

Proceedings of the Third Session of the First Assam Legislative Assembly assembled under the provisions of the Government of India Act, 1935

The Assembly met at the Assembly Chamber, Shillong, at 11 a.m. on Thursday, the 9th December 1937

QUESTIONS AND ANSWERS

UNSTARRED QUESTIONS

Monopoly rights on the Pandu-Gauhati-Shillong Motor Road.

SRIJUT JADAV PRASAD CHALIHA asked :

53. Do Government propose to consider giving preference to deserving local parties in the matter of giving the monopoly rights on the Pandu-Gauhati-Shillong Motor Road as enjoyed now by the Commercial Carrying Company, Limited, of Calcutta, when the term of existing contract with the company expires ?

54. If so, do Government propose to publish in the *Assam Gazette* and other local papers, a notice to that effect at least six months before the expiry of the present contract mentioning the important terms and conditions that will govern the contract ?

55. Do Government realise that the present disparity has been greatly hampering the long-existing trade between Shillong and Gauhati ?

56. Do Government propose to take steps to remove the disparity between the rates and the general traffic conditions prevailing between the Shillong-Gauhati-Pandu Service and Shillong-Sylhet Services at the earliest available opportunity by enforcing proportionately equivalent rates and traffic conditions over both the routes ?

THE HON'BLE MAULAVI SAIYID SIR MUHAMMAD SAADULLA replied :

53.—The claims of deserving applicants who are natives of or domiciled in the Province will be duly considered at the time of making future arrangements for motor transport on the Gauhati-Shillong Road.

54.—Nothing has been decided, but the suggestion will be borne in mind.

55.—This is a matter of opinion.

56.—No. Nothing can be done during the tenure of the present agreement with the Commercial Carrying Company or the currency of the permits granted for plying vehicles on the Shillong-Sylhet Road.

Number of various communities in Public Services in Assam.

MAULAVI ABDUL BARI CHAUDHURY asked :

57. (a) Are Government aware that the people of Sunamganj are very much under-represented in all the different branches of the public services in Assam ?

(b) If so, what steps, if any, have so far been taken by Government to remove this disparity ?

58. (a) Is it a fact that the Muhammadans of Sunamganj Subdivision are under-represented in all the different services under the Assam Government ?

(b) If so, what steps have Government taken to procure adequate representation for the Muhammadans of Sunamganj in the different public services in the Province ?

THE HON'BLE MAULAVI SAIYID SIR MUHAMMAD SAADULLA replied :

57. (a), (b) & 58. (a), (b)—Recruitment to the public services is not conducted on the basis either of the total population of a subdivision or of the total number of a particular community within a subdivision. Government are not therefore in a position to give the information required. Nor can they take steps of the kind indicated without a reversal of the existing system. This system is described in Government Circular letter No. 1-A.P., dated the 2nd December 1935, copy of which is laid on the Library table.

Number of Backward Tribal communities in the Assam Junior Civil Service.

SRIJUT RUPNATH BRAHMA asked :

59. Will Government be pleased to state—

(a) Whether there is any one from the Backward Tribal communities of the plain districts, now serving in the Assam Junior Civil Service ?

(b) If so, what is his name and home district and for how long he has been serving ?

(c) The number of candidates from the Backward Tribal people of the plain districts from 1932 to 1936 for the Assam Junior Civil Service ?

THE HON'BLE MAULAVI SAIYID SIR MUHAMMAD SAADULLA replied :

59. (a) & (b)—There is one such officer, namely, Srijut Baloram Neog Thengal, who belongs to Lakhimpur district and was appointed on 2nd January 1936.

(c)—The information is not readily available and the labour of collecting it would be incommensurate with the results.

Travelling allowance of the Hon'ble Speaker for attending the Congress Presidents' and Speakers' Conference held in Calcutta.

BABU HARENDRA NARAYAN CHAUDHURI asked :

60. (a) Is it a fact that the travelling allowance of the Hon'ble Speaker in connection with his visit to Calcutta to attend the All-India Congress Presidents' and Speakers' Conference has not been sanctioned ?

(b) If so, by whom and under what authority ?

61. Is it a fact that the travelling expenses of the Hon'ble Finance Member, for attending the All-India Finance Members' Conference held at Bombay, were paid by Government ?

THE HON'BLE MAULAVI SAIYID SIR MUHAMMAD SAADULLA replied :

60. (a)—Yes.

(b)—By Government under the Fundamental and Subsidiary Rules

MR. BAIDYANATH MOOKERJEE: The answer given to question 60(b) is "By Government under the Fundamental and Subsidiary Rules". What is the number of the rule, Sir?

THE HON'BLE MAULAVI SAIYID SIR MUHAMMAD SAADULLA: Sir, I have received notice of a series of starred questions which are very full and at great length, from Mr. Arun Kumar Chanda which will be answered very soon. If all supplementary questions arise at that time I will be obliged.

MR. BAIDYANATH MOOKERJEE: I only want the number of the rule?

THE HON'BLE MAULAVI SAIYID SIR MUHAMMAD SAADULLA: I will give everything in detail in answer to supplementary questions then.

61.—Yes.

Number of Veterinary Dispensaries in each district of the Province.

SRIJUT RAJENDRA NATH BARUA asked:

62. Will Government be pleased to state the number of Veterinary dispensaries in each district in the Province of Assam?

63. Will Government be pleased to state the area served by each Veterinary dispensary of the Province?

64. Will Government be pleased to state the number of cattle treated by each Veterinary Assistant per year during the last three years?

65. Will Government be pleased to state the number of deaths of cattle from diseases in the Province for the last three years?

THE HON'BLE MAULAVI MD. ALI HAIDAR KHAN replied:

62.—A statement is laid on the table.

Statement showing the number of Veterinary Dispensaries in each district in the Province of Assam

Cachar	...	...	...	...	...	4
Sylhet	...	...	...	...	...	10
Khasi and Jaintia Hills	...	...	...	...	...	1
Naga Hills	...	...	...	...	...	1
Lushai Hills	...	...	...	...	...	1
Goalpara	...	...	...	...	...	5
Kamrup	...	...	...	...	...	5
Darrang	...	...	...	...	...	5
Nowgong	...	...	...	...	...	3
Sibsagar	...	...	...	...	...	7
Lakhimpur	...	...	...	...	...	4
Garo Hills	...	...	...	...	...	1
Sadiya Frontier Tract...	...	...	...	...	...	1
				Total	...	48

63.—On the average about 1,280 square miles.

64.—Excluding other animals, *viz.*, horses, dogs, sheep, goats, etc., the number of cattle treated on an average by each Veterinary Assistant was as follows:—

1934-35	...	...	...	...	...	3,027
1935-36	...	...	...	...	...	3,963
1936-37	...	...	...	...	...	4,441

65.—The number of deaths from contagious diseases only was 19,349 in 1934-35 and 21,759 in 1935-36. The number of deaths from *all causes* in 1936-37 was 37,347.

Proposal for the enactment of a legislation for improvement and good administration of Temples and *Satras*.

SRIJUT SIDDHI NATH SARMA asked :

66. Will the Hon'ble Minister in charge of Revenue be pleased to state whether he has received copies of resolutions passed at a public meeting of the Managers of Temples, *Satras* and *Nisf-kherajdars* held on 24th October 1937 in the premises of the Sanatan Dharma Sabha at Gauhati under the presidency of Rai Bahadur Kalicharan Sen, B.L.?

67. Do Government propose to enact legislation for the purpose of improvement and good administration of Temples and *Satras*?

68. Is the Hon'ble Minister in charge of Revenue aware that *Nisf-kherajdars* including Managers of Temples and *Satras* have not been able to pay their revenue liabilities on account of their tenants' failure to pay their rents?

69. Is the Hon'ble Minister in charge of Revenue aware that the tenants of the *Nisf-kherajdars* have refused to pay their rents unless the same reduction of rent is granted to them as given by Government in case of *Khiraj* estates?

70. Will the Hon'ble Minister in charge of Revenue be pleased to state whether he has conducted any enquiry to ascertain the truth of the above mentioned facts?

71. Is the Hon'ble Revenue Minister aware that many *Nisf-kheraj* estates have been sold for failure to pay land revenue to Government and that most of them have failed to pay land revenue in time?

72. Are Government aware that the condition of the under-tenants of *Nisf-kherajdars* is miserable?

73. Are Government aware that *Nisf-kherajdars*, Managers of Temples and *Satras* are prepared to give to their under-tenants reduction of rent in the same proportion as may be granted to the former by Government in respect of their land revenue demand?

THE HON'BLE SRIJUT ROHINI KUMAR CHAUDHURI replied :

66.—Yes.

67.—The hon. member is referred to the reply to question No.114(c) asked by Srijut Jogendra Nath Barua at the last session of the Assembly.

68-73.—The question of concessions to *Nisf-kheraj* landlords is occupying the attention of Government at present. In view of the fact, however, that these landlords pay eight annas whereas full *Kheraj* landlords pay twelve annas for land bearing ordinary revenue of one rupee, and that the hon. questioner at the last session of the Assembly accepted an amendment, with the concurrence of the House excluding *Nisf-kheraj* landholders from the proposed concession in land revenue, Government have not at present allowed any concessions.

Remission of 33 per cent. of land revenue to the *khiraj patta* holders.

SRIJUT SIDDHI NATH SARMA asked :

74. Will the Hon'ble Minister in charge of Revenue be pleased to state (a) whether he has issued instructions to his subordinate Revenue Authorities to remit 33 per cent. of land revenue to the *khiraj patta* holders according to the terms of the resolutions passed in the last session of the Assembly ?

(b) If not, why not ?

75. Will the Hon'ble Minister in charge of Revenue be pleased to state the number of *Khiraj* estates assessed at a revenue of Rs.12 and less per year in each district of the temporarily-settled districts of Assam for the previous and the current year ?

76. Will the Hon'ble Minister in charge of Revenue be pleased to state (a) The total amount of land revenue assessed, in respect of *Khiraj* estates in Assam other than those mentioned in question No.75 above, for the previous and the current year ?

(b) The total revenue of the estates mentioned in question No.75 above and what proportions does it bear to the entire land revenue of the Province ?

77. Will the Hon'ble Minister in charge of Revenue be pleased to state the number of estates of which settlements were annulled for failure to pay the land revenue on account of poverty but the holders of which are still in possession ?

78. Will the Hon'ble the Revenue Minister be pleased to state the amount of revenue payable by each of such estates in the province mentioned in question 77 above ?

79. Will the Hon'ble Minister in charge of Revenue be pleased to state the attitude of Government towards the recommendations of the Land Revenue Committee appointed by Government ?

80. Will the Hon'ble Minister in charge be pleased to state whether Government are going to accept the recommendations of the said Committee appointed by them ?

81. Will the Hon'ble Minister in charge be pleased to state the total amount of land revenue reduction estimated by Government for the current year for the Province ?

THE HON'BLE SRIJUT ROHINI KUMAR CHAUDHURI replied :

74, 79 and 80.—The hon. member is referred to Government resolution No.3829-R., dated the 22nd November 1937 published in the *Assam Gazette* of 24th November 1937.

75-78 and 81.—Commissioners have been requested to furnish Government as soon as possible with statistics to show the total cost of the additional concessions, which will include many of the details now asked for, but these will not be ready until all the demands have been recalculated. Some of the information asked for cannot be ascertained without an amount of labour incommensurate with the result.

The estimated cost of the additional concessions for 1937-38 is 11 lakhs of which 25 per cent. will fall in the current and 75 per cent. in next financial year. This is in addition to 18 lakhs estimated to be the cost of the previous concession.

Postponement of the Assam Civil Service Examination.

MAULAVI MD. ABDUS SALAM asked :

82. Will the Hon'ble the Chief Minister be pleased to state whether he received any representation from the post-graduate students of Assam, reading at Aligarh requesting the postponement of the Assam Civil Service examination till the end of May, 1938 ?

(a) Whether he proposes to direct the Public Service Commission to hold the same at such a time as may be convenient to the students prosecuting their studies at far-off places outside Assam ?

THE HON'BLE MAULAVI SAIYID SIR MUHAMMAD SAADULLA replied :

82.—Yes.

(a)—The Public Service Commission will bear this in mind.

Duration of the sitting of the Assembly.

MR. BAIDYANATH MOOKERJEE : Before we proceed to the work of the day, Sir, as I mentioned yesterday, I suggest that during the current session it will be better for us to sit only till 4 p.m.

THE HON'BLE THE SPEAKER : It will depend upon the sense of the House. If the hon. members agree not to sit later than 4 o'clock, that can be done.

THE HON'BLE MAULAVI SAIYID SIR MUHAMMAD SAADULLA : I did not hear the proposal, Sir.

THE HON'BLE THE SPEAKER : The proposal is that we should sit during this session till 4 p.m. instead of till 5 p.m. as we usually do.

THE HON'BLE MAULAVI SAIYID SIR MUHAMMAD SAADULLA : We have got absolutely no objection. If the hon. members feel that they cannot sit after 4 p.m., Government will have no objection.

This was agreed to by the House.

Complaint *re* perpetual draught in the Assembly Chamber.

MR. F. W. HOCKENHULL : Before we proceed with the business also, Sir, may I call your attention to the fact that this end of the House where we are sitting is in a perpetual draught. It is really most uncomfortable. May I suggest that some sort of a curtain may be placed over this door, for the House is not warm at any time? Otherwise I am afraid we shall be laid up at the end of a fortnight.

THE HON'BLE THE SPEAKER : I shall try my best to meet the hon. member's wishes if I can do anything in this matter.

MR. F. W. HOCKENHULL : Thank you very much.

Presentation of the Report of the Select Committee on the Sylhet Town Tenancy Bill, 1937.

BABU KARUNA SINDHU ROY : Sir, I beg to present the report of the Select Committee on "The Sylhet Town Tenancy Bill, 1937".

BABU KARUNA SINDHU ROY: I beg to move that the Bill as reported by the Select Committee be taken into consideration.

MR. BAIDYANATH MOOKERJEE: On a point of order, Sir, I beg to draw your kind attention to the Government of India Act, 1935, page 70, section 108, clause 2, which says "Unless the Governor General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, a Chamber of a Provincial Legislature, any Bill or amendment which—

(b) repeals, amends, or is repugnant to any Governor General's Act or any ordinance promulgated in his discretion by the Governor General." The relevant portion is "which repeals, amends or is repugnant to any Governor General's Act". Now I beg to draw your kind attention, Sir.

THE HON'BLE THE SPEAKER: What is the contention of the hon. member?

