law that are raised by the counsel for both the parties. They do not even understand the points that are raised by the counsel and they have no interest in them. It is simply a tormenting procedure which goes on from morning till evening without understanding a word of what is being done in the court and yet they are called upon in the end to deliver a verdict and to give an opinion on a thing which they have neither understood nor digested nor appreciated in the least. If they adopt the straightforward attitude of a gentleman and say, "We know nothing", then they are forced to say something. In my early days when I started the practice, I was appearing before the Court of Sessions. I was quite new and could not understand the implications of a sessions trial. The case was an ordinary case in which a man had to die under section 304. I started cross-examining the prosecution witnesses and the learned Judge said, "Why are you cross-examining them? Have they said anything against you?" I was very much encouraged and stopped cross-examination. All the prosecution witnesses finished in a very short time. After the case was over, the learned Judge addressed the assessors. He said, "Look here, a man has died and a lathi has been produced by the prosecution by which it is said that he was killed. What is your opinion? Was he killed or not? There are certain persons who are brought before the court and it is said that they are guilty men. Now, let me know whether these persons killed that man". The assessors said, "Yes, they might have". The Judge said, "Why do you say 'might have'? Why don't you say that they did kill the man? Look here, the lathi is here and a person has died. It is alleged by the defence that the death was caused by the fall of a yoke; no yoke has been produced. Under these circumstances, have these men killed him or not?" They said, "They might have". The Judge said, "No, be definite because the court wants a definite opinion". And the definite opinion was that they killed that man with the lathi and at once the sentence of death was passed. So, what is the use of having these assessors who only say "They might have killed the man". My first experience was simply disgusting of these assessors.

Now, Sir, I was just mentioning the opinions of the Judges of the High Court. The Honourable the President has also been in practice and I would also appeal to him to give us an idea of his experience of the assessors. Now, Sir, Mathur, J. says:

"In my opinion the institution of assessors serves no useful purpose. It rather tends to wastage of public time and money. I will therefore support the Bill."

Now, these are one or two big provinces, the Judges and the Government officials of which have fully supported this Bill. Now, Sir, I may take the Government of Madras first. So far as the legal acumen is concerned the Madras High Court has got a very good reputation and without any prejudice to my Honourable friend from Sind I would say that they stand in the legal domain almost first or at least among the first.

The Honourable Sir Sultan Ahmed (Law Member): All are first!

Qazi Muhammad Ahmad Kazmi: I would prefer Allahabad to be the first. But any way, they are among the first so far as the legal acumen is concerned. The Government of Madras says:

"This Government agrees with the Honourable Judges of the High Court and other opinions expressed in support of the Bill."

They, however, desire to point out that the Bill will not be complete unless consequential amendments are made. As a matter of fact, this opinion has given a certain amount of help to solve the problem. Further, they give full support to the Bill. Similar is the case with the Government of Assam. Similar is the case with Bihar

The Honourable Sir Sultan Ahmed: No, no. Just see, don't say that.

Qazi Muhammad Ahmad Kazmi: Judges of the High Court of the Bihar have not supported the Bill. This is the only province from which I have heard a Judge saying that he has received help from the opinions of assessors. I do not consider this as a good ground to oppose the Bill, otherwise I would have produced before this House a voluminous judicial report of Bihar. In

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Bihar this matter of jury system of trial by Sessions has been a subject of scrutiny for a very long time, and I am sorry that either the Government or the Honourable Judges have not probably used that voluminous document of evidence that comes in support of the abolition of the assessors. If you just have perusal of the Report on the administration of justice in Bihar, then from year after year you will find that they give figures regarding the cases referred to Sessions Judges, 'in how many cases he agreed with them and in how many cases, partially agreed and partially differed. The number of cases in which he has differed from the assessors will probably be larger. Almost every judge with the exception of one or two has in this Judicial report said that the system of assessors is absolutely useless and is merely a waste of time and money. It is of no help in arriving at a decision where necessary for the purpose of a case.

Then there remain two Provinces, namely, Bengal and Bombay. The Governments of these two Provinces are opposed to the Bill. But let me place before this Honourable House the motives which lie behind their opposition to this motion. Are they really enamoured of the system and want to support it on account of some intrinsic matter or it is on account of certain other considerations that they have thought that this matter must be shelved off. I would take up the opinion of the Government of Bombay first. They say:

"Further it is feared that the abrogation of the system of assessors may lead, whatever the author's intentions, to a demand for its substitution by the Jury system which can be a real obstacle in the way of justice sometimes. For these reasons I am directed to say that the Government is opposed to the amendment suggested."

