

Thursday, 11th March, 1943

# COUNCIL OF STATE DEBATES

(OFFICIAL REPORT)

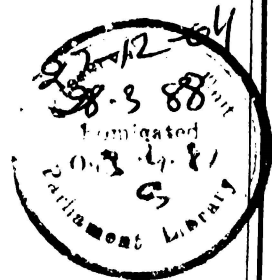
VOLUME I, 1943

*(15th February to 3rd April, 1943)*

## THIRTEENTH SESSION

OF THE

# FOURTH COUNCIL OF STATE, 1943



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# COUNCIL OF STATE

Thursday, 11th March, 1943.

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

## STATEMENTS, ETC., LAID ON THE TABLE.

THE HONOURABLE SIR MAHOMED USMAN (Posts and Air Member): Sir, I beg to lay on the table a copy of the notification issued by the Chief Commissioner, Coorg, No. B-1-2858 (9)/42, dated the 9th January, 1943, amending the Coorg Motor Vehicles Rules, 1940.

### THE CHIEF COMMISSIONER OF COORG.

#### NOTIFICATION.

No. B-1-2858 (9)/42, dated Mercara, the 9th January, 1943.

In exercise of the powers conferred by section 68 of the Motor Vehicles Act, 1939 (IV of 1939), the Chief Commissioner is pleased to make the following amendment in the Coorg Motor Vehicles Rules, 1940, issued with his Notification No. R.F.-43/121-39, dated the 26th March, 1940, the same having been previously published as required by sub-section (1) of section 133 of the said Act :—

#### Amendment.

For clause (h) of rule 43 of the said rules the following shall be substituted :—

“(h) A non-official member of the Provincial Transport Authority shall receive travelling allowance at the rates admissible, and subject to the conditions applicable, to a Government servant of the fifth grade under Annexure I to the Coorg Travelling Allowance Rules, and any such member performing any journey, other than to attend a meeting of the Authority, in connection with the business of the Authority shall with the sanction of the Chairman be entitled to receive travelling allowance likewise.”

J. W. PRITCHARD,

Chief Commissioner.

### STANDING COMMITTEE FOR ROADS, 1943-44.

THE HONOURABLE SIR MAHOMED USMAN (Posts and Air Member): Sir, I beg to move :—

“That this Council do proceed to elect, in such manner as the Honourable the President may direct, three members to serve on the Standing Committee for Roads which will be constituted to advise the Governor General in Council in the administration of the Central Road Fund during the financial year 1943-44.”

The Motion was adopted.

### CENTRAL ADVISORY COUNCIL FOR RAILWAYS.

THE HONOURABLE SIR SATYENDRA NATH ROY (War Transport Secretary): Sir, I move :—

“That this Council do proceed to elect in such manner as may be approved by the Honourable the President, six non-official members from the Council who shall be required to serve on the Central Advisory Council for Railways for the year commencing 1st April, 1943.”

The Motion was adopted.

THE HONOURABLE THE PRESIDENT: Honourable Members, with reference to the two Motions which have been adopted by the Council, I have to announce that nominations will be received by the Secretary up to 11 A.M. on Tuesday, March 16th, 1943, and that the date of the election, if necessary, will be announced later.

### MOTOR VEHICLES (AMENDMENT) BILL.

THE HONOURABLE SIR MAHOMED USMAN (Posts and Air Member): Sir, I beg to move :—

“That the Bill further to amend the Motor Vehicles Act, 1939, as passed by the Legislative Assembly, be taken into consideration.”

Several representations have been received by Government, including one from the Transport Advisory Council which is a body consisting of representatives of Provincial Governments, that the operation of Chapter VIII of the Motor Vehicles Act, 1939, relating to the insurance of motor vehicles against third party risks, which is to come into operation on the 1st of July, 1943, should be postponed. Government, after considering the whole question, thought that the best interests of the country would be served by postponing the operation of the Chapter in question until the 1st of July, 1946. In the present conditions it is not easy to make the

[Sir Mahomed Usman.]

necessary elaborate preparations; hence the Government have come before the House for a very, very small amendment of the Act.

Sir, I move.

The Motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE SIR MAHOMED USMAN: Sir, I move:—

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

The Motion was adopted.

### GOVERNMENT SAVINGS BANKS (AMENDMENT) BILLS.

THE HONOURABLE SIR MAHOMED USMAN (Posts and Air Member): Sir, I beg to move:—

“That the Bill further to amend the Government Savings Banks Act, 1873, and the Post Office Cash Certificates Act, 1917, as passed by the Legislative Assembly, be taken into consideration.”

Sir, according to section 4 of the Government Savings Banks Act, 1873, the Postmaster-General has got power to authorise the payment of deposits which do not exceed Rs. 3,000. We find that the corresponding provision of Act XVIII of 1917, applicable to Post Office cash certificates, fixes the limit at Rs. 5,000. The Bill provides that this higher figure shall henceforth be the limit for deposits in Government Savings Banks also. Further, Sir, certain other officers of the Government Savings Bank have got the power to sanction the payment of deposits which do not exceed Rs. 100, but I think it would be a great public convenience to raise this amount to Rs. 5,000; hence this Bill.

Sir, I move.

The Motion was adopted.

THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muhammadan): On a point of information, Sir. May I know how a Bill has been introduced to amend two Acts by the same Bill? Is there any precedent in the Legislative Department for amending two Acts, one of 1873 and another of 1917, by one Act?

THE HONOURABLE SIR MAHOMED USMAN: Our legal advisers have advised that it is absolutely legal.

Clause 2 was added to the Bill.

Clause 3 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE SIR MAHOMED USMAN: Sir, I move:—

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

The Motion was adopted.