MR. BAIDYANATH MOOKERJEE: If you kindly hear me, Sir, it is this. Clause 4 of the Bill says that the provisions of the Transfer of Property Act, 1882, the Indian Contract Act, 1872, etc., shall, to the extent necessary to give effect to the provisions of this Act, be deemed to have been repealed or modified. In this case the Governor General's sanction has not been obtained. That is my point, Sir.

THE HON'BLE THE SPEAKER: Will the hon. member tell me what is a "Governor General's Act" mentioned in the sub-section 2(b) of section 108 of the Government of India Act?

MR. BAIDYANATH MOOKERJEE: My point is that the Transfer of Property Act and the Indian Contract Act.....

THE HON'BLE THE SPEAKER: No, they are not Governor General's Acts.

MR. BAIDYANATH MOOKERJEE: They are all-India Acts.

THE HON'BLE THE SPEAKER: An Act of the Government of India is quite different from the Governor General's Acts. The hon. member will look into sections 43 and 44 and there the hon. member will find what is meant by "Governor General's Acts".

MR. BAIDYANATH MOOKERJEE: Sir, my point is whether an all-India Act can be modified or repealed by any Provincial Legislature and I want your ruling on this point.

THE HON'BLE SPEAKER'S RULING—WHETHER AN ALL-INDIA ACT CAN BE MODIFIED OR REPEALED BY ANY PROVINCIAL LEGISLATURE.

THE HON'BLE THE SPEAKER: If the subject matter of a legislation is one which is included in the Provincial or Concurrent List given in the 7th schedule of the Government of India Act then a Provincial Legislature is quite competent to undertake legislation. In such a legislation undertaken, if there is any clause which is repugnant or inconsistent with any Act of the Government of India then that provision would be void to that extent. I may refer the hon. member to section 107. It says—"If law which the Federal Legislature is repugnant to any provision of a Federal of an existing Indian law... (The hon. member will take note of this 'Indian law') with respect to one of the matters enumerated in the Concurrent Legislative List, then, subject to the provisions of this section, the Federal Law, whether passed before or after the Provincial law, or, as the case may be, the existing Indian law, shall prevail and the Provincial law shall, to the extent of the repugnancy, be void". This is quite another matter if the provision be repugnant and only speaks of the voidability of a repugnant provision and not of the necessity of a previous sanction from the Governor-General.

If the provision be repugnant, it would be considered as void. This sub-section runs :—

“Where a Provincial law with respect to one of the matters enumerated in the Concurrent Legislative List contains any provision repugnant to the provisions of an earlier Federal law or an existing Indian law with respect to that matter, then, if the Provincial law, having been reserved for the consideration of the Governor-General or for the signification of His Majesty’s pleasure, has received the assent of the Governor-General or of His Majesty, the Provincial law shall in that Province prevail, but nevertheless the Federal Legislature may at any time enact further legislation with respect to the same matter :

Provided that no Bill or amendment for making any provision repugnant to any Provincial law, which, having been so reserved, has received the assent of the Governor-General or of His Majesty, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.”

Now, the hon. member will note that under sub-section 2 if there be a provision in a Provincial Act which is repugnant to any provision of an existing Indian law, then the assent of the Governor-General will remedy the defect, that is to say it will not be considered void, and even if the provision be repugnant, it will stand. So if this Bill be passed and if His Excellency the Governor thinks that there is any provision repugnant to any provision of an existing Indian law, then His Excellency may reserve it for the assent of the Governor-General. If his assent is received, it will be good ; otherwise it will be void. There is no provision for taking the previous consent of the Governor-General in matters of legislation to which the Bill relates and the section to which the hon. member referred is a section which, is not applicable in this case, because that section speaks of the Governor-General’s Acts. So the objection which the hon. member has raised is not a valid objection and I do not think it should weigh.

The motion moved is that the Sylhet Town Tenancy Bill, 1937, be taken into consideration.

THE HON’BLE SRIJUT ROHINI KUMAR CHAUDHURI: I shall speak a few words, Sir, on this motion. The object of such a legislation, Sir, is always to protect the relationship between the landlord and the tenant and it should be in the interests both of the landlord as well as that of the tenant. The Bill as introduced was originally one-sided and I am glad to be able to say that, after a discussion in Select Committee, we have been able to remove some of the most glaring objections. There still remain, however, some strong grounds of objection to the Bill and for that the Government shall have to move certain amendments. One of the amendments which Government proposes to bring and which shall be discussed in due course is that retrospective effect should not be given to this Bill. I submit, Sir, that giving retrospective effect to a Bill of this nature is laying down rather a dangerous principle. For the present, Sir, I do not propose to go further into the details of this Bill.

RAI BAHADUR PROMODE CHANDRA DATTA: Does the Hon’ble Minister oppose the Bill, Sir ?

THE HON’BLE SRIJUT ROHINI KUMAR CHAUDHURI: No, Sir.

THE HON’BLE THE SPEAKER: The question is that the Sylhet Town Tenancy Bill, as reported by the Select Committee, be taken into consideration.

The motion was carried.

GOVERNOR'S ASSENT TO THE ASSAM LOCAL RATES
(AMENDMENT) BILL, 1937

THE HON'BLE THE SPEAKER : Information has been received from the Secretary to His Excellency the Governor of Assam, that under the provisions of section 75 of the Government of India Act, 1935, His Excellency the Governor has assented to the following Bill which was passed by both Chambers of the Assam Legislature during the August-September Session, 1937 of the Assam Legislative Assembly and the October Session, 1937 of the Assam Legislative Council —

The Assam Local Rates (Amendment) Bill, 1937.

BILL PASSED BY THE ASSAM LEGISLATIVE COUNCIL LAID
ON THE TABLE—THE ASSAM MUNICIPAL (REMOVAL
OF FEMALE INELIGIBILITY) AMENDMENT BILL, 1937

Secretary to the LAGISLATIVE ASSEMBLY : In accordance with the provisions of Rule 104 of the Assam Legislative Assembly Rules, I lay on the table "The Assam Municipal (Removal of Female Ineligibility) Amendment Bill, 1937", which was passed by the Assam Legislative Council on the 29th October, 1937. The Bill was not referred to a Select Committee of the originating Chamber.

THE ASSAM MONEY LENDERS' (AMENDMENT) BILL, 1937

THE HON'BLE THE SPEAKER : Next comes the consideration of Maulavi Abdul Aziz's "The Assam Money Lenders' (Amendment) Bill, 1937". To clause 1 there is the amendment of Babu Dakshina Ranjan Gupta Chaudhuri.

MAULAVI ASHRAFUDDIN MD. CHAUDHURY : Can other business be taken up before the question time of one hour has elapsed ?

THE HON'BLE THE SPEAKER : The entire hour need not be taken up by questions. And there are no more questions to be disposed of.

MAULAVI ABDUL AZIZ : Sir, I beg to move that in sub-clause (2) of clause 1, the "full stop" after the word "once" be omitted and the words "and it shall apply to pending suits and appeals" be inserted thereafter.

THE HON'BLE THE SPEAKER : The amendment moved is that in sub-clause (2) of clause 1, the "full stop" after the word "once" be omitted and the words "and it shall apply to pending suits and appeals" be inserted thereafter.

MAULAVI ABDUL AZIZ : The section as amended will read thus :—
"It shall come into force at once and it shall apply to....."

THE HON'BLE THE SPEAKER : That has been understood by the House and I am now putting the amendment.

RAI BAHADUR PROMODE CHANDRA DATTA : I am afraid many have not been able to follow what the amendment is. May I know if the hon. member in charge of the Bill did give any notice of this amendment ?

THE HON'BLE THE SPEAKER : Yes.

MAULAVI ABDUL AZIZ : Sir, in support of this amendment it will be, in my opinion, sufficient to point out to the House that it has been supported by a very reputable association like the Sylhet Bar Association and they say thus :—

"The application of the proposed legislation to pending suits and appeals is a wholesome provision, as otherwise its very object is likely to be frustrated. Any creditor who can meet only the court-fee cost is launching suits as hurriedly as can be imagined to avoid the proposed legislation, if possible. On the other hand the debtors....."

MR. BAIDYANATH MOOKERJEE: On a point of information, Sir, is the hon. member citing the remarks of the Sylhet Bar Association?

THE HON'BLE THE SPEAKER: Yes.

MR. BAIDYANATH MOOKERJEE: We want to hear only the relevant portions on this point.

MAULAVI ABDUL AZIZ: I am reading from page 34 of the opinions a copy of which, I think, is in the hands of the hon. member.

"On the other hand, the debtors are trying to delay the final adjudication by filing defences and appeals, of course, with the utmost straining of their resources, to get the benefit of it. So without such a provision the amendment would lose half its attraction and utility if not more, and the legislature should see that the clause relating to pending suits and appeals is retained."

I have another support from the senior Munsif, Maulvibazar. He says as follows:—

"I have the honour to report that though the Assam Money Lenders' Act was enacted for the purpose of giving relief to the debtors, yet some of the sections of the Act were so unhappily worded that in the actual working of this Act it was found that the Civil Courts were absolutely helpless in some matters and they could not grant adequate reliefs to the debtors who deserved such consideration, and it is gratifying to note that the Assam Money Lenders (Amendment) Bill has now been introduced though it is long overdue to enable the Act to be more effective in future I fully support the Bill. I am rather sorry that no retrospective effect is going to be given to the operative portion of the Act in respect of the suits and appeals disposed of"

MR. BAIDYANATH MOOKERJEE: We want to hear only the relevant portion.

MAULAVI ABDUL AZIZ: This is the relevant portion. "About five thousand Small Cause Court suits have been disposed of by me during these three years, and had the wordings of sections 8 and 9 of the Act been what they are proposed to be now, further relief could have been granted to a great many of the debtors, and the object of the Act would not have been frustrated. In my opinion the Act as amended should be made applicable not only to the pending suits and appeals, but also to the suits and appeals disposed of since the passing of the Assam Money Lenders' Act".

This is the opinion of the senior Munsif of Maulvi Bazar. As to the opinion of the District Judge of Sylhet, he is silent about it. He says he is supporting also.

MR. BAIDYANATH MOOKERJEE: What about the other opinions?

THE HON'BLE THE SPEAKER: These opinions have been circulated to the House and I do not think the hon. member should ask for these.

MAULAVI ABDUL AZIZ: I think, Sir, these opinions are very respectable opinions and these are entitled to more respect in this matter. These are independent disinterested opinions,—opinions of Judges and Courts of Law.

With this view, I commend my amendment to the House for acceptance.

THE HON'BLE THE SPEAKER: The motion moved is that in sub-clause 2) of clause 1 the full stop after the word "once" be omitted and the words "and it shall apply to pending suits and appeals" be inserted thereafter.

MAULAVI ABDUR RAHMAN: I beg to support the amendment that has been brought by the hon. mover. It has been pointed out by the mover that in order to give relief to the debtors, it is necessary that it should extend to pending suits and appeals. The original Bill that was moved by the hon. mover of the amendment also stated that during the present economic stringency that is prevailing in the country, some sort of amendment should be made to the Assam Money Lenders' Act that was promulgated in 1934, and in order to give further relief to the debtor. With a pious wish I think, the mover has amended this portion also. Of course it will not be out of place to mention here that the hon. members who are in close touch with the masses will agree with me at once that the conditions of the poor masses of the village are so deplorable that they even are not allowed to take two meals a day. Furthermore, Sir, the poor agriculturists are deprived of their belongings, lands and everything by the creditors and since the enforcement of the Money Lenders' Act that was introduced in 1934, creditors lost no opportunity of bringing in a number of suits in court so as to avert the operation of the Act. And if any move is not made in this respect, so as to see that this Act, that is the amending Bill, that has been moved by my hon. friend, Maulavi Abdul Aziz, be not given an opportunity of being operative in pending suits and appeals, I think the real spirit of the Bill will become frustrated. With these words I support the amendment brought by Maulavi Abdul Aziz.

MR. BAIDYANATH MOOKERJEE. I rise to oppose the amendment because the hon. mover wants to give retrospective effect to the Bill and moreover there is no time limit. It may so happen that a case may be pending in Law Courts for 5, 6 and 10 years; in that case the provisions of this will be applied. Another point should also be considered. I mean a case in which a man has paid his money and after that in order to realise that amount pays something more as litigation cost. He will be deprived of that money also. These are my two points and with these words I oppose the amendment.

MR. KEDARMAL BRAHMIN: I strongly oppose this amendment brought by my hon. friend Maulavi Abdul Aziz. He has stated certain opinions given by certain Bar Associations, but he has refrained from giving the views of others. I find that the Co-operative Societies and many Bar Associations and some Banks are opposed to this Bill, Sir. The Bar Association in Nowgong, Gauhati, Sylhet, Hailakandi and Dhubri all have opposed this Bill, not because they are not looking to the good of the debtors, but they say that Government has not made any provision for agriculturists to borrow money. It will be very difficult for them to borrow money from the money lenders when this legislation will be enacted. Sir, I find from these opinions that some of them like the Bank of Habiganj say that—

“The economic condition in both provinces has improved since the time when more effectual control of money-lending was made by legislation. There does not appear to be any reason as to why the Money Lenders' Act in Assam, which is much more favourable in its operations to the debtor should be more tightened against the creditor.”

So it seems that the present Money Lenders' Act is sufficient to give relief to the debtors and that there is no need for such legislation at present.

Further, Sir, this should not affect the pending cases and appeals as the cause of action in these cases have arisen before this Act come into force and must not be given a retrospective effect.

MAULAVI ASHRAFUDDIN MD. CHAUDHURI: Sir, we are now on y concerned with the amendment that my friend Maulavi Abdul Aziz has moved in this House whether it should apply to pending suits and

appeals. While I stand to support the amendment, I also want to make one thing clear. Whenever there is a Bill under the Act in contemplation in the House, we find that the party which is rather in more affluent circumstances always rush up very hastily and they go ahead in bringing much pressure upon the debtors in order to avoid the effect of the new law. It appears that we are going to give some relief to the debtors and I think we should be charitable to give some amount of relief to those unfortunate debtors whose fate is now hanging before some Court of Justice. The main point that has been brought by this amendment is whether we should give relief to debtors in pending suits and appeals. If the House is now favourably considering the case of other debtors I wish the House also to see that relief is given to those unfortunate debtors whose case is now pending before Courts. With these words I support the amendment of my friend Maulavi Abdul Aziz.

THE HON'BLE THE SPEAKER: The question is—

That in sub-clause (2) the "full stop" after the word "once" be omitted and the words "and it shall apply to pending suits and appeals" be inserted.

