

**LEGISLATIVE ASSEMBLY, SINGAPORE**

**Sessional Paper**

**No. L.A. 5 of 1957**

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**Ordered by the Legislative Assembly to be printed**

**(5th March, 1957)**

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**REPORT FROM THE SELECT COMMITTEE ON THE MUSLIMS BILL**

The Select Committee to whom the Muslims Bill was committed have agreed to the following Report:-

1. The Muslims Bill was committed to your Committee on the 5th day of November, 1956, and the Assembly resolved as follows:-

- (a) "That the minutes of the evidence taken before the Select Committee on the Muslims Bill in the previous session of the Assembly be referred to the Select Committee on the Muslims Bill."
- (b) "That it be an instruction to the Select Committee on the Muslims Bill to consider amendments to the Bill to provide that no Muslim shall dispose of his property by will except in accordance with Muslim law."

2. Your Committee held seven meetings.

3. At their first meeting held on the 28th day of November, 1956, your Committee agreed that written representations on the Bill should be invited from the public through the media of the Press and Radio Malaya, and that reference to the two resolutions set out in paragraph 1 above should be made in the notice to the public. The closing date for written representations was the 10th day of December, 1956.

4. Written representations received are annexed to this Report as Appendix I, numbered Paper S.C. (Muslims Bill) as hereinafter appearing. Those received on or before the closing date were from:-

- (1) The Tamil Muslim Union Paper No. 1;
- (2) Mr. A. Osman and others Paper No. 2;
- (3) Mr. Nazir Mallal Paper No. 3;
- (4) The Singapore Malayala Muslim Cultural Association Paper No. 4;
- (5) Mr. M. Sulaiman Marican and others Paper No. 5;
- (6) The All Malaya Muslim Missionary Society Paper No. 6;
- (7) The Singapore Bar Committee Paper No. 7;
- (8) Mr. Abdul B. Rahaman Paper No. 8;
- (9) "Muslim" Paper No. 9.

Other representations received after the closing date were from:-

- (10) Mr. Mahat and others, residing at Seletar Paper No. 10 updated (received on 31st December, 1956);
- (11) The Muslims, Kampongs of East Singapore Paper No. 11 updated (received on 18th January, 1957);
- (12) M. I. Ibrahim & Co., and others Paper No. 12 dated 28th January, 1957 (received on 2nd February, 1957);

- (13) The United Malays National Organisation Paper No. 13 dated 26th January, 1957 (received on 30th January, 1957);
- (14) Residents of Kampong Pachitan, Changi Road, Singapore 14- Paper No. 14 dated 31st January, 1957 (received on 6th February, 1957).

5. At a meeting held on the 12th day of December, 1956, your Committee agreed that those persons or bodies who had by that date sent written representations should be invited to say whether they wished to give oral evidence.

6. As a result of replies received, your Committee heard evidence on the 14th and 15th days of January, 1957, from the representatives named below:-

<i>Names of Representatives</i>	<i>Representing</i>
(1) Mr. M. I. Abdul Azeez	} The Tamil Muslim Union.
(2) Mr. M. Muhammad Suleiman	
(3) Mr. A. Subair Mohamed	} The Singapore Malayala-Muslim Cultural Association.
(4) Mr. P. K. Abdul Kader	
(5) Mr. Mohamed Musa	
(6) Tuan Haji K. I. Muhiudeen	} Mr. M. Sulaiman Marican and others.
(7) Mr. A. K. A. Abdus Samad	
(8) Mr. Moulavi A. Abdul Jaleel	
(9) Mr. S. M. Mohamed Thahir	
(10) Tuan Haji K. M. Abdul Kassim	} The Singapore Bar Committee and Mr. A. Osman and others.
(11) Mr. N. A. Mallal ...	
(12) Mr. T. E. Atkinson ...	The Singapore Bar Committee.

The Minutes of Evidence taken are annexed to this Report as Appendix IV.

7. In accordance with the resolution of the Assembly set out in paragraph 1 (a) above, the Minutes of the Evidence taken before the Select Committee on the Muslims Bill in the previous Session were placed before your Committee and are annexed to this Report as Appendix V.

8. In accordance with the resolution of the Assembly set out in paragraph 1 (b) above, your Committee considered amendments to the Bill to provide that no Muslim shall dispose of his property by will except in accordance with Muslim law.

9. Representations made on this aspect of the Bill centred on whether or not a clause contained in the Muslims Bill which was introduced in the previous Session and which lapsed on prorogation of the Assembly, should be included in the present Muslims Bill committed to your Committee.

10. This Clause (referred to in this Report as "old Clause 47") reads as follows:-

"47. Notwithstanding anything contained in any written law of the Colony of Singapore, the provisions of the Law of Islam shall be applicable in the case of any Muslim person dying testate on and after the appointed day."

11. It became apparent to your Committee that there was a great deal of misapprehension as to the effect of including or excluding old Clause 47 in or from the present Bill.

12. Subsection (3) of section 26 of the Muslims Ordinance (Chapter 46 of the Revised Edition) reads as follows:-

"26.- (3) Nothing in this Ordinance contained shall be held to prevent any Muslim person directing by his or her will that his or her estate and effects shall be administered according to the law of Islam."

Paragraph (3) of Clause 40 of the present Bill repeats subsection (3) of section 26 of the Muslims Ordinance as quoted above. The Muslims Ordinance does not contain any section similar to old Clause 47.

13. It has been represented to your Committee that any attempt not to incorporate old Clause 47 into the present Bill would, in effect and in fact, break or alter the Islamic law of inheritance. It is clear from paragraph 12 that this is not the case. In making wills Muslims have and have always had freedom to follow the Islamic law of inheritance.

14. After careful consideration of the aforesaid instruction and of the representations made, your Committee are satisfied that a real fear exists amongst the Muslim community that there might be hardship in any case where a Muslim does not make sufficient provision by will for the persons entitled under the law of Islam to share in his estate. Your Committee are also satisfied that Muslim opinion generally is in favour of a provision to enforce the observance of the law of Islam by Muslims and therefore recommend the addition of a new clause \* which requires the court on application to make an order varying the will of a deceased Muslim testator to bring it into conformity with the law of Islam.

15. A reprint of the Bill, incorporating all the amendments to the Bill recommended by your Committee, is annexed as Appendix II.

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\*Clause 41 in the Bill printed as Appendix II.

*Notes:-* Appendix I-Written representations (pages 7 to 22).

Appendix II-Reprint of the Bill incorporating the amendments recommended by the Select Committee (pages 25 to 42).

Appendix III-Minutes of Proceedings of the Select Committee (pages 45 to 54).

Appendix IV-Minutes of Evidence taken by the Select Committee on 14th and 15th January, 1957.

Appendix V-Minutes of Evidence taken by the Select Committee on the Muslims Bill in the previous Session on 20th March, 1956.

## **APPENDIX I**

## WRITTEN REPRESENTATIONS

## Paper S.C. (Muslims Bill) No. 1

## TAMIL MUSLIM UNION

c/o P.O. Box No. 966,  
Singapore.  
5th December, 1956.

The Secretary of the Select Committee,  
(Dealing with Muslims Bill)  
Assembly House,  
Singapore.

Dear Sir,

*re* Muslims Bill.

"A" I am instructed by my Union to forward to you the resolution passed at a meeting held at Moulana Mohamed Ali Mosque, 16 Market Street, Singapore on the 4th December, 1956 for your consideration.

"B" I am also instructed to send to you a copy of the letter sent to the Press by me as the Secretary, in reply to the arguments made by Hon. Mr. W. A. C. Goode when he moved the second reading of the Muslims Bill.

Yours faithfully,

(Sd.)?  
Secretary,

*Tamil Muslim Union.*

"A"

Singapore.  
5th December, 1956.

The Secretary of the Select Committee,  
(Dealing with Muslims Bill)  
Assembly House,  
Singapore.

Dear Sir,

*re* Muslims Bill.

With reference to the notice appearing in the *Straits Times* of Singapore calling for representation relative to the above Bill, I beg to inform you that a meeting of the members of the Tamil Muslim Union was held at Moulana Mohamed Ali Mosque, No. 16 Market Street, Singapore on 4th December, 1956 when the above Bill was considered and the following resolution passed.

"This Meeting expresses its full support to the Muslims Bill now under consideration by the Assembly but is strongly of the view that the law of Islam should apply to Muslims dying testate as it does now to Muslims dying intestate. This meeting expresses surprise that clause 47 of the lapsed Muslims Bill which gives effect to this general desire of the Muslims (whatever Madzhab they may profess) should have been omitted and views with alarm the dissatisfaction that will arise amongst the Muslims of Singapore if some such provision is not incorporated in the Bill now before the Assembly".

Yours faithfully,

(Sd.)?  
Secretary,

*Tamil Muslim Union.*

Singapore.  
5th December, 1956.

### COPY OF THE LETTER SENT TO THE PRESS

As the law stands at present, the law of Islam. applies to the distribution of the property of a Muslim who dies intestate. The vast majority of the Muslims desire that the law of Islam should be extended to the case of a Muslim dying testate. The Chief Secretary in moving the Muslims Bill to be referred to a Select Committee was kind enough to concede the Government would defer to this opinion and succeeded in obtaining the approval of the Assembly to the consideration by the Select Committee of the inclusion of a clause in the Bill providing for this extension.