### INDIAN RAILWAYS (AMENDMENT) BILL.

THE HONOURABLE SIR SATYENDRA NATH ROY (War Transport Secretary): Sir, I move:—

“That the Bill further to amend the Indian Railways Act, 1890, as passed by the Legislative Assembly, be taken into consideration.”

The scope and intention of the Bill is sufficiently explained in the Statement of Objects and Reasons. Under the existing law, no compensation is payable to those injured or to the dependants of those killed in a railway accident unless it can be proved that the accident was due to negligence on the part of the Railway Administration concerned or of its servants. This Bill provides that, whether or not there has been such negligence, the Railway Administration concerned shall be liable to pay compensation up to the extent of Rs. 10,000 in respect of any one person. The Bill introduces a new principle, and imposes a new liability on the railways, but I believe it will be generally agreed that the unfortunate victims of accidents, however caused, who suffer injuries due to no fault of their own or the dependants of such victims should be granted relief.

Clause 2 of the Bill has undergone two changes of substance since its introduction. In the Bill as introduced the limit of compensation was fixed at Rs. 7,000.

in respect of any one person, and the Railway Administration was specifically exempted from liability in respect of any person travelling without a proper pass or ticket. In the Select Committee the limit was raised to Rs. 10,000, and the clause about the ticketless traveller was omitted. These amendments were accepted by the Assembly, and I trust that the Bill as it now stands will commend itself to the House.

Sir, I move.

THE HONOURABLE SIR DAVID DEVADOSS (Nominated Non-Official): Sir, I welcome this Bill. You may remember that whenever there was an accident and a suit was filed, the railway authorities always opposed the grant of compensation for injuries or for death. You may remember the well-known case in Madras—I refer to the Mangapatnam disaster. And there were other cases which were tried by the Madras High Court for a very long time. It is not possible for every one to spend money and fight a Railway Administration, which has got unlimited funds at its command. This Bill certainly is a very welcome one, as it relieves the traveller from the liability to prove negligence on the part of the railway. It is very difficult to prove negligence on the part of the railway. Even if an officer is found to have been negligent, the Railway Company says, "Oh, no; he was not negligent. He was doing his duty or that was outside his duty". And so on. I will give you one instance which happened only a few years ago in Madras. Between Trichinopoly and Dindigul a train was running at a very high speed, and a few miles to the south of the Trichinopoly Railway Junction water was flowing over the rails. It is not known what was the height at which the water was flowing. But the driver drove the train along the rails. The permanent way had been washed away. The result was that the train was derailed and there were a lot of casualties. The casualties were variously estimated; some put it at 30, some at 40, and so on. But no compensation was paid to those people who were injured or to the dependants of those killed. I remember travelling that way more than two weeks after and the stench was horrid; the portions of corpses had been lying there for at least a fortnight.

Therefore, Sir, this is a very welcome measure. It gives compensation not only to those injured, but also to the dependants of those killed in a railway accident. It also lays upon the Railway Administration the duty of seeing that everything is all right. For instance, in the Mangapatnam disaster it was found that the whole bridge had been washed away, and there was no one to inform the driver of that. The driver came along with a long mail train. He drove across, and fell into the river. Whose fault was it? The Railway Company said they were not liable because it was an act of God. No doubt the flood was an act of God. There was a heavy flood. But why did they not protect the bridge, or at least make arrangements to inform the guard or the engine driver that the bridge had been washed away?

Therefore, Sir, without wasting more time of the Council, I wish to say that this is a very welcome Bill, and it relieves the people of a lot of trouble. I support the Motion.

THE HONOURABLE MR. M. N. DALAL (Bombay: Non-Muhammadan): Mr. President, I am in perfect agreement with my Honourable friend Sir David Devadoss in what he said about this Bill. But my objection is with regard to sub-section (2) of the proposed new section 82A, wherein the limit of liability has been fixed at Rs. 10,000. There is no limit fixed in the present Act, and I see no reason why the liability should now be limited to the amount proposed. This provision has also been opposed by some of the Commercial Institutions in Bombay. I oppose sub-section (2).

THE HONOURABLE RAI BAHADUR SRI NARAIN MAHTHA (Bihar: Non-Muhammadan): Sir, apart from what the Honourable Mr. Dalal has said, I would like to put just one question. Does sub-section (2) of the contemplated section 82A cover the cases of railway employees and of coolies working on railway tracks?

THE HONOURABLE SIR SATYENDRA NATH ROY: No, Sir. It covers only passengers.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (United Provinces Northern: Non-Muhammadan): Can the Honourable Member give us any information with regard to the compensation awarded to the passengers involved in

[Pandit Hirday Nath Kunzru.]

the Bihta disaster? Were there any cases where the persons were awarded more than Rs. 10,000 as compensation?

**THE HONOURABLE SIR SATYENDRA NATH ROY:** I am not sure of my facts, but my impression is that, perhaps with the exception of one or two cases, the compensation never exceeded Rs. 7,000, which was the limit which was indicated in the Bill as originally introduced in the Assembly.

**THE HONOURABLE THE PRESIDENT:** Motion moved:—

“That the Bill further to amend the Indian Railways Act, 1890, as passed by the Legislative Assembly, be taken into consideration.”

The Motion was adopted.

**THE HONOURABLE THE PRESIDENT:** Clause 2.

**THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muhammadan):** Mr. President, I should like to say a few words on clause 2. There is no doubt that this is a betterment of the position of the travelling public. Formerly, the law as it then stood laid no obligation on the Railway Administration to pay any compensation for loss of life in cases where negligence could not be proved. Now the position has been reversed. But, Sir, at the same time the liability of the railways has been restricted. Formerly we had no restriction on the liability of the Railway Company; they could be held liable to pay compensation of even a higher amount than Rs. 10,000.

