

obvious interpretation of article 286(3) of the Constitution. I submit that the objection raised by my hon. friend is not at all tenable.

**Shri Tyagi:** I am very grateful to my hon friend Mr. Pocker Saheb. After all this long time he has come to my rescue and has helped me by supporting the Bill. I am grateful to him more especially for the argument he has put forth. I do not think I need make any lengthy speech again on this point because it will be more or less a repetition of what he has already said.

For the benefit of the House, I might again read. It is not as if these words only occurred to the Government and that we introduced these few words into the Bill. Sufficient investigation has been made with regard to the legal position and the interpretation which could be put to the article under dispute. We consulted the Attorney-General and had his opinion too. Shall I read it again although it will be a repetition?

**Mr. Chairman:** The hon. Minister read it out to the House at a previous stage. What is the idea of reading it out again?

**Shri Tyagi:** That was of the Law Ministry. This is the opinion of the Attorney-General. This goes absolutely in support of what I had said. With regard to what my hon. friend, Mr. Kalappan said, I again want to emphasize that it is not possible sitting here in the Centre to act in a manner so as to disturb the fiscal position of the State Governments. Since the time the sales tax was introduced in the country, the State Governments have begun to base their revenues more and more on this avenue. All their programmes of development are based mostly on the incomes they received from the sales tax because that is the only one source of revenue which is flexible and from which they can draw whenever the need arises. For all the rest they have either to come to the Centre or that has been left to them. Now with the abolition of zamindari, land revenue will again be practically a sort of static source of revenue to them. It will not be so flexible and there will be no elasticity in that. This is the only tax from which they could just meet their needs, either by means of loans or by means of changes in the rates of the sales tax. So the sales tax from the point of view of administrative expenditure which the State Governments incur,

### Notaries Bill

is one of the most important sources of revenue to them and therefore, we cannot sitting here in the Centre do anything which disturbs their revenues. I wish to repeat again that it will only be by means of negotiations and consultations with the Finance Ministers of various States that we can arrive at some uniformity in the sales tax. Government stands for uniformity. I agree and confess that this Bill does not bring about that uniformity in sales tax as desired by the House and by the Government. But this will put us on the way to it. After this the State Ministers will meet together and as I said it is by mutual consent alone they might come to agreement whether at least on certain essential goods, there should be uniformity. Attempts will also be made to bring about uniformity of sales tax on other commodities.

I do not want to take more time of the House. I hope now the Bill will be passed.

**Shri B. Das:** May I suggest to hon. Mr. Tyagi that while inviting the Finance Ministers, he should invite the Chief Minister of each State, because it is they who shape the policy of the States and not the Finance Ministers. Otherwise, it will be like the Pakistan delegation going back and coming again.

**Mr. Chairman:** The question is:

“That the Bill, as amended, be passed.”

The motion was adopted.

12 NOON

### NOTARIES BILL.

**The Minister of Law and Minority Affairs (Shri Biswas):** I beg to move:

“That the Bill to regulate the profession of notaries, as reported by the Select Committee, be taken into consideration.”

Copies of the report of the Select Committee have been in the hands of Members for some time, and they will have seen what changes have been made in the Select Committee. As a result of these changes the Bill is now a great improvement upon what it was when it was first introduced. I need not refer in detail to all these changes.

[Shri Biswas]

They are all tabulated in the report itself, but the most important of them are those which they will find in clause 8 where the functions of notaries are set out. One important modification that was made was the deletion of a provision in that clause which had been necessitated by another clause which stood in the original Bill. The original Bill contemplated different sets of functions by different sets of notaries. Now under the Bill, as modified by the Select Committee, notaries will all be placed on the same footing and they will be competent to discharge any or all of the functions which a notary public usually performs. Therefore, there will be no further occasion for specifying in the order of appointment that a particular notary shall be entitled to discharge only particular functions. Anyone who is registered as a notary under the provisions of the Bill, as amended by the Select Committee, will be competent to perform all the functions which you find in clause 8. That is about the most important change that has been made in the Select Committee.

Another change which has been made is that Government will prescribe by the rules which will be framed under the Act the qualifications which one must possess before one becomes a notary. In the original Bill, there was no such provision for prescribing qualifications under the rules. All that was said was that the appointment will be made by the Central Government on such conditions as the Central Government may think fit. Now you will have an indication in the rules themselves of the qualifications which are required. That is an important change.