His speech, as reported by the *Straits Times* of 5th November, 1956 was to the effect that although this was wrong in principle, foolish in practice and will affect a large number of existing wills, nevertheless as the vast majority of Muslims desired it, should be conceded to them. It is the typical paternal attitude of a civil servant who thinks he knows what is best for the people concerned.

The Mohammadan Ordinance was first enacted in 1880 and has from time to time been amended. Even the Bill before the Assembly provides for a Shariah Court and is therefore special legislation for Muslims. The fear that Muslims will ask for more and more special legislation is groundless for any change in the law can only be made by an Assembly, predominantly Non-Muslim, which will test every request on its merits, and its reasonableness having regard to local conditions.

Why is it wrong basically to extend the principle conceded in the case of intestacy to a case of testacy? Because the individual's freedom is curbed to the extent of 2/3rds in disposing of his wealth. And in whose interest is it curbed? In the interest of his wife, his children and his parents. Is it unjust to say to him, 'you shall not disregard your responsibility to your family and you shall leave 2/3rds to them leaving yourself free to dispose of 1/3rd as you may wish'. Mr. David Marshall conceded the reasonableness and the justice of this provision. In the same breath however he said the power to be unjust should not be taken away. I fail to see the logic of this argument.

Why should not Government implement the many statements made by its leaders, that we must be steadfast in our own particular faiths or is it to be mere lip-service. I conceive freedom of conscience and worship to imply freedom to be, bound by your own personal law to the extent that it is practicable.

The Chief Secretary went on to say it was a big handicap to the building of Muslim and particularly Malay Commercial interests. Much as we may search in Singapore we fail to find any substantial Malay Commercial interests built up during all these years that this freedom not to provide for one's family has existed. On the other hand the application of this principle in India has not prevented Muslims from building up large commercial concerns and providing for their continuity in India and other countries.

There are many ways for providing for continuity-by converting the business into limited liability company, by taking in sons and relations into the business as partners, by even obtaining the consent of the beneficiaries to the disposition of the business to one or more members of the family who have the ability to carry on the business satisfactorily. And of course if the beneficiaries agree that it should be carried on, which they are likely to do if it is a profitable one and is likely to be conducted fairly and with justice to the partners.

As regards to the last argument that many wills may be affected, the remedy is quite simple—they can be altered to comply with the changed law and if the change has the effect of avoiding any injustice to the family and parents then the result will be beneficial rather than harmful.

Yours faithfully,

(*Sd.*)?

Secretary,

Tamil Muslim Union.

**Paper S.C. (Muslims Bill) No. 2**

MALLAL & NAMAZIE,  
Advocates & Solicitors.

Ref: NAM/OAA/

22A Malacca Street,  
Singapore.  
8th December, 1956.

The Clerk of the Legislative Assembly,  
Assembly House, Empress Place,  
Singapore.

Dear Sir,

*re* Muslims Bill.

"A"

I enclose herewith a letter addressed to the Chairman, Select Committee on Muslims Bill, signed by a number of Muslim businessmen, firms and property owners.

I shall be glad if you will place the letter before the Select Committee on Muslims Bill.

Kindly acknowledge receipt.

Yours faithfully,  
(*Sd.*) Nazir Mallal.

"A"

Singapore.  
4th December, 1956.

The Chairman,  
Select Committee on Muslims Bill,  
Assembly House,  
Empress Place, Singapore.

Dear Sir,

*re* Muslims Bill.

We the undersigned members of the Muslim Community of Singapore are businessmen and/or property owners.

We beg to place our views on the Muslims Bill before the Select Committee.

We are strongly opposed to the proposal that every Muslim should be compelled to leave his property on death according to Muslim Law.

"Let there be no compulsion in religion" has been one of the fundamental principles of Islam. This principle is being departed from, if it is proposed to compel all Muslims to comply with Islamic laws as to making of Wills. In this country, the Muslims have to compete against the members of other communities in business and in improving their economic position and we cannot do this if immediately on death our properties and our businesses are going to be realised

and wound-up and distributed among our next-of-kin. Our hard work in establishing businesses and acquiring property, so that our future descendants may continue with the good work is in vain, if everything we die possessed of is to be immediately sold and distributed - in some cases among heirs who have proved complete wastrels and who would merely be waiting for the old man to die so that they can inherit his hard earned money.

At present any Muslim can leave a Will with directions that his property be administered according to Muslim Law. There is, therefore, no prohibition against any Muslim leaving his property for distribution according to Muslim Law. That is as it should be. We have complete freedom in the matter. But, we object to being compelled to leave our estates for distribution according to Muslim Law.

In Arabia, India and Pakistan, where Muslim Law applies to Muslims, the laws of "Wakaffs" and Shufaa" are in force side by side with the Muslim Laws of Succession. By creating a Wakaff, a Muslim in those countries can create a perpetual trust in favour of his descendants. In Singapore, we understand that perpetual trusts cannot be created. Under the Laws of Shufaa, if one of the heirs sells the family property to an outsider, another heir can buy that property back from the outsider and keep it in the family. The outsider is compelled by law to return the property to the family on refund of money which he had paid for it. In Singapore, there is no such law.

These laws as to Wakaffs and Shufaa are in force so as to lessen the harshness of Muslim Laws of Inheritance and Succession. It is therefore our view that so long as Singapore has no laws sanctioning perpetual Wakaffs and Shufaa the Muslim Law as to Wills should not be enacted.

Yours faithfully,

<i>Name</i>	<i>Address</i>	<i>Signature</i>
A. Osman	165, Beach Road, Singapore	(Signature).
Syed Hussain Alkaff bin Syed Abdulrahman Alkaff	70A, The Arcade, Singapore	(Signature).
Syed Ali bin Abdulrahman Alkaff	70A, The Arcade, Singapore	(Signature).
King & Co.	23-1, Raffles Place, Singapore	(Signature).
Kassim bin Adam	29, Arab Street, Singapore	(Signature).
O. A. Hajee Mohamed Ismail & Co.	187, Beach Road, Singapore	(Signature).
L. J. Shaik Abdul Kader	5, Rochore Road, Singapore	(Signature).
Rahmath Stores	17, Cecil Street, Singapore	(Signature).
A. Maideen Co.	7, Change Alley, Singapore	(Signature).
S. M. Abdul Ahad & Co.	86, Robinson Road, Singapore	(Signature).
T. M. Majeed & Co.	92-A, Robinson Road, Singapore	(Signature).
A. Abdul Kader & Co.	159, Market Street, Singapore	(Signature).



<i>Name</i>	<i>Address</i>	<i>Signature</i>
P. A. Madarsa Maricar	155, Market Street, Singapore	(Signature).
New Haffiz Store	153, Market Street, Singapore	(Signature).
K. M. Abdul Razak	98, Arab Street, Singapore	(Signature).
V. M. Abdul Kader	94, Arab Street, Singapore	(Signature).
V. M. Mohamed Eusoof	103, Arab Street, Singapore	(Signature).
V. K. Mohamed Hussain	132, Arab Street, Singapore	(Signature).
Hussainali & Co.	104, Arab Street, Singapore	(Signature).
Star Textiles	108, Arab Street, Singapore	(Signature).
E. Mohamed Ali & Co.	108, Arab Street, Singapore	(Signature).
A. M. Mohamed Yusoof & Co.	117, Arab Street, Singapore	(Signature).
A. Wali Mohamed Bros.	113, Arab Street, Singapore	(Signature).
Java Store	68, Arab Street, Singapore	(Signature).
Abdul Kader & Co.	59, Arab Street, Singapore	(Signature).
N. K. M. Amanullah & Co.	57, Arab Street, Singapore	(Signature).
M. I. Ibrahim & Co.	55, Arab Street, Singapore	(Signature).
V. Shaik Mohamed & Co.	155, Beach Road, Singapore	(Signature).
O. S. Dawood & Co.	18/20, Arab Street, Singapore	(Signature).
Mohamed Thamby	99, Arab Street, Singapore	(Signature).
V. Sulaiman & Co.	125, Arab Street, Singapore	(Signature).
Maideen Jabbar & Co.	705, North Bridge Road, Singapore	(Signature).
K. Syed Mohamed Co.	163, Beach Road, Singapore	(Signature).
A. O. Abdul Razack & Brothers	42, Garden Street, Singapore	(Signature).
O. Rahiman Sahib	2 & 3, Rochore Road, Singapore	(Signature).
K. M. Haji Mohamed Ismail	74, Arab Street, Singapore	(Signature).

<i>Name</i>	<i>Address</i>	<i>Signature</i>
M. I. Mohamed Sultan & Co.	72, Arab Street, Singapore	(Signature).
K. S. M. Abubaker & Co.	40, Arab Street, Singapore	(Signature).
M. M. Haji Abdul Azeez	Robinson Road and Market Street, Singapore	(Signature).
K. Meera Hussain	10, It, Tulok Ayer Market, Singapore	(Signature).
A. Jamaludin	92A, Robinson Road, Singapore	(Signature).
"Batcha Stall"	71, Robinson Road, Singapore	(Signature).
A. S. Kader Maideen	Nos. 121, 161-162, 163, Maxwell Road Market, Singapore	(Signature).
Ocean Lighterage & Transport Co.	-----	(Signature).
M. Salomon & Co.	34A, Raffles Quay, Singapore	(Signature).
P. M. S. Abdul Razak	13, Arcade, Singapore	(Signature).
Regal Trading Co.	17, Malacca Street, Singapore	(Signature).
E. N. Mohd. Ibrahim & Co.	81, Market Street, Singapore	(Signature).
M. M. Abdul Rahim & Co.	15, Cecil Street, Singapore	(Signature).
Saiboo Cigarettes Store	—	(Signature).
S. Saburdeen	4, Peck Seah Street, Singapore	(Signature).
K. M. Mohamed Yassin	58, Arab Street, Singapore	(Signature).