**THE HONOURABLE SIR DAVID DEVADOSS:** In how many cases did they pay?

**THE HONOURABLE MR. HOSSAIN IMAM:** The fact is, we do not know how many cases went to Court and how many were settled outside. Most of such cases used to be settled amicably out of Court by the parties concerned. While we realise the benefits of this Act, we feel that, if it is found in the working of the Act that some injustice is being done to the persons involved, the Government should take up the matter and bring forward an amendment whereby in cases where negligence has been proved the amount of compensation may be increased. Where no proof of negligence on the part of the railway exists, I perfectly agree that the amount now proposed is quite enough. But if negligence on the part of the railway is definitely proved, then I think there should be a provision allowing a larger amount of compensation than Rs. 10,000 to be paid commensurate with the status of the persons involved.

**THE HONOURABLE SIR SATYENDRA NATH ROY:** Sir, on the point as to whether the liability under the ordinary law still subsists, of course the answer is in the negative. This Bill definitely limits the liability of the railways to the figure mentioned in clause 2. It is obvious that the financial burden on the railways could not be indefinitely increased. If you are going to accept a liability in all cases where there had been no negligence, it is reasonable that there should be some set-off by having the liability limited in cases where negligence has been proved. But I would point out that this Bill is intended as a relief for the relatively poor man. It is probably well known that in England and possibly other countries, when you buy a ticket you can buy an insurance at the same time, and although those facilities do not exist in this country, it is open to the rich man to supplement the relief that he is likely to get under this Bill by taking out an insurance himself. It is the poor man who is unable to do so or to bring his case to Court even when there has been negligence. He has not the means to bring forward the evidence or incur the expenditure necessary to prove negligence in Court. It will be realised, Sir, that the figure which was put down in the Bill originally was considerably in excess of the maximum laid down in the Workmen's Compensation Act. In that Act the maximum compensation is, I think, Rs. 5,500. Now that sum of Rs. 7,000 has been increased to Rs. 10,000. The objections which the Honourable Mr. Dalal and the Honourable Mr. Hossain Imam have raised were voiced in the other House and fully discussed, and it was accepted generally, I think that on the ground that it would be unjustifiable to increase the liability of the railways indefinitely a limit to the compensation payable was necessary.

**THE HONOURABLE MR. M. N. DALAL:** Is it possible to increase the ticket fares slightly and the Railway Company to take upon themselves the responsibility

of accident insurance? And if so, what would be the percentage rise in the ticket fare?

**THE HONOURABLE SIR SATYENDRA NATH ROY :** That, Sir, was considered very carefully before this Bill was drafted. The practical difficulties in the way of making arrangements of that kind are immense. In the first place, the lowest class fares are small and they vary, as they must, with distances. In the next place the amounts in certain cases which would have to be realised would be so small—I think in some cases it worked out to half a pie—that it would be impossible to make arrangements for their collection. It is possible, of course, to work a scheme under which people who are anxious to take out insurances for various amounts would be able to do so at the time they buy a ticket but it is not a simple matter to work such a scheme and railways do not feel that it is up to them to undertake it. This Bill, if passed, should provide sufficient relief for most classes of the population and will provide a limited policy of insurance to every traveller.

\***THE HONOURABLE SIR A. P. PATRO (Nominated Non-Official) :** Sir, the position of Government is rather curious. On one side they say that in addition to the compensation they have fixed under clause 2, a passenger could obtain an insurance and therefore he would be entitled, if he goes to Court, to greater compensation. But, on the other side, the railway authorities refuse to have any such insurance scheme as there is in England and continental towns where there is an insurance scheme. Along with the ticket, you can take an insurance scheme, but here, you have not got such facilities and the Railway Administration do not propose to afford any such facilities. Rs. 10,000 is, therefore, the highest limit. Even in cases where the disaster was wilful and could be proved, the limit is only Rs. 10,000. In the case of the Ennore disaster on the Madras and Southern Mahratta Railway the compensation given was Rs. 30,000, if I remember aright. Therefore, it seems to me that the attitude of the Railway Administration in this matter is not at all justifiable, and to fix a limit by clause 2 to any passenger is not at all sound. If it is intended that the poor man should benefit by this, it is welcome. It is an advantage to him that the railway should give compensation. Even for the poor man there is difficulty in applying for compensation. Therefore, difficulties exist in either case. For the Railway Administration not to accept the responsibility of issuing insurance certificates and at the same time to suggest that there is another possibility of the passenger obtaining insurance seems to me quite inconsistent. Therefore, Rs. 10,000 should not be taken as the maximum. It may be a suggestion but it should not be laid down that the compensation should not exceed that amount.

**THE HONOURABLE THE PRESIDENT :** Motion moved :—

“ That clause 2 stand part of the Bill.”

Question put : the Council divided :

AYES—18.

Charanjit Singh, Honourable Raja.  
Conran-Smith, Honourable Mr. E.  
Das, Honourable Rai Bahadur Satyendra  
Kumar.  
Devadoss, Honourable Sir David.  
Ghosal, Honourable Sir Josna.  
Hissamuddin Bahadur, Honourable Lt.-Col.  
Sir.  
Holdsworth, Honourable Mr. B. G.  
Jogendra Singh, Honourable Sir.

Jones, Honourable Mr. C. E.  
Khurshid Ali Khan, Honourable Nawabzada.  
Mahomed Usman, Honourable Sir.  
Menon, Honourable Sir Ramunni.  
Nihal Singh, Honourable Sirdar.  
Pillai, Honourable Mr. N. R.  
Prior, Honourable Mr. H. C.  
Roy, Honourable Sir Satyendra Nath.  
Sobna Singh, Honourable Sardar Bahadur.  
Sunderam, Honourable Mr. K. V. K.

NOES—9.

Dalal, Honourable Mr. M. N.  
Das, Honourable Mr. N. K.  
Kalikar, Honourable Mr. V. V.  
Kunzru, Honourable Pandit Hirday Nath.  
Mahtha, Honourable Rai Bahadur Sri Narain.