The motion was carried.

MAULAVI ABDUL AZIZ: I beg to move, Sir, that in clause 1 the following be inserted as sub-clause (4):—

"(4) That the provisions of the Transfer of Property Act, 1882, the Indian Contract Act, 1872, the Indian Registration Act, 1908 and the Civil Procedure Code, 1908, shall, to the extent necessary to give effect to the provisions of this Act, be deemed to have been repealed or modified".

Sir, this sub-clause is necessary in order to enable the provisions of the amending Bill to be operative. We have also provisions in the Indian Contract Act, the Transfer of Property Act and Registration Act regulating the loan transactions. Sir, the provisions of those Acts have to be repealed if the provisions of the present amending Bill are to be made operative. Now, the Transfer of Property Act provides that a mortgage of Rs.100 or over Rs. 100 must be written and it must be registered, but in this amending Bill there is a provision, I am referring, Sir, to clause 4 of the same, which seeks to amend section 8 of principal Act. The explanation in the clause reads thus:—

"'Secured Loans' means mortgaged debts as well as bonds for the satisfaction of the interest of which land has been delivered in possession of creditors to be enjoyed in lieu of interest by the debtors in conformity with local custom".

Thus by this explanation I have proposed to bring certain bonds within the purview of mortgage. In the definition of "secured loans", I have included bonds "for the satisfaction of the interest of which land has been delivered in possession of creditors to be enjoyed in lieu of interest". So, in order to give effect to this section, the particular provision in the Transfer of Property Act has to be repealed. The provisions of the Indian Contract Act have also to be loosened. I am also proposing in the amending Bill that it shall apply to decrees. To do this, the existing provisions in Code have also to be repealed. So, Sir, I think this section is quite necessary.

With these few words, I commend my amendment for the acceptance of the House.

THE HON'BLE THE SPEAKER: The motion moved:

In clause 1 the following be inserted as sub-clause (4)—

"(4) That the provisions of the Transfer of Property Act, 1882, the Indian Contract Act, 1872, the Indian Registration Act, 1908 and the Civil Procedure Code, 1908, shall, to the extent necessary to give effect to the provisions of this Act, be deemed to have been repealed or modified".

[After a pause].

I take it no other hon. member wants to speak. Then I put the motion.

The amendment was put by the Hon'ble Speaker and carried.

THE HON'BLE THE SPEAKER: The question is that clause 1 of the Bill as amended do stand part of the Bill.

The motion was carried.

MAULAVI ABDUR RAHMAN: Sir, I beg to move that after sub-clause (1) of clause 2 thh following be inserted, namely—

“ 2(1A). That after the word “ person ” in sub-section (1) of section 2 of the principal Act, a “ comma ” and the following words, “ Society or Bank either private or registered under the Co-operative Societies Act, 1912, or the Indian Companies Act, 1913 ” be inserted.

Sir, another amendment has also been moved by hon. Srijut Purna Chandra Sarma to the effect that the present Assam Money Lenders' Act does not specifically mention the Co-operative Societies which have been realising compound interest.

Sir, I have the good-luck or bad-luck of being associated with such Banks as the Central Co-operative Bank and the Co-operative Town Bank in the capacity of a Director for about last 10 years, and I have been noticing all the time, that the debtor who unfortunately once took loan of Rs.100 some ten years back, has paid more than Rs.500 ; still that unlucky fellow is paying interest and the amount which stands in his name will be more than Rs.200. So, Sir, if the Co-operative Societies or the banks are not taken within the purview of the Assam Money Lenders' Act, I think the fate of those people will be doomed. Of course it has been circulated by the Registrar of Co-operative Societies that no bank should realise more than double of the principal amount, but this circular does not give effect to the amount that has already been paid by the debtors. So, with a view to give some relief to the debtors, those who unfortunately borrow money from the banks, I have moved that this amendment be inserted after section 2 of the principal Act.

It is also a fact, Sir, which is probably known to the hon. members of this House that the number of rural societies at present is not a negligible one. In my Subdivision, *i.e.*, Habiganj, the number of Co-operative Societies will be nearing about 100. In each society there are more than hundred members who are generally all debtors. With this view in mind I move this amendment and I appeal to the hon. members of the House that they will accept the amendment.

THE HON'BLE THE SPEAKER: The motion moved is that in clause 2 after sub-clause (1) the following be inserted namely :—2(1A). That after the word “ person ” in sub-section (1) of section 2 of the principal Act, a “ comma ” and the following words “ Society or Bank either private or registered under the Co-operative Societies Act, 1912, or the Indian Companies Act, 1913 ” be inserted.

BABU KAMINI KUMAR SEN: On a point of information, Sir. Is it not a fact that the existing Money Lenders' Act governs the Co-operative and other private and registered banks ?

MAULAVI ABDUR RAHMAN: No, Sir. It does not govern the Co-operative and other private banks.

THE HON'BLE THE SPEAKER: It is a question of law.

THE HON'BLE SRIJUT ROHINI KUMAR CHAUDHURI: I rise, Sir, to say a few words with regard to this amendment. First of all, I should say that I do not quite understand the utility of this amendment. I may

perhaps inform the House about the original Bill of 1934. There was a clause which excluded the operation of the then Money Lenders' Act of 1934 on the Co-operative Societies but in the Select Committee that clause was deleted. So the fact is that the present Money Lenders' Act also applies to the Co-operative Societies. I therefore, Sir, do not see any reason why this amendment has been moved by the hon. member. The law as it stands applies both to private Banks as well as to Co-operative Societies and so this amendment I may repeat is quite unnecessary.

MAULAVI ASHRAFUDDIN MD. CHAUDHURY: I rise to say something in regard to this amendment. We have just now heard the Hon'ble the Judicial Minister. I do not find any tangible reason why this law should not be specifically clear on this point. It is better to accept the amendment as moved by my hon. friend Maulavi Abdur Rahman. It will rather be to the advantage of all the parties. Otherwise some sort of difficulty may be felt because the word "Bank or Society" is not specifically mentioned there. When the Act is going to be amended, I think, it is better that it should be there. With these few words, I support the amendment of my hon. friend Maulavi Abdur Rahman.

SRIJUT PURNA CHANDRA SARMA: Sir, I have also got a Bill with regard to this particular matter and there I have put in the word "society." I would like to add the words mentioned by my hon. friend Maulavi Abdur Rahman. The Hon'ble Minister has said that these Societies were meant and included as Banks and Societies under the Co-operative Society's Act or under the Company's Act in the category of person mentioned in the Act. Nevertheless, Sir, there is a saying in our vernacular that বিস্তৃত ন দেব। It will be more clear if these words are inserted because inspite of what was there in the mind of legislators the societies have the option of increasing the rate of interest or the demand for increased decretal amount on the poor *Raiyats*. I am aware of a few cases where Banks have increased not only the rate of interest but also have in the aggregate decreed more money than they actually can under the present law. Now, Sir, if these people want to move against the *ex-parte* awards of the Registrar their remedy lies only in the Judge's Court or in an appeal to a High Court. Sir, this amendment will enable them to bring in suits in the Munsif's Lower Court for setting aside the decree of the Registrar if it exceed the amount prescribed by the present clause. Now, Sir, only to make it more clear and to ensure better safety to the poor *Raiyats* I have brought in this clause which, I think, will explicitly and clearly explain the position of the legislators with regard to the scope of the Act.

THE HON'BLE THE SPEAKER: The motion moved is that in clause 2 after sub-clause (1) the following be inserted, namely—

2(1A). That after the word "person" in sub-section (1) of section 2 of the principal Act, a "comma" and the following words, "Society or Bank either private or registered under the Co-operative Societies Act, 1912, or the Indian Companies Act, 1913," be inserted.

The motion was carried.

Then the question is that clause 2 as amended do form part of the Bill.

The motion was carried.

Then the question is that clause 3 do form part of the Bill

The motion was carried.

THE HON'BLE THE SPEAKER: Maulavi Abdur Rahman may move his amendment to clause 4.

MAULAVI ABDUR RAHMAN: I beg, Sir, to move the following amendment to the Assam Money Lenders' (Amendment) Bill, 1937, introduced by Maulavi Abdul Aziz—that in lines 9 and 13 for the figure and words “12½ per cent.” the figure and words “9½ per cent.” be substituted and in lines 10 and 14 the figure and words “12½ per cent.” be substituted for the figure and words “18¾ per cent.” C. No. 13

This I move, Sir, with a view to reduce the rate of interest that has been laid down in the Assam Money Lenders' Act of 1934 in order to provide facilities to the poor *raiya*s and to the agriculturists. It is necessary to reduce the rate of interest so as to enable them to borrow money for their agricultural purposes. Some relief has, of course, been given to the poor *raiya*s but I should like to submit that it is not sufficient for the purpose. The country now demands more relief to be given to the poor *raiya*s. It is a move of the general mass to reduce the existing rate of interest from 18¾ per cent. to 12½ per cent. I think, Sir, at present the rate of interest in consideration of the existing economic condition of the country, is rather high. Now the number of banks has been increased to a great extent and the banks are providing money on a very low terms of interest. There are certain banks which are in a very firm footing. They even lend money on 2½ per cent. to 4½ per cent. interest. Now, Sir, if the existing rate of interest is not reduced, the private money-lenders will not thrive. If this amendment is accepted and this rate of interest is inserted in the Act, then I think the private money-lenders will also get sufficient scope for competing with the Banks and with this view in mind I have moved this amendment.

MR. KEDARMAL BRAHMIN: Mr. Speaker, Sir, I oppose this amendment. We find that these rates of 12½ per cent. and 18¾ per cent. are a fair rate of interest, and are being charged in all other provinces of India, and so there is no reason for changing the rate of interest in Assam. Interest means risk, and it includes various sort of expenditure incurred by the creditors; apart from agriculturists there are other persons who also live in Assam and they are merchants, and in connection with their business they require money and they cannot get the same at lesser interest than the rates of 12½ per cent. and 18¾ per cent., and so I oppose this amendment.

THE HON'BLE SRIJUT ROHINI KUMAR CHAUDHURI: Mr. Speaker, Sir. This amendment aims at the reduction of interest. I wish to raise only one point in this connection. The Bill of my hon. friend Maulavi Abdul Aziz did not intend to reduce the existing rates of interest—that was not the principle of his Bill; he accepted the rate of interest in the existing Money Lenders' Act of 1934, but sought relief in other respects and wanted to amend other provisions of the Bill. I think this amendment could more properly come under the Bill of my hon. friend Srijut Purna Chandra Sarma and not in the Bill of Maulavi Abdul Aziz because that was not the principle of his Bill; he never intended to reduce the rate of interest which was in the Money Lenders' Act of 1934. As regards the merits of the question the Government leaves it entirely to the decision of the House whether they want to keep the present rate of interest or to reduce it in the manner suggested by our hon. friend Maulavi Abdur Rahman.

The motion was put and adopted.

MAULAVI ABDUL AZIZ: Mr. Speaker, Sir, I beg to move that in lieu of the explanation in clause 4, the following be inserted:—“Explanation.—‘Secured loans’ means mortgage debts as well as bonds, for the satisfaction of the interest whereof, land has been delivered by debtors in conformity with local custom, in or to the possession of creditors, to be enjoyed in lieu of interest by the latter”.

By this I only want a rearrangement of the words and nothing new, so that there may not be any ambiguity hereafter or any confusion in getting the meaning of the section, and as I am proposing nothing new, I hope the House will have no objection to the change and with these words about the amendment I commend my motion to the acceptance of the House.

MR. F. W. HOCKENHULL: Mr. Speaker, Sir, I rise to a point of order. At page 16 of the Assembly Rules, consideration and amendment of Bills, rule 59(1) we have the following:—"If notice of a proposed amendment has not been sent to the Secretary three clear days before the meeting of the Assembly at which the Bill is to be considered, any member may object to the moving of the amendment, and such objection shall prevail, unless the Speaker, in his discretion, allows the amendment to be moved". Now, Sir, this motion may have been in the office three days ago, but the fact remains that the amendments were found on our table only when we took our seats this morning. I beg to protest against this inadequate notice which such an arrangement gives to us.

THE HON^{BLE} THE SPEAKER: Rule 59(1) only says that notice is to be sent to the Secretary 3 clear days before the meeting of the Assembly. The notice of this amendment was really received by the Secretary three clear days before the meeting of the Assembly, so the amendment cannot be said to be out of order, but with regard to the complaint of Mr. Hockenull that a copy of the amendment was not laid on his table before to-day, I think the hon. Mr. Hockenull is not correct; I am told by the office that it was laid on the table yesterday. As the rule does not say that the amendment should be sent to the members three clear days before the meeting of the Assembly I do not think I can hold that this amendment is out of order.

MR. F. W. HOCKENHULL: I bow to your ruling, Sir. But consequent on that ruling may I suggest that some better arrangement be made for ensuring that papers are on the table at least the day previous to their being moved?

THE HON^{BLE} THE SPEAKER: Certainly I shall see that it is done. It is necessary that the hon. members should know what amendments are going to be discussed. The practice that has hitherto been followed is that amendments are laid on the tables of the hon. members on the day previous to the date on which amendments would come up for discussion. I may assure the hon. member that this practice will not be departed from.

SRIJUT GOPINATH BARDOLOI: We received the copies yesterday.

MR. F. W. HOCKENHULL: Some of them were but some of them were not

The amendment was put to the House and carried.

Clause 4 as amended was then put to the House and formed part of the Bill.

MAULAVI ABDUL AZIZ: Sir, in clause 5, I propose to add a new sub-clause which will be clause 9 (1) (a) and the amendment I beg to move is this:

"9 (1)A In a suit brought for recovery of a loan, if the money received or realised or the usufruct appropriated by the creditor, be found on evidence taken, to be equal to or to exceed the claim, the loan shall be deemed to have been paid up and the suit shall be dismissed and if the money so received or realised or the usufruct so appropriated be found to be less than the claim, the suit shall be decreed for the balance." Clause 5, section 9, sub-section (1) says that "no money-lender shall, in respect of any loan made before or after the commencement of this Act, recover on account of

interest, whether, through court or otherwise or by way of usufruct of lands in usufructuary mortgages a sum greater in aggregate than the principal of the loan”.