How far this fear has stood in the way of opposing the Bill? If they are really opposed to the Bill why have they not the courage to say that they have opposed the Bill and the primary Jury system should be abolished? Why should they put the poor tax payer to this unnecessary expense, inconvenience to the people who have got to attend the Court and inconvenience to the lawyers, parties concerned and the Judges; only because they want to keep up this farcical show? That is the chief motive which has induced the Bombay Government to oppose the provisions of this amending Bill. When you go to the Judges you find them straightaway—more straightaway and still opposing the Bill for the same reason. They say:

"I am directed by the Honourable the Chief Justice and Judges to say that Their Lordships think that the Bill represents a retrograde step."

How it is a retrograde step, because they think it proper to stop the jury system. Their Lordships think that the Bill represents a retrograde step. But very much can be said for substituting trial by jury for trial by assessors. Until that is done assessors will serve no useful purpose. Is there any difference of opinion so far as this point is concerned between myself, the Government of India and the Government of Bombay and Judges of the High Court? I say the Government of India is of opinion that trial by jury should be abolished: it should not be maintained. The Judges of the High Court of Bombay say that trial by jury is the proper step which must be adopted by the Government. But as that is not possible, let it remain where it is. That is in the meantime they want this farce to be kept up. The opinion of everybody can be judged by us, even by a layman on its merits. Can any body say and maintain that even in the light of the opinions that have been expressed by the learned Judges of the High Court of Bombay that this institution of assessors should be maintained?

Now, I come to the Province of Bengal. These are two Provinces where probably the administration of East India Company with English ideas was adopted much earlier than in other Provinces and probably on account of these ideas, they have got a greater desire for the jury system than other Provinces. Bihar also has got the same desire to some extent. We in the United Provinces invited opinions during the days of Congress Government about the jury system. There was a lot of discussion on the matter, and the Congress Government had to drop the question of extending the jury system to all the

districts. The same happened in Bihar during the time of the Congress Government. It was at that time that so many opinions were collected in Bihar regarding the merits and demerits of the system of trial with assessors and trial with the aid of jury. Coming to the opinions of Bengal, they say:

"The criticism which has been made of the opinions of assessors might be made in many cases in respect of the verdicts of juries, though these have of course a considerable degree of finality. This Government accordingly agree with the High Court that it is most undesirable to repeal those sections of the Code of Criminal Procedure which permit trial with the aid of assessors."

Sir, in this whole opinion, I would just beg of the House to find out a word in support of the intrinsic merits of the system of trial with the aid of assessors. They are speaking of something else absolutely irrelevant for the enquiry that we have before us. They say that the criticism which has been made of the opinions of assessors might be made in many cases in respect of verdict of juries. They are satisfied that so far as the verdicts of juries are concerned, they are subject to the same criticism. But they do not say that the criticism is wrong. They do not come forward and say that the criticism is absolutely baseless. Do they say a word in support of the proposition that the criticism is wrong, that the criticism is baseless? Then they say that though of course the system of trial by juries has a considerable degree of finality, they agree with the High Court that it is most undesirable to repeal those sections of the Criminal Procedure which permit trial with the aid of assessors. Well, Sir, in my humble opinion, this does not follow logically from what they said before. They say that the thing is subject to the same criticism, it cannot be defended, but because the verdict of juries is final, therefore we must retain a body of people whose opinions have got absolutely no value and who are unnecessarily to be troubled and paid at the public expense and still their opinions are to be acted or not by the Judge who is trying these cases. This is a conclusion which, to my mind, seems to be thoroughly wrong and I submit that the Government of Bengal have taken an untenable position. Unlike the Government of Bombay which introduced some sentences which are liable to criticism, the Judges of the High Court have taken care to see that no criticism can be levelled against the opinions that are given by them. I do not know whether the entire opinions of the Judges of the High Court of Calcutta are given here or only an extract from their opinions. They lay great stress on this that it is most undesirable to repeal those sections of the Criminal Procedure Code which permit trial with the aid of assessors. Why? Are they valuable opinions? Have they got any value? Have they got any weight? Do they help in arriving at correct decisions? Not a word is said. There are two or three more opinions which have been received from Bengal. Let us see what the public of Bengal have got to say about this. The Incorporated Law Society of Calcutta say:

"The Council of my Society approves of the said Bill and is of opinion that Sessions trials with the aid of assessors should be abolished. The presence of assessors at a sessions trial is of no use as under section 309 of the Code of Criminal Procedure the Judge is not bound to conform to the opinions of the assessors."