Muhammad Hussain, Honourable Khan Bahadur Mian Ali Baksh.  
Padshah Sahib Bahadur, Honourable Sayed Mohamed.  
Patro, Honourable Sir A. P.  
Ray Chaudhury, Honourable Mr. Kumarsankar.

The Motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE SIR SATYENDRA NATH ROY : Sir, I move :—

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

The Motion was adopted.

#### ALIGARH MUSLIM UNIVERSITY (AMENDMENT) BILL.

THE HONOURABLE SIR JOGENDRA SINGH (Education, Health and Lands Member) : Sir, I move :—

“ That the Bill further to amend the Aligarh Muslim University Act, 1920, as passed by the Legislative Assembly, be taken into consideration.”

The Motion was adopted.

Clause 2 was added to the Bill.

Clauses 3 and 4 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE SIR JOGENDRA SINGH : Sir, I move :—

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

The Motion was adopted.

#### CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

THE HONOURABLE MR. K. V. K. SUNDARAM (Nominated Official) : Sir, I move :—

“ That the Bill further to amend the Code of Civil Procedure, 1908, as passed by the Legislative Assembly, be taken into consideration.”

I do not think I need say much on this very short and formal Bill. Although the amendments appear somewhat numerous on paper, the object of the amendments is very simple and the scope of the Bill really comes to this, that for the expression “ public officer ” which is used in several places in section 60 of the Code and rule 48 of Order XXI we are going to substitute “ servant of the Crown ”. The reasons for the amendments are fully explained in the Statement of Objects and Reasons.

Sir, I move.

The Motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. K. V. K. SUNDARAM : Sir, I move :—

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

The Motion was adopted.

#### INDIAN PENAL CODE (AMENDMENT) BILL.

THE HONOURABLE MR. C. E. JONES (Finance Secretary) : Sir, I move :—

“ That the Bill further to amend the Indian Penal Code, and to amend the Currency Ordinance, 1940, as passed by the Legislative Assembly, be taken into consideration.”

The object of this Bill, Sir, has been explained in the Statement of Objects and Reasons. All Honourable Members are aware that the counterfeiting of currency-notes and bank-notes is a criminal offence, but there is no provision of law in existence to prohibit the reproduction of currency-notes or bank-notes for innocent purposes, such as advertisement, where there is no intention on the part of those who reproduce the notes to practise deception. A practice has grown considerably of late of taking photo-prints of currency and bank-notes for use on the stage or for use by film artists in the screening of films, or for purposes of pure advertisement. While the latter, that is those for pure advertisement, are generally of the cruder variety which would not deceive any person of ordinary intelligence, the former are actual photographic prints of genuine notes which might easily pass muster even among the more educated classes. It is a fact that a considerable number of such bogus notes have actually passed into circulation and been accepted by people, thereby putting them to loss which they could ill-afford. Quite a number have in fact been presented at the Currency Offices of the Reserve Bank of India, and one has actually been encashed and the Bank employee who accepted the imitation had to make good the value of the note out of his own pocket. Although these reproductions or



imitations of currency-notes or bank-notes were originally produced for purely innocent purposes, persons have been arrested carrying on their person quite a quantity of them obviously for the purpose of passing them into circulation as genuine notes. With the law as it stands this danger cannot be checked at the source because the reproduction can be proved to have been for purely innocent purposes. It is anomalous that in this matter of photographing currency-notes the Indian law is much more lax than the law of the United Kingdom where the standard of education is very much higher. The result of this Bill will be to more or less assimilate the law in this country to the law in the United Kingdom in this respect.

The Bill is designed primarily for the protection of the poor, the ignorant and the illiterate, but there is a wider aspect so far as the working of the currency system of the country is concerned. It must be clear to Honourable Members that every instance of the circulation of a spurious note must mean discredit to some extent of the genuine article in the eyes especially of the more ignorant section of the public. This provides good reason for stopping the loophole which the present Bill has been designed to rectify. I need only mention that all Provincial Governments have been consulted on this measure and they have agreed in expressing themselves in favour of the passage of this legislation.

Sir, I move.

**THE HONOURABLE MR. HOSSAIN IMAM** (Bihar and Orissa : Muhammadan) : On a point of information, Sir. I do not wish to speak on this but I want the Honourable Member to inform us whether sub-clause (3) of clause 2 presumes that merely because a person's name is printed he shall be regarded as guilty? Now that is rather a tall order. I think the British jurisprudence does not provide that any man should be presumed to be guilty without proof of his guilt being forthcoming. Here, we find, Sir, that he will be presumed to be guilty unless the contrary is proved. I should like the Honourable Member to explain how he reconciles it with the British jurisprudence.

**THE HONOURABLE MR. C. E. JONES** : It seems a natural presumption, Sir, that when a note of the kind we are considering bears a name (this would not apply to a photographic print of a currency-note, but only to an imitation currency-note made for purposes of advertisement, of the type of which I have got copies here, bearing the names of certain cinematograph firms) then that name indicates who is responsible for the production of the note. Moreover, this is not a mandatory provision; this is merely a permissive provision which entitles the Court, if the circumstances of the case seem to justify it, to draw that presumption in a case where the imitation in question bears the name of a definite person in whose interests that note purports to have been issued.

**THE HONOURABLE PANDIT HIRDAY NATH KUNZRU** (United Provinces Northern : Non-Muhammadan) : But how can Government make sure in these cases that the name that appears on the note is really the name of the person who caused it to be printed? It is quite possible for a man who has a grudge against another person to get a note printed bearing his enemy's name. Yet in such a case Government will presume that the person whose name appears on the photo-print of the bank-note is the person who is guilty. It does not seem to me to be a sound position and I think that the objection taken by my Honourable friend Mr. Hossain Imam has a great deal of substance in it. I think the matter requires further consideration at the hands of Government.