We have thus already provided that money-lenders shall not recover or realise for a loan a sum greater than the principal as interest. That is to say for the interest he has to realise only so much as the principal and not more. So, Sir, in the case of a secured loan, that is loan in which land has been given into the possession of the creditor in lieu of interest, there may arise a difficulty when a suit is brought for recovery of the loan and to remove that difficulty I have added this new sub-clause. The creditor after some time may take a fancy to realise his loan. He may come before the court for the realisation of his loan and I think he should have that right to realise or get back his loan when he pleases. Now in that case, what will be the position of the debtor? What will his defence be or what relief will he claim? By this sub-section I give the debtor his defence he will come before the court and say that so much of his land has been enjoyed by the creditor in lieu of interest, that the usufruct of his land has got a market value and that that should be calculated and given credit for. Then the law court will assess the value thereof and credit the debtor for the amount realised or appropriated by the creditor. To do this I propose this addition, *viz.*, sub-section 9 (1)A.

In the case of bonds, there may be cases where the bond is not endorsed on the back and in that case, a court may not take evidence of those moneys which are paid out of court for interest. To enable the court to take evidence and give credit to the debtor, I have added that new sub-section by allowing the court to take evidence to see how much has been realised and recovered by the creditor in money or usufruct. With these words, Sir, I commend my amendment for the acceptance of the House.

THE HON'BLE SRIJUT ROHINI KUMAR CHAUDHURI: On a point of information from the hon. member who moved the amendment, Sir, may I know what the word 'money' means. Does it mean the principal as well as the interest?

MAULAVI ABDUL AZIZ: The word there is 'loan'.

THE HON'BLE SRIJUT ROHINI KUMAR CHAUDHURI: "In a suit brought for recovery of a loan, if the money received....." I mean this word 'money' whether it means principal and interest or what?

MAULAVI ABDUL AZIZ: Principal as well as interest.

THE HON'BLE SRIJUT ROHINI KUMAR CHAUDHURI: If the money exceeds the amount of principal and interest, then is it the idea that the creditor should not get anything?

MAULAVI ABDUL AZIZ: Certainly not. We have already provided that he should not get as interest more than the principal.

THE HON'BLE SRIJUT ROHINI KUMAR CHAUDHURI: That is not quite clear from the amendment.

MAULAVI ASHRAFUDDIN MD. CHAUDHURY: Sir, I think so far as this amendment is concerned, it is not very clear. It does not make any provision relating to interest nor does it clear the point whether 'loan' means principal or principal and interest.

THE HON'BLE THE SPEAKER: Is the hon member opposing the motion?

MAULAVI ASHRAFUDDIN MD. CHAUDHURY: I am opposing and at the same time I am bringing this point to the notice of the Hon'ble Member. According to the subsequent amendment of Maulvi Abdur Rahman, namely, that no money-lender shall recover a sum greater in aggregate than double the principal of the loan, the word 'loan' should mean principal and interest. But in this amendment the mover does not say whether the word

'loan' means principal or principal together with interest. So that word should be defined. I should rather say that wording in Maulvi Abdur Rahman's amendment is better.

MR. BAIDYANATH MOOKERJEE: Then another point is not clear.

THE HON'BLE THE SPEAKER: It is better that the hon. member should speak on the motion. If he wants to do so, then he can raise the point he wants to.

The motion is that—

In clause 5 after the proposed sub-section (1) of section 9 the following be inserted:—

“9(1)A. In a suit brought for recovery of a loan, if the money received or realised or the usufruct appropriated by the creditor, be found on evidence taken, to be equal to or to exceed the claim, the loan shall be deemed to have been paid up and the suit shall be dismissed and if the money so received or realised or the usufruct so appropriated be found to be less than the claim, the suit shall be decreed for the balance.”

MAULAVI ASHRAFUDDIN MD. CHAUDHURY: Sir, in view of the fact that, as the amendment does not make the word 'loan' clear, I am unable to follow whether there is any provision made in this amendment for the realisation of interest. What the creditor will have in lieu of his interest it is not clear. Probably my friend also from a perusal of the entire Bill will find that he is not also against the principle that in no case it should be more than double the principal amount. So far as this amendment is concerned, we do not find any clear indication that he makes any provision for interest. So I oppose the amendment, for defective wording.

MAULAVI ABDUR RAHMAN: Sir, I stand to oppose the amendment on the ground that the purpose with which the hon. Mr. Aziz endeavours to bring an amendment to the existing Money Lenders' Act falls flat by bringing this amendment. His intention is to give relief to the poor *raiyat* and agriculturists. But if this amendment is accepted by the House and it be allowed to be enacted, the debtors are bound to go to the court to seek redemption through the court. The creditor who holds land on usufructuary mortgage will never go to the court and avoid the decree for redemption of the land by the debtor, as there is no time limit for the creditor who holds land under a mortgage deed and it is not necessary for him to go to the court or sue the debtor. So in order to get back the land the debtor himself has to go to the court and sue the creditor for the redemption of the land, thereby running the risk of unnecessary litigation. Moreover, Sir, the peasants are not so well off at present so as to be able to bear the expenses of litigation.

Then again, Sir, the point will be a very controversial one. My friend has suggested that in lieu of the mortgaged land the usufruct that will be appropriated by the creditor will be taken into consideration by the court. It is a well known fact, Sir, that our debtors as well as creditors generally do not keep any register in order to show the amount of usufruct that is being appropriated by the creditor, and so it will be difficult for the debtor to prove to the satisfaction of the court what amount of paddy was being appropriated by the creditor. Again, Sir, there will be controversy about the price of the produce of the land. As amount of the produce and the price thereof will both be controversial, the debtors will have to run a great risk. With these words, Sir, I oppose the amendment.

THE HON'BLE SRIJUT ROHINI KUMAR CHAUDHURI: Sir, I also rise to oppose the amendment which has been moved, not exactly on the grounds suggested by my hon. friend Maulavi Abdur Rahman, but on the ground that the clause is rather ambiguous and is not understandable at all.

Supposing, Sir, a man has lent out Rs.100 and the debtor has already paid Rs.150 and the claim is made for Rs.100 on the ground that no interest is charged and a suit is filed claiming only the principal amount due. Here the man has already paid Rs.150 and it will be urged that, as he has already paid Rs.150, that is to say an amount in excess of the claim, therefore the claim should be dismissed. So, that will be very hard on the creditor and it will be absolutely going beyond the scope of any relief which was contemplated by the Money Lenders' Act. I think, Sir, the hon. member does not mean that, and in order to make his position clear I think this amendment ought to be withdrawn.

MR. BAIDYANATH MOOKERJEE: Sir, I also rise to oppose this amendment. From the wordings used by the hon. mover I find that, if a creditor who lent Rs.100 but has already realised Rs.200 as interest, then he will receive nothing absolutely. No case will lie. And further it is not clear whether, if the creditor has already realised Rs.250 after lending Rs.100, he shall have to return Rs.50 from his pocket or not. With these words, Sir, I beg to oppose the amendment.

THE HON'BLE THE SPEAKER: Before I put the question I should like to draw the attention of the House to the fact that I ought to have allowed the amendment of Maulavi Abdur Rahman to be moved first, because that proposes a substitution of the present clause 1. Therefore, before I put that question to the vote, I would ask Maulavi Abdur Rahman to move his amendment.

MAULAVI ABDUR RAHMAN: Sir, I beg to move.....

MAULAVI ABDUL AZIZ: On a point of information, Sir. In place of my amendment that is a new clause that is brought forward. Should not the amendment be taken first?

THE HON'BLE THE SPEAKER: The hon. member is trying to add another clause 9(1)A. But Maulavi Abdur Rahman wants to alter clause 9(1). Therefore that should come first.

MAULAVI ABDUL AZIZ: Sir, then his amendment will be in place of my amendment to 9(1).

THE HON'BLE THE SPEAKER: Then the hon. member will have to think whether he should press his amendment to clause 9(1).

MAULAVI ABDUR RAHMAN: Sir, I beg to move that in lieu of proposed sub-section (1) of section 9 together with the explanation thereof the following be inserted:—

“ 9(1). No money-lender shall, in respect of any loan made before or after the commencement of this Act, recover, on account of interest and principal, whether through Court or otherwise, or by way of usufruct of lands in usufructuary mortgages, a sum greater in aggregate than double the principal of the loan ”

“ *Explanation.*—(1) The term “ aggregate ” means and includes the amount already paid amicably or otherwise.

(2) For the purpose of sub-section (1) of section 9 in respect of usufruct of lands in usufructuary mortgages the loan made before the commencement of this Act, shall be deemed to be fully satisfied on the completion of 12 years from the date of the loan and on the completion of 9 years of the loan made after the commencement of this Act.”

Now, Sir, I have tried to add only, after the word “ interest ” appearing in the principal amendment of Maulavi Abdul Aziz, the words “ and principal ”. His amendment is “ No money lender.....recover on account of *interest*.....” and I add here the word *principal* also.

Sir, if the amendment that is originally moved by Maulavi Abdul Aziz and which was introduced in the last session of the Assembly be allowed to remain as it is, I think, his purpose as well as the purpose of the people in general cannot be served by that. He says here that on account

of *interest* only more than double cannot be realised and by this, I am of opinion, the matter is not made fully clear. Rather it leaves some ambiguity in the section itself. The spirit of section 9 which was enacted in 1934 proposes that in no account there shall be a decree of more than double the principal amount that was originally advanced to the debtor. But now-a-days what do we find? The courts simply take the plea that they are to consider that they should not pass a decree of more than double the amount which on the date of institution of the suit was placed before the Court. But the spirit of the legislature possibly was that in no case it should exceed double of the principal amount that was originally advanced. Perhaps in order to remove the ambiguity Maulavi Abdul Aziz inserted the word "interest" in his amendment. But I think to make it more clear the words "and principal" should be inserted after the word "interest". That is to say that the Court should take into consideration before passing any decree that on no account the creditor should be paid both on account of interest as well as principal more than double the amount originally lent.

Then, Sir, as regards sub-clause (2) in section 9, it is also the intention of the original mover of the amendment that debtors who leased out their land on mortgage and the produce whereof is given to the creditor in lieu of interest, should be given some relief and in order to fulfil that mission my hon. friend has placed another amendment this time. But I have already said his amendment is not clear enough. In order to save the poor people from unnecessary litigation I have placed in my amendment that on completion of 12 years from the date of the loan, the loan should be deemed to be fully satisfied and on completion of 9 years after the commencement of this Act, the land should be resumed by the debtor. This will, I think, be to the satisfaction of both parties. Of course it may be argued that creditors lent their money Rs.100 per *khyar*, in those days when money was not so scarce. But 12 years, I think, will satisfy them also. It is not uncommon that some creditors are enjoying the land for 30 years and I have got reports that some persons are enjoying the land even for 40 years and the actual debtor cannot get any advantage. I do not say that the creditor should go to Court, because he is simply enjoying the land of the debtor and has not appropriated it. Specially in the lower part of Habiganj subdivision the reports are that the tenants who are paying to the landlords for about 4 *hals* of land are not holding even a *khyar* of land and unless some sort of amendment is enacted, these poor people cannot be given any relief. With these words I commend that the Hon'ble House will accept my amendment.

THE HON'BLE SRIJUT ROHINI KUMAR CHAUDHURI: May I put a question on a point of information, as regards the last amending clause? May I ask the hon. mover of the amendment: What will be the effect of hypothecation of crops for a period of 12 years? Will the debt be extinguished if this hypothecation goes on for 12 years?

MAULAVI ABDUR RAHMAN: After this period the debt will be satisfied; so the period has been fixed. Twelve years is not a matter of joke.

THE HON'BLE THE SPEAKER: The amendment moved is—

That in lieu of proposed sub-section (1) of section 9 together with the explanation thereof the following be inserted:—

"9.(1) No money-lender shall, in respect of any loan made before or after the commencement of this Act, recover, on account of interest and principal, whether through Court or otherwise, or by way of usufruct of lands in usufructuary mortgages, a sum greater in aggregate than double the principal of the loan.

Explanation.—(1) The term "aggregate" means and includes the amount already paid amicably or otherwise.

(2) For the purpose of sub-section (1) of section 9 in respect of usufruct of lands in usufructuary mortgages the loan made before the commencement of this Act, shall be deemed to be fully satisfied on the completion of 12 years from the date of the loan and on the completion of 9 years of the loan made after the commencement of this Act."

✓ Mr. D. B. H. MOORE: It appears that this amendment, as tabled, is very similar to the original Bill, and both clauses are, in our view, objectionable in certain points. Under the Act of 1934, the money-lender cannot recover more interest than the principal loaned. But, at the same time, it appears no restriction has been placed upon amicable recoveries. In other words, it is possible for a money-lender to obtain both his interest amicably and interest on the original loan through the Court. Under the new Bill, amicable interest is only recoverable up to the amount of original loan and no further interest can then be claimed. The effect of this, as we see it, will be two-fold. In the first place, a money-lender will be forced to sue for recovery of his debt as soon as the total, both paid and unpaid, amounts to 100 per cent. Secondly this legislation will encourage bogus transactions in taking out fresh loans. In other words, in our view, this amendment is going to make long term loans almost impossible, and, in many cases, where interest only is collected annually, it will affect more particularly the poorer classes of cultivators.

We therefore feel that this amendment will operate harshly on the borrower and discourage long term loans, and, therefore, I beg to oppose the amendment ✓

MR. KEDARMAL BRAHMIN: I oppose this amendment. Retrospective effect to be given will tell very badly on the creditors. If this amendment is passed, it will unsettle settled contract and will affect the validity of registered and unregistered documents and in that case what will be the value of these deeds if they can be revoked at any time by the Legislatures. As my friend has already pointed out this will discourage long term borrowing, and so will tell very badly on debtors also; it will encourage fraud, and therefore I oppose this amendment.

BABU SHIBENDRA CHANDRA BISWAS: I support the amendment brought by Maulavi Abdur Rahman. If this amendment is not accepted, I think 60 per cent. of the cultivators in the district of Sylhet will become landless. If we go to villages, we find that paddy lands of 75 per cent. of the cultivation are given in usufructuary mortgage. So a year limit is absolutely necessary. If there be no year limit litigation will increase. Creditors will say that it will take so many years. If the crops fail in such a year the produce will not be estimated from year to year and in order to avoid this sort of litigation a year limit is absolutely necessary.

SRIJUT JOGENDRA NATH BARUA: With regard to this amendment, I think, Sir, that explanation in clause 9(2) is very arbitrary, and at the same time it is not known how on a 12 years' basis loans contracted before the Act will be satisfied, and in the case of a loan contracted after this Bill is passed, it will be satisfied after nine years only. If the hon. mover of the amendment has got some specific instances in view, we shall be glad to know these and then we can support this amendment; otherwise I think this amendment is arbitrary and not based on good reasons. It is not consistent with the other parts of the amendment also. And, Sir, this amendment will revolutionise the whole law of mortgage, to a great extent, because, Sir, for interest, lands are occupied in case of usufructuary mortgages. If this amendment is carried the debtors in many cases will be put to greater difficulties.