Then there are some minor changes. One, for instance, you will find in clause 13 where it is provided "No court shall take cognizance of any offence committed by a notary save upon complaint in writing made by some officer authorized in this behalf." The idea is to discourage all frivolous complaints. As regards those who are already functioning as notaries, it is provided that they will be required to get themselves enrolled under this Act at the end of two years. In the original Bill the period was one year. A suggestion was made that the period should be three years. The Select Committee as a compromise has accepted two years.

Some amendments came into my hands only this morning. I have examined them. None of them are important. The points raised in

these amendments were all considered either on the previous occasion when the Bill was before the House or in the Select Committee. I do not think, Sir, that I can accept those amendments.

**Mr. Chairman:** Motion moved:

"That the Bill to regulate the profession of notaries, as reported by the Select Committee, be taken into consideration."

**Shri Mulchand Dube (Farrukhabad Distt.—North):** On a point of information, I wish to say that I have seen the original Bill as also the new one as it has emerged from the Select Committee. I do not find anything in the Bill to show what the evidentiary value of Notarial Acts will be. That is one thing on which I want information from the hon. Minister.

The other thing is this. What effect will it have as regards documents which have been registered before the Registrar or Sub-Registrar. Suppose a document is taken to the Sub-Registrar and registered there and then it is again brought before a Notary Public. The question is whether he will again verify and if he verifies it, whether that document will be received in court without any further evidence about its genuineness or about its execution. What I want to know from the hon. Minister is, what the legal effect of the notarial act being performed on a particular document will be, and whether it will be received in evidence without any further proof, or whether the Notary Public will have to be called, or anything of that kind. I do not find any provision to that effect in the Bill as it is before the House. That is the information that I want from the hon. Minister.

**Mr. Chairman:** If the hon. Member wants to speak on the Bill, this is the proper time.

**Shri Mulchand Dube:** After I have received the information I will speak.

**Mr. Chairman:** There is no regular procedure for examination and cross-examination in the House. If he likes, the hon. Minister may reply when he speaks. I would request the hon. Member to go on with his speech if he wants to make one.

**Shri Mulchand Dube:** This is a point of information.

If the hon. Minister gives the information and if that is satisfactory, it is not necessary to make a speech and take any further time of the House.

**Shri Biswas:** I may at once say that the matter will have to be dealt with in accordance with the rules contained in the Evidence Act. Notarial acts may have to be presented before courts or other authorities both in this country and in foreign countries. Wherever they are presented, it is the rules of evidence obtaining in that country which will determine whether or not they will be admissible. So far as the Indian Evidence Act is concerned, I may refer my hon. friend—I am speaking from memory—to section 65 which deals with the question of secondary evidence relating to documents. Those provisions will apply. The ordinary way of proving any document or the content of a document is to produce the document. That is called primary evidence. Secondary evidence is allowed in certain cases. If an original document is not produced, something else is produced: a certified copy, etc. The admissibility of such a document will depend upon the conditions laid down for admitting secondary evidence. There are other sections also. Section 76 refers to public documents. So far as public documents are concerned, it is expressly provided in the Indian Evidence Act that certified copies may be issued by persons in whose custody those documents lie. Some conditions are also laid down. Such documents must be open to public inspection, etc. It is in respect of such documents that these officers are empowered to issue certified copies and these certified copies can be accepted as secondary evidence of those documents. That is expressly laid down as regards public documents. As regards private documents, section 65 will apply. I am quoting sections, subject to correction, from memory. That is the position. If these documents are taken to other countries, there also their admissibility will depend upon the rules of evidence which obtain there.

**Mr. Chairman:** May I just enquire from the hon. Minister, what section 76 of the Evidence Act has got to do here? There is no provision in this Bill so far as copies are concerned. No Notary Public is required to keep a copy of the documents which he verifies or authenticates, nor is he authorised to give copies of documents.

**Shri Biswas:** I imagine the question which was raised by my hon. friend

arose out of an amendment of which notice has been given. It is said that the functions of a Notary Public should be enlarged by including the right to prepare, verify, authenticate or certify copy of any instrument or document. It is in view of that that this question arises; that is what I imagine. As a matter of fact, in the functions which we have already included in clause 8, you will not find anything which ought to give rise to such a question.