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**Paper S.C. (Muslims Bill) No. 3**

MALLAL & NAMAZIE,  
Advocates and Solicitors.

Our Ref. NAM/OAA/P.

22A Malacca Street,  
Singapore.  
8th December, 1956

The Clerk of the Legislative Assembly,  
Assembly House, Empress Place,  
Singapore.

Dear Sir,

*re* Muslims Bill.

Section 43-Proof of the Law of Islam

In Section 43 (1), a number of books on Muslim Law are referred to.

Except for Fayzee's book which is only an outline of Muslim Law, the other books were published many years ago and do not contain references to many leading Indian and Privy Council decisions on Muslim Law.

One of the best books on the subject and which is commonly referred to in the High Courts of India and Pakistan and in the Privy Council is Mohammedan Law by Faiz B. Tyabjii. It has been a standard book on Muslim Law since 1918. The last edition of that work came out in 1940.

I would therefore suggest that Tyabjii on Mohammedan Law be included in the list in Section 43 of the Bill.

Yours faithfully,  
(*Sd.*) Nazir Mallal.

**Paper S.C. (Muslims Bill) No. 4**

SINGAPORE MALAYALA-MUSLIM CULTURAL ASSOCIATION  
74c York Hill Road

Singapore.  
9th December, 1956.

*re* Muslims Bill.

Sir,

With reference to the notice calling for representations relative to the above, I am instructed by my Committee to forward the following resolution passed at its Meeting held on Sunday 9th December 1956 at 118 Radin Mas, Singapore:-

"This Meeting while expressing its gratitude to Government for introducing legislation especially to safeguard the well being of Muslims residing here views with regret the omission in the proposed bill of a clause on the lines of clause 47 of the bill published as Gazette Supplement No. 104 dated 7th December 1955 and respectfully requests that provision be made in the proposed bill for the inclusion of a clause similar to clause 47 mentioned above."

I have the honour to be,  
Sir,  
Your obedient servant,

(*Sd.*)?  
Secretary,

*Singapore Malayala-Muslim Cultural Association.*

The Secretary,  
The Select Committee dealing with Muslims Bill  
Assembly House,  
Singapore.

**Paper S.C. (Muslims Bill) No. 5**

10th December, 1956.

*From:*

M. Sulaiman Marican,  
17 Langsat Road,  
Singapore. 15.

*To:*

The Secretary,  
Select Committee,  
Dealing with Muslims Bill,  
Assembly House,  
Singapore. 1.

Dear Sir,

I am requested by the audience assembled in the "RATHEEB MAJLIS" in honour of Khwaja Mui-nu-deen Chishthi (Be Peace Upon Him) at my above premises to send to you their unanimous desire in respect of Muslims Bill, which is now under consideration before the Select Committee.

"A"

Please find (enclosed) herewith the audience signatures giving their consent towards the Bill.

Enc: 13 sheets.

Yours faithfully,  
(*Sd.*) M. Sulaiman Marican.

"A"

8th December, 1956.

The Clerk,  
Select Committee,  
Dealing with Muslims Bill,  
Assembly House,  
Singapore.

Dear Sir,

*re* Muslims Bill.

We the undersigned Muslims of Singapore wholeheartedly support the resolution of Tamil Muslim Union regarding the above Muslims Bill passed in a meeting held at Moulana Mohamed Ali Mosque No. 16 Market Street, Singapore on the 4th of December, 1956, regarding as follows:-

"This meeting expresses its full support to the Muslims Bill now under consideration by the Assembly but is strongly of the view that the law of Islam should apply to Muslim dying testate, as it does now to Muslims dying intestate. This meeting expresses surprise that clause 47 of the lapsed Muslim Bill which gives effect to this general desire of the Muslims (whatever madzhab they may profess) should have been omitted and views with alarm the dissatisfaction that will arise amongst the Muslims of Singapore if some such provision is not incorporated in the Bill now before the Assembly".

(Signatures of 249 persons)

**Paper S.C. (Muslims Bill) No. 6**

ALL MALAYA MUSLIM MISSIONARY SOCIETY

Secretary's Office,  
31, Lorong 12  
Geylang,  
Singapore. 14.

10th December, 1956.

Clerk of the Legislative Assembly,  
Assembly House,  
Empress Place,  
Singapore.

Sir,

*re* Muslims Bill,

I am directed to draw your attention relating to the above-mentioned bill and to state that according to the decision taken at the last General Committee Meeting of this Society that provisions be incorporated whereby the Muslim Law should apply to Muslims who make wills.

Yours faithfully,

(*Sd.*) A. Wanjor,  
*Hon. Secretary.*

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**Paper S.C. (Muslims Bill) No. 7**

SINGAPORE BAR COMMITTEE

Urgent

c/o Messrs. Eber & Tan,  
4A Raffles Place,  
Singapore.

10th December, 1956.

The Clerk of the Legislative Asssmbly,  
Assembly House,  
Empress Place,  
Singapore, 6.

*re* Muslims Bill.

Dear Sir,

Further to my letter\* of even date, I should be grateful if you would draw the Select Committee's attention to my Committee's views on the proposed amendments to the above-mentioned Bill.

My Committee strongly oppose any legislation which would deprive a Muslim of his right to make a will which does not conform with the Muslim law in the Colony. Further, I am directed by my Committee to refer to Mr. N. A. Mallal's letter + to you on the subject, dated 28th February, 1956, and the letters sent therewith, and to inform you that my Committee strenuously endorse Mr. Mallal's views therein expressed.

Yours faithfully,

(*Sd.*) Phyllis Tan,  
*Hon. Secretary.*

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Notes:-\* Not reproduced.

+Annexe "A" to the Minutes of Evidence taken before the Select Committee on the Muslims Bill in the previous session of the Legislative Assembly, annexed as Appendix V to this Report.

**Paper S.C. (Muslims Bill) No. 8***(Translation from Romanised Malay)*

Abdul B. Rahaman,  
3 Jalan Kelapa,  
Singapore.

Sir,

Announcement in newspaper states that proposers are required in connection with distribution of property by law. I am a follower of the religion of Islam by descent of my forefathers without ambition and I attend all what people of the Christian religion influence the divine commands in the Malay language religious books dealing with distribution of property since the Malay language religious books are based on the glorious Koran. If, as what has been said, the Governor has power to defend and alter what has been laid down and practised, then in future the Koran could be interpreted with Western ideas. (It becomes the Kadiani way?). Islam will be influenced by Christianity.

So are the Muslim marriage and divorce laws. What is recognised by Islam is not recognised by Christians as in the case of Nadrah. It was known by a wide circle of learned Muslim theologians and the case was witnessed by huge crowd.

This means that the Muslim pen is controlled by the Christians. If the Christians want to interfere in the Muslim Court of law then it is just the same as the Kadiani Court. Splendid!

First recognised and then not recognised. Friday congregational prayer cannot be had. Leave on Sunday.

To go on a pilgrimage to Mecca is not possible because passport is not granted by the Government after having written to the Arab Saubby.

This means that one cannot go on a pilgrimage to Mecca. Remember. Which Muslim leaders can defend the right of the Muslims to go on a pilgrimage to Mecca? (Are the Christians who have no humanitarian feeling?) "If cotton will go through, so will thread". Remember!! The Muslim theologians have followed the teaching and the orders of the Governor. Like this, cannot. Like that, cannot. Finally all the Muslim people are Kadiani.

Don't put questions to clergymen or to those who are not Muslims regarding question' connected with Islam.

Follow what the Koran says. Is it easy to make alterations of what has been in the Koran? It has been in existence since eternity. You alter and so your fate will also be altered in the Hereafter! I am a Muslim and so I am a fool who does not want to alter what is said in the Koran.

Good-bye.

Shall see again next time.

(*Sd.*) Abdul B. Rahaman.

**Paper S.C. (Muslims Bill) No. 9**

(No Address)

Dated 3rd December, 1956.

Sir,

I chanced to read in Utusan Melayu of 1st December, 1956 that a public opinion was being sought in respect of Islamic laws.

As a Muslim I feel it is necessary to express my opinion for the matter.

Islam is all sufficient regarding laws in all spheres of life for they have been laid down in the Holy Koran.

If the Government wishes to value the Islamic laws it is not necessary to seek the opinion of the public. Just leave the matter to the Muslims who are conversant with the injunctions and the contents of the Holy Koran. I wish to make it clear that all arguments or opinions that differ from what is stated in the Koran do not have the legal basis of Islam.

Muslim.

**Paper S.C. (Muslims Bill) No. 10**

(LATE REPRESENTATION)

*(Translation from Romanised Malay)*

(Undated)

To:

The Clerk to the Legislative Assembly,  
Assembly House,  
Singapore, 6.

Sir,

We the undersigned who reside in Seletar wish to bring to your attention that "tahkim" (delegation of powers) which can only be performed by the Chief Kathi according to the Shariah Court rule 7-1 and 7-3 which will come into force is not in accordance with the law of Islam. It causes inconvenience to us who live far away from the City and it affects our work in cases where three or four "tahkim" marriages take place at the same time.

We, therefore, request Government to amend this rule and retain the old one.

Thank you.

*(Sd.)* Mahat and 249 others.