THE HON'BLE SRIJUT ROHINI KUMAR CHAUDHURI: Sir, I wish to point out some very serious objections to this amendment. The first paragraph of this amendment says that no money-lender shall, in respect of any loan made before or after the commencement of this Act, recover, on account of interest and principal, whether through Court or otherwise or by way of usufruct of lands in usufructuary mortgages, a sum greater in aggregate than double the principal of the loan; and the Explanation is that the term 'aggregate' means to include the amount already paid amicably or otherwise.

It has become all the more serious on account of the fact that we have already decided to give retrospective effect to this piece of legislation. Now, Sir, if a money-lender has lent out a sum some years ago, and on account of his forbearance he has not sued the particular debtor and has been satisfied with the acceptance of interest only from time to time — it may be in many cases the interest has exceeded the principal amount — in such a case it would be reasonable to accept that the money-lenders will not get as interest anything more than the principal amount. But would it be fair to let the entire debt to be extinguished for the mere fact that the money-lender has been forbearing and has been satisfied by accepting the interest from time to time and has not sued the debtor? Sir, according to the law of *Dam Dupat* the interest realised should not exceed the principal amount, but it is not in contemplation of any legislature anywhere and I think nowhere is there any law in force that the entire debt would be extinguished by the mere fact that interest paid has exceeded the principal amount. I think, Sir, the House can accept the amendment, which also is in advance of the existing law, only if the words "and principal" be deleted in the third line of the amending clause.

Then, Sir, as regards sub-clause (2) of the amending clause I think it is absolutely revolutionary in a sense that no money-lender will think of advancing any large sum of money even for industrial purposes. I know, Sir, of several estates which have taken large amount of loan and have given over the entire produce or profit from the property, which has been given in mortgage, in order to pay off the debt. Now, it may be, on account of the largeness of the amount, it would require more than 12 years — sometimes even up to 20 or 25 years — for the liquidation of the entire amount of debt. But for that timely help of the money-lender the property might have been sold at a much lesser price. So, it would be extremely hard to punish the money-lender, who has helped by taking out the usufructuary property and giving a large amount of loan. If this Bill is going to have retrospective effect the result will be disastrous to the money-lenders who may not be to-day, owing to the economic condition of the country, in the same position, as they were when they lent money. This aspect of the question has got to be considered. Some money-lenders may be altogether ruined on account of the effect of this Bill. So, Sir, I would ask the hon. mover of the amendment at least to withdraw this clause. It will seriously affect on our banks as well as industries.

Now, Sir, the House will also do well to remember another thing that in no other province there is such a legislation, and if we have such a stringent law in this province, people — at least industrial people — who want that a fairly good number of banks are being established from day to day, in our own province such banks will not be able to do business properly, and the whole idea of establishing banks in this province will receive a great set-back. All these circumstances, I hope, the House will take into account before deciding to accept this amendment.

MAULAVI DEWAN MUHAMMAD AHBAB CHAUDHURY: Sir, I rise to support the amendment moved by my hon. friend Maulavi Abdur Rahman, Sahib. I am very glad to find that it is for the first time to-day that the members of the Congress Party have joined their hands together with the Muslim League party to advocate the cause of the poor and the oppressed. It is a happy occasion no doubt and so I congratulate them on their sincerity of purpose. Poor are the poor. Creditors are the creditors. There is no communalism or class warfare in it.

Sir, the question of capital and labour, oppressor and the oppressed, creditors and debtors is the burning topic of the day. The Mahajans represent the capitalists while we represent the poor. We have come here to advocate the cause of the poor *rai-yats* and agriculturists. So, I support the amendment of the hon. mover. One of the hon. members of this House said that it will be difficult for the debtors to get money if this Act is passed, but, Sir, if it is true it will be a great blessing for the poor villagers. I know, Sir, personally that oftentimes the Mahajans encourage and even persuade the simple villagers at the time of the marriage of their sons and daughters to borrow money and the result is this that their lands, and homesteads are swallowed up by them. The term "Mahjan" in Bengali means "great person". But, alas this term has now been degenerated in "Mahajan".

So, with these few words I beg to support this amendment.

MAULAVI ASHRAFUDDIN MD. CHAUDHURY: Sir, I find that I am neither of this party nor of that party. It has been very difficult for me to please any party since I came to this House.

Now, Sir, I find from explanation (1) to the amending clause 9(1) that "the term 'aggregate' means and includes the amount already paid amicably or otherwise". The amending clause reads "No money-lender shall, in respect of any loan made before or after the commencement of this Act, recover, on account of interest and principal, whether through Court or otherwise, or by way of usufruct of lands in usufructuary mortgages, a sum greater in aggregate than double the principal of the loan", and then we have explanation (2) which reads thus:—

"(2) For the purpose of sub-section (1) of section 9 in respect of usufruct of lands in usufructuary mortgages the loan made before the commencement of this Act, shall be deemed to be fully satisfied on the completion of 12 years from the date of the loan and on the completion of 9 years of the loan made after the commencement of this Act".

Now, I cannot reconcile these two provisions. I do not know how to calculate the aggregate which is not greater than double the principal of the loan in case of usufructuary mortgages. It may so happen that the aggregate of the amount paid may not be equal to the principal amount. There should be some standard to ascertain that the usufruct of lands after twelve or nine years, as the case may be, does not exceed a sum greater in aggregate than double the principal of the loan, as has been provided in clause 9(1). On the other hand, it may so happen that the aggregate realised in respect of usufructuary mortgages for 9 years may not be equal to the principal of the loan even? Suppose a debtor, who has paid for four years, could not pay anything for subsequent two or three years on account of floods, famine, etc. In that case would it be fair to remit the entire amount of principal? My friends, I am against this provision. I am not here to capture public imagination. I think I should stand boldly and see that I am conscientiously doing my duty (Mr. Baidyanath Mookerjee:— He does not

care for cheap popularity). There has been comment that my Assembly life will be shortened ; I do not care it much. I will rather say that the spirit of section 9(1), is in conflict with the spirit of explanation.

Would it not be reasonable to leave some scope for the court to ascertain the point whether the amount which the Mahajan has got after some years is near in aggregate than double the amount of principal. Some scope must be there for determination of this issue.

THE HON'BLE THE SPEAKER : How long the hon. member will take ?

MAULVI ASHRAFUDDIN MD. CHAUDHURY : I will take only a few minutes more.

THE HON'BLE THE SPEAKER : The hon. member should say whether he will take two, three or ten minutes.

MAULAVI ASHRAFUDDIN MD. CHAUDHURY : I will finish it within five minutes, Sir.

THE HON'BLE THE SPEAKER : Very well.

MAULAVI ASHRAFUDDIN MD. CHAUDHURY : I support the first portion of the second explanation but I would rather ask the hon. mover of the amendment whether he means that section 9(1) should be carried literally. In explanation 2 he is going to deny that privilege which he confirms on the creditors by virtue of section 9(1). The assumption is that the loan on the completion of 12 years or 9 years will be double the amount of principal. It will not be a very safe data I should say. It may so happen that in many cases there may be sheer injustice. So, I hope my hon. friend will think over the matter. I also want to say at the same time that I am nonetheless keen in my feeling for the cause of the poor debtors. With these few words I resume my seat.

(The house was adjourned for lunch till 2-5 p. m.)

(After lunch)

MAULAVI ABDUR RAHMAN : Mr. Speaker, Sir, I have been requested by some of my hon. friends to give some concrete examples, and also to explain the position, so I request that I may be allowed to do so.

The intention of my moving this amendment has already been explained to the hon. members of the House, but I want to add a few words as to why I have added the words "on account of principal and interest, whether through Court or otherwise, or by way of usufruct of lands in usufructuary mortgages, sum greater in aggregate than double the principal of the loan". In the amendment moved by my hon. friend Maulavi Abdul Aziz he has mentioned that the sum should not be more than double the interest only, but I have added the words "and principal" after the word "interest" and if the principle of my amendment is accepted then I think the object of hon. mover can be fulfilled. If the word "principal" is not added, in my opinion a creditor will get an opportunity to realise double the amount of the principal on account of interest only. Therefore in order to remove any ambiguity and to make the matter clear for the Courts I have added the word "principal" after the word "interest". This will debar any money-lender in respect of any loan made before or after the commencement of this Act to recover on account of interest or principal a sum greater than double the principal of the loan.

As regards clause 2 of the explanation I have been requested by some of my hon. friends to see whether I can withdraw it, and I have been also requested by some of my hon. friends opposite to cite some instances to show whether a creditor will be able to realise a sum greater than double the amount of the principal of the loan by way of interest, in the case of usufructuary mortgage bonds. Sir I have got a particular case of mine which I shall

now lay before the House. I had an opportunity to invest a sum of money on account of certain area of a land. The area of the land is about 7 *keirs*, and I have invested only a thousand rupees, and I am enjoying the usufruct of this land for the last 15 years, and that land yields annually not less than 60 maunds of paddy, and if we calculate the price of the paddy as Rs.2 per maund then I am receiving Rs.120 per year, and in this way if I am to enjoy this land for an indefinite period I shall realise the principal of the loan many times over.

MR. BAIDYANATH MOOKERJEE : On a point of information, Sir, who pays the cost of cultivating the land.

MAULAVI ABDUR RAHMAN : Of course I have the land cultivated along with my other *khamar* lands.

MR. BAIDYANATH MOOKERJEE : Then the cost of cultivation should be deducted.

MAULAVI ABDUR RAHMAN : Then, again, one gentleman very recently came to me and he complained to me that he let out some land some 30 years ago for Rs.200 and the annual produce of the land according to his version could not be less than Rs.50 or 60. In such cases, Sir, you may see how much has been realised by the happy creditor. The man is not in a position to go to the Court. In that case he has to bring a suit and then there will be a regular trial and he has to adduce evidence to satisfy the court whether the creditor has actually appropriated more than double the principal during these years. If anybody looks into it then it will be evident that the creditor has actually appropriated more than four times of the principal amount that he lent out to the debtor.

THE HON'BLE THE SPEAKER : The hon. member is really making a long speech.

MAULAVI ABDUR RAHMAN : I have finished, Sir. It has been said by some friends that there may be natural exigencies such as droughts or inundation where no concession will be given to the creditors. A consolidated period has been fixed here. Sir, this is a sort of business and before studying the business conditions nobody knows whether he will always be benefited by the establishment of his business or whether he will in some cases have to suffer a loss. If nobody can lay his hand on these natural accidents and foresee the condition, then I would submit to the House that the period of 12 years and 9 years is not inconsiderate in consideration of the poor lot of the people of the country.

SRIJUT GOPINATH BARDOLOI : In regard to this amendment I would like to make the position of the party clear. I find that this amendment evidently intends to cover all manner of transactions, not merely between an agriculturist and a money-lender but also all kinds of money lending business. We as a party are prepared to give all manner of relief to agriculturists. But surely, we are not a party who are prepared to shut out of consideration every kind of enterprise that may arise if this legislation as it is passed. (Mr. Hockenull : *Hear, hear*). Our point is this. I thought we are perfectly agreeable to the amendment if the amount of loan was definitely stated, I mean to say an amount which could have been taken as an usual or even a more than usual amount which the agriculturists in the ordinary circumstances would borrow. So that what I was really thinking was that the loan should be defined to mean a particular amount not exceeding Rs.500. If it is possible to accept such an amendment our party would be only too happy to vote for the amendment of the mover. Otherwise we could find it rather difficult to support it. (Throughout the Bill I find the same difficulty. This piece of legislation which surely wants to do great

relief to the agriculturists really deserves our entire support. But if the effect of it is also to jeopardise other enterprises in which other poor people are also involved I think it is our duty to see that it is not allowed to be done. That is the view point that we have taken.)

MAULAVI ABDUR RAHMAN: May I suggest whether they can accede to the amount of Rs. 1,000 so as to give some relief to the Taluqdars ?

MR. BAIDYANATH MOOKERJEE: So, that is the real reason ?

MR. GOPINATH BARDOLOI: Rs. 1,000 may be an unusual case but that is not generally the amount that an ordinary cultivator is expected to borrow.

MR. HOCKENHULL: Rs. 500 is very generous.

MAULAVI ABDUR RAHMAN: I am ready to accept if an amendment could be made like that.

THE HON'BLE THE SPEAKER: But how does the hon. member propose to accommodate the hon. the Leader of the Opposition ? Where does he want to put the figures Rs. 500 ?

MAULAVI ABDUR RAHMAN: If he comes forward with an amendment I will accept it.

THE HON'BLE THE SPEAKER: How to fit in that amendment ?

KHAN BAHADUR MAULAVI KERAMAT ALI: May I suggest "Any loan not exceeding Rs. 500 in principal."

MAULAVI ABDUR RAHMAN: I accept it.

THE HON'BLE THE SPEAKER: Then explanation (2) will be "For the purpose of sub-section (1) of section 9 in respect of a loan not exceeding Rs. 500 in principal made before the commencement of this Act shall be deemed to be fully satisfied on the completion of 12 years from the date of the loan and on the completion of 9 years of the loan made after the commencement of this Act". I think there is no objection to accept this alteration to the amendment

The question is—

(iii) That in lieu of proposed sub-section (1) of Section 9 together with the explanation thereof the following be inserted:—

"9(1) No money-lender, shall, in respect of any loan made before or after the commencement of this Act, recover, on account of interest and principal, whether through Court or otherwise, or by way of usufruct of lands in usufructuary mortgages, a sum greater in aggregate than double the principal of the loan.

"Explanation—(1). The term "aggregate" means and includes the amount already paid amicably or otherwise.

(2) For the purpose of sub-section (1) of section 9 in respect of usufruct of lands in usufructuary mortgages a loan not exceeding Rs. 500 in principal made before the commencement of this Act shall be deemed to be fully satisfied on the completion of 12 years from the date of the loan and on the completion of 9 years of the loan made after the commencement of this Act."

THE HON'BLE THE SPEAKER: The motion before the House is that the following explanation be added to sub-section (1) of section 9:—

"Explanation—(1), The term "Aggregate" means and includes the amount already paid amicably or otherwise.