**Mr. Chairman:** Does the hon. Member want to put any other question?

**Shri Mulchand Dube:** Yes, Sir.

**Mr. Chairman:** This is not a Question-hour.

**Shri Mulchand Dube:** So far as section 65 is concerned,.....

**Mr. Chairman:** I want to know from the hon. Member whether he is making a speech or he only wants to put a question.

**Shri Mulchand Dube:** I shall refer to the answer that has been given by the hon. Minister and if a speech is necessary, I shall speak.

**Mr. Chairman:** The House does not want the hon. Member to make a speech. The answer is given. If the hon. Member wants to put another question on the basis of the answer....

**Shri Mulchand Dube:** I want to put another question. In clause 8 of the Bill, the functions of the Notaries are stated as:

“(a) verify, authenticate, certify or attest the execution of any instrument.”

If the Notary Public merely verifies, authenticates or certifies an instrument, he is certainly not required to maintain a copy of it. Therefore, section 65 that has been referred to by the hon. Minister will not come into play at all. My submission is that there may be other functions in which he may be entitled to keep a copy and if he does keep a copy, it will be used as secondary evidence. But, if he merely verifies, authenticates or certifies or attests, what happens? What is the effect of this thing done by the Notary? That is what I want to know. The hon. Minister referred to section 65, which I think has no application; nor does section 76 to which the hon. Minister referred, seem to have any application to the present case.

**Shri A. K. Dutt** (Calcutta South-West): This Bill, as originally drafted, was sent to a Select Committee,

[Shri A. K. Dutt]

The Select Committee has suggested certain modifications in clause 2 with reference to the meaning of 'Instrument'. The Select Committee has made certain suggestions and modified some clauses. No doubt, they are improvements on the original draft of the Bill. But, I think they are not yet comprehensive. Notaries have got sometimes to attest documents which are known as Declarations.

A declaration entitles some third party to act upon it. I suggest the word "declared" should also be included in Clause 2 (b). I suggest that Clause 2 (b) should read:

" 'Instrument' includes every document by which any right or liability is, or purports to be, created, transferred, declared, modified, limited, extended, suspended, extinguished or recorded."

It may be argued that the words "created" and "recorded" mean declaration. But neither of those words gives third-party right to act upon the basis of such documents. Therefore, I suggest the word "declared" should also be included. I support the Bill with the said amendment.

**Shri C. C. Shah (Gohilwad-Sorath):** There appears to be a little misunderstanding about the functions of a Notary Public, particularly on the question which my hon. friend asked as to what will be the evidentiary value of the notarial act. Section 8 defines the functions of the Notary. Sub-clauses (b) and (c) of this section relate to acts which a Notary Public has to do under the Negotiable Instruments Act, and the Negotiable Instruments Act provides the results which will follow on the notarial act done under sub-clauses (b) and (c). Sub-clauses (d) and (f) relate to notarial acts done under the Mercantile Marine Act in regard to a ship's protest, boat's protest or protest relating to demurrage and other commercial matters, and preparing bottomry and respondentia bonds, charter parties and other mercantile documents, and have to be certified by Notaries Public and the results which follow on such certification are specified in those various Acts. And therefore, there is no point of evidentiary value of notarial acts. Certain acts require that they should be done by Notaries Public—presentation of promissory notes, hundis or bills of exchange when they are dishonoured or non-accepted; then,

they have got to be certified that they were presented and dishonoured, and thereupon follows a notarial certificate which is conclusive proof of the presentation and dishonour.

**Shri Mulchand Dubc:** What about sub-clause (a)?

**Shri C. C. Shah:** I will tell you about sub-clause (a) also.

As regards sub-clause (a), it says:

"verify, authenticate, certify or attest the execution of any instrument".

Now, there are certain documents which are required to be attested and executed in a particular manner, say a Will, for example, under the Indian Succession Act, is required to be executed and attested in a particular manner. But there are certain other documents which are required to be executed and attested by a higher degree of proof, so to say; for example, the execution of an application under the Indian Partnership Act for registration of a partnership firm. Now, the application to be made by the partners can be attested either by a Solicitor or a Notary Public and, when attested by a Notary Public, it is conclusive proof of the fact that the document is executed by the persons by whom it purports to be executed. Certain documents which are required to be attested in that manner are referred to in sub-clause (a).