**THE HONOURABLE MR. K. V. K. SUNDARAM** (Nominated Official) : It is not the Government which makes this presumption. It is for the Court, when the name of a person appears on a document in respect of which he is charged to make this presumption. Moreover sub-clause (3) of clause 2 says "it may be presumed"; it does not say "it shall be presumed". So that it is really for the Court alone, on all the evidence which may be submitted before it, to draw the presumption and decide whether the accused is guilty of an offence under sub-section (1). I do not think therefore there is much danger of justice being miscarried.

**THE HONOURABLE MR. HOSSAIN IMAM** : Under the ordinary jurisprudence the Court holds a man not guilty unless the guilt is proved to the hilt. Here under sub-clause (3) the Court will presume that the man is guilty.

**THE HONOURABLE MR. C. E. JONES** : It is a permissive measure; it is not a mandatory provision at all.

**THE HONOURABLE MR. V. V. KALIKAR :** What we want, Sir, is that the Court shall come to the conclusion after taking evidence that the man is really guilty.

**THE HONOURABLE PANDIT HIRDAY NATH KUNZRU :** I do not think, Sir, that it comes to the same thing. The Honourable Mr. Sundaram has said that the word used was "may" and not "shall". I do not know whether in practice that will cause any difference at all. In the second place it is quite possible, Sir, in times of disturbance that *agents provocateur* may get such bank-notes printed which bear the names of the persons whom they wish to implicate in the crime of forging a bank-note. It is, I think, a serious matter, therefore, and the Government should withdraw this Bill and consider the matter further more carefully before coming forward again with their proposal.

**THE HONOURABLE MR. HOSSAIN IMAM :** I should like to endorse the remarks of the Honourable Pandit Kunzru. It is a better suggestion that the Bill should be withdrawn for the moment and that Government should reconsider it and bring in an amended clause.

**THE HONOURABLE MR. C. E. JONES :** Government are not prepared to withdraw this Bill because the provision seems to the Government to be equitable and fair and there is no likelihood of any miscarriage of justice at all.

\* **THE HONOURABLE SIR A. P. PATRO (Nominated Non-Official) :** I think the presumption will be against the person who has got the counterfeit note in his possession. Take the case of property which is said to be stolen property in the possession of a person. What is the presumption the law draws from that? Or take the case of counterfeit coins in the possession of a person. What is the presumption that the law draws? The presumption is against the person who is in possession. In the case of possessing counterfeit coins what is it that the law courts do? The Courts presume that he is the maker of the coins unless the accused is able to prove some other source wherein they were manufactured or to prove that it was stolen property. These are the cases and instances wherein the Courts presume the offence unless it is proved otherwise. I therefore think that there is nothing very seriously wrong in the clause that has been added. Moreover, the Court will be perfectly justified under this section not to draw any presumption. The only thing is that discretion is left to the Court, namely, that the Court may under certain circumstances draw the presumption. It is not obligatory, it is not mandatory on the Court to draw a presumption. Therefore, Sir, I do not think there is any fear of a miscarriage of justice.

**THE HONOURABLE THE PRESIDENT :** Motion moved :—

"That the Bill further to amend the Indian Penal Code, and to amend the Currency Ordinance, 1940, as passed by the Legislative Assembly, be taken into consideration."

Question put and Motion adopted.

**THE HONOURABLE THE PRESIDENT :** Clause 2.

**THE HONOURABLE MR. HOSSAIN IMAM :** Mr. President, I wish to speak on clause 2, sub-section (3) of the proposed new section 489E. The Honourable Mr. Sundaram pointed out that this is only a permissive clause and not a mandatory one. But our contention is this. Everything being equal, what is the necessity of having this presumption? If there is a contributory proof, then there is no need for having this provision regarding presumption. It is only if the contributory evidence is not sufficient that you want to bring in presumption. Presumption does not come in unless you are forced to have recourse to it in order to secure a conviction. The fact of the matter is that a situation may arise in which a person's name may appear on the note but he is neither in possession of it nor has any knowledge of it. It may have been done by his enemy. For instance, suppose the note is sent to his address through a post office. A man comes forward and gives information to the police that such and such a note is going to the printer whose name is on the note itself. The police intercept the parcel, open it, and find that the parcel is addressed to the man whose name appears on the note. Here you have a contributory factor which you will use as circumstantial evidence to prove the man's guilt. Now, all this can be concocted. Our advice to the Government is that they should wait and should not be in a hurry. There is an English proverb : "Marry in haste, and repent at leisure". It is going to be something of that sort. You

want to have a law to deal with your difficulty. We are in perfect agreement with you. We wish that you should have a law of the nature you want. But, at the same time, as representatives of the people, we cannot in any way jeopardise the liberty and the well-being of the people by giving to the executive or even to the criminal Courts powers which can be misused. My argument is that this is the thin end of the wedge. You are proposing to give Courts power which may be misused unless you have some proviso in the Bill on the lines referred to by the Honourable Mr. Sundaram, namely, that other contributory factors being there to prove the guilt, this may be used only as corroborative evidence. That proposal we can accede to. But a general formula that guilt may be presumed is against all ethics of English jurisprudence as we have understood it for all these 150 years.

Sir, I oppose sub-section (3) of the proposed new section 489E.