Then there is the opinion of the District Judge of 24-Parganas. He says that trial by jury is also very unsatisfactory as practised in this country.

Then the next opinion is from the Bar Library Club, Calcutta, which say:

"I beg to state that the Calcutta Bar is of opinion that it is just and proper that the system of sessions trial with the aid of assessors should be abolished. The Bar also is in agreement with the view in the Statement of Objects and Reasons appended to the Bill that a Sessions trial with the aid of assessors is nothing but a farce and entails useless burden on the public purse. The Calcutta Bar also agrees with the view of the Mover of the Bill that the system of Sessions trials with the aid of Assessors provides no facility in arriving at a decision by a Judge in a particular case. Experience of the working of this system shows that the Judges who are all trained and versed in Criminal Law and procedure, more often than not, simply disregard the opinion of assessors, which in the majority of cases, is of not much material value or assistance to them. Assessors are a useless appendage to Courts and the Calcutta Bar agrees with the view that they are of no profit to the prosecution or the defence or the Judge."

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member has already read a lot of these opinions which are all before the House.

Qazi Muhammad Ahmad Kazmi: I am just referring to a few.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member has already referred to the opinions at length. These opinions are before Honourable Members of the House and therefore they are not to be read out *in extenso*.

Qazi Muhammad Ahmad Kazmi: They are all expected to read. I shall only refer in brief.

Mr. President (The Honourable Sir Abdur Rahim): But the Honourable Member has already referred to them at great length.

Qazi Muhammad Ahmad Kazmi: I will not do so in future. I have dealt with almost all the important opinions of all Governments. There remains the very important Government of Sind, which, I am afraid, if I do not refer to, my learned friend may have something to say against it. This Sind Government is an appendage of the Government of Bombay. I do not hold a better opinion of the Government of Sind than I do of the Government of Bombay itself. Even there let us see what the Bar Association has got to say. I will not read the whole opinion.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member ought to advance his own opinion.

Qazi Muhammad Ahmad Kazmi: They do not attach much weight to my opinion. The Government of Sind also has opposed it on the same ground as the Government of Bombay.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member need not then go on repeating it.

Qazi Muhammad Ahmad Kazmi: They apprehend that abolition of sessions trial by assessors might give rise to a demand by the public for trial by jury. Even the Chief Justice of the Judicial Commissioner's Court in Sind has fully supported this Bill and he has said:

"That the system of assessors has served no useful purpose. My experience is that in a great majority of cases in order to come to a proper decision, the judge must ignore the opinion of assessors."

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member had better advance his own arguments.

Qazi Muhammad Ahmad Kazmi: So far as the learned Judge of Sind is concerned, he is also of the same opinion. But the question is whether the Government of India also feels any justification of the Bill or not. It will be only after the speech of the Honourable the Law Member that I will be able to understand the reasons why they are opposing the Bill. So far as I have been able to gather the Government's point of view it is that on account of the present war outside the country this legislation should not be undertaken. But, Sir, if the Government really wants to take up that attitude, I hope that in their reply they will clarify their position as to what it means—what are the difficulties which are in their way in accepting this Bill; and whether the Government really consider it proper to bring forward this Bill again after the war is over; if so, in what form? Sir, I move that the Bill may be referred to a Select Committee of this House.

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

"That the Bill further to amend the Code of Criminal Procedure, 1898, for the abolition of Sessions trials with the aid of assessors (*Amendment of sections 269, 272, etc.*) be referred to a Select Committee consisting of the Honourable Sir Sultan Ahmed, Sir George Spence, Khan Bahadur Sir Abdul Hamid, Mr. Govind V. Deshmukh, Sir Syed Raza Ali, Sir Muhammad Yamin Khan, Mr. Lalchand Navalrai, Sardar Sant Singh, Mr. P. J. Griffiths, Mr. K. C. Neogy, Raja T. Manavedan, Maulvi Abdul Rasheed Choudhury and the Mover and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

Mr. Govind V. Deshmukh (Nagpur Division: Non-Muhammadan): Sir, I give my wholehearted support to the motion which has been moved by my

Honourable friend, Mr. Kazmi. It is one's experience that the opinions of assessors—whether they are educated or uneducated—count for nothing and I may say on behalf of the educated assessors that they would certainly like to do away with this sort of system because they feel that when they take the trouble of making notes of evidence and write down a reasoned opinion they are not consulted. Under such circumstances it is but proper that this system ought not to prevail.