Then, if you refer to sub-clause (g), it relates to the preparation, attestation and authentication of any instrument intended to take effect in any country or place outside India. Now, all documents which are ordinarily attested in India are not automatically effective in foreign countries unless they are attested in the manner provided by the laws of those countries, and a notarial certificate is a higher degree of proof of the attestation and execution of a document than a mere ordinary attestation of a lawyer. And laws of all countries—you will also find in the Indian Evidence Act and also laws of foreign countries—provide that where a particular document the execution of which can be called into question, is required to be proved, the notarial certificate is a proof of such execution. And that is the reason why all countries have the institution of Notaries Public.

And sub-clause (h): "translate, and verify the translation of, any document from one language into another".

It often happens, for example, that a document is required to be used in Switzerland or France, and a translation of that document is required in the French or Swiss language. Then, a translation certified by a Notary Public that it is a correct translation is accepted in foreign countries as a correct translation of the document. So, these are the various functions of a Notary Public, and the admission of an execution before a Sub-Registrar has nothing whatever to do with the functions of a Notary Public. A Notarial act, whether certified by a Notary or not, makes no difference to the requirements of the Indian Registration Act. That must be gone into according to those Acts. Therefore, as I was saying, the functions which a Notary Public performs are of a character entirely different from what are required under the Indian Evidence Act or the Indian Registration Act.

Then I will say something about the Bill in general, having explained what the functions of a Notary Public are. The Bill, as amended by the Select Committee, I agree with the hon. Minister, is a distinct improvement upon the original Bill. In particular, the provision by the Select Committee that the rules shall prescribe the qualifications for the appointment of a Notary Public, is a distinct improvement.

If we turn to Clause 15, sub-clause 2 (b), it requires that the rules shall provide:

“the certificates, testimonials or proofs as to character, integrity, ability and competence which any person applying for appointment as a notary may be required to furnish”.

This sub-clause gives us the two essential elements in the qualifications of a Notary Public, *viz.*, character and integrity, and ability and competence. And I hope that in prescribing the qualifications, the Government will see to it that only persons of character and experience are appointed on proper recommendation. I am speaking for Bombay with which I am acquainted

Before the Master of Faculties in England makes any appointment of a Notary Public, certificates and certain recommendations are insisted upon. The one invariable recommendation which the Master of Faculties requires is from the Bombay Incorporated Laws Society that the person who seeks the appointment is a fit and proper person

to be appointed from the point of view of experience as well as in regard to character. I would, therefore, request the Government that in providing for the certificates and testimonials under sub-clause (b) they should provide that the applicant should be recommended either by a District Judge or a High Court Judge or by recognised Associations like the Bar Council or the Bombay Incorporated Law Society. Their knowledge of the applicant would be proof of the ability and the integrity of the person applying.

I would also suggest that under sub-clause (a), a certain minimum experience should be provided in the rules. All legal practitioners, of course, can apply for being appointed as a Notary Public, but the practice is that a legal practitioner, say for example, of a standing of less than ten years is generally not permitted to apply for being appointed as a Notary Public, because it needs a certain experience for the proper discharge of the functions under Clause (8). He must be familiar with both the Mercantile law as well as the Negotiable Instruments Act, and as to the manner in which these documents are presented and noted.

One other factor which I should like to bring to the notice of Government is that these appointments need not be too many. I mean, it is not a profession intended for any source of income. It is intended that there should be the requisite number of persons in a particular area to discharge certain functions which can be discharged only by a limited class of people. And therefore the appointments should be as few as possible considering the requirements of any particular area. At present, as I said, the practice is to observe a sort of blanket ban by the Master of Faculties that no person shall be appointed until the ban is lifted by the Incorporated Law Society in the case of any applicant or any individual. That is done by the Society or the Bar Council after being satisfied that the number of Notaries in the particular area is not enough to satisfy the requirements of that area, and that any new or more appointments are required.

Clause 3 also provides for the appointment as notaries of any legal practitioners or other persons who possess such qualifications as may be prescribed. I do not know what class of other persons, the Government has in mind, for appointment as Notary Public. Ordinary, in order

[Shri C. C. Shah]

to discharge the functions of a Notary Public, it needs a certain legal training and a certain knowledge of mercantile law as well as negotiable instruments law. I was told that the provision for the appointment of other persons has been made with a view to the fact that certain high government officials may be appointed as notaries public in order to discharge certain functions which the government may require to be discharged, and for which they may not have to obtain ordinarily the service of an outside Notary Public. To that extent, there is no objection in this provision. But such appointments of other persons, namely persons other than legal practitioners, should be very very rare indeed.