**THE HONOURABLE SIR DAVID DEVADOSS (Nominated Non-Official):** Sir, I had no intention of intervening in this debate, but it appears to me that much is made of the fact that the words used are "may presume". No doubt in some cases the word "may" can be taken to mean "shall". But in this case it is only "may". The man has to explain how he came by the note which is found in his possession and how his name appeared on it. Suppose a man has planted some stolen property in my house and the police come and take possession of the stolen property. Will they not ask me to explain how I came to be in possession of it? I shall have to explain that somebody—an enemy we will say, my Honourable friend Mr. Hossain Imam—planted it; he came to me the previous day and planted the property in my house. Some explanation on these lines will have to be given to the police. Therefore, I do not think this affects the substance of the case. It is not an easy thing to forge a pro-note. And then, when a man's name appears on it, some explanation has to be given. There are no doubt many forgeries, and it may be a forgery. Nobody can be protected against false evidence. But you must take it that judges and magistrates are reasonable persons. They have common-sense. When they consider all the circumstances, they will come to the correct conclusion.

**THE HONOURABLE THE PRESIDENT:** Then there is also the protection by way of appeal.

**THE HONOURABLE SIR DAVID DEVADOSS:** That is a secondary matter. No doubt there is the appellate Court, but I do not want to go so far. You must leave some discretion to the magistrates and judges. You cannot go on the assumption that no magistrate is honest and no magistrate is free from bias and no magistrate is independent. Simply because the Government institutes a prosecution, it cannot be said that the magistrate or judge should necessarily convict the accused. That is not a very good argument. I do not think there is any substance in that argument.

\* **THE HONOURABLE MR. V. V. KALIKAR (Central Provinces: General):** Sir, I am very glad that an ex-judge of the Madras High Court has admitted that in certain Acts "may presume" has the meaning of "shall presume". The instance that he has cited about the planting of stolen property does not bear any analogy with the present case. There, he has to explain to the police-officer how he came into possession of the property. Sub-section (3) here says that the Court may presume, not the executive officer. There is a lot of difference between the action taken by an executive officer and the presumption made by a Court against any person. My Honourable friend said that in cases of disturbances it is just possible that an enemy may plant a note on somebody and the Court may presume guilt and throw the burden on the person to prove that he has not printed it. This is against the elementary principle of British jurisprudence—that a man should be found guilty where his guilt is not yet proved. The elementary principle of criminal law in British jurisprudence is that a man should always be deemed innocent unless his guilt is proved to the hilt.

**THE HONOURABLE SIR A. P. PATRO:** Special laws make an exception.

**THE HONOURABLE MR. V. V. KALIKAR:** Unless there is an emergency, in which case an emergent provision may be brought before the Legislature, under no ordinary law can the Court presume a man to be guilty. I therefore submit,

[Mr. V. V. Kalikar.]

Sir, that the remarks made by my Honourable friend Sir David Devadoss do not at all apply to the present case.

I submit that the Motion should have been made by the Legislative Department and not by the Finance Department. Moreover, the Legislative Department ought to take into consideration the suggestions made by this part of the House. I again request them to withdraw this Motion, to reconsider the position in the light of the suggestions made, and, to avoid any further trouble, to bring a new Motion according to the suggestions made by this side of the House.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (United Provinces Northern : Non-Muhammadan) : Mr. President, I should like to add a word to what has fallen from my Honourable friends Mr. Hossain Imam and Mr. Kalikar. Much has been made of the fact that if stolen property is found in a man's house, the presumption that he stole the property would arise against him. But the present case is not of the kind imagined by my Honourable friends Sir David Devadoss and Sir A. P. Patro. A man may not be found in possession of a note and yet be held responsible for it merely because his name appears on it. There is, therefore, a great difference between the cases mentioned by Sir David Devadoss and others and the present case. I think, therefore, that there is every reason why Government should take time to think over the matter and bring in a more satisfactory proposal at a later date.

THE HONOURABLE MR. HOSSAIN IMAM : May I just ask one question of the Honourable Sir David Devadoss ? Is there any Statute providing for a presumption that if property is found in any one's house, he should be presumed to be guilty ?

THE HONOURABLE SIR DAVID DEVADOSS : Not in the case of property. But there are Acts which say the presumption shall be against the accused.

THE HONOURABLE MR. HOSSAIN IMAM : He gave instances of stolen property. I wanted the information as an addition to my own knowledge.

THE HONOURABLE SIR DAVID DEVADOSS : Because he is in possession.

THE HONOURABLE THE PRESIDENT : As there has been so much heated discussion, I shall put the clauses separately.

The Question is :—

“ That clause 2 stand part of the Bill.”

The Council divided :—

AYES—24.

Charanjit Singh, Honourable Raja.  
Conran-Smith, Honourable Mr. E.  
Das, Honourable Rai Bahadur Satyendra  
Kumar.  
Devadoss, Honourable Sir David.  
Ghosal, Honourable Sir Jomsa.  
Hartley, General the Honourable Sir Alan.  
Hissamuddin Bahadur, Honourable Lt.-Col.  
Sir.  
Holdsworth, Honourable Mr. B. G.  
Jogendra Singh, Honourable Sir.  
Jones, Honourable Mr. C. E.  
Khurshid Ali Khan, Honourable Nawabzada.  
Mahomed Usman, Honourable Sir.

Menon, Honourable Sir Ramunni.  
Muhammad Hussain, Honourable Khan Bahadur Mian Ali Baksh.  
Mukherjee, Honourable Sir Satya Charan.  
Nihal Singh, Honourable Sardar.  
Ogilvie, Honourable Mr. C. M. G.  
Parker, Honourable Mr. R. H.  
Patro, Honourable Sir A. P.  
Pillai, Honourable Mr. N. R.  
Roy, Honourable Sir Satyendra Nath.  
Sobha Singh, Honourable Sardar Bahadur.  
Sundaram, Honourable Mr. K. V. K.  
Srivastava, Honourable Sir Jwala Prasad.

NOES.—9.

Ali Asgar Khan, Honourable Maulvi.  
Dalal, Honourable Mr. M. N.  
Das, Honourable Mr. N. K.  
Hossain Imam, Honourable Mr.  
Kalikar, Honourable Mr. V. V.  
Kunzru, Honourable Pandit Hirady Nath.