**Paper S.C. (Muslims Bill) No. 11**

(LATE REPRESENTATION)

*(Translation from Romanised Malay)*

From:

The Muslims,  
Kampongs of East Singapore.

(Updated)

To:

The Clerk of the Legislative Assembly,  
Assembly House,  
Singapore.

*re:* MARRIAGE THROUGH A MATCHMAKER

Dear Sir,

We the Muslim residents of the kampongs of East Singapore understand that the Singapore Government will establish the Shariah Court for the performance of the affairs relating to the local Muslims Ordinance. We are indeed very grateful to Government for its kindness in this matter:

The following are provided in the Ordinance in connection with marriage through a matchmaker.

The Chief Kathi:-Section 7 (1) "Where there is no wali, marriages shall be solemnised according to the Law of Islam by the *Chief Kathi* appointed by the Governor under section 4 hereof."

Nevertheless, we do not agree to the term "Chief Kathi" used in this sentence. If only the Chief Kathi could solemnise marriages without wali, we the kampong residents who stay far away from the residence of the Chief Kathi would inevitably have to encounter difficulties: -

- (1) We have to pay more for transport when inviting him for the said purpose.
- (2) In the event of the Chief Kathi being absent from his residence, we have to look for him. This would waste more money and time.
- (3) In the event of the Chief Kathi being busily engaged, the marriage may have to be postponed.
- (4) The certificates issued by the Governor to other Kathis are not of the same value as the one issued to the Chief Kathi.

With the reasons mentioned above, we would propose and petition that an amendment be made to the same section 7 (I):-

"Where there is no wali, marriages shall be solemnised according to the Law of Islam by the *Kathis* appointed by the Governor under section 4 hereof."

We the undersigned submit this petition and earnestly hope that it be given favourable consideration.

(Signatures of 115 persons).

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**Paper S.C. (Muslims Bill) No. 12**

2A Raffles Place,  
Singapore.

30th January, 1957.

The Secretary,  
Select Committee dealing in Muslim Bill,  
Assembly House,  
Singapore.

Dear Sir,

"A"

I enclose herewith a petition by 33 out of the 50 persons who signed a petition under a misapprehension, which speaks for itself. I shall be obliged if you will kindly bring this to the notice of the Select Committee. It was not possible to interview the others owing to the urgency of this matter.

Yours faithfully,  
(*Sd.*) S. I. O. Alsagoff.

---

"A "

Singapore.  
28th January, 1957.

The Secretary,  
Select Committee,  
Dealing with Muslims Bill,  
Assembly House,  
Singapore, 6.

We the undersigned hereby declare that Mr. A. Osman of 165, Beach Road, Singapore brought to us a petition in early December 1956, stating that the Government of the Colony of Singapore was, going to bring a Bill viz. Muslims' Inheritance



Bill, that it was quite against the Shariah Laws and that the public should make a protest to prevent the Bill from being passed as a law.

Having had the impression that if that being the motive of the said Bill it should be stopped by all means from being passed, but not knowing the contents of the paper we signed on the petition.

We now understand through Press reports and enquiring that the petition\* has been forwarded to the Select Committee through Mr. N. A. Mallal, a Lawyer, in fact to break the Islamic Inheritance Shariah Laws.

We regret the mistake; we signed on the petition under the influence of wrong ideas given to us by Mr. A. Osman.

We therefore appeal to the Government by this petition that the Islamic Shariah Laws should be observed intact.

<i>Name</i>	<i>Address</i>	<i>Signature</i>
1. M. I. Ibrahim & Co.	55, Arab Street, Singapore	(Signature).
2. K. S. M. Abdubaker & Co.	40, Arab Street, Singapore	(Signature).
3. Java Store	68, Arab Street, Singapore	(Signature).
4. K. M. Haji Mohamed Ismail	74, Arab Street, Singapore	(Signature).
5. Hussainali & Co.	104, Arab Street, Singapore	(Signature).
6. E. Mohamed Ali & Co.	108, Arab Street, Singapore	(Signature).
7. A. M. Mohamed YusooF & Co.	117, Arab Street, Singapore	(Signature).
8. A. Wali Mohamed Bros.	113, Arab Street, Singapore	(Signature).
9. V. M. Abdul Kader	94, Arab Street, Singapore	(Signature).
10. O. A. Hajeer Mohamed Ismail & Co.	187, Beach Road, Singapore	(Signature).
11. L. J. Shaik Abdul Kader	5, Rochore Road, Singapore	(Signature).
12. O. Rahiman Sahib	2, Rochore Road, Singapore	(Signature).
13. V. Sulaiman & Co.	125, Arab Street, Singapore	(Signature).
14. O. S. Dawood & Co.	18/20, Arab Street, Singapore	(Signature).
15. Maideen Jabbar & Co.	705, North Bridge Road, Singapore	(Signature).
16. K. M. Mohamed Yassin	58, Arab Street, Singapore	(Signature).
17. M. I. Mohamed Sultan & Co.	72, Arab Street, Singapore	(Signature).
18. Rahmath Stores	17, Cecil Street, Singapore	(Signature).

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\* Paper S.C. (Muslims Bill) No. 2, Appendix I, pages 9 to 12.

<i>Name</i>	<i>Address</i>	<i>Signature</i>
19. P. A. Madarsa Maricar	155, Market Street, Singapore	(Signature).
20. T. M. Majeed & Co.	92A, Robinson Road, Singapore	(Signature).
21. M. M. Abdul Rahim & Co.	15, Cecil Street, Singapore	(Signature).
22. New Haffiz Store	153, Market Street, Singapore	(Signature).
23. M. M. Haji Abdul Azeez	Robinson Road, Singapore	(Signature).
24. A. Abdul Kader & Co.	159, Market Street, Singapore	(Signature).
25. Saiboo Cigarettes Store	36, Robinson Road, Singapore	(Signature).
26. S. M. Abdul Ahad & Co.	86, Robinson Road, Singapore	(Signature).
27. Regal Trading Co.	17, Malacca Street, Singapore	(Signature).
28. "Batcha Stall"	71, Robinson Road, Singapore	(Signature).
29. E. N. Mohd. Ibrahim & Co.	81, Market Street, Singapore	(Signature).
30. P. M. S. Abdul Razak	13, Arcade, Singapore	(Signature).
31. Ocean Lighterage & Trans- port Co.	-----	(Signature).
32. K. Syed Mohamed Co.	46, Market Street, Singapore	(Signature).
33. K. Meera Hussain	30, Robinson Road Singapore	(Signature).

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**Paper S.C. (Muslims Bill) No. 13**

(LATE REPRESENTATION)

*(Translation from Romanised Malay)*

**UNITED MALAYS NATIONAL ORGANISATION**

UMNO Singapore Secretary's Office,  
316, East Coast Road,  
Singapore, 15.

26th January, 1957.

Tel: 43067.

No.: I dlm SUN/U/SING-UM

The Hon. Secretary,  
Select Committee on the Muslims Bill.

Sir,

**MUSLIMS BILL**

It is respectfully informed that the Executive Committee Meeting of UMNO State Singapore which met recently decided to press the Select Committee on the Muslims Bill to insert the following clauses in the Muslims Bill which is to be tabled and passed by the Legislative Assembly Meeting:-

- (a) Clause 23 in the original Bill, namely, the Malay language should be used in the Religious Court (Mahkamah Syariah) must be inserted in the Muslims Bill.
  - (b) Clause 47 in the original Bill, namely, distribution of properties in accordance with Islamic law must be inserted in the Muslims Bill.
2. This is all for the attention of the Select Committee. Thank you.

By Order,

(Sd.) S. A. Jamalulil,  
Secretary, UMNO State,  
Singapore.

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**Paper S.C. (Muslims Bill) No. 14**

(LATE REPRESENTATION)

*(Translation from Romanised Malay)*

*From:*

Residents of Kampong Pachitan,  
Changi Road,  
Singapore, 14.

*To:*

Clerk to the Legislative Assembly,  
Assembly House,  
Singapore.

**APPLICATION**

We, the undersigned people of the above kampong, wish to inform the Singapore Government that according to the reports, the Singapore Government will establish a "Mahkamah Shar'iah" (Religious Court) to deal with matters pertaining to the local Muslims.

We are all very gratified and we fully support the move to establish, as early as possible, the said Court.

But we came to hear that the case of the marriage of persons without guardian, such persons must entrust to the Chief Kathi to give away such persons in marriage. This is very unfair and causes inconvenience to the kampong people who live far away from the Chief Kathi's house. Firstly, it is expensive to call the Chief Kathi, and secondly, should the Chief Kathi be indisposed the wedding already fixed for that night has had to be deferred.

Such regulation certainly causes inconvenience to the poor kampong people. We hope the Government may allow all Kathis in Singapore to give away persons who have no guardians in marriage.