One more point I would like to mention is that such persons who are appointed as assessors are appointed because the Administrative Officers want them to be appointed. As a matter of fact, in some provinces it is considered a mark of respect for a person to be an assessor and such persons as well as the Administrative Officers, who wish to extend their patronage to certain individuals who are really unfit to act as assessors, may very likely and properly from their point of view not support the abolition of this system of assessors.

It has also been found by experience that trials with the aid of assessors are unnecessarily prolonged for a very long time. If it is a trial with the aid of assessors, the judge practically finds that his time is being wasted—and it is not really an uncommon experience to appreciate that because the assessors are merely serving as assessors under compulsion because it is within the power of the Magistrate to make a person an assessor and compel him to serve as an assessor—and having known from his experience that the assessor's opinions are really not respected, he starts dozing and becomes absent-minded while the trial is going on. It is very undesirable to insult an educated man and we find that the educated man who is prepared to render public service is insulted when his opinion is not respected. Similarly, when one finds that persons who are uneducated and are unfit to understand law when it is being explained in a criminal trial by the counsel for prosecution or the public prosecutor—such a man may be eating *pan* if he is permitted to do so—it is in the interest of everybody that this sort of system should be abolished.

Government's plea that this is not the time when any legislation of this kind should be taken up, is not very clear. What is the implication of that? I do not think it is to be gathered from that statement that the enemy will benefit if such a legislation is undertaken and passed by the House and debated on the floor of the House. If it is the implication that they have no time as they are the most hardworked creatures, I think the House should spend some money and have a commission to investigate the matter and if it is really found that they are over-worked, the House should request the Government to appoint a few more Councillors in order to give them a little leisure. Any how speaking seriously, the Government cannot really object to this motion for referring the Bill to a Select Committee when we are there to help them and shoulder the responsibility. I, therefore, wholeheartedly support Mr. Kazmi's motion that the Bill may be referred to a Select Committee.

Mr. Lalchand Navalrai: The Bill as it has been introduced wants that the system of Assessors to sit with the judge should be abolished altogether. The Bill does not say whether any alternative proposals should be offered to the Government or not. I am not enamoured of the trials by assessors. But the point at issue, and which should be considered, is whether the system is bad, or whether the system in practice is bad.

The original object of trials by assessors was that the decision should not be that of a single man, but that he should be helped in arriving at a proper conclusion by the aid of certain persons who could give their opinions and whose opinions should be considered and then a decision arrived at.

We have now Criminal Procedure Code which provides two kinds of trials in the Sessions Court. One is by jury and the other is by assessors. First of all, it was the judges who used to give judgments without the help of anybody, but then it was considered that the public ought also have their views given

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to the judge at least, and in some cases they should have power to associate in giving judgments themselves. It seems to me that the reason for creating assessors and jurors differently, is because in some places people are more educated and can give more help as well as express opinions which demand respect. In such cases the public have demanded the jury system. Here the judge is not the master of himself. If he disagrees, and the case is such that it should not be submitted to the High Court for decision, then ordinarily the opinion of the jury prevails, and it is only in those cases provided for in the Criminal Procedure Code where the cases go to the High Court. With regard to assessors they give their opinions only but the judge is not bound to accept them. But, Sir, my humble submission is this. It was not the intention of the Government or the Legislature that the assessors should be selected in a manner in which only those persons who have not even sufficient intellect should be selected. In other words, the system of selection is bad. If they select people of independent opinion or character, there will be then no fault with the system, because the system is founded on the basis that the arbitrary decision of one man should not be entered upon. After all, it is the life of a person at stake, and if the judge feels that he is all in all it is not the fault of the system: the fault lies in the way that the system is used.