The present Bill provides for the appointment for a period of three years only from the date on which the certificate is issued to him, and the certificate can be renewed at the end of the period. At present, the practice of the Master of Faculties is that the appointment once made is an appointment for life, unless the person is found to be guilty of any misconduct, in which case of course, his name can be removed from the list of notaries, just as in the case of any legal practitioner. I have no objection to the appointment being made for a period of three years, and its being renewable after the end of that period, but I hope the renewal of the appointment will be as a matter of course, except in cases where there has been any misconduct.

The other and more important clause is clause 14 which provides for reciprocal arrangements in connection with the recognition of notarial acts done by foreign countries. The Clause provides that the countries which recognise our Indian notarial acts will have a reciprocal recognition by our country also. But what is more important is that not only should we recognise the notaries of foreign countries, but that our notaries should be recognised in foreign countries. That will require some effort on the part of the Government, to move the respective foreign countries to recognise the notarial acts or certificates issued by our Indian notaries as valid in those territories. The present position is that the Indian Notary Public is automatically recognised in all the Commonwealth countries, because his appointment is made by the Master of Faculties in England. But it may be that our Government may have to make some effort in obtaining the recognition of our Indian

notaries in foreign countries. In fact much of the importance of this Act will be lost unless the notarial acts done in India by Indian notaries are recognised by foreign countries also.

Lastly I come to Clause 15, which gives the rule making powers to the Government. I would request that—and I suppose that it is the practice too—before the rules are made finally by the Government, the draft thereof will be circulated at least to the Bar Councils, Law Societies and the High Courts in order that important and relevant suggestions may be made, and nothing may be left out.

With these words, I support the Bill. I have given notice of a small amendment, on which I shall speak, when the time comes.

**Mr. Chairman:** May I know from the hon. Member who has spoken just now, as to how he thinks that there is any provision in this Bill whereby the appointment of notaries is restricted only up to a certain number? Every person having the required qualifications is entitled to become a notary. I think that that is the provision in the Act.

**Shri C. C. Shah:** He may be appointed, but he is not entitled to be appointed as of right.

Clause 3 reads:

“The Central Government, for the whole or any part of India, and any State Government, for the whole or any part of the State, may appoint as notaries...”

So, that means that a person need not necessarily be appointed as a notary only because he holds a certificate. It is not like every person who has a Law Degree entitled to practise in a Court of Law. It is for the Central Government and the State Government to decide what is the number of notaries that is required to discharge those functions in a particular area and on the basis of these requirements, they may make the appointments.

**Shri N. R. M. Swamy (Wandiwash):** I want to say a few words on this Bill, as reported by the Select Committee. I find that this Bill is a distinct improvement on the original Bill. Yet, I have a few important observations to make.

In Clause-16 it is said that in section 3 of the Negotiable Instruments Act, 1881, the definition of ‘notary public’

shall be omitted. In Clause 2 (d) it is said that a notary means a person appointed as such under this Act; and there is the following proviso to that sub-clause:

"Provided that for a period of two years from the commencement of this Act, it shall include also a person, who, before such commencement, was appointed a notary public either under the Negotiable Instruments Act, 1881 (XXVI of 1881), or by the Master of Faculties in England, and is immediately before such commencement, in practice in any part of India."

The Select Committee perhaps thought that after the coming into force of this present Bill, the definition of notary under Section 3 of the Negotiable Instruments Act of 1881 was superfluous and so they have sought to delete it, as they thought that such notaries will be functioning under the present Act. So, until the expiry of these two years from the commencement of this Act, they must have existence under the old Act. If the basis for their appointment is now removed, by deletion of the definition in Section 3 of the Negotiable Instruments Act, then, where is the provision in law whereby they can have their existence? They must function and discharge their duties only under the Negotiable Instruments Act, under which they came into existence. The Notary Public has come into existence only in one or two States in India, Madras, and Bengal or Bombay, under the old Negotiable Instruments Act. If the definition in Section 3 of that Act is deleted, then the existing notaries will have to function only in accordance with clause 8 of the present Bill, whereas only if it is retained, they can perform the functions of a notary public under section 3 of that Act. As the *locus standi* of the existing notaries will be hanging in the air, if that definition clause is omitted, I insist that it should be retained.

**Shri Biswas:** The hon. Member may kindly see the proviso to Clause 2 (d). Under this Bill, it has only been provided that there will be new appointments under the Negotiable Instruments Act.