We the undersigned:-

<i>Name</i>	<i>Address</i>	<i>Signature</i>
1. Haji Rosdi bin Haji A. Salam	620-46, Kg. Pachitan	(Signature).
2. Mohd. Som bin Haji Talib	620-170, Kg. Pachitan	(Signature).
3. Misdi bin Posemita	620-123, Kg. Pachitan	(Signature).
4. Simin bin Poncho	620-48, Kg. Pachitan	(Signature).
5. Saimin bin Kaman	620-179, Kg. Pachitan	(Signature).
6. Ibrahim bin Ahmad	620-103, Kg. Pachitan	(Signature).
7. Osman bin Sulaiman	620-45, Kg. Pachitan	(Signature).
8. Rahmad bin Haji. Johari	620-44, Kg. Pachitan	(Signature).
9. Said bin Haji Johari	620-44, Kg. Pachitan	(Signature).
10. Marhassan bin Haji Palil	620-103, Kg. Pachitan	(Signature).
11. Sirmadi bin Parto	620-99, Kg. Pachitan	(Signature).
12. Sopian bin Haji Suhaimi	620-59, Kg. Pachitan	(Signature).
13. Haji Yasin bin M. Mordiman	620-50, Kg. Pachitan	(Signature).
14. Haji Ihwan bin Haji Omar	620-61, Kg. Pachitan	(Signature).
15. Haji Ilyas bin Ahmad	620-124, Kg. Pachitan	(Signature).
16. Adnan bin Ahmad	620-14, Kg. Pachitan	(Signature).
17. Haji Dahlan H. A. Rahman	620-65, Kg. Pachitan	(Signature).
18. Kasan bin Dariyan	620-48, Kg. Pachitan	(Signature).
19. Haji Ishak bin Kario	620-46, Kg. Pachitan	(Signature).

Sir,

In my opinion, all the residents of Kampong Pachitan Singapore, totalling about 3,000 do not agree if the above regulation is passed.

(Sd.) Haji Redwan bin Haji Palil,  
Ketua Kg. Pachitan,  
Singapore.

31st January, 1957.

## **APPENDIX II**

*Reprinted with the amendments recommended by the Select Committee.*

A BILL  
*intituled*

An Ordinance to repeal and to re-enact the law relating to Muslims, the registration of marriages and divorces among Muslims, and to establish the *Shariah* Court.

It is hereby enacted by the Governor of the Colony of Singapore with the advice and consent of the Legislative Assembly thereof as follows:-

1. This Ordinance may be cited as the Muslims Ordinance. 5 1956, and shall come into force on such day as the Governor may by notification in the *Gazette* appoint and the Governor may appoint different dates for different parts or provisions of this Ordinance. Short title and commencement.
2. In this Ordinance- Interpretation.
- 10 "Eddah" means the period within which a divorced woman or widow is forbidden by the law of Islam to remarry;
- "English law" means the English law in force in the Colony for the time being;
- 15 "Janda" means a female who has been married and whose marriage has been terminated by divorce or the death of her husband;

"*Kathi*" means a person, appointed by the Governor under section 4 of this Ordinance and shall where the context allows include the Chief *Kathi*;

"Muslim" means a person who, professes the religion of Islam;

"Registrar", means the person appointed by the Governor under section 3 of this Ordinance;

"revocation of divorce" means the revocation of divorce known in the law of Islam as *rojo*;

"*Wali*" means the lawful guardian according to the law of Islam for purposes of marriage of a woman to be wedded.

### Part I.

#### REGISTRATION.

##### *Registrars and Kathis.*

Appoint-  
ment of  
Registrar.

3.-(1) The Governor may appoint either by name or office any male Muslim of good character and position and of suitable attainments to be the Registrar of Muslim Marriages.

(2) Such appointment shall be notified in the Gazette.

(3) The Governor may at any time at his pleasure by a notification in the *Gazette* cancel such appointment.

Appoint-  
ments of  
Chief Kathi  
and Kathis.

4.-(1) The Governor may appoint any male Muslim of good character and position and of suitable attainments to be the Chief *Kathi* and may similarly appoint suitable Muslims to be Kathis.

(2) The Governor may appoint two or more *Kathis* for the same district or place.

(3) The letter of appointment shall-

(a) be in such form as the Governor prescribes;

(b) be signed by the Chief Secretary;

(c) state either-

(i) that the person named therein is appointed to be a *Kathi* for a particular district or place, of which the limits shall be strictly defined; or

(ii) that the person named therein is appointed to be a *Kathi* for particular schools of law (*Madzhabs*); or

(iii) that the person named therein is appointed to be the Chief *Kathi* with jurisdiction over Singapore.

(4) The appointment of the Chief *Kathi* and the appointment of a *Kathi* shall be notified in the *Gazette*.

(5) The Governor may at any time at his pleasure by a notification in the *Gazette* cancel such appointment.

5 (6) In the event of the Chief *Kathi* or a *Kathi* temporarily leaving the Colony or being temporarily incapacitated from performing the duties of his office the Governor may appoint a suitable person to officiate in his appointment.

10 **5.-(1) Every *Kathi*-**

Deputy Registrars.

(a) shall be a Deputy Registrar of Muslim Marriages; and

(b) shall use a seal bearing such inscription in the Malay language as the Registrar approves.

15 (2) In the event of a *Kathi* leaving the district within which he is appointed to act, or ceasing to hold his appointment, or dying, his books and seals of office shall forthwith be given up to or taken possession of by the Registrar.

*Registers and Indexes.*

**6.-(1) Every *Kathi* shall keep such books and registers as are prescribed.** Registers.

20 (2) Every *Kathi* shall keep in the Malay or English language, and in such form as is prescribed, a current index of the contents of every register kept by him. Indexes.

(3) Every entry in such index shall be made, so far as is practicable, immediately after he has made an entry in a register.

25 **7.-(1) It shall be lawful for the *wali* of the woman to be wedded to solemnize the marriage according to the law of Islam.** Wali.

30 (2) Any *Kathi* may at the request of the *wali* of the woman to be wedded perform the marriage ceremony but before solemnizing such marriage he shall make full enquiry in order to satisfy himself that there is no lawful obstacle according to the law of Islam to the marriage and shall not perform the ceremony until he is so satisfied.

35 (3) Where there is no *wali* of the woman to be wedded or where a *wali* shall, on grounds which the Chief *Kathi* does not consider satisfactory, refuse his consent to the marriage, the marriage may be solemnized by the, Chief *Kathi* but before solemnizing such marriage the Chief *Kathi* shall make enquiry as prescribed in subsection (2) of this section.

40 (4) For the purpose of any enquiry the Chief *Kathi* or a *Kathi* may issue a summons requiring any person to appear before him to give evidence or to produce a document.



(5) The provisions of this section shall not apply where the woman to be wedded belongs to a school of law under which she can be married without the consent of her guardian.

5

*Janda.*

**8.** Where the woman to be wedded is a *janda* she shall not be married to any person other than the husband from whom she was last divorced, at any time prior to the expiration of the period of *eddah*, which shall be calculated in accordance with the law of Islam : Provided that if the divorce was by three *talak* she shall not be remarried to her previous husband unless prior to such marriage she shall have been lawfully married to some other person and such marriage shall have been consummated and later shall have been lawfully dissolved.

10

Copies to be sent to Registrar.

**9.**-(1) Every *Kathi* shall at the expiration of every month personally appear before the Registrar, or before a Magistrate's Court and deposit copies verified on oath of all entries made by him in his registers and indexes.

15

(2) Such certified copies shall, if deposited with a Magistrate, be at once forwarded to the Registrar.

20

General register.

**10.** The Registrar shall cause all such certified copies to be bound together with an English translation, if they are in the Malay language, in a general register, of which a general index shall be kept.

Registers and indexes when filled up to go to Registrar.

**11.** Every *Kathi* shall keep safely all registers and indexes until they have been filled up, and shall then forward them for record to the Registrar.

25

#### *Registration.*

Registration compulsory.

**12.**-(1) In the case of every marriage, divorce or revocation of divorce, effected in the Colony between Muslims, the husband and wife shall -

30

(a) attend personally within seven days of the marriage, divorce or revocation of divorce at the office of a *Kathi*;

(b) effect the registration of such marriage, divorce or revocation of divorce; and

35

(c) furnish such particulars as are required by the *Kathi* for the due registration of such marriage, divorce or revocation of divorce.

(2) Nothing in this section shall be construed as preventing a *Kathi* at his option from, registering a marriage, divorce or revocation of divorce at the house of the parties or one of the parties thereto.

40

(3) A *Kathi* shall not register any divorce unless he is satisfied that both the husband and the wife have consented thereto.

5 **13.**-(1) Subject to the provisions of subsection (3) of section 12 of this Ordinance a *Kathi* may at any time within one month of a marriage, divorce or revocation of divorce taking place make an entry in his register of such marriage, divorce or, revocation of divorce. Registers how signed; and inquiries by the *Kathi*.

(2) The entry shall be signed by the *Kathi* and by such Inquiries may be made.  
10 of the parties and by such number of witnesses as are prescribed.

(3) Before making any entry the *Kathi* may make such Summons to witness.  
15 inquiries as he considers necessary to satisfy himself as to the validity of the marriage, divorce or revocation of divorce.

(4) For the purpose of such inquiries the *Kathi* may issue a summons requiring any person to appear before him to give evidence or to produce a document.

(5) Every person so summoned shall be legally bound to Refusal to register and appeal therefrom.  
20 comply with such summons:

**14.**-(1) Every *Kathi* who refuses to register a marriage, divorce or revocation of divorce shall record his reasons for such refusal in a book to be kept for that purpose.

(2) Upon payment of the prescribed fee such *Kathi* shall Where the *Shariah* Court orders registration.  
25 give a copy of such record to the applicant for such registration.

(3) An appeal from such refusal shall lie to the *Shariah* Court constituted under section 20 of this Ordinance.

(4) Such appeal shall be presented within one month Registers how signed; and inquiries by the *Kathi*.  
30 from the date of refusal: Provided that the *Shariah* Court may if it thinks fit permit an appeal to be presented after the expiration of that period.