(2) For the purpose of sub-section (1) of section 9 in respect of usufruct of lands in usufructuary mortgages the loan not exceeding Rs.500 in principal made before the commencement of this Act, shall be deemed to be fully satisfied on the completion of 12 years from the date of the loan and on the completion of 9 years of the loan made after the commencement of this Act.'

KHAN BAHADUR MAULAVI KERAMAT ALI: In lines 3 and 6 of the explanation (2) would it not be better to have the words 'a loan' instead of the words 'the loan'?

THE HON'BLE THE SPEAKER: The words 'a loan' would be better I think. (This was agreed to by the House and the explanation as thus amended was put and carried).

THE HON'BLE THE SPEAKER: I have got notice of some more amendments from the Hon'ble Minister. His amendments were handed over to us to-day at 11 and I think by this time the hon. members have got on their tables copies of these amendments. Of course they have been sent out of time. As I pointed out this morning, they should have been sent to us three clear days before the meeting of the Assembly.

THE HON'BLE SRIJUT ROHINI KUMAR CHAUDHURI: I may explain, Sir, I sent these very identical amendments in the last session of the Assembly. Our office was under a misapprehension. They thought that, as the Bill had not lapsed, the notice of the amendments also had not lapsed, and under that impression did not send the amendments. But now having understood their mistake, they sent the amendments this morning. We had sent notice of these amendments before and they were also laid on the table of the hon members last session. These amendments are more or less of a non-controversial nature and I hope the House will not object.

THE HON'BLE THE SPEAKER: It may be that under some misapprehension the amendments were not sent. But I did not expect that such misapprehension should arise on the part of a Government Department. Does the House really want that these amendments should be allowed? I want to know the sense of the House.

RAI BAHADUR PROMODE CHANDRA DUTT: After all we are all human beings and are apt to commit mistakes.

THE HON'BLE THE SPEAKER: Moreover as the Hon'ble Minister has stated these amendments were sent previously.

RAI BAHADUR PROMODE CHANDRA DUTT: I think, Sir, that the amendments are also very necessary.

THE HON'BLE THE SPEAKER: I quite see that and accordingly I allow the amendments.

THE HON'BLE SRIJUT ROHINI KUMAR CHAUDHURI: Sir, I beg to move that, after sub-section (1) of the proposed section 9, the following be inserted:—

“Provided that nothing in this sub-section shall effect.—

(i) A Bank advancing money at interest not exceeding 6 per cent. per annum,

or

(ii) subscribers to a loan made to or debentures or other securities of any description issued by Government, a public body, a bank, or a company.”

Sir, this amendment will speak for itself and it is hardly necessary for me to explain. As is known to hon. members of this House, some banks advance money to industrial concerns, for tea estates, etc. And those concerns are unable to pay the money within a short time and the debts are usually prolonged from year to year, only interest being taken. But if this legislation is to affect these banks also, the result will be that it will be difficult both for the banks to realise their dues and it will also be difficult for the borrowers to get loans from them and to develop their business. Therefore Sir, we have proposed this amendment.

Secondly, Sir, it becomes necessary for the Government, banks and other public bodies to issue debentures. The debenture holders are content to get their interest and they would rather like that these debentures should be spread over a long time. Consequently if they are not exempted, this Bill will affect the debenture holders and the subscribers. I have therefore proposed this amendment and I hope the House will accept it.

After reading out the motion to the House, there being no other speaker on the motion, the Hon'ble Speaker put the motion, which was carried.

THE HON'BLE THE SPEAKER: Then I want to put the motion moved by Maulavi Abdul Aziz, namely, addition of another clause 9(1)A.

MAULAVI ABDUL AZIZ: Sir, I beg to withdraw the amendment. The motion was by leave of the House withdrawn.

THE HON'BLE THE SPEAKER: Then the question is that clause 5 of the Bill, as amended, do stand part of the Bill.

THE HON'BLE SRIJUT ROHINI KUMAR CHAUDHURI: Sir, there is another amendment.

THE HON'BLE THE SPEAKER: All right. The Hon'ble Member may move it.

THE HON'BLE SRIJUT ROHINI KUMAR CHAUDHURI: Sir, I beg to move that sub-section (4) of the proposed section 9 be omitted. I would only draw the attention of the House to sub-section (4) of this clause. It is like this:—

“The foregoing provisions contained in sub-sections (1), (2) and (3) of this section will apply to the decrees passed before the principal Act came into operation and the decrees shall not be executable until the amount payable thereunder be reduced in accordance with the said provisions.”

This means, Sir, that all decrees which are yet alive and which are capable of being executed will have to be revised in the light of the amendments which have been made by this Bill. This will upset the existing order of things and will not only multiply the work of our courts but will also disturb the many trading arrangements made. Also many decrees might have been satisfied in the meantime and only those indulgent decree-holders who have not got their decrees satisfied will suffer, if this clause remains as it is. I therefore think, Sir, that the hon. mover of this Bill will accept the amendment which I have proposed.

THE HON'BLE THE SPEAKER: The motion moved is that sub-section 4 of the proposed section 9 be omitted.

MAULAVI ABDUR RAHMAN: In this connection may I know whether it is within the scope of the Provincial Legislature to adopt this Bill and whether it will not affect the Civil Procedure Code?

SRIJUT GAURI KANTA TALUKDAR: Sir, I beg to support the amendment. And I fully agree with the Hon'ble Revenue Minister when he says that it will create great complication if decrees which have been already passed before the Act came into operation are to be affected by the proposed amendments. Those decree-holders who have been somewhat lenient and thereby late in execution of their decrees will have to suffer and litigation will also greatly increase. So I think these provisions should not be made applicable to decrees passed before the Act came into force in the interests of both the creditors as well as the debtors.

BABU SHIBENDRA CHANDRA BISWAS: Sir, I oppose this amendment. If this is accepted it will defeat the object of the whole Act. If the decrees which have allowed more than double the principal amount and which have been passed before the Act came into force, are to be executed, then it will be a Democle's Sword over the head of the debtor. So, I think if this provision is omitted the whole aim of the Act will be of no use.

MAULAVI ABDUL AZIZ : I beg to oppose the amendment proposed by the Hon'ble Revenue Minister. I could not follow the line of argument advanced by the Hon'ble Minister. He says that if this provision is accepted it will create complications and the decree-holders will have to incur additional cost. To me, Sir, there is little difference between an unrealised decree and a bond awaiting decree. The amount under unexecuted decree is as much unrealised as the amount not yet decreed. The Court has ample power to allow full cost ; Court is not bound by any dictation on this point. If the decree holder incurs any extra cost the Court can allow that to the decree-holder by way of cost. In this view I do not see why unrealised decrees should not come under the operation of this Act. In spirit there is very little difference between an unrealised decree and a bond. Of course the unrealised decree has got the sanctity of an order from the Court whereas the bond has not got that sanctity. As to the amount of cost it is a negligible feature as I have already submitted that the Court has enough power to give this to the decree-holder.

KHAN BAHADUR MAULAVI KERAMAT ALI : May I ask my hon. friend to say under what section of the Civil Procedure Code a court can undo its own decree ?

MAULAVI ABDUL AZIZ : It is not undoing a decree. I do not think the Civil Procedure Code stands in the way of it. What is the meaning of special legislation ? To avoid this objection, I have included sub-clause (4), clause 1 and the relevant provisions of the existing laws such as the Transfer of Property Act, Civil Procedure Code, etc., have been repealed and modified. So I say there is no valid objection to have this. But as I see that there is a consensus of opinion in this House in favour of the amendment, I agree to the deletion of this sub-clause.

THE HON'BLE THE SPEAKER : The question is that sub-section 4 of the proposed section 9 be omitted.

The motion was put and carried.

The question is that clause 5 of the Bill as amended do form part of the Bill.

The motion was carried.

The question is that the preamble and short title of the Bill do form part of the Bill.

(The motion was carried.)

MR. F. W. HOCKENHULL : Before we proceed to the last stage of this Bill, there are one or two observations which I should like to make. In the first place, in matters of money-lending we should go very cautiously. There is a danger, that while on the one hand we want to help the people who are perhaps unable to help themselves, it may be at the same time doing them considerable injustice in making it impossible for them to take ordinary loans. This apprehension has in some measure been lessened by the motion of my hon. friend Mr. Bardoloi on the right, and I think if this Bill had gone to a Select Committee before it appeared in the House, some advantage might have been gained. We should remember also, that there is a danger that we may be accused of undertaking hasty and ill-considered legislation. There is one thing which I would like to emphasise. It is in our view a very dangerous principle in an Act, like this that it should come into force at once. This inclination to introduce retrospective legislation surely aims at the foundation of all rules of contract and I can only emphasise and at the same time repeat that this is a dangerous principle which we should like to avoid.

MR. BAIDYANATH MOOKERJEE: Before this Bill is passed, I feel I must mention in this House that after the passing of the Money Lenders' Act, 1934, villagers have been put into great difficulty. The credit has become very shy and the poor villagers cannot get loan. It is well known practically to every hon. member in this House who cares to know, that if we pass this Bill, it will aggravate the present deplorable condition of villagers, and it will increase the number of thefts and dacoities in villages. The reasons have been put forward that this Bill is meant to do some benefit to the peasants; but we are thinking only of the present; we are not thinking of the future at all. Suppose all the peasants are debt free to-day and after two or three years there is failure of crops; then what will happen to those poor peasants? No body will advance any money when he is being killed in darkness in this House. They advanced money in good faith and their money will be gone. This is really meant not to do some good to the poor, but it has got some other end behind it. Sir, I appeal to this House that before they pass this Act they should consider these points that I have placed before them. With these words I oppose the Bill. I mean to say that this Bill should be thrown out altogether.

BABU LALIT MOHAN KAR: Mr. Speaker, Sir, the proposed legislation will do much harm to the poor. Banks will be rooted out of their existence. It will heavily tell upon the trade and industry of our country. Honest lending business will practically disappear from rural areas.

MAULAVI ABDUL AZIZ: I beg to move that the Bill as amended be passed.

THE HON'BLE THE SPEAKER: The question is that the Assam Money Lenders' (Amendment) Bill, 1937, as amended be passed.

The motion was put and the House divided with the following result:—

Ayes—77

1. The Hon'ble Maulavi Saiyid Sir Muhammad Saadulla.
2. The Hon'ble Shams-ul-Ulama Maulana Abu Nasr Md. Wahced.
3. The Hon'ble Rev. J. J. M. Nichols-Roy.
4. The Hon'ble Srijut Rohini Kumar Chaudhuri.
5. The Hon'ble Maulavi Md. Ali Haidar Khan.
6. Babu Akshay Kumar Das.
7. Mr. Arun Kumar Chanda.
8. Babu Balaram Sircar.
9. Srijut Beliram Das.
10. Srijut Bhuban Chandra Gogoi.
11. Babu Bipin Behari Das.
12. Srijut Bipin Chandra Medhi.
13. Srijut Debeswar Sarmah.
14. Srijut Ghanasyam Das.
15. Srijut Gauri Kanta Talukdar.
16. Srijut Gopi Nath Bardoloi.
17. Babu Harendra Narayan Chaudhuri.
18. Srijut Jogendra Chandra Nath.

Noes—13

1. Mr. Baidyanath Mookerjee.
2. Mr. Kedarmal Brahmin.
3. Col. A. B. Beddow.
4. Mr. A. F. Bendall.
5. Mr. J. R. Clayton.
6. Mr. W. R. Faull.
7. Mr. W. Fleming.
8. Mr. B. I. Barry.
9. Mr. F. W. Hockenull.
10. Mr. D. B. H. Moore.
11. Mr. R. A. Palmer.
12. Srijut Bideshi Pan Tanti.
13. Mr. P. Parida.

19. Srijut Jogendra Narayan Mandal.
20. Srijut Jogendra Nath Barua.
21. Srijut Jogeschandra Gohain.
22. Babu Kalachand Roy.
23. Srijut Kameswar Das.
24. Babu Karuna Sindhu Roy.
25. Srijut Krishna Nath Sarmah.
26. Babu Rabindra Nath Aditya.
27. Srijut Lakshesvar Borooah.
28. Srijut Mahadev Sarma.
29. Dr. Mahendra Nath Saikia.
30. Srijut Mahi Chandra Bora.
31. Mr. Naba Kumar Dutta.
32. Srijut Omeo Kumar Das.
33. Srijut Paramananda Das.
34. Srijut Purandar Sarma.
35. Srijut Purna Chandra Sarma.
36. Srijut Rajani Kanta Barooah.
37. Srijut Rajendra Nath Barua.
38. Srijut Ramnath Das.
39. Srijut Sankar Chandra Barua.
40. Srijut Sarveswar Barua.
41. Babu Shibendra Chandra Biswas.
42. Srijut Siddhi Nath Sarma.
43. Maulavi Abdul Aziz.
44. Maulavi Abdul Bari Chaudhury.
45. Maulana Abdul Hamid Khan.
46. Khan Bahadur Hazi Abdul Majid Chaudhury.
47. Maulavi Abdul Matin Chaudhury.
48. Maulavi Abdur Rahman.
49. Maulavi Syed Abdur Rouf.
50. Maulavi Dewan Muhammad Ahab Chaudhury.
51. Maulavi Muhammad Amiruddin.
52. Maulavi Ashrafuddin Md. Chaudhury.
53. Maulavi Badaruddin Ahmed.
54. Mr. Fakhruddin Ali Ahmed.
55. Maulavi Ghyasuddin Ahmed.
56. Maulavi Jahanuddin Ahmed.
57. Khan Bahadur Maulavi Keramat Ali.
58. Maulavi Muhammad Maqbul Hussain Chaudhury.
59. Khan Bahadur Maulavi Mahmud Ali.
60. Maulavi Matior Rahman Mia.
61. Maulavi Mabarak Ali.
62. Khan Bahadur Maulavi Mufisur Rahman.

63. Maulavi Munawwar Ali.
64. Maulavi Muzarrof Ali Laskar.
65. Maulavi Namwar Ali Barbhuiya.
66. Maulavi Sheikh Osman Ali Sadagar.
67. Khan Sahib Maulavi Sayidur Rahman.
68. Mr. Benjamin Ch. Momin.
69. Srijut Bhairab Chandra Das.
70. Srijut Binode Kumar J. Sarwan.
71. Srijut Dhirsing Deuri.
72. Mr. C. Goldsmith.
73. Mr. Jobang D. Marak.
74. Srijut Karka Dalay Miri.
75. Srijut Khorsing Terang.
76. Srijut Rabi Chandra Kachari.
77. Srijut Rupnath Brahma.

Ayes being 77 and Noes 13 the motion was carried and the Bill was passed.