It is true that the judge, according to the law, as is contained in section 309 of the Criminal Procedure Code, paragraph 2, has got this discretion. It is said: "The judge shall then give judgment, but in doing so shall not be bound to conform to the opinion of assessors." That is true. But it does not mean that the judge should not even consider or think that there are certain persons before him whose opinions have to be shared. In that case commentators say: "The opinions of the assessors should be recorded separately". Not only opinions but also the grounds have to be recorded. But this is not being done today. May I ask the practising members of the law whether they find the grounds recorded? They do not. Therefore, my friend the Mover should not think that I am in any way in favour of the assessors system, if it is so badly worked. If that system be improved, and these judges do not regard these people as nonentities; if they do not think they are there only to make a show or to reduce everything to a farce, then the system of assessors is not bad. I want the judge to have some help. I should think that when the assessors are there in the court, there is at least some semblance of restriction on the judge. He will realise that there are people who will understand whether he is acting arbitrarily or is paying any attention to their views. Therefore what the law says is this: "That the opinions of the assessors should be recorded separately. It is not that this record should contain a mere verdict of guilty or not guilty". That is however the practice now prevailing. But they do not conform to the practice that is required by law and by the authorities. Then it is said: "What the Court requires is not only the result arrived at by each assessor sitting on a sessions trial but, if possible, the reasons by which each assessor arrived at the result". Now this is what they do not do. If they do that then those people will feel that they have some status, in that they have been sitting for four or five days hearing the evidence and in the end they have been able to give an opinion which will have some effect. I, therefore, submit that the assessors system should not be done away with, unless a better alternative is found, either all sessions trials by jury or by a better selection of assessors. The time has now come when the assessor system should be substituted by the jury system, because under the present system, very intelligent assessors merely get disappointed to see that their opinion is given no value at all. The judges should record the reasons so that the High Court can understand whether the judges have given due weight to the opinions of the assessors though they may reject it. I, therefore, agree with my friend the Mover of the Bill that in practice the present system is absolutely

useless and serves no useful purpose and it is really waste of money and should be improved.

My friend referred to the opinion of the judges in Sind. I wish he had not read the opinion of Sir Davies, C. J. which shows how the mentality of even a Chief Justice is in giving a hint or indication to the sessions judges as to how to treat these assessors. I hope that the sessions judges will not pay any attention to it—apparently the Chief Justice considers the assessors a nonentity; and he tells the sessions judges what they should do; and if the Government thinks that such direction can be given, then there is no hope; let the whole system be done away with. This is what he says:

"The system of assessors now serves no useful purpose."

That is true, because it is practised in a particular manner. He says further:

"My experience is that in the great majority of cases, in order to come to a proper decision, the Judge must ignore the opinion of the assessors. I am in favour of the proposed abolition."

He does not want any reform; he merely says, let the system be abolished; that is exactly what the Honourable the Mover of the Bill wants. But we feel that one man's judgment is no good in these serious judicial cases. We do not say the judges are not intelligent, but they are human beings after all. The Legislature provided for two assessors. Then in 1923 they thought that two were not sufficient—they wanted more to serve as guards for the judge and watch on his doings, as it were, and they said the number must be raised to three or four. But here I am sorry to say it is a judge from my own province who says they must be abolished. But the other judge, Mr. Lobo says:

"I am against the proposed amendment. Trial of Sessions Cases in the mofussil with the aid of assessors should remain."

When he said the system should remain, he should also have said that it should be improved. He had seen the opinion of the Chief Justice and he should have said that he disagreed with that opinion and should have gone further and said that the judges should give more consideration to the opinions of assessors.

I need not read anything more; but my own opinion would be that this system serves no useful purpose and should be improved, but my Honourable friend the Mover says it should be abolished altogether. He would have been well advised to give some consequential suggestions. I do not think he wants that the judge by himself should decide cases. My Honourable friend is disappointed—everybody gets disappointed—that the assessors' opinions are not heeded. But if he thinks that one man's opinion is enough, I think his mentality is not right. I do not think he wants one man's judgment, and therefore he should have come forward with suggestions for some kind of jury system. Otherwise the whole opinion of the Legislature and the law itself will be antagonised. Of course, there are cases where the jury system also requires improvement it all depends on the selection. I can give my own experience of how the assessors are selected in the mofussil and also in the High Court. Every year the District Judge and the Collector sit together and select the assessors. The list was prepared years ago when people were not so intelligent as now and had less education. That list was prepared, years ago, by a *tapedar*—a revenue village officer getting Rs. 30 or Rs. 40 a month—Rs. 20 in the old days as a matter of fact—and that list goes before the district magistrate and sessions judge; they sit and discuss whether the people should continue on that list; they have merely to say the list will continue. However, people who are intelligent and whose opinion is worth something and who know that their opinions are ignored and they have simply to sit under the domination of the sessions judges—those people come with applications asking "we do not want to serve as assessors: let our names be removed". Such applications are only to be considered at that time and nothing else; the remaining list consists of persons, some of whom are not even worth anything at all. People of

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some standing rightly say "we are losing so much, why should we not follow our avocations instead of sitting to no purpose the whole day and getting nothing". Thus the list is prepared by that subordinate official,

5 P.M. and it is nominally considered and passed. How does the subordinate official prepare that list?

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member can continue his speech next day. The House stands adjourned till 11 A.M. on Friday next.

The Assembly then adjourned till Eleven of the Clock on Friday, the 5th March, 1943.