(5) The appeal may be heard either in public or in camera and the *Shariah* Court may take such evidence as it thinks fit.

(6) The *Shariah* Court may uphold, vary or reverse the *Kathi's* decision.

**15.**-(1) If the *Shariah* Court on appeal orders the marriage, divorce or revocation of divorce to be registered, the necessary entries shall at once be made by the *Kathi*.

(2) An entry shall be made in the register showing that the marriage, divorce or revocation of divorce was registered by order of the *Shariah* Court on appeal, and shall be signed by the person entering the same.

Extended  
time for  
registra-  
tion.

16. Any marriage, divorce or revocation of divorce which has not been registered within the time prescribed by section 13 of this Ordinance may, with the consent in writing of the Registrar, be registered by a *Kathi* within three months from the date of such marriage, divorce or revocation of divorce. 5

Copy of  
entry to be  
given to  
parties.

17. On the completion of the registration of any marriage, divorce or revocation of divorce the *Kathi* shall upon application deliver to each party to the marriage, divorce or revocation of divorce a copy of the entry duly signed and sealed with his seal of office. 10

Unlawful  
registers.

18. No person other than the Registrar or a *Kathi* shall-

(a) keep any book being or purporting to be a register of Muslim marriages, divorces or revocations of divorce; or 15

(b) issue to any person any document being or purporting to be a certificate of marriage, divorce or revocation of divorce.

Legal  
effect o  
registra-  
tion.

19. Nothing in this Ordinance shall be construed to render valid or invalid merely by reason of its having been or not having been registered any Muslim marriage, divorce or revocation of divorce which otherwise is invalid or valid. 20

## Part II.

### RELIGIOUS COURTS JURISDICTION.

Constitu-  
tion of  
*Shariah*  
Court.

20. The Governor may by notification in the *Gazette* constitute a *Shariah* Court for the Colony, hereinafter in this Part of this Ordinance referred to as the "Court". 25

Jurisdic-  
tion.

21.-(1) The Court shall have jurisdiction throughout the Colony and shall be presided over by the Registrar or such other male Muslim as the Governor may appoint.

(2) The Court shall hear and determine all actions and proceedings in which all the parties are Muslims and which involve disputes relating to - 30

(a) marriage;

(b) divorces known in the law of Islam as *fasah*, *taalik*, *khula* and *talak* other than those by mutual consent of the parties; 35

(c) betrothal, nullity of marriage or judicial separation;

(d) the payment of *mahr*, alimony and maintenance subject to the limits hereinafter set out.

(3) The Court shall have jurisdiction to hear appeals from the decision of a *Kathi* under section 14 of this Ordinance. 40

*Procedure.*

**22.** -(1) The Court shall have and use such seal or stamp as the Governor shall approve. Use of seal.

(2) Process of such Court shall issue under the seal of the Court and the signature of the presiding officer thereof.

5 **23.**-(1) The languages of the Court shall be English and Malay. Languages and records.

(2) All documents and written, proceedings may be written or typewritten in English or in Jawi or Rumi script.

10 (3) The Court shall keep and maintain full and proper records of all proceedings therein and full and proper accounts of all financial transactions of the Court.

**24.** Advocates and solicitors shall have the right to appear in the Court on behalf of a party to any proceedings. Advocates and solicitors.

15 **25.** Every party to any proceedings shall appear in person or by advocate and solicitor. Representation.

**26.**-(1) Process of the Court shall be served by an officer of the Court or by any other person expressly authorised by the Court to serve the same, and may be served at any place within the Colony. Process of the Court.

20 (2) Service shall be personal, unless for special reasons the Court shall order substituted service. Substituted service shall be effected in such manner as the Court may order and shall then be as effective as personal service.

25 (3) Personal service shall be effected by handing to the person to be served the original or a sealed and signed copy of the document to be served. If the person to be served refuses to accept a document it may be brought to his notice and left near him.

30 (4) A person who has served any document or proceeding shall forthwith file in Court a memorandum showing the place, time and method of service.

(5) Service shall be proved where necessary by oral evidence.

35 **27.**-(1) The Court shall observe all provisions of the law of Islam relating to the number, status or quality of witnesses or evidence required to prove any fact. Save as aforesaid, the Court shall have regard to the law of evidence for the time being in force in the Colony, and shall be guided by the principles thereof, but shall not be obliged to apply the same strictly. Evidence.

40 (2) The Court may administer oaths and affirmations. Evidence shall ordinarily be given on oath in a form binding upon Muslims, but the Court may on special grounds dispense with an oath and take evidence on affirmation. Such

*Cap. 8.* affirmation shall be in accordance with the Oaths Ordinance. Whether on oath or on affirmation a witness shall be bound to state the truth.

(3) If in the opinion of the Court any witness has wilfully given false evidence in any proceedings, the Court may report the matter to the Attorney-General. 5

*Summons to give evidence or produce documents.* **28.**-(1) Subject to the provisions of any other written law the Court may issue a summons to any person to give evidence or to produce any document in his possession.

(2) Every such summons shall be served personally unless for special reasons the Court shall order substituted service. Substituted service shall be effected in such manner as the Court may order and shall then be as effective as personal service. 10

(3) Every person served with a summons under this section shall, whether a Muslim or not, be legally bound to comply therewith. 15

(4) The Court may, before issuing such summons, order the payment of the reasonable travelling and subsistence expenses of any witness who resides more than one mile from the Court house. 20

*Adjournment.* **29.** The Court may for sufficient reason adjourn any proceeding from time to time and from place to place. Save as aforesaid, proceedings in the Court shall be held in the Court-house of the Court. 25

*Time.* **30.** The Court may fix, and may at any time extend or abridge, the time for doing any act or thing, and in default of compliance with any order so made may proceed as if the party in default had not appeared.

*Courts to be open.* **31.** Every trial or hearing in Court shall be held in public: 30  
 Provided that a Court may order that the whole or any part of any proceedings before it may take place in *camera* if it is satisfied that it is expedient in the interests of justice so to do.

#### *Divorce and Recalcitrancy.*

*Fasah.* **32.**-(1) The Court may receive from a married woman who has been resident for at least four months within the Colony an application for the divorce known in the law of Islam as *fāsah*. 35

*Service of notice.* (2) Upon, receiving such application the Court shall immediately cause a notice thereof to be served upon the husband of the woman. 40

(3) If it is made to appear to the Court by sworn statement that the husband is not in the Colony and that in the circumstances of the case it is impossible to serve the notice upon the husband, the Court may order the notice to be served upon the husband's nearest relative, or, if no relative is known to be in the Colony, to be advertised in the *Gazette* and in a newspaper circulating in the Colony.

Substituted service.

(4) If at the hearing of the application the husband of the woman does not appear, the service of the notice shall, unless the Court has dispensed with notice under this section, be proved by sworn statement.

Non-appearance of husband.

(5) The Court shall then record in a book to be kept for that purpose the sworn statement of the woman and of at least two witnesses, and may then, if satisfied that the provisions of the law of Islam have been complied with, make such order or decree as is by the law of Islam lawful.

Procedure at hearing.

(6) The Court making an order or decree under this section shall immediately cause such order or decree to be registered.

Order to be registered.

(7) The register shall be signed by the presiding officer of the Court, by the woman who obtains the order or decree, and by all the witnesses whose evidence has been taken by the Court.

Signature of register.

**33.**-(1) If satisfied that there is serious disagreement between the parties to a marriage the Court may appoint in accordance with the law of Islam two arbitrators, or *hakam*, to act for the husband and wife respectively. In making such appointment the Court shall where possible give preference to close relatives of the parties having knowledge of the circumstances of the case.

Appointment of *hakam*

(2) The Court may give directions to the *hakam* as to the conduct of the arbitration and they shall conduct it in accordance with such directions and according to the law of Islam. If they are unable to agree, or if the Court is not satisfied with their conduct of the arbitration it may remove them and appoint other *hakam* in their place.

(3) The *hakam* shall endeavour to obtain from their respective principals full authority, and may, if their authority extends so far, decree a divorce, and shall in such event report the same to the Court for registration.

**34.** Section 32 shall apply *mutatis mutandis* to application for the divorces known as *taalik and khula*.

*Taalik and khula.*

*Nusus.*

**35.** In any case where the parties have been resident for not less than four months within the Colony the Court may inquire into questions arising out of the law of Islam regarding recalcitrancy called *nusus*, and may make such decree as is by the law of Islam lawful.

*Civil Powers.*

5

Claims for *mahr* alimony and maintenance.

**35.**-(1) The Court shall have powers of a Civil Court to inquire into and adjudicate upon claims for the payment of *mahr* or alimony on divorce known as *talak* where the sum in dispute does not exceed five hundred and one dollars and applications for past maintenance not exceeding one hundred dollars a month and for future maintenance not exceeding one hundred dollars a month.

10

Limit to jurisdiction.

(2) The Court shall have no jurisdiction in any case where the parties have not been resident for four months within the Colony.

15

Procedure and process.

(3) The procedure and forms of process in suits under this section shall be as prescribed.

Execution.

(4) Any order made by the Court under this section for the payment of a sum of money shall be executed by a District Court upon the Court's certificate in the same way as if it were a judgment or order of the District Court.

20

(5) Any order for the payment of *mahr*, alimony or maintenance shall, until reversed, be a bar to any proceedings under the Married Women and Children (Maintenance) Ordinance.

25

*Cap. 44.*

**Appeals.**

Appeal.