The Assam Money Lenders' (Amendment) Bill, 1937

THE HON'BLE THE SPEAKER : Then comes the Bill standing in the name of Srijut Purna Chandra Sarma to be taken up clause by clause ; but I wish to point out to the House that the Bill if passed will bring about an anomalous situation, because the Bill which has just been passed has traversed some of the provisions which the Bill of Srijut Purna Chandra Sarma wants to amend. So I wish to know what the hon. mover wants to say.

SRIJUT PURNA CHANDRA SARMA : In view of the fact that the Bill of my hon. friend Maulavi Abdul Aziz has been accepted with my amendment and also I have been satisfied with the amendment of Maulavi Abdur Rahman regarding the rate of interest, I think my Bill is unnecessary and so I beg leave of the House to withdraw the Bill.

THE HON'BLE THE SPEAKER : So I take it that the hon. member Srijut Purna Chandra Sarma is not going to move his Bill.

Then comes the Bill of Srijut Rajendra Nath Barua which he can move.

The Assam Municipal (Amendment) Bill, 1937

SRIJUT RAJENDRA NATH BARUA : I beg, Sir, to move that the Assam Municipal Amendment Bill, 1937, be referred to a Select Committee, consisting of the following gentlemen :—The Hon'ble Minister of Local Self-Government, Srijut. Mahi Chandra Bora, Srijut Kameswar Das, Maulavi Md. Amjad Ali, Mr. Baidyanath Mookerjee, Srijut Ram Nath Das, Maulavi Abdur Rahman, Babu Akshay Kumar Das, Maulavi Abdul Matin Chaudhury, Srijut Purna Chandra Sarma and the mover. Five members will form the quorum.

Shall I have to submit the list ?

THE HON'BLE THE SPEAKER : Yes, I want the list.

SRIJUT RAJENDRA NATH BARUA : Sir, the principles of the Bill have been discussed and in the last session of the House the Bill was referred for eliciting public opinion. I beg to submit that volumes of public opinion have been received and the hon. members are in possession of those opinions.

Sir, at the outset I might say that the majority of the opinions received is in favour of the Bill and the most important Associations and persons of position are also supporting the principles of the Bill. Excepting a few who requires reservation of seats for the minority communities, the Bill is supported almost by all. The principle of the Bill was to do away with Government nominations. I accede to the opinions received from large sections of the communities that seats should be reserved for the minority communities on joint electorate basis, and in that case, I think, a large number of the members of the House will be willing to support the Bill. I might refer to a few of the important Associations and persons of position that have supported the Bill. I can just read out my list which is a huge one:—The Secretary, Bar Association, Sunamganj, page 2 ; Secretary, Bar Association, Silchar, page 8 ; Secretary, Hailakandi Bar Association, page 10 ; President, Anjumon-I-Islamia, Hailakandi, page 10 ; Babu Birendra Chandra Biswas, Secretary, District Bar Association, Sylhet ; Secretary, Muktear Bar Association, Karimganj, page 15 ; Secretary, Anjumon-I-Islamia, Karimganj, page 15 ; Secretary, Haj Committee, Karimganj, page 15 ; Mr. S. Goswami, Deputy Commissioner, Sibsagar, page 23 ; Secretary, Bar Association, Jorhat, page 23 ; Secretary, Jorhat Municipal Board, page 24 ; Secretary, Sanathan Hindu Sabha, page 26 ; Secretary, Bar Association, Goalpara, page 26 ; Branch Secretary, Kaibarta Sanmilan, page 27 ; Secretary, Bar Association, Dhubri, page 28 ; Secretary, Ministerial Association, Dhubri, page 29 ; Chairman, Municipal Board, Jorhat, pages 31-32 ; Secretary, Bar Association, Mangaldai, page 39 ; Secretary, Anjumon-I-Islamia, Nowgong, pages 41-42 ; President of the Nowgong Bar Association, page 42 ; Secretary, Bar Association, Nowgong, page 43 ; Chairman, Municipal Board, Nowgong, page 44 ; Secretary, Assam Kachari Sanmilan, Dibrugarh, page 44.

I think, I need not read out all this. Majority of them have agreed and a few of them said that they would agree to the Bill provided reservation of seats are made for the minority communities on joint electorate basis. So, Sir, I respectfully submit to the House that these details can be well thrashed out in the Select Committee and I therefore propose that this Bill may be referred to the Select Committee. As regards other matters regarding control and other things, of course the opinions vary and I hope these matters can be discussed there. Opinions also vary regarding the eligibility of Government servants and Ministerial officers but these are minor matters and they can be settled in the Select Committee. So taking all these circumstances into consideration I think the Bill may well be referred to the Select Committee for dealing with all these different aspects.

THE HON'BLE THE SPEAKER : The motion moved is that the Assam Municipal (Amendment) Bill, 1937, be referred to a Select Committee, consisting of the Hon'ble Minister of Local Self-Government, Srijut Mahi Chandra Bora, Srijut Kameswar Das, Maulavi Md. Amjad Ali, Mr. Baidyanath Mookerjee, Srijut Ramnath Das, Maulavi Abdur Rahman, Babu Akshay Kumar Das, Maulavi Abdul Matin Chaudhury, Srijut Purna Chandra Sarma and the mover. Five members will form the quorum.

MR. F. W. HOCKENHULL : On a point of information, Sir. On what principle has the hon. member selected the members of the Select Committee ? He did not consult our party.

SRIJUT RAJENDRA NATH BARUA : It is known, Sir, that European group do not take any interest in Municipal affairs. Otherwise I would be willing to take members from his group.

MR. F. W. HOCKENHULL : May we, Sir, offer him our assurance that all these problems are our problems ?

MAULAVI NAMWAR ALI BARBHUIYA : On a point of information, Sir, how many members have been taken from the Muslim League Party ?

THE HON'BLE THE SPEAKER : Three—Maulavi Muhammad Amjad Ali, Maulavi Abdur Rahman and Maulavi Abdul Matin Chaudhury. There has also been a suggestion that Maulavi Munawwar Ali should be included.

SRIJUT RUPNATH BRAHMA : Is there any name from the national Progressive Party ?

SRIJUT RAJENDRA NATH BARUA : Srijut Ramnath Das, and if there is any other gentleman who is willing to serve on the committee I shall be willing to take him.

THE HON'BLE THE SPEAKER : As I pointed out yesterday, it will be far more convenient to consult the different parties beforehand and to get the names of the members who should form the Select Committee. At present there have been suggestions from all sides, and if suggestions go on in this way I do not know where we shall end.

MR. F. W. HOCKENHULL : That is a small matter, Sir, which can be determined towards the latter part of the debate.

THE HON'BLE REV. J. J. M. NICHOLS-ROY : I agree with Mr. Hockenhull that the personnel of the committee can be discussed after we have discussed the principles of the Bill.

It is my duty to show what is the position of the Government in this respect. The Government thinks that it is its duty to oppose this motion. The Bill deals with three main principles :—(1) the abolition of nominations altogether ; (2) the disqualification of certain rate-payers who have been enjoying the right of being eligible for Municipal elections ; (3) the abolition of the immediate control of local officers over Municipal Boards.

In regard to nominations I want to point out to the hon. members that there are certain grounds which justify nominations—(a) to give representation to under-represented and unrepresented communities ; (b) to give an opportunity to some experienced and able persons who do not want to take the trouble of standing for elections to serve in a Board.

SRIJUT DEBESWAR SARMAH : On a point of information, Sir. Is this the old stale information which the Hon'ble Minister is going to give us or is he going to tell us something new ?

THE HON'BLE REV. J. J. M. NICHOLS-ROY : Sir, I am discussing the principles of the Bill at this stage. It is very important that we should discuss the principles of the Bill. This House should realise when they refer the Bill to a Select Committee to what principles they are committed, because when once the Bill has been referred to a Select Committee the House is committed to the principles of the Bill, and the Select Committee cannot introduce any new principle into the Bill. Now I am going to repeat what I said on account of the disturbance.....

THE HON'BLE SRIJUT ROHINI KUMAR CHAUDHURI : You will go on getting disturbed.

THE HON'BLE REV. J. J. M. NICHOLS-ROY : I have stated two grounds for nominations. I will go on with the next one—(c) to provide the Boards with gentlemen who may be capable of becoming officers of the Board in case none of the elected members is capable or willing to serve as such ; and (d) to provide persons in the Board who will look after the interests of Government in the Municipalities. This point is often lost sight of by many critics in papers as well as in this House. We must remember that the Government has interests in the Municipalities.

Now, Sir, I want to say that if the principle of nomination be done away with what are we going to substitute in its place ? This Bill does not say

anything about it. If the Bill be referred to a Select Committee the Select Committee cannot introduce the principle of reserved seats and communal electorates.....

MR. BAIDYANATH MOOKERJEE : Why not ?

THE HON'BLE REV. J. J. M. NICHOLS-ROY : Because that is different from the principle of nomination—it is a different principle altogether, and that has been the ruling of the President of the previous Council.

RAI BAHADUR PROMODE CHANDRA DUTT : The Hon'ble Minister is misleading the House.

THE HON'BLE REV. J. J. M. NICHOLS-ROY : I am not misleading the House.

SRIJUT DEBESWAR SARMAH : Statements are being made which we all know are misleading.

KHAN BAHADUR MAULAVI KERAMAT ALI : What about members making misleading interruptions ?

SRIJUT DEBESWAR SARMAH : You are one. (*Laughter.*)

THE HON'BLE REV. J. J. M. NICHOLS-ROY : I think that there is a right for every member to speak on this subject and I may be allowed to go on without interruption, and if necessary these points can be replied to after I have finished.

Sir, what is the practical experience in the Municipalities of Assam in regard to nominated members ? We find certain things. We find that nominated members have been *elected* to the office of Chairman. Nominated members have been a great asset and of great help to many Municipal Boards ; Government interests to certain extent have been looked after in the Municipalities. Now, these are facts.

Now I will refer to the opinions on this point. I was very much surprised that the hon. mover of the Bill said that the majority of the opinions is in favour of his Bill. I have read and marked all of them.

Seventy-nine are against the principle of nomination being abolished. Twenty-seven are for, 6 are partly for and partly against. There are altogether 112 opinions received and 79 are against the principle.

SRIJUT DEBESWAR SARMAH : On a point of information, Sir, will the Hon'ble Minister say under what category does he include this particular opinion of Mr. Cantlie ?

THE HON'BLE REV. J. J. M. NICHOLS-ROY : I am coming to that in time if the hon. member will bide with patience.

Sir, let me turn to the Associations in the town from which the hon. mover comes. I refer to page 36 of the opinions. The Secretary of the Bar Association, Golaghat, which is the home of the hon. mover.....

SRIJUT RAJENDRA NATH BARUA : On a point of information, Sir. Is it my fault ?

THE HON'BLE REV. J. J. M. NICHOLS-ROY : I will read his opinion, Sir.

“ The Bill in short proposes (1) to do away with the principle of nomination, (2) to take away the immediate control of Magistrate, *i.e.*, of the Subdivisional Magistrate except in a small matter, *viz.*, election and (3) to disqualify certain classes of people in seeking election besides salaried Government servants. The other matters dealt in the Bill are not of far-reaching importance.

The principle of administration by an elected body in a Municipality is an ideal one. The ideal can be safely applied in ideal state of society. In other words the Bill pre-supposes that the people are well informed, fairly educated and sufficiently capable of running the Municipal administration with proper sense of civic responsibilities, discharge with free mind

without bias, prejudice and cliques and giving no semblance of apprehension of insecurity to the minorities, unrepresented and under-represented communities. Now in the year 1937 we must perforce ask the question whether facts and circumstances prevailing in the Municipal towns of Assam justify the abolition of nomination so that the elective body will create confidence and remove all apprehension of "Rule by minority" in the name of democracy.

Taking 75 per cent. of the people of a town to be literate we must deduct at least 45 per cent. as not educated in its general sense. These 45 per cent. could hardly read and write the alphabets, in short their literacy is confined to the lower primary standard. Of the rest some say about 15 per cent. can be taken as educated or fairly educated. To be fair, about 80 or 85 per cent. of the people are neither educated, sufficiently informed nor sufficiently capable of exercising their franchise properly and freely. In such a state of society it is no wonder that the minorities have harboured a reasonable apprehension that their interests are likely to be neglected by the 15 per cent. well-informed, well-educated and trained persons in the town in the absence of their representatives. In a joint electorate, as in Municipal Bodies these 85 per cent. of the people and the minority communities have very little chance of success in the poll. The argument that might be canvassed against this is then how the major minority community could secure some seats in a joint electorate? My answer is very simple inasmuch as they could secure a seat only because their constituencies contain a fair proportion of voters of their community and not by the selection of voters belonging to other communities. There may be an exceptional case, no doubt but an exception does not prove the rule. Nomination is required to put in an element of unrepresented communities with intent to safeguard the interest of such communities. In the absence of this element the civic administration will have likely to be run by a minority, *i.e.*, 15 per cent. only in the name of so-called democracy with all the race for more power in them undeterred. In view of what I have said above I am strongly of opinion that principle of nomination should continue till we have an ideal society or at least for sometime to come when one can boldly say that at least 60 per cent. of the people are well educated, well informed and sufficiently capable of discharging the civic responsibilities without distinction of caste, creed, religion and party cliques. It would be wrong to compare Assam Municipal towns with other advanced cities elsewhere. There is nomination even in the Calcutta Corporation, a city which is said to be 2nd city in the British Empire."

THE HON'BLE THE SPEAKER: Does the Hon'ble Minister want to oppose the motion?

THE HON'BLE REV. J. J. M. NICHOLS-ROY: I have said that I oppose it in the very beginning of my speech. I am showing that nomination is supported by the Bar Association in the home of the hon. mover.

SRIJUT MAHI CHANDRA BORA: That is, I think, Sir, the opinion of the Secretary in his private capacity.

THE HON'BLE REV. J. J. M. NICHOLS-ROY: It is the opinion of the Secretary of the Bar Association.

Then, Sir, we shall see what the Chairman of the Municipal Board, Golaghat, has got to say. That is at page 37 and it says: (Keep in mind that Golaghat is the home of the hon. mover of the Bill).

KHAN BAHADUR MAULAVI KERAMAT ALI: May I enquire whether the hon. mover is a member of that Board?

SRIJUT RAJENDRA NATH BARUA: Unfortunately I was not present when it was considered. At the time I was at Shillong.