**Shri N. R. M. Swamy:** The proviso says that such notaries will continue to exist for a period of two years. I have no objection to that. But my point is that they should exist under the Negotiable Instruments Act, because if that is omitted, then where is the provision in law for their existence?

Then, originally in the proviso to clause 2 (d), the period was three years, now it has been reduced to two years by the Select Committee. I would suggest that the original period of three years may be retained.

**Shri Biswas:** The hon. Member may refer also to Clause 9 (2) in the Bill, where legal existence for two years has been given to notaries under the old Act.

**Shri N. R. M. Swamy:** Yes, the provision is there in Clause 9 and also in Clause 2 (d) Proviso. But that is exactly the reason why I want that Section 3 of the original Act should continue. When it is provided that the notaries under the old Act will continue to exist, you must also provide for the continuation of Section 3.

**Shri Biswas:** All that I can say is that the hon. Member is wholly mistaken.

**Shri N. R. M. Swamy:** My point is this. If Section 3 of the Negotiable Instruments Act is omitted, the Notaries Public appointed under that Act will have no legal sanction for their existence if this Bill comes into force.

Secondly, I wish to suggest that they should also continue for a period of three years like the Notaries appointed under this Bill, after which period they can renew their certificate along with the others.

That is all I wanted to say on this Bill.

**Shri Pocker Saheb (Malappuram):** I just want to say only a few words. This Bill, on the whole, seems to be very vague and I do not know whether the Government itself has got any clear notion as to what it purports to do under this Bill. What are the legal effects of appointing as Notaries Public certain persons possessing certain qualifications which are to be prescribed by rules to be framed by the Government hereafter? A very pertinent question was put to the hon. Law Minister by my hon. friend on the other side and I am afraid either the hon. Minister has not correctly appreciated the importance of that question or he has not given a satisfactory answer if he has understood it. He put the question as to what its legal effect is, as a matter of evidence in a court of law. The hon. Member wanted to know the distinction of the notarial act from registration. Of course, it has been answered by my hon. friend the previous speaker that the notarial act cannot

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take the place of registration. But the hon. Minister has not explained what the legal effect of the notarial act is as regards the evidentiary value of document or instrument attested or verified by the Notary Public or whether his attestation is conclusive evidence in a court of law, as to the correctness or authenticity or genuineness of the document which he attests or certifies. The hon. Minister has referred to sections 65 and 76 of the Evidence Act. I do not think that those sections—I made a reference to those sections also—in any way clarify the position. The question is whether this attestation or certification by the Notary Public is conclusive evidence just as a registration is before a court of law. There is nothing either in this Act or in any other statute that I am aware of, which lays down that the certification or attestation by the Notary Public is conclusive proof of the correctness or genuineness of the document attested by the Notary Public. This Bill does not lay down any such thing and, subject to correction, I do not think there is anything in the Evidence Act also—our Evidence Act—laid down to that effect, that it is conclusive proof. It is necessary that the Government should clarify what their intention is in bringing this Bill and what the legal effect of the certification or attestation by the Notary Public is.

One other matter on which I would like to say a word is this. As regards the qualification of persons to be appointed as Notaries Public—these persons are not public officers. They are persons who are enabled to exercise certain powers, that is all. And in conferring such powers on those persons, what are the qualifications required? Of course 'legal practitioners' are mentioned there; that is clear enough. Then it is said 'any other persons who may possess such qualifications as may be prescribed'. That is what is stated. No doubt, Government can be relied upon to prescribe rules defining the qualifications that may be required. But it is very necessary that some indication should have been given in the Bill in what directions the Government is intending or will have to prescribe as qualifications, whether it requires a law degree or any legal qualification or any other qualification which the Government has in view. A suggestion has been made that no one shall be given this power unless he possesses a certifi-

cate from a District Judge or a High Court Judge or is certified to be a fit and proper person for the purpose by the law association or such other body which may be competent. Some indication has to be given by the Government of what their intention is in bringing a measure of this sort giving some definiteness about the qualifications. It is very necessary that some indication should be given in this direction and I would also just mention that if they take these rule-making powers, those rules which they frame under this Act should be laid on the table of this House for the information of the Members of this House before they are given effect to.