**37.**-(1) An appeal shall lie to the Appeal Board hereinafter constituted from any decision of the Court-

(a) (i) by any person aggrieved by the decision if the amount in issue on appeal is not less than twenty-five dollars;

30

(ii) in all cases involving any decision as to personal status, by any person aggrieved by the decision;

(iii) in all cases relating to maintenance of dependants, by any person aggrieved by the decision

35

Provided that no such appeal shall be against a decision by consent; and

(b) in any other case, if the Appeal Board shall give leave to appeal.

40

(2) Every appeal and every application for leave to appeal shall be presented within fourteen days from the date of the

decision appealed against or against which it is desired to appeal:

5 Provided that the Court may if it thinks fit permit any appeal and any such application to be presented after the expiration of that period.

(3) Notice of appeal shall be sent by the appellant to the Appeal Board through the Registrar and to all other persons who were parties to the proceedings in respect of which the appeal is made.

10 (4) The Governor shall annually nominate at least seven Muslims to form a panel of persons from among whom an Appeal Board of three may be constituted from time to time by the Registrar of the Supreme Court.

15 (5) On any person appealing against the decision of the Court or applying for leave to appeal in accordance with the provisions of subsection (1) of this section, the Registrar of the Supreme Court shall select three persons to form an Appeal Board to hear such appeal or application for leave to appeal and shall nominate one of such persons  
20 to preside over the Appeal Board.

(6) On any appeal an Appeal Board may confirm, reverse or vary the decision of the Court, exercise any such powers as the Court could have exercised, make such order as the Court ought to have made or order a retrial.

25 (7) The decision of the Appeal Board shall be final.

#### *Mufti.*

**38.** The Governor may appoint a *Kathi* or some other male Muslim to be a *Mufti* and to assist the Registrar, the Court and the Appeal Board with advice in all matters connected with the law of Islam.

Appoint-  
ment and  
duties of  
*Muftis*.

#### *Revision by Governor.*

30 **39.**-(1) The Governor may in his discretion call for the record of any proceedings before the Court, the Registrar or *Kathi* and may order any decision to be reversed, altered or modified.

Revision by  
Governor.

35 (2) Every decision when so altered or modified shall in its altered or modified form be held to be valid in all respects as if made by the Court, Registrar or *Kathi* whose decision has been revised.

### **Part III.**

#### PROPERTY

40 **40.**-(1) The modifications of the laws of property to be recognized in the case of Muslim marriages shall be as enacted in this Ordinance.

Modifica-  
tions of law.



(2) The law of Islam in the absence of special contract between parties shall be recognized by the courts of the Colony only so far as is expressly enacted in this Ordinance.

(3) Nothing in this Ordinance contained shall be held to prevent any Muslim person directing by his or her will that his or her estate and effects shall be administered according to the law of Islam. 5

*Testacy.*

Powers for Court to vary will of testator to wake provision for heirs.

**41.-(I)** Where after the commencement of this Ordinance a Muslim dies domiciled in the Colony leaving a will and leaving any person who is, under the school of the law of Islam to which the deceased belonged at the time of his death, entitled- 10

- (a) to a share in the estate of the testator; or
- (b) to take the residue or any part thereof, of the estate of the testator 15

then, if the court on application by or on behalf of any such person finds that the will does not make provision or sufficient provision for that person in accordance with the school of law of Islam to which the deceased belonged at the date of his death, the court shall make an order, not inconsistent with such school of law, varying the will of the testator in order that provision or sufficient provision in accordance with such school of law shall be made out of the testator's net estate for that person. 20

(2) In determining in what way and as from what date provision for any person ought to be made by an order under subsection, (1) of this section, the court shall, as far as possible, ensure that the order does not necessitate a realisation that would be improvident having regard to the nature of the testator's estate and the interests of the heirs as a whole. 25 30

(3) An order under this section shall not be made save on an application made within six months from the date on which probate or letters of administration in regard to the testator's estate is first extracted. 35

(4) Where an order is made under this Ordinance, then for all purposes, including the purposes of any written law relating to estate duty, the will shall have effect, and shall be deemed to have had effect as from the testator's death, as if it had been executed with such variations as may be specified in such order. 40

(5) A certified copy of every order made under this section shall be sent to the probate registry for entry and filing and

a memorandum of the order shall be endorsed on or permanently annexed to the probate of the will of the testator or the letters of administration with the will annexed, as the case may be.

(6) For the purposes of this section:-

(a) "net estate" means all the property of which a testator had power of disposal as beneficial owner at the time of his death less the amount of his funeral, testamentary and administration expenses, debts and liabilities and estate duty payable out of his estate on his death;

(b) "heirs" includes the sharers and residuaries of the estate of a deceased person, according to the law of Islam;

(c) "residue" means that portion of the estate (if any) which is left over after the sharers according to the law of Islam have received the shares to which they are respectively entitled; and a "residuary" means a person entitled to take the residue or any part thereof;

(d) "share" means the definite fraction of the estate allotted to a person under the provisions contained in the law of Islam and "sharer" means a person who is entitled to such a share.

#### *Intestacy.*

**42.** In the case of any Muslim person dying intestate after the 1st January, 1924, the estate and effects shall be administered according to the law of Islam, except in so far as such law is opposed to any local custom which prior to the 1st January, 1924, had the force of law: Provided that any of the next of kin who is not a Muslim shall be entitled to share in the distribution as though he were a Muslim.

Adminis-  
tration of  
Muslim  
estates to be  
according to  
the law of  
Islam.

**43.** In all applications for probate or letters of administration, the petition shall, in the case of a deceased Muslim state the school of law (*Madzhab*) which the deceased professed in addition to the particulars required by Order LIV of the Rules of the Supreme Court or by Order 36 of the District Court Rules.

Petition for  
probate and  
letters of  
administra-  
tion.

**44.-(1)** In deciding questions of succession and inheritance in the law of Islam the court shall be at liberty to accept as proof of the law of Islam any definite statement on the law of Islam made in all or any of the following books : -

Proof of  
the law of  
Islam.

1. The English translation of the Koran, by A. Yusof Ali or Marmaduke Pickthall;

2. Mohammedan Law, by Syed Ameer Ali;
3. Howard's translation of Vanden Berg's French translation of the *Minhaj Et Talibin*, a Manual of Muhammadan Law according to the School of Shafi, by Nawawi; 5
4. Digest of Moohummudan Law, by Neil B.E. Baillie;
5. Anglo-Muhammadan Law, by Sir Roland Knyvet Wilson, BART., M.A., LL.M.;
6. Outlines of Muhammadan Law, by A. A. Fyzee; 10
7. Muhammadan Law, by F. B. Tyabji.

(2) The Governor by notification published in the Gazette may vary or add to the list of books in subsection (1).

Administra-  
tion of  
husband's  
estate.

**45.** In granting letters of administration to the estate of a Muslim dying intestate and leaving a widow or widows, the court may if it thinks fit, grant letters of administration to any other next of kin or person entitled to administration by English law if there was no widow, either to the exclusion of the widow or widows, or jointly with such widow or widows, or any one or mote of such widows. 15

Administra-  
tion of  
wife's estate

**46.46.-(1)** When any person, being the wife of a Muslim, dies intestate leaving property of her own and leaving male children of the full age of twenty-one years-

- (a) such male children shall be entitled to a grant of letters of administration to her estate and effects in preference to her husband; 25
- (b) the husband shall be entitled next after such male children;
- (c) after such male children and the husband, the daughters, father, mother, brothers, sisters, uncles, aunts, nephews, and nieces of the intestate shall be entitled in the order above set out; 30
- (d) failing all the above, the next nearest of kin according to English law shall be entitled.

(2) Preference shall be given to male over female relationship of the same degree in the above cases. 35

(3) The children of the husband by other wives shall not be considered as next of kin to the deceased intestate wife, and shall not by reason of such relationship be entitled to a grant of administration to her estate and effects. 40

(4) Nothing herein contained shall lessen the power of selection given to the court by paragraph (d) of subsection (3) of section 18 of the Probate and Administration Ordinance.

47. Unless, otherwise expressly provided in this Ordinance the provisions of this Ordinance shall be without prejudice to the Probate and Administration Ordinance and the Wills Ordinance.

Saving  
Cap. 17.  
Cap. 35.

*Muslim Married Women's Property.*

5 **48.** Subject to the provisions of section 41 of this Ordinance Muslim married women may, with or without the concurrence of their husbands, dispose by will of their own property.

Wills.

10 **49.-(1)** All the property belonging to a woman on her marriage, whether movable or immovable and however acquired, shall after marriage to a Muslim husband continue, in the absence of special written contract to the contrary, to be her own property.

Property at marriage.

15 (2) She may dispose of the same by deed or otherwise; with or without the concurrence of her husband and without the formalities required by Part VII of the Conveyancing and Law of Property Ordinance.

Cap. 243.

**50.-(1)** The following shall be deemed to be the property of a Muslim married woman: -

Property of a Muslim married woman.

20 (a) wages and earnings acquired or gained by her during marriage in any employment, occupation or trade carried on by her and not by her husband;

25 (b) any money or other property acquired by her during marriage through the exercise of any skill or by way of inheritance, legacy, gift, purchase or otherwise; and

(c) all savings from, and investments of, such wages, earnings and property.

30 (2) Her receipts alone shall be good discharges for such wages, earnings and property.

(3) She may dispose of the same by deed or otherwise and without the concurrence of her husband.

**51.** A Muslim married woman-

35 (a) may maintain a suit in her own name for the recovery of property of any description which is her own property;

Right to sue and liability to be sued.

