

श्री नन्द लाल शर्मा : अगर इसका नाम कम्प्लेक्स हिन्दी है तो मिक्सड बोली न जाने क्या होगी ।

Pandit Balkrishna Sharma: It is a shame that he does not know the language of his Gurus.

(English translation of the above speech).

Shri Nand Lal Sharma (Sikar): Mr. Deputy-Speaker, I shall speak in Hindi, because on the very first day I announced in Parliament that it shall be a matter of principle for me to speak in Hindi. The Law Minister has moved for the consideration of a Bill for entering into reciprocal arrangements with other countries. My submission is that Pakistan should be excluded from the list of such countries. We cannot afford to close our eyes to facts. It has been our experience that in all Indo-Pakistan dealings India has always stood to lose. The refugees who have come from Pakistan have been put to loss, while those who have migrated from India are still enjoying the profits of their property in India. It is because of this that one is constrained to say so. According to the amendment proposed by Dr. Mukerjee, we shall have to insert the following words in respect of all the countries with which reciprocal arrangements are to be entered into: 'You are to see that this thing is being carried out into practice'. It is not necessary to entertain doubts about all the countries, but it is quite natural to do so in the case of a country which has consistently failed to fulfil its obligations. The Delhi Pact is still fresh in our minds. They (the Pakistanis) claim that they are implementing it honestly and faithfully and say that there is no slackness on their part. But we daily witness what kind of treatment is being meted out to the minorities there. I, therefore submit, that Pakistan should not be included in these reciprocity arrangements. It is of course understandable to provide that the decrees of all countries, which enforce our decrees, should be enforced in this country. But if these arrangements are entered into with Pakistan, it would misuse this provision just as it has been misusing the provisions of other agreements. In this way, Indian citizens or the persons who have migrated to India, shall stand to lose in respect of property in India, while they (the evacuees to Pakistan) shall stand to gain. Upto this time property worth 15 to 20 crores of rupees has already been transferred from India to Pakis-

tan and such transfer is continuing. That is why I repeat again and again that Pakistan should not be included in these arrangements. Barring Pakistan, we can enter into reciprocal arrangements with all other countries.

Shri Namdhari rose—

Mr. Deputy-Speaker: Hon. Members must know that they should not only not repeat what they have said, but also what others have said.

Shri Namdhari (Fazilka-Sirsa): Nothing of the sort Sir. My submission is that the use of Hindi is quite welcome, but since the change-over has been very recent, it shall be of advantage to us if Hindi mixed with Urdu is spoken instead of this complex Hindi.

Shri Nand Lal Sharma: If this is complex Hindi, I do not know what the mixed language will be like.

Pandit Balkrishna Sharma (Kanpur Distt. South cum Etawah Disst.—East): It is a shame that he does not know the language of his Gurus.

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Mr. Deputy-Speaker: Does the hon. Member take exception to the word बदि ? I am glad that hon. Members have not understood what has happened. There is nothing strange if Sanskrit words are used. After all, whenever new words have to be coined, the basic language is Sanskrit. It cannot be Arabic or Persian. Sanskrit is a language already in use, and it is one of which everybody in this country must be proud. If some hon. Members have not had the opportunity to know it, it is not too late for them to learn it.

The question is :

"That the Bill be passed."

The motion was adopted.

NOTARIES BILL

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

"That the Bill to regulate the profession of notaries be taken into consideration."

In a sense, legislation regarding notaries is not new to this country. There is provision in the Negotiable Instruments Act for the appointment of notaries. Section 138 of that Act provides:—

"...the Central Government may, from time to time, by notification in the Official Gazette, appoint any person by name or by virtue of his office to be a notary public under

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this Act and to exercise his functions as such within any local area and may by like notification remove from office any notary public appointed under this Act."

Notaries public appointed under this Act are competent only to exercise the functions which are prescribed thereunder. In addition to such notaries public, there is another class of notaries public practising in India who derive their authority, not from the Government of this country, but from the Master of Faculties in England.

