

THE INDIAN EVIDENCE (AMENDMENT) BILL.

Mr. K. Rama Aiyangar (Madura and Ramnad *cum* Tinnevely: Non-Munammadan Rural): I beg to move for leave to introduce a Bill further to amend the Indian Evidence Act, 1872. This Bill was in another form placed before this House on the 21st February 1924 and therein I asked for the amendment of section 114 of the Indian Evidence Act. Objection was taken on behalf of Government by Sir Henry Moncrieff Smith that that was not the proper place and that it was sought to introduce an amendment in another section by a side-ways arrangement. I now propose in this Bill to amend section 68 of the Indian Evidence Act by adding to it an Explanation which runs as follows:

“Proof of execution under this section may be presumed to have been made where the attester proves his presence at the execution or the acknowledgment thereof by the executant.”

Honourable Members will see that the object of this Bill is to get mortgage documents proved even where the attester proves the acknowledgment of the executant. What I pray for is only to give the right to court to presume. “May presume” is the expression used. I do not want to take away the effect of the provision in the Transfer of Property Act which requires that it should be attested, and the word “attest” has been held by the Privy Council in the decision quoted to mean the actual witnessing of the execution. But section 68 of the Indian Evidence Act gives us the method of proof or such a document, and there again, attestation has to be proved by an attester which was held by the Privy Council though there were conflicting decisions of the various High Courts, to mean a person who actually saw the execution by the executant. The object of the present Bill is to see that injustice is avoided and justice rendered where, as it often happens, the attester is kept out of the way or is under the control of the defending party. A party may admit execution, he may remain *ex parte*, but yet the attester may be made to say that he did not see the execution but only had the acknowledgment made to him by the executant. In such a case, the law, as it has been interpreted, compels the court to dismiss the suit even when the defendant is not really contesting it and remains *ex parte* or admits execution. The Madras and the Calcutta High Courts have taken one view while the Allahabad and Bombay High Courts have taken another view about the proof to be given. But their Lordships of the Privy Council, after going through the whole matter and the wording of section 68 of the Indian Evidence Act and of section 59 of the Transfer of Property Act, could not hold that an acknowledgment will be sufficient proof. Under those circumstances it is felt that in many cases the existing law works great hardship unnecessarily. What I propose to do is that in cases where such evidence is either found not to be procurable or where such evidence is purposely kept out of court, a presumption may be made so that justice may be rendered and injustice may not be perpetrated. A close reading of the decision of the Privy Council will indicate that their Lordships only feel constrained to hold in the way they have done owing to the wording of the sections. I therefore ask for leave to introduce the Bill.

The Honourable Sir Malcolm Hailey (Home Member): With regard to the attitude of Government, though we do not accept the Honourable Member's arguments, we think that the issue being a legal one it had perhaps be fought out at a later stage on the floor of the House.

Mr. President: The question is:

"That leave be given to introduce a Bill further to amend the Indian Evidence Act, 1872."

The motion was adopted.

Mr. K. Rama Aiyangar: Sir, I introduce the Bill.

MESSAGE FROM THE COUNCIL OF STATE.

Secretary of the Assembly: Sir, the following Message has been received from the Secretary of the Council of State:

"I am directed to inform you that the Council of State, at their meetings held on the 25th March, 1924, have passed without any amendments the Bill further to amend the Indian Income-tax Act, 1922, for certain purposes, which was passed by the Legislative Assembly on the 19th March, 1924."

MOTION FOR ADJOURNMENT.

Mr. Chaman Lal (West Punjab: Non-Muhammadan): I beg to move the adjournment of the House. The motion I have to put is that I move the adjournment of the House to discuss the refusal of passports to several prominent Indian leaders of the Khilafat movement, including Maulana Muhammad Ali, Maulana Shaukat Ali, Dr. Kitchlew and others who have been selected to proceed as members of delegations to Turkey, Persia and certain Arab States on a religious mission of peace, including the settlement of the future of the Khilafat, thereby creating a grave cause of unrest among the Mussalmans of India. The question before the House is one of the most important that it has fallen to the lot of this Assembly to discuss during this present Session. It is a question which goes deep down to the constitution under which we live in India to-day, it goes into the rights of the people of India, into the constitutional practice that prevails in this country and into the autocratic methods which prevent us from exercising our inherent rights in our own land. The facts of the situation are very simple. On the 25th November last Maulana Shaukat Ali wrote a letter to the Secretary to the Government of India, Foreign Department, stating as follows:

"The undersigned has been directed by the Working Committee of the Central Khilafat Committee to request you to kindly issue the necessary passports for the delegations which the all-India Khilafat Conference have resolved to send to Turkey, Hedjaz, Mesopotamia, Syria, Palestine and other Arab States with a view to adjust the religious relations of all Muslims and to remove all existing misunderstandings.

The undersigned will greatly appreciate if you will be good enough to let him know at your earliest convenience what particulars you would require for issuing the above passports and how long it would take you to issue them. It is hoped that the matter will be treated as urgent."

To this letter of the 25th November a reply was received by Maulana Shaukat Ali from the Government which stated:

"With reference to your application on behalf of the Working Committee of the Central Khilafat Committee for the issue of passports to enable delegations to visit Constantinople, Angora, Palestine, Iraq, Hedjaz, Syria and other countries I am directed to request you to intimate to me the name and number of the members of the proposed delegations and the routes they propose to follow."