**Shri Biswas:** The points which have been raised now had been dealt with by me at an earlier stage when I explained the provisions of the original Bill. Our idea is to do nothing which will in any way lower the standard now prevailing regarding Notaries Public. They are now enrolled by the Master of Faculties in England. It is as a result of the attainment of independence by India that this new Bill is proposed to be passed by the Indian Parliament. It does not look consistent with the dignity of free India that we should still have to derive authority for certain functionaries from a foreign country—from an alien country. India herself must now claim the right to select and appoint her own Notaries Public. That is the idea behind the Bill. But because we are now going to enroll Notaries Public, that does not mean that in status and rank our Notaries Public should occupy an inferior position, or that we shall frame our law in such a way that those who are enrolled under its provisions will not be accepted by foreign countries. Notaries Public will function not only within India but also outside and it is very important that our Notaries should command the greatest respect outside the borders of our country. Therefore, there need be no fear that the rules will be framed in such a way as to lead to a lowering of the standard which the Notaries Public have been expected to fulfil up till now.

If you look at the provisions the statutes which regulate the appointment of Notaries Public in the United Kingdom, you will see that there it is provided in very general terms that "The Master of Faculties, for the

time being, may make any general rule or rules requiring testimonials, certificates or proofs as to the character, integrity, ability and competence of any person who shall hereafter apply". Here also rules will have to be framed, but by the Central Government.

We have not got a Master of Faculties as in England who makes the rules. But the rules here should be so framed as to ensure that the persons, whether legal practitioners or others, must fulfil these basic qualifications of character, integrity, ability and competence. When we speak of competence we mean competence to discharge the duties laid down in the Act as being the functions of a notary. Now we should only select such men as may be depended upon, and as will be accepted in other countries as persons who may be depended upon, for the performance of these duties. The suggestion made by hon. Members in this regard will be borne in mind and the rules when framed may be circulated to Bar Associations and other associations to get the benefit of their views. There is no objection to that, and that will be done. We are very anxious that these rules should be framed in such a way as not to let in anybody who is not really qualified. In the original Bill all that was said was that the Central Government may appoint any person whom they may consider fit. We have in the Select Committee altered that and provided that rules must be prescribed in this behalf, so that the public may know what sort of persons will be eligible for appointment as notaries. It is not as if anybody applying, if he possesses the minimum qualifications, must be appointed. A certain amount of discrimination has got to be exercised, and the Central Government is mentioned as the authority which will exercise such discretion. It may be that the Central Government may hereafter have to appoint someone, say, the Chief Justice of the Supreme Court, and make him the authority who will finally pass these applicants. There may be a preliminary screening and after that the names will be placed before the Chief Justice of the Supreme Court, and the final orders will be passed upon his recommendation. These are matters of detail, but I can give this assurance that nothing will be done which will in any way diminish the standard of attainments now insisted on in the case of a Notary Public.

The question has been raised as to the evidentiary value of notarial acts. Those things are not provided for in this Act dealing with the appointment of notaries. That is a different matter. This measure has nothing to do with the Registration Act or with the Evidence Act, as my hon. friend over there has very lucidly explained. Nor do you expect that these things which really pertain to other enactments should find a place in this. As regards the question whether a particular document will be accepted as evidence or not, so far as this country is concerned it may be regulated by any law which we have here on the subject. We have the Indian Evidence Act, and you will find therein express provisions referring to documents authenticated by a Notary Public with his signature and his seal. If I had the Evidence Act here, I could have hunted up these sections and placed them before the House, wherein such express reference is made to a Notary Public and to authentication of documents by Notaries Public. But so far as foreign countries are concerned, we cannot say that they shall be bound by or guided by the rules of evidence which prevail here. It will depend upon their own rules. But then there is an international convention regarding this which is respected wherever notarial acts are recognised. So far as the British Commonwealth is concerned, all the Commonwealth countries follow the same rules. I will read out for the benefit of my friends only one paragraph from a standard book on Notaries:—

"The functions of an English Notary are not defined by any statutory provision or rule."—

we here are attempting to do something—then;—

"but generally speaking a Notary Public may be described as an officer of the law appointed by the Court of Faculties.....",

—here he will be an officer of law appointed by the Central Government in accordance with the provisions of this Act—

"...whose duty it is to attest deeds, contracts, and other instruments that are to be used abroad and to give a certificate of the due execution of such documents, which certificate, if duly authenticated by his signature and official seal, is accepted in all countries where notarial acts are recognised

[Shri Biswas]

as proof of the acts done in his presence and attested by him."