[PANDIT THAKUR DAS BHARGAVA
in the Chair]

That is an ancient institution, and as a matter of fact the history of notaries in England goes back to the reign of Henry VIII. Before that, the authority was vested in the Pope. Then it was taken away from the Pope and vested in the Sovereign of England. Since then, this power has been delegated to what is known as the Court of Faculties. It is the Court of Faculties which now enrolls notaries. The instrument of authorisation which enables a notary to function as such is issued by the Master of Faculties acting under the Court of Faculties. Various persons from India—not merely solicitors, though most of them were solicitors, but others as well like chartered accountants and businessmen—now approach the Master of faculties supported by testimonials and other documents for enrolment as notaries public with liberty to practise in India and elsewhere, and that class of notaries generally command a higher status and rank as compared with notaries functioning under the Negotiable Instruments Act.

Now that India has attained independence, it was in the fitness of things that no notaries should henceforth derive their authority from any institution in England, however sanctified it might be by custom and age. The proposal was therefore made that the Central Government should take power to appoint notaries, not merely notaries competent to function under the limited provisions of the Negotiable Instruments Act, but in a general way like notaries enrolled and appointed by the Master of Faculties in England. That proposal was in due course communicated to the Master of Faculties, and with your permission I should like to read out the reply received through our High Commission from

the Archbishop¹ of Canterbury who is in charge of the Faculty Office. He says:

"I note that the Government of India propose at an early date to undertake legislation providing for the appointment of notaries for all recognised notarial purposes, and I shall of course fall in line with their wish that no further patents for any part of India should be issued by the Faculty Office."

Our High Commission had intimated to him that they might not in the Faculty Office issue any further patents to any applicants from India. He proceeds:

"Naturally, I cannot abandon this old jurisdiction without some feeling of regret. It has always seemed to me to form a pleasant link between our two countries. But the old order changes and I have lately felt that the change here would be natural, and indeed inevitable."

He recognises that fact and quite rightly. He proceeds:

"When a change has to be made, it is good that it should come about happily, and I should like to thank you and through you the Government of India for the kind words with which you end your letter."

So, there it is. That is why I wanted to reciprocate the same sentiment in dealing with the other matter also.

We ought to be careful now in enacting this legislation. The point I should like the House to consider is this. Whether in legislating for enrolment or appointment of notaries in this country we should in any way lower the standard which now prevails. As a matter of fact, there is an amendment in which it has been suggested that a *muktear* should also be competent to be enrolled as a notary. Personally speaking, I have no prejudice against *muktears*. I have come in contact with many *muktears*, and some of them are very competent lawyers, much better lawyers than many ordinary pleaders in district courts. But still when you are legislating, it is for consideration whether or not you should have in your definition reference to a class of legal practitioners who may not command the same confidence as lawyers of a higher status. I shall deal more fully when the amendment is moved.

The functions which notaries have got to discharge are very important and responsible. There is some misapprehension in certain quarters that all that a notary public has got to do is to put his signature to a certain document by way of attestation, as an ordinary witness does. That is not so. He has got to attest not merely documents; he has got to attest what is called a "notarial act". Suppose a man comes to him; he has got a Bill of Exchange, for instance. He presents the Bill of Exchange to the Notary Public. The Notary Public on his behalf presents it to the party who is liable. Suppose he does not get any answer from him. Then he records that fact: "I took it to so and so; but he will not honour this." Thereupon he enters a protest. He "protests" the Bill of Exchange, as the language goes. The Notary Public records the facts which actually did take place. Then he puts his signature at the bottom of the instrument. That instrument authenticated by his signature and by his seal can be presented in a court in any part of the civilised world, where notaries are recognised. That is accepted, not merely the attestation of that document by the notary, but as proof of the truth of the statements for which he has vouched by signing that instrument.

The duties and functions of a Notary Public are very responsible ones. The English Act regulating the Notaries Public says:

"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 competency of any person who shall hereafter apply for admission or readmission as a Public Notary."