THE HON'BLE REV. J. J. M. NICHOLS-ROY: That explains probably why we are able to get an independent opinion. (*Laughter.*) That opinion is:—"Read and considered the Assam Municipal (Amendment) Bill of 1937 introduced by Srijut Rajendra Nath Barua, B.L., M.L.A. The meeting considers (Srijut D. Rajkhowa, B.L. dissenting) that such an amendment is not necessary and the Act should remain as it is". (Page 37 of the opinions.)

Now let us see the opinion of the Secretary, Anjuman, Golaghat. It says:—"I have the honour to say that I have gone through the proposed Bill, and consider that the existing rules in the main Act are quite good and no amendment is necessary".

Now, Sir, I have said that 79 are against. I can read all those opinions against but it will take several hours to read.

THE HON'BLE THE SPEAKER: These opinions have been circulated to all hon. members.

THE HON'BLE REV. J. J. M. NICHOLS-ROY: Yes. I mention only the names of those that are against the Bill:—The representatives of the Christian community at Golaghat, the representatives of Labour, the Chairman, Town Fund Committee, the Subdivisional Officer, Mangaldai, the Commissioner, Surma Valley and Hill Division. Let me read the opinion of the Commissioner, Surma Valley and Hill Division. It is at pages 3 and 4 and is against the Bill. He says in his opinion that he has sent: "The Assam Municipal Act (I of 1923), section 10 (3) provides that at least four-fifths of the members shall be elected. It also provides that the Local Government may at any time direct that all members of a Municipal Board shall be elected. It seems therefore, unnecessary to make separate legislation for this purpose. However, there is another point which appears to be overlooked sometimes and that is that where there are nominations these are made by the Local Government, *i.e.*, under this new Constitution, by the Minister. Hitherto it has been the practice for Government to ask the Commissioners to make suggestions for nomination of members to Municipal Boards. Sometimes these suggestions have been accepted, sometimes they have not. If the principle of nomination by the Local Government is retained I see no reason for making any change in this practice."

Now, Sir, I want to say also that the President of the Gurkha Panchayat, Shillong, the Secretary of the Seng Khasi, Shillong, the Secretary of the Assam Club, Shillong, the Secretary of the Shillong Club, the Deputy Commissioner, Cachar, a pleader of the Scheduled Castes, namely, Babu Nita Chand Patni of Silchar, a representative of the Muslims, namely, Khan Sahib Rashid Ali Laskar of Silchar, the Secretary, Anjuman-I-Islamia of Silchar, are also against the Bill. So are also the Additional District Magistrate, Sylhet, the Secretary, Anjuman-I-Islamia, Maulvibazar, the Principal of the Government Madrassa, Sylhet, the Subdivisional Officer of Karimganj, the Chairman, Karimganj Municipal Board. As regards the last one, I should like to read a portion of the opinion, as it is a good one and is worth the consideration of any one. It is on pages 15 and 16 of the opinions. It runs as follows:—

"I am entirely opposed to the provisions of the Bill and the principles enunciated in the Statement of Objects and Reasons.

Government having now surrendered all its power to the Ministers excepting only a few safeguards, it is a Government of the people for the people consisting of officials and non-officials alike.

There is absolutely no reason or logic why salaried or remunerated servants of Government should be excluded from enjoying membership of the Board." And so on he goes.

(One hon. member:—Why not proceed further?)

THE HON'BLE REV. J. J. M. NICHOLS-ROY: Then he goes to another point altogether. I will read that afterwards. The point is that he opposes the Bill just as it is.

Then, Sir, there are others who are against this Bill. The Secretary, Haj Committee, Karimganj is one of them. I was very much surprised that the hon. mover said that this gentleman is in favour of the Bill, whereas I find in page 16 of the Opinions that he is against it. He says:—"The total number of members of a Municipal Board shall be elected with reservation of seats for Muslims on the basis of population residing within a Municipality". He is bringing another principle altogether, not the principle that is in the Bill. So he is not supporting the hon. member in that sense.

Then, Sir, Babu Pulin Behary Roy, Narsinghpur, Karimganj (page 17 of the Opinions) is also against this Bill. Then there are Maulvi Abdul Korim, Maulvi Khurshid Ali, Rev. D. K. Badshah of Karimganj, Maulvi Basharat Ali Chaudhury, Maulvi Hashim Ali, pleader and Khan Bahadur Maulvi Muhammad Mashraf, Secretary, Anjuman-I-Islamia, Sylhet, who are against the Bill. I will read the opinion of the last named gentleman, because he is a gentleman who has had long experience as a municipal member. He says:—

"I beg to oppose the Bill. I see there is no force in the argument why all the members of the municipal bodies should be elected only. As soon as the system of nomination will be done away with the vexed question of communal representation is sure to come in and its solution has always been found to be a difficult task. Past experience shows that in the matter of election minor communities especially the Moslem communities were the sufferers and it is only by nomination that Local Government were able to adjust the situation. After the allocation of seats is made by equitable distribution with weightage to the minority communities, the Local Government may decide and direct under section 10(3) in which of the Municipalities all the members should be elected."

Now, Sir, there is also the Commissioner, Assam Valley Division, who has given his opinion on page 19.

SRIJUT GOPINATH BARDOLOI: Will the Hon'ble Minister be pleased to read it?

THE HON'BLE REV. J. J. M. NICHOLS-ROY: Yes, Sir, I will read that.

"The proposal to abolish nominations will probably be resisted by the Musalmans in the Assam Valley and by the members of Council of minority communities. The defence of nomination is that it secures representation of minorities."

This, Sir, states facts.

SRIJUT GOPINATH BARDOLOI: Will the Hon'ble Minister read the whole paragraph?

THE HON'BLE REV. J. J. M. NICHOLS-ROY: He says that the defence of nomination is that it secures the representation of minorities, and nominations follow this principle. But the Commissioner of the Assam Valley did not consider one principle which I have stated, viz., that the Government have interest in the municipalities and therefore can nominate for the purpose of protecting its interests in a municipality any one who may be of the minority communities or any other community. I read further from his opinion:

"A formidable attack in the Assembly is certain, in which example will be quoted. To this attack a defence can be found only in the plea that

nominations are made also for obtaining distinguished persons not available for the community by election. But some nominations have been made which cannot be defended even on this plea." (*Laughter by some members.*)

That may be true or may not be true. This is the Commissioner's opinion which may be wrong altogether. If a particular case is cited and circumstances be known the Commissioner may find that he has been wrong in his judgment.

"If they are to be retained, a section of the Municipal Act should be drafted directing that nominations should be made to secure representation of minorities."

Therefore he said that nomination should be substituted by representation of minorities if you want to do away with nominations. The facts are there as he has stated. But there is another thing which he has not said there and has lost sight of, namely, the interest of the Government inside the municipality.

Then, Sir, the Secretary, Anjuman-I-Islamia, Gauhati, has given a very good opinion. Then there is the opinion of Srijut Romesh Chandra Das, M.A., B.L., a representative of the Scheduled Castes community I think. This is his opinion:—

"In my opinion, the proposed Bill is a retrograde measure in that it has failed to introduce any workable schemes for better working of the Municipality. It mainly aims at restricting representation of minority interest and control of Government without which, as experience has shown, the Municipality cannot properly function. The elimination of official control will not act as panacea for all the grievances, apparently fancied and unreal, but shall undoubtedly pave the way for domination of party caucus which very often, betrayed lamentable lack of civic responsibilities, administrative capacity in matters vitally affecting rate-payers.

The substitution of a new sub-section for sub-section (4) is premature uncalled for, and unnecessary, so long as the method of representation by nomination is retained even the system of nomination has not proved to be an unmixed blessing, as on recent occasions, nomination having been manipulated for party interest, and party aggrandisement. It is far more welcome to have reservation of interest on basis of representation outlined in the Government of India Act. The scheduled communities in the town area would certainly prefer representation by reservation of seats in the joint electorate on basis of the voting strength they command."

What does this mean? It means that he is for nomination and if nomination is to be done away with, we must substitute representation of minorities.....

THE HON'BLE THE SPEAKER: The Hon'ble Minister has taken too long a time. It seems that the same argument is being repeated. He is simply reading and repeating the opinions which are already with the hon. members.

THE HON'BLE REV. J. J. M. NICHOLS-ROY: I am reading them, only in support of my contention. Again, Sir, why should we refer the Bill to a Select Committee, for we find that 79 opinions are against the Bill. I may mention another gentleman from the tribal people, namely, Srijut Rabi Chandra Kachari, M.L.A. He is also against the Bill. The Deputy Commissioner, Sibsagar, the Secretary, Anjuman, Dhubri, the Deputy Commissioner, Goalpara, and many others—all these are against this Bill.

THE HON'BLE THE SPEAKER: At this stage may I enquire who selects the persons to whom the Bills are sent for opinions?

THE HON'BLE REV. J. J. M. NICHOLS-ROY: That I do not know, Sir. The Bill is published in the Gazette and it is sent by the Secretary, Legislative Assembly.

THE HON'BLE THE SPEAKER: Is it not a fact that the persons are selected by the administrative Department which is concerned in a Bill?

THE HON'BLE MAULAVI SAIYID SIR MUHAMMAD SAADULLA: The Bill is published in the Gazette and individuals and associations are at liberty to send their opinions.

THE HON'BLE THE SPEAKER: Are not the persons to whom the Bill should be sent selected by Government? If not, how are the persons selected?

THE HON'BLE MAULAVI SAIYID SIR MUHAMMAD SAADULLA: Yes, it is sent to the recognised associations and certain Government officers.

THE HON'BLE THE SPEAKER: I think each party may supply the names to whom the Bill may be sent and Government may also supply the names.

MAULAVI ABDUR RAHMAN: The Bill is sent to the Subdivisional Officer through the Deputy Commissioner and the Subdivisional Officer circulates it in the Bar Library, etc. It is also published in the Gazette.

KHAN BAHADUR MAULAVI KERAMAT ALI: The Deputy Commissioners and Subdivisional Officers always forward such Bills to the local bodies, Anjumans and other recognised associations.

BABU RABINDRA NATH ADITYA: May I know whether the Subdivisional Officer sends it to the persons whose name appears in the interviewers' list? (*Laughter.*)

THE HON'BLE REV. J. J. M. NICHOLS-ROY: Whatever may be said but the fact remains that these are the opinions of responsible persons. They are Secretaries of very important associations and their opinion is surely valuable. Then another point. I myself did not know who selected the names. We got these opinions from the Secretary, Legislative Assembly. Perhaps the Secretariat office supplied the names. I think my hon. friend Rai Bahadur P. C. Dutt knows this, because he was in Government for sometime.

RAI BAHADUR PROMODE CHANDRA DUTT: Who is responsible for that?

THE HON'BLE REV. J. J. M. NICHOLS-ROY: I do not know who is responsible. It is the Secretary, Legislative Department, who sends the Bill.

SRIJUT RAJENDRA NATH BARUA: I find that 72 are for and 66 against the Bill, I challenge the Hon'ble Minister.

THE HON'BLE REV. J. J. M. NICHOLS-ROY: I must tell the hon. members of this House that in a big city like Bombay according to the Bombay Municipal Act not less than half of the members of the Municipal Board have to be elected and others nominated; and half of the nominated members may be Government servants. In the Bengal Municipal Act one-fourth of all the members are nominated members.

The second point in the Bill is the withdrawal of civic rights which the Government ministerial officers, Government pleaders and Mauzadars have been enjoying so long. The people who have enjoyed the right so long are against this opinion. The Ministerial Officers' Association, Gauhati, is strongly opposed to the taking away of the right which they have so long enjoyed and they say that although they do not exercise the right, yet they must not be deprived of that right. Should we therefore in these days of democracy deprive one of the rights and privileges which

he has enjoyed for so many years in the past? The Secretary, All-Assam Ministerial Officers' Association also resents this. The Deputy Commissioner, Khasi and Jaintia Hills, also is against this. The Vice-Chairman of Shillong Municipal Board goes so far as to say that if the Bill be passed like this, Shillong Municipality should be excluded from the operation of that section. The Secretary, Assam Club, Secretary, Shillong Club, Subdivisional Officer, South Sylhet—they all resent the withdrawal of the right...

BABU RABINDRA NATH ADITYA: Is there any opinion of the Congress Party?

THE HON'BLE REV. J. J. M. NICHOLS-ROY: Nothing is written about the Congress Party; I assume that the Bar Association includes some Congress members. (*Laughter.*)

Now, therefore, Sir, on these two points opinions are against the Bill. Then, Sir, as regards the third point, opinions on the point of control are also very much against this Bill. There are many opinions, about 79, which are against this Bill with regard to the lessening of control. This Bill proposes to withdraw the power given to the immediate local officer, *viz.*, the Subdivisional Officer, in having anything to do with the Municipality. It proposes withdrawal of the power of the Deputy Commissioner, giving it to the Commissioner, and the power of the Commissioner to the local Government.....

MR. ARUN KUMAR CHANDA: Is the Hon'ble Minister aware that according to the Montagu-Chelmsford Report, these self-governing bodies should be allowed to benefit by their mistakes?

THE HON'BLE REV. J. J. M. NICHOLS-ROY: Some of them then will run into deeper water. If control is withdrawn these Municipal bodies will run into debts.

MR. BAIDYANATH MOOKERJEE: That is a matter of opinion.

THE HON'BLE REV. J. J. M. NICHOLS-ROY: Lessening of control is not good for municipalities, and many of the opinions that we have here on this point are against this Bill. Again, many of the local officers do not exercise even the power that is given. One of the officers, Subdivisional Officer, Sibsagar, says, that he has not gone to the Municipal office. The power of control is only for cases of emergency. In these days, I am sure, local officers would not interfere with the municipal administration unless that municipal administration is run very badly. Therefore it is altogether unwise to do away with the power of local officers, and if this is done, a time will come when there will be a block in the administration of the municipality. Whichever party takes the reins of Government will find that it is difficult to run the administration of municipalities. The Minister in charge of Local Self-Government will not be able to deal directly with the municipalities. In that case he will have to be an Inspecting Officer. If local officers' control is done away with, it is very necessary that the standard of the administration of the Municipalities should be improved. All the opinions of different officers are very much against the lessening of control.

(*Voices—there are only 3 minutes more.*)

I may deal with it to-morrow. I have only stated the opinions. I have not yet come to the principle of the Bill. We can continue to-morrow.

(*The discussion was postponed.*)

The Assembly was then adjourned till 2 p.m. on Friday the 10th December 1937.

SHILLONG:

A. K. BARUA,

The 27th December 1937.

Secretary, Assam Legislative Assembly.