Muhammad Hussain, Honourable Haji Syed.  
Padshah Sahib Bahadur, Honourable Saiyed  
Mohamed.  
Ray Chaudhury, Honourable Mr. Kumarsan-  
kar.

The Motion was adopted.

Clause 2 was added to the Bill.

Clause 3 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. C. E. JONES : Sir, I move :—

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

The Motion was adopted.

## COFFEE MARKET EXPANSION (AMENDMENT) BILL.

**THE HONOURABLE MR. N. R. PILLAI** (Commerce Secretary) : Sir, I move :—  
 “That the Bill to amend the Coffee Market Expansion Act, 1942, as passed by the Legislative Assembly, be taken into consideration.”

Sir, this Bill, though it is of some length and includes as many as 18 clauses, is in reality a very simple Bill, its main purpose, which is secured by clause 8, being to give to the Coffee Board discretion, with the sanction of the Central Government, to refrain from allotting internal sale quotas to registered estates in any year. Under the Act, as it stands at present, every estate is entitled to receive an internal sale quota against which it is open to it to dispose of a certain portion of its crop in the internal market in whatever manner it chooses. The surplus crop is delivered into a central pool from which export sales are made by the Board and partial releases are also made for consumption in the internal market. Thus, while export transactions are strictly regulated, there is a singular lack of a co-ordinated and orderly marketing programme for the internal market with the result that there has been a marked instability in prices, operating to the disadvantage of both producer and consumer. To remedy this situation, it is proposed to give liberty to the Coffee Board to assume responsibility for handling coffee intended for the internal market and on those occasions to refrain from allotting the normal quotas. This is the purpose of clause 8. At the same time, if the Board is to be empowered to take over the entire crop of an estate, it is only fair and reasonable that it should be enabled to make immediate payment for the crop so taken over. Provision for this is made in clause 12. Another clause which calls for mention is clause 5, which by the substitution of an amended section for section 16, gives power to Government to fix wholesale and retail prices. To this provision Government attach the greatest importance as being conceived in the interests of consumers and Government will not hesitate in case of necessity—and the trend of coffee prices has been disquieting—to take swift action to check any advance in price. The other provisions of the Bill involve only consequential amendments or minor amendments of substance and call for no comments.

Sir, I move.

The Motion was adopted.

Clauses 2 to 4 were added to the Bill.

**THE HONOURABLE THE PRESIDENT** : Clause 5.

**THE HONOURABLE MR. HOSSAIN IMAM** (Bihar and Orissa : Muhammadan) :  
 May I ask a question, Sir, in respect of clause 5 ? The Honourable the Mover has told us what is the utility of this clause. But I should like to have an assurance from him that the power vested by this clause in the Government will be utilised—that is, the control of the internal price.

**THE HONOURABLE MR. N. R. PILLAI** : If conditions requiring an exercise of this power should arise, the power will be exercised.

**THE HONOURABLE SIR A. P. PATRO** (Nominated Non-Official) : May I know, Sir, what power is now exercised by the Government over the prices ? Clause 5 deals with the control of wholesale and retail price.

**THE HONOURABLE MR. N. R. PILLAI** : I am sorry, Sir, that I am not in a position to give details of the various regulations which have been introduced.

Clauses 5 to 18 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

**THE HONOURABLE MR. N. R. PILLAI** : Sir, I move :—

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

The Motion was adopted.

## DELHI MUSLIM WAKFS BILL.

**THE HONOURABLE MR. HOSSAIN IMAM** (Bihar and Orissa : Muhammadan) :  
 Mr. President, I rise to move :—

“That the Bill to provide for the better administration of Muslim Wakfs in the Province of Delhi, as passed by the Legislative Assembly, be taken into consideration.”

Sir, this is a long Bill having in all about 69 clauses. Considering that it is a non-official Bill it had a swift passage in the other House. The mover, Maulvi Abdul Ghani, introduced this Bill in 1941, Budget session. It has got through the Legislature in two years. It is rather a record for a non-official Bill, and especially a Bill

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so contentious and so omnibus as this one. We are indebted for the whole-hearted support which we received from all the people concerned with this Bill, the Home Department, the Legislative Department; and the Honourable the ex-Leader of the House and the present Leader who were members of the Joint Select Committee of the two Houses. The necessity of bringing forward a measure of this nature had been long felt. When we were considering the Dargah Khawaja Sahib Bill in 1936 an appeal was made by the Imam Sahib of the Juma Masjid asking the legislators to bring forward a measure for the better control of the Muslim endowments in Delhi. We, being members of the Second Chamber, did not as usual feel up to the task of bringing forward new measures then and there as we were requested to do. But in March, 1939 our late colleague Kunwar Haji Ismail Ali Khan brought forward a Bill for the better control of the Juma Masjid, the Fatehpuri Masjid and the Kalan Masjid. That Bill, Sir, had to be dropped. It died because of the fact that the Honourable Member was translated to the other House; and so I took up the Bill which he had introduced. That Bill was referred to a Joint Select Committee of the two Houses. But I did not proceed with this measure as in the meantime a more comprehensive and in many respects a better Bill was introduced in the Legislative Assembly. This Bill which represents the greatest measure of agreement between the public and the legislators will serve as a model legislation. May I also express the hope that our Hindu friends would also bring forward measures for the better control of their own endowments, because in this respect we should try to help each other and bring forward beneficial measures as far as we can.

Sir, I move.

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR (Madras : Muhammadan) : Sir, I rise to support the Bill. To the appreciation which my Honourable friend Mr. Hossain Imam has expressed of the co-operation which this Bill has received from all the different parties which had anything to do with the formulating of it, the Government, non-Muslim friends and others, I would add the appreciation of the immense help which we received from the Honourable the Law Member who was the Chairman of the Joint Select Committee. Again, Sir, I would also take the occasion to offer our heartiest congratulations to Maulvi Abdul Ghani Sahib who has taken the trouble of formulating this very wholesome and salutary measure.