Not only that, it requires every Notary Public (that is left out in our Bill, unless provision is made therefor by rules) to take oath to this effect:

"I do swear that I will faithfully exercise the office of a Public Notary. I will faithfully make contracts of instruments for or between any party or parties requiring the same and I will not add or diminish anything without the knowledge and consent of such party or parties that may alter the substance of the fact. I will not make or attest any act, contract or instrument in which I shall know there is violence or fraud; and in all things I will act uprightly and justly in the business

of a Public Notary, according to the best of my skill and ability.

So help me God."

This clearly shows the responsibility attached to the office. Notarial acts,—not merely attestations—are recognised as proofs of acts done in his presence and attested by him. Unless the acts of a Notary Public command universal acceptance, well, a notary is not worth the name. There is no point in appointing somebody, and allowing him to function and attest documents which are not accepted in foreign countries. It will not do merely to think of India as if that was the only place where a notary is competent to practise. His acts will have effect not merely within the borders of India, but in foreign countries as well. Therefore, it will not do for us to forget that important fact for the purpose of deciding who should be eligible for appointment as Notaries.

This Bill was introduced in the provisional Parliament and was referred to a Select Committee. The Select Committee submitted its report. Unfortunately it was not possible for Parliament to consider that report and the Bill, along with the report of the Select Committee, accordingly lapsed. That is why it has been reintroduced in the present Parliament.

This Bill has been drafted in accordance with the recommendations which were made by the Select Committee. I find there are various amendments—one of them asking that the Bill be referred to a Select Committee over again. It is for the House to consider whether in view of the fact that there was a Select Committee once which had considered the Bill, it is necessary to commit it to another Select Committee.

Of course, there have been quite a large number of amendments received—more than 80, I believe—and that shows the great interest which hon. Members take in this new piece of legislation. As I said, we ought to be very careful as to the lines on which we legislate in this matter. Let it not be said that by our legislation we are lowering the standards in any way. On the other hand, we want that any act of a notary of India should command even higher respect and greater acceptance than that of a notary from another country. Like the Master of Faculties in England there are certain authorities in other countries—but not in many—where notaries are appointed, but everywhere they try to main-

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tain a very high standard. In our Bill we have provided that it will be open to the Central Government to limit the area within which a notary may act or the purpose for which he may function. That is a necessary safeguard, because all at once we cannot throw open to every Notary who may be appointed under the Act all the functions which are open to a Notary Public. At any rate in the first stages we ought not to go to that extent.

One of the recommendations of the previous Select Committee was that the preparation of any instrument relating to movable or immovable property need not be a notarial act, and they omitted the provision relating to it. Effect has been given to that in the present Bill.

There is an amendment to one of the clauses where the word "instrument" is defined. Whether that is desirable or not has to be examined. I submit the Select Committee excludes only the preparation of such an instrument, whereas the amendment seeks to exclude even attestation of such instrument. My own personal view is that when you are laying down the duties and functions of a Notary Public, you should make it as exhaustive as possible, especially when you are taking power to limit the functions which you may assign to a particular Notary Public. Otherwise it may seem that an important part of the functions of a Notary has been taken away under our legislation. That is not desirable, because the execution of such instruments and conveyances is an important part of the responsibilities of a notary public even now under the faculty granted by the Master of Faculties and in other countries as well. There is no reason, therefore, why this should be omitted. The reason which actuated the Select Committee, I understand, was this. They thought that this will clash with the powers given to ordinary deed-writers here and may take away from them their cherished profession. Nothing of the kind. There are documents and documents, and a man who has an ordinary conveyance or a deed of sale in respect of some property in a village and who desires such an instrument to be executed will not go to an expensive notary public. But, on that ground, to take away from the notary public this important part of his functions would not be right. That is my personal view. However, this Bill has been drawn up without any alteration and on the lines recommended by the previous Select Committee.

That is the position. Notaries are entitled to draw or prepare any instrument relating to real or personal estate or any legal proceeding.