Where a Notary authenticates a document, he says, "This is what has happened", and that is generally accepted in all countries as a true statement. But the question as to how that particular document has got to be proved is a different matter. If that document is produced and accepted in a court of law in a foreign country, then, of course, the authorities there may draw a presumption that the facts stated in the document are true. That is about all, and that is the general rule.

As regards the functions, as I have already said, you do not find an enumeration of these functions in any enactments in other countries where notaries are appointed, but then it is well-established, we all know, what are those functions. We have tried to incorporate some of these functions in clause 8 of this Bill. We had the Negotiable Instruments Act. The Negotiable Instruments Act provides for certain acts to be done: If a Bill of Exchange or a Promissory Note is not honoured, then somebody has got to present it to the party who is liable for payment. Somebody has got to do all these acts. They are done by notaries: such as Notarial protests for dishonour, notarial protests for better security, and so on. We have included these functions in clause 8 and said that these are some of the duties which a Notary Public is expected to discharge. Now, these protests are made, and when the matter comes to the court, the documents have to be admitted in evidence in accordance with rules of evidence. Merely because it is provided here that a Notary Public may attest or authenticate any document, it does not follow that the document becomes automatically admissible. Now a will is required to be attested by two witnesses; because a will is attested by two witnesses that does not dispense with the calling of those witnesses for the purpose of proving the will. So, those are matters which are to be determined by reference to the rules of evidence which are in force.

I believe I have covered all the points. I commend the Bill, as modified by the Select Committee, to the House.

Mr. Chairman: The question is:

"That the Bill to regulate the profession of notaries, as reported by the Select Committee, be taken into consideration."

The motion was adopted.

Mr. Chairman: As I find there are no amendments to clauses 2 to 7 I shall place them before the House together.

Shri Simhasan Singh (Gorakhpur Dist.—South): I have an amendment to clause 2, Sir.

Mr. Chairman: I understand that notice of some amendments has been given by some hon. Members today but the rule is well-known that if notice is given on the very day the Bill comes up for consideration it is not accepted. The rule of limitation in that regard is not waived unless the hon. Minister in charge agrees to accept the amendment. The hon. Minister has not agreed to accept the amendment and therefore all those amendments are not in order and they will not be considered by the House.

Clauses 2 to 7 were added to the Bill.

Clause 8.—(Functions of notaries).

Shri C. C. Shah: I beg to move:

In page 3, after line 2, insert—

"(hh) prepare, verify, authenticate or certify copy of any instrument or document".

My purpose in bringing this amendment is that sometimes it is not possible to produce original documents in foreign countries and a copy certified as true by a notary public may be accepted as a correct copy. This filed as true by a Notary Public may and I am speaking from experience. Therefore, in order to facilitate the work of the public as well as the notaries, I suggest the addition of this sub-clause.

Shri Biswas: I think that sub-clause (a) of clause 8 ought to be sufficient. It provides that a notary may perform, authenticate, certify or attest, the execution of an instrument. What is now suggested is that he should be empowered to perform these functions not merely in respect of an instrument, but in respect of a certified copy of an instrument. That is go-

ing a little too far. As a matter of fact, he authenticates, certifies or attests an instrument and if along with it you authorise him to authenticate a copy also, it may be that the certificate may have been prepared elsewhere. I do not think that that should be one of the functions of a notary. I have looked up books on notaries after this amendment was given notice of, and nowhere do I find such a provision. He executes an original document and there his function ends. In the circumstances, I do not accept the amendment.

**Shri C. C. Shah:** In view of the explanation offered by the hon. Minister, I do not press my amendment. But I consulted him only yesterday and he appeared to be agreeable.

**Shri Biswas:** But since then, I have looked up the books.

**Mr. Chairman:** The question is:

"That clause 8 stand part of the Bill."

The motion was adopted.

Clause 8 was added to the Bill.

Clauses 9 to 16 were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Enacting Formula were added to the Bill.

**Shri Biswas:** I beg to move:

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

**Shri B. Das (Jajpur-Keonjhar):** We have not heard Pandit Thakur Das Bhargava and Shri Ananthasayanam Ayyangar on this very vexatious Bill. It would be better to postpone the third reading to tomorrow.

**Mr. Chairman:** The question is:

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

The motion was adopted.

*The House then adjourned till a Quarter Past Eight of the Clock on Tuesday, the 29th July, 1952.*