I don't think I need say much in recommending this Bill for the acceptance of the House. I would only content myself with expressing this fact that this Bill in the Select Committee and in its passage in the Legislative Assembly has undergone very many important modifications which were necessitated in order to make this measure more simple and efficient and the result of all this labour has been that the Bill as it has emerged from the Legislative Assembly is really a very good measure which is calculated to tend to the better management and control of the Muslim wakfs in Delhi. I would just say only one thing about one feature of the Bill as it was originally introduced which made certain actions of the mutawallis offences. The whole Chapter about such offences has been removed by the Select Committee and instead of it all those actions which were made offences under that Chapter have been treated as being such actions as would make the mutawallis liable for dismissal and even in the matter of dismissal, Sir, it has been provided that the dismissal should not be made by the Majlis straightaway; that the Majlis should apply to the District Court for having the mutawallis dismissed. I believe, Sir, that on the whole this is a very salutary measure which while providing for an efficient and better management of the endowments in Delhi also provides for all remedies for the mutawallis who may feel grieved by any actions that might be taken against them by the Majlis.

THE HONOURABLE THE PRESIDENT : Motion moved :—

"That the Bill to provide for the better administration of Muslim Wakfs in the Province of Delhi, as passed by the Legislative Assembly, be taken into consideration."

Question put and Motion adopted.

Clause 2 was added to the Bill.

Clauses 3 to 24 were added to the Bill.

Clauses 25 to 37 were added to the Bill.

THE HONOURABLE THE PRESIDENT : Clause 37A.

**THE HONOURABLE MR. E. CONRAN-SMITH (Home Secretary) :** Sir, I move :—

'That in sub-clause (4) of clause 37A of the Bill for the words "The order" the words "Any order" be substituted'.

Sir, the amendment is purely a drafting one and is self-explanatory.

The Motion was adopted.

Clause 37A, as amended, was added to the Bill.

**THE HONOURABLE THE PRESIDENT :** New clause 37B.

**THE HONOURABLE MR. HOSSAIN IMAM :** Sir, I beg to move :—

"That after clause 37A of the Bill, the following clause be inserted—"

**THE HONOURABLE THE PRESIDENT :** Is this the amendment of which you gave notice yesterday? If so, I must mention that under Standing Order 45 the notice given by you is not a proper notice. You ought to have given me two clear days' notice, but I will ask the Government Member and other Honourable Members and if they have any objection I will not allow it.

**THE HONOURABLE MR. E. CONRAN-SMITH :** Government have no objection.

**THE HONOURABLE MR. HOSSAIN IMAM :** Sir, I beg to move :—

'That after clause 37A of the Bill, the following clause be inserted :—

"37B. *Notice of sales to be given to the Majlis.*—(1) Before any wakf property is notified for sale in execution of a decree, or for the recovery of any revenue, cess, rate or tax 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.

(2) If the notice required by sub-section (1) to be issued to the Majlis in respect of any sale is not issued the sale shall be voidable at the option of the Majlis."

Sir, this is only a necessary amendment which is being introduced in order to clarify the meaning which was present in our minds but which had not unfortunately been clearly stated. If we realise, Sir, the great stress under which the Draftsman had to remodel the Bill it is no wonder that such a small thing was left out. We are very much indebted to our Draftsman for his great help and hard work which he put in in redrafting the Bill when it was before the Joint Select Committee.

Sir, I move.

The Motion was adopted.

Clause 37B was added to the Bill.

Clause 38 was added to the Bill.

Clause 39 was added to the Bill.

**THE HONOURABLE MR. E. CONRAN-SMITH (Home Secretary) :** Sir, I move :—

'That in clause 39 of the Bill the words "or under the Land Acquisition Act, 1894," be omitted.'

The clause as it previously stood stated that no arrangement, compromise or adjustment of any suit or proceeding in respect of any wakf or property belonging to a wakf shall be recorded under the provisions of rule 3 of Order XXIII of the Code of Civil Procedure, without the approval of the Majlis. The addition of the words "or under the Land Acquisition Act, 1894," is unnecessary because no provision is made under that Act for recording arrangements, compromises or adjustments.

Sir, I move.

The Motion was adopted.

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

Clauses 40 to 54 were added to the Bill.

Clauses 55 to 69 were added to the Bill.

**THE HONOURABLE MR. E. CONRAN-SMITH (Home Secretary) :** Sir, I move :—

"That the clauses of the Bill be re-numbered and re-lettered as necessitated by the amendments made in the Bill during its passage by the Legislative Assembly and the Council of State and that the changes consequential thereon in all references throughout the Bill be made."

This amendment is self-explanatory.

Sir, I move.

The Motion was adopted.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

**THE HONOURABLE MR. HOSSAIN IMAM :** Sir, I rise to move :—

"That the Bill, as passed by the Legislative Assembly and as amended by the Council of State, be passed."

Sir, at the end of the passage of this Bill I should like to thank the Legislative Department especially for the great help which they have rendered in the passage of

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this Bill ; and I also hope that the Home Department will continue to co-operate with us and give this Bill as early effect as possible so that we may see the Majlis functioning when we come back for the next session.

Sir, I move.

The Motion was adopted.

#### STATEMENT OF BUSINESS.

THE HONOURABLE THE PRESIDENT : Has the Honourable the Leader of the House to make any statement as regards the business of the House ?

THE HONOURABLE SIR MAHOMED USMAN (Leader of the House) : I have no statement to make, Sir. But if we have to assemble earlier than the 24th, we shall have to inform the Honourable Members.

THE HONOURABLE THE PRESIDENT : The Council will now adjourn to a date of which notice will be given by a circular.