These, then are the important points. I wish to emphasize the responsible character of the functions discharged by the notary public. I wish to point out that the notary public is invested with an official and international character. It is not merely that he is entitled to practise and his acts are to take effect only within the limits of this country. His status is recognized by the laws of all civilized nations. I believe that instruments sworn and authenticated before him and notarial acts performed by him are all respected and received as evidence in foreign courts. I need not go into the details of this measure.

Mr. Chairman: Motion Moved:

"That the Bill to regulate the profession of notaries be taken into consideration."

Shri S. S. More (Sholapur): May I know from the hon. Minister whether he has any objection to send this Bill to a Select Committee of this House?

Mr. Chairman: It was referred to a Select Committee.

Shri S. S. More: It was to another Select Committee—of the previous House.

Mr. Chairman: He has already dealt with this matter. There are certain motions tabled to this effect. If any hon. Member wishes to move his motion he is perfectly entitled to do so.

Shri Biswas: I hope the report of the Select Committee has been circulated to hon. Members.

Several Hon. Members: Yes, yes.

Shri K. K. Basu (Diamopd Harbour): As the hon. Minister himself has emphasized the international character and the responsible nature of the job performed by notaries, and in view of the fact that so many amendments have been tabled, I think it would be better to refer it to a Select Committee of this House.

Mr. Chairman: May I request the hon. Member to wait a little? There is a motion for reference to Select Committee. Let me first enquire whether the motion is going to be

moved. Shri S. V. Ramaswamy is absent.

Shri Raghuramaiah (Tenali): I have given notice of a similar motion.

Mr. Chairman: When did he give notice?

Shri Raghuramaiah: Yesterday.

Shri Biswas: I have got a copy of it, Sir.

Mr. Chairman: The hon. Member should have given the names of the persons proposed to the Select Committee and passed them on to me. The rules require that they should be given beforehand. There is also another objection that he has not indicated the time by which the report of the Select Committee should be made.

Shri B. Das (Jajpur-Keonjhar): It is not clear to me how motions for reference to Select Committee are sought to be moved now. The hon. Minister has moved his motion for taking the Bill into consideration, and I thought we are at the consideration stage.

Mr. Chairman: No, no. This is the proper time. The motion has been made that the Bill be taken into consideration. To that motion an amendment is sought to be moved that it be referred to a Select Committee. It is perfectly in order.

Shri B. Das: I am sorry.

Mr. Chairman: Very well, the hon. Member may just move his amendment so that the House may not wait.

Shri Raghuramaiah: With your permission, Sir, I shall first move my amendment and then I shall give the names. If it was merely a question of this House not having had any say in the matter, because it was the Select Committee of the last House that took all the points into consideration, I would not have stood on a mere technicality. But, as will be seen from a number of amendments that have been tabled, the Bill requires, possibly, very radical changes, some in principle and some of a drafting nature.

Coming to the point of principle, first I find that attestation of documents is made a notarial act with the result that any person who attests any document which falls within the definition of 'instruments' under this Bill will be penalized unless he gets the licence under this Bill. We all know that in this country attestation of pronotes, sale deeds, etc. is done by ordinary people living in the villages who

are personally acquainted with the actual events, who know the persons who execute the documents and who are easily available for giving evidence in courts whenever the attestation becomes a subject-matter of dispute. To make this, the act of a notary, to require that for the ordinary attestation of a pronote or a sale deed a person should go all the way to a notary in a town and wait at his door-step in order to get the attestation, and to make the Executant run after the notary for giving evidence in courts is a very cumbersome and difficult procedure. I submit it is quite unnecessary. It may be all right in a country like England where you have got the solicitor system, where even the persons living in remotest villages have got the opportunity of consulting a solicitor. But in a country like this where every day thousands and thousands of documents are executed in remote corners, where notaries can hardly be found, it will be imposing a very great strain on and causing very great inconvenience to our people.

As regards two other points which strike me, in the first place I would like to draw attention to the definition of the term 'legal practitioner' in clause 2.

It says:

"'Legal practitioner' means an advocate, vakil or attorney of the Supreme Court or of any High Court, or a pleader practising in any subordinate civil court;".

It seems to me extraordinary. I can only say that it is probably due to oversight that an advocate practising in a district court is omitted from the definition of 'legal practitioner'. As the language of the clause stands, this is what, in effect, the clause comes to, unless the word 'advocate' is intended to stand by itself and then the words "vakil or attorney of the Supreme Court or High Court, etc." are intended to stand as a separate category. But if that is the intention it should have been more clearly drafted. I suggest that we do not have any definition of 'legal practitioner' at all because we know what 'legal practitioner' means. But if we have a definition we must make it clear.

There is one other matter and if I am wrong in that, I would be very grateful to be corrected. I refer to the use of the word 'notaries' in line 40, page 3 of the Bill. This occurs in clause 13. Clause 13 relates to acts done by notaries in foreign countries. That is to say, any act done by a notary in a reciprocating foreign territory will

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be recognised within India. The reference there is to a notary in a foreign country, appointed in that country or recognised in that country. I would like to draw the attention of the House to the definition of the word 'notary' in clause 2(d). It says:

"'notary' means a person appointed as such under this Act."

Therefore, the reference to notaries in line 40, page 3 must be construed as a reference to notaries appointed by the Government in this country. But that is not obviously the intention. This is a matter which must be looked into.

These are some of the amendments which strike me. There are many more which we may like to consider. If the whole House has to consider them it will take a long time and I do not think it would be worthwhile. I would therefore move my amendment.

I beg to move:

"That the Bill be referred to a Select Committee consisting of....."

I shall presently pass on the names.

Mr. Chairman: What is the date?

Shri Raghuramaiah: 18th July.

An Hon. Member: The names have not been read to the House.

Mr. Chairman: I shall read out the names. Amendment moved:

"That the Bill be referred to a Select Committee consisting of Shri N. C. Chatterjee, Shri K. K. Basu, Dr. A. Krishnaswami, Shri Rayasam Seshagiri Rao, Shri B. S. Murthy, Shri Munishwar Datt Upadhyay, Shri H. V. Pataskar, Shri B. N. Datar, Shri N. C. Kasliwal, Shri N. P. Nathwani, Shri C. C. Shah, Shri N. P. Sinha, Shri Kushi Ram Sharma, Shri S. V. Ramaswamy, and the Mover....."

Dr. S. P. Mookerjee: The Law Minister must be there.

Mr. Chairman: But, his name is not here. It is better his name is included. His name will be taken as included. Does the hon. Member wish to include his name also?

Shri Raghuramaiah: Yes, Sir.

Mr. Chairman:

...Shri C. C. Biswas, and the Mover, with instructions to report by the 18th July, 1952."

Shri P. T. Chacko (Meenachil): May I know, Sir, whether these hon. Mem-

bers have consented, and whether the hon. Member has taken their consent?

Mr. Chairman. All the hon. Members are present here. If any of them does not want to serve on the Committee, then, the matter may be considered. When an hon. Member moves the names, it is presumed that their consent has been taken.

Shri K. K. Basu: In view of the fact that the Government is accepting the suggestion for reference of the Bill to the Select Committee, I do not want to take much of the time of the House. I had also given notice of an amendment to the same effect. Now, I have only one amendment to this motion. I do not know if the 18th will be a suitable date. I suggest it may be extended by a week.

Many points have been covered by the Minister himself as to the importance of this particular legislation and the important part played by notaries for more than a century in the commercial life of our country. I agree with many of the points made by the Minister and I support the principle of the Bill. In fact, I congratulate the Minister for bringing forward this legislation. Though it is a minor one, it is a good thing to do away with all the links, however good they may be, with our imperialist rulers. No doubt, the notaries have played a very important part in our country, especially in the commercial life. In course of time, as industry and commerce in our country develop, specially international trade, I think the notaries will have to perform much better and more important functions.

Shri Venkataraman (Tanjore): May I raise a point of order? It has been a convention in this House that Members who are on the Select Committee do not participate in the discussion at the stage when the matter is referred to the Select Committee. I want to know whether that convention is valid and whether it is being followed.

Pandit K. C. Sharma (Meerut Dist.—South): It has not been a binding convention.

Mr. Chairman: Conventions are developing. Members who are on the Select Committee are not allowed to have their say at this stage. Here, the peculiar position is that a gentleman whose name is given here wants to support the motion for reference to the Select Committee. He is not speaking on the merits of the Bill.

Shri Venkataraman: I thought he did.

Mr. Chairman: He is only speaking on the motion whether the Bill should be referred to the Select Committee.

Shri K. K. Basu: That is why I have also an amendment for referring the Bill to the Select Committee and I am glad it has come up. As we go through the amendments that are before us, we find most of them support the Bill and intend to improve upon the working of particular sections of this legislation. Instead of going into the details of them, I commend the motion to refer this matter to a Select Committee with this particular suggestion that the time may be extended at least to the 25th or 26th July.

Shri Biswas: In that case, it cannot be passed in this session. It will have to go to the Council of States. If you are extending the time up to the 26th, there is hardly any time left.

Shri K. K. Basu. My point is this. We will have discussions in the Select Committee. As I know the sense of the House, it will not take much time to push this Bill through. There will be enough time to get it through the Council of States also.

Shri Biswas: Personally speaking, I should have been pleased if we have the whole discussion here. There are now more than 80 amendments. If they are discussed, I am quite sure, they would be accepted or rejected by agreement and we could come to some conclusions. My only fear is this. One reason for referring the Bill to a Select Committee is that we may save the time of the House. If there is no prospect of saving the time, and if we are only going to be flooded with another list of 80 amendments, there is hardly any point in referring the matter to the Select Committee. We would rather be done with it and try to dispose of the matter. I would not agree to any delay. I shall adopt any suggestion which will have the effect of saving the time of the House. If this motion only means adding to our troubles, and adding to controversies in this House, there is hardly any point in referring the matter to a Select Committee.

Shri Nambiar (Mayuram): Our only point was...

Mr. Chairman: I am sorry to interrupt the hon. Member. I thought the Law Minister was going to accept the proposal.

Shri Biswas: I have no objection.

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Mr. Chairman: Otherwise, I would not have called upon him at this stage to speak. Other Members have not been given full opportunity to voice their views.

Shri Biswas: I have no objection to that procedure.

Mr. Chairman: I shall just allow other Members to have their say in the matter.

Shri Nambiar: Our point is not either to protract or delay the Bill. Our only point is to see that these various points raised in the amendments may be accommodated and a forum arranged for discussion. If it is possible to get that done by the 18th or the 16th, we have no objection. We are here to work together and finish it. We are not here to delay. If it is delayed, it will do harm. Therefore, I suggest that the Bill may be referred to the Select Committee.

Shri Biswas: I accept the amendment provided we can report by the 18th—I mean I accept the original proposal, not the amendment.

Shri K. K. Basu: In that case, I don't press for the extension of time.

Mr. Chairman: I understand the position is that the motion is going to be accepted by hon. the Minister for Law.

Shri B. Das: The hon. Minister has suggested that most of the amendments have already been tabled, and that if the Bill is taken, the discussion can be finished in half an hour. I, therefore, suggest that if the hon. Law Minister and those who have to put the amendments meet in a conference this afternoon and accept the amendments, the Bill need not be referred to the Select Committee, if that proposition is accepted by the Members here.

Mr. Chairman: I put the motion to the House. The question is:

"That the Bill be referred to a Select Committee consisting of Shri N. C. Chatterjee, Shri K. K. Basu, Dr. A. Krishnaswami, Shri Rayasam Seshagiri Rao, Shri B. S. Murthy, Pandit Munishwar Datt Upadhyay, Shri H. V. Pataskar, Shri B. N. Datar, Shri N. C. Kasliwal, Shri N. P. Nathwani, Shri C. C. Shah, Shri N. P. Sinha, Shri Kushi Ram Sharma, Shri S. V. Ramaswamy, Shri C. C. Biswas and the Mover, with instructions to report by the 18th July, 1952."

The motion was adopted.