40 (b) shall have in her own name the same remedies, both civil and criminal, against all persons for the protection and security of such property as if she was unmarried;

(c) shall be liable to such suits, processes and orders in respect of such property as she would be liable to if she was unmarried.

Liability on her own contracts.

**52.**-(1) If a Muslim married woman possesses property, and if any person enters into a contract with her with reference to such property or on the faith that her obligations arising out of such contract will be satisfied out of her own property, such person shall be entitled to sue her and to the extent of her own property to recover against her whatever he might have recovered in such suit if she had been unmarried at the date of the contract and continued unmarried at the execution of the decree.

(2) The husband shall not, in the absence of special stipulations whereby he has made himself responsible as surety, guarantor, joint contractor or otherwise, be liable to be sued on such contracts.

(3) Nothing herein contained shall annul or abridge the liability of a Muslim husband for debts contracted by his wife's agency, express or implied.

(4) Such liability shall be measured according to English law.

Ante-nuptial debts

**53.**-(1) A Muslim husband shall not by reason only of his marriage be liable for the debts of his wife contracted before marriage, but the wife shall be liable to be sued for and shall to the extent of her own property be liable to satisfy such debts as if she had continued unmarried.

(2) Nothing in this section contained shall invalidate any contract into which a husband has before the twenty-seventh day of August, 1880, entered in consideration of his wife's ante-nuptial debts.

Effect of marriage on property.

**54.** No Muslim person shall by any marriage contracted after the twenty-seventh day of August, 1880, acquire any interest in the property of the person whom he or she marries nor become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried.

Household property.

**55.** When a Muslim husband and his wife or wives live together in the same house the household goods, vehicles and household property of every description of the husband and wife or wives, except the paraphernalia of the wife or wives, shall be held *prima facie* to belong to the husband in any question between the husband and his creditors.

Voluntary settlements.

**56.**-(1) Nothing in this Part contained shall be held to affect the operation of English law relating to voluntary settlements.

(2) All settlements and dealings with property between a Muslim husband and wife shall, subject to the provisions of this Part, be governed by the rules of English law.

(3) When there is not adequate consideration on either side, such settlements and dealings shall be held to be voluntary in any question between the husband and wife or either of them and his or her creditors.

**57.**-(1) All the provisions in this Part contained, except section 54 of this Ordinance, shall be held to apply to all cases in which the death or marriage happened before as well as after the twenty-seventh day of August, 1880.

Operation of this Part.

(2) Nothing in this Part contained shall, without the consent of the parties interested, be held to affect any contract entered into or the administration of any estate commenced before the twenty-seventh day of August, 1880.

**Part IV.**

**MISCELLANEOUS.**

**58.** Any person who, being required by this Ordinance to effect the registration of any marriage, divorce or revocation of divorce, omits to do so within the prescribed time shall be liable to a fine not exceeding fifty dollars.

Omission to register within prescribed time.

**59.** Any person who -

(a) refuses or omits to make over any book or seal of office to the Registrar as required by this Ordinance; or

(b) is found in possession of such book or seal of office without lawful excuse after such book or seal of office ought to have been made over to or taken possession of by the Registrar,

Omitting to hand over books or seals or being in possession thereof without lawful excuse.

shall be liable to a fine not exceeding one thousand dollars.

**60.** Any person who contravenes section 18 of this Ordinance shall be liable to a fine not exceeding two hundred dollars, and for every subsequent offence to a fine not exceeding one thousand dollars and to imprisonment for a term which may extend to six months.

Contravention of section 18.

**61.**-(1) Every Registrar, *Kathi* and the Chief *Kathi* shall be public servants within the meaning of the Penal Code.

Registrar, Chief *Kathi* and *Kathis* public servants within Penal Code.

(2) All proceedings before the *Shariah* Court or before a Registrar or *Kathi* under this Ordinance shall be deemed to be judicial proceedings within the meaning of Chapter XI of the Penal Code.

Cap. 119.

- Witnesses.           **62.** The *Kathi* before whom an inquiry is proceeding may summon any person whom he believes to be likely to be able to give material evidence respecting the matter in dispute to attend before him, and may examine such person on oath. 5
- Inspection and search.       **63.**-(1) (a) The general register and general index of the Registrar; and  
   (b) the register and index of a *Kathi*, shall be open to inspection upon payment of the prescribed fee by any person applying to inspect the same.
- Certified copies to be given.       (2) The Registrar or *Kathi* shall, upon payment of the prescribed fee, furnish to any person requiring the same a copy of any entry certified under his signature and seal of office. 10
- Proof.                   **64.**-(a) Any *Kathi*'s register and any general register; and  
   (b) any copy of any entry therein, certified under the hand and seal of the Registrar or *Kathi* to be a true copy or extract, shall be *prima facie* evidence in all courts and tribunals in the Colony of the dates and acts contained or set out in such register, general register, copy or extract. 15 20
- Rules.                   **65.**-(1) The Governor in Council may make such rules as seem to him necessary or expedient for the purpose of carrying out the provisions of this Ordinance.  
   (2) Such rules may amongst other things regulate the fees to be charged by the Registrar and *Kathis* and the incidence and application of such fees. 25
- Delegation.           **66.** The Governor may delegate the exercise of all or any of the powers vested in him by this Ordinance to the Chief Secretary. 30
- Repeal of *Cap. 46.*       **67.** The Muslims Ordinance is hereby repealed.

## **APPENDIX III**



MINUTES OF PROCEEDINGS OF THE SELECT COMMITTEE ON THE  
MUSLIMS BILL

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1st Meeting

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WEDNESDAY, 28TH NOVEMBER, 1956

3.00 p.m.

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PRESENT:

The Honourable Mr. Speaker (*in the Chair*).  
The Honourable Inche Abdul Hamid bin Haji Jumat.  
Inche Ahmad bin Ibrahim.  
The Honourable Mr. C. H. Butterfield, Q. C.  
Mr. Goh Chew Chua.  
The Honourable Mr. W. A. C. Goode, C.M.G.  
The Honourable Mr. J. M. Jumabhoy.

ABSENT:

Mr. R. Jumabhoy, C.B.E., M.C.H., J.P.

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1. The Committee deliberated.
2. Copies of the Minutes of Evidence taken before the previous Select Committee on the Muslims Bill were distributed to Members of the Committee.
3. *Agreed* that written representations on the Bill should be invited from the public through the media of the Press and Radio Malaya; and that it should be indicated in the notice to the public, which should be advertised in the local newspapers on 30th November, 1956 (i) that the evidence taken before the previous Select Committee on the Bill in the previous session of the Assembly would be before the present Committee; (ii) that it was an instruction of the Assembly to the Select Committee to consider amendments to the Bill to provide that no Muslim shall dispose of his property by will except in accordance with Muslim law; and (iii) that written representations should reach the Clerk of the Assembly on or before the 10th of December, 1956.

(Adjourned till Wednesday, 12th December,  
1956, at 2.45 p.m.).

**2nd Meeting**

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WEDNESDAY, 12TH DECEMBER, 1956

**2.45 p.m.**

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PRESENT:

The Honourable Mr. Speaker (*in the Chair*).  
The Honourable Inche Abdul Hamid bin Haji Jumat.  
Inche Ahmad bin Ibrahim.  
The Honourable Mr. C. H. Butterfield, Q.C.  
Mr. Goh Chew Chua.  
The Honourable Mr. W. A. C. Goode, C.M.G.  
The Honourable Mr. J. M. Jumabhoy.  
Mr. R. Jumabhoy, C.B.E., M.C.H., J.P.

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1. The Committee deliberated.
2. *Agreed* that those persons or bodies who have sent in written representations should be invited to say whether they wished to give oral evidence; that if they wished to do so, they should notify the Clerk of the Legislative Assembly not later than Friday, 21st December, 1956; and that such oral evidence will be heard on Monday, 14th January, 1957.
3. *Agreed* further that the Committee shall sit again at 2.30 p.m. on Monday, 14th January and Tuesday, 15th January, 1957.

(Adjourned accordingly till Monday, 14th  
January, 1957, at 2.30 p.m.).

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**3rd Meeting**

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MONDAY, 14TH JANUARY, 1957

**2.30 p.m.**

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PRESENT:

The Honourable Mr. Speaker (*in the Chair*).  
The Honourable Inche Abdul Hamid bin Haji Jumat.  
Inche Ahmad bin Ibrahim.  
The Honourable Mr. C. H. Butterfield, Q.C.  
Mr. Goh Chew Chua.  
The Honourable Mr. W. A. C. Goode, C.M.G.  
The Honourable Mr. J. M. Jumabhoy.  
Mr. R. Jumabhoy, C.B.E., M.C.H., J.P.

1. The following representatives of organisations or of groups of representors were examined:-

<i>Representatives</i>	<i>Organisations or groups of representors</i>
(1) Mr. M. I. Abdul Azeez	} The Tamil Muslim Union.
(2) Mr. M. Muhammad Suleiman	
(3) Mr. A. Subair Mohamed	} The Singapore Malayala-Muslim Cultural Association.
(4) Mr. P. K. Abdul Kader	
(5) Mr. Mohamed Musa	
(6) Tuan Haji K. I. Muhiudeen	} Mr. M. Sulaiman Marican and others.
(7) Mr. A. K. A. Abdus Samad	
(8) Mr. Moulavi A. Abdul Jaleel	
(9) Mr. S. M. Mohamed Thahir	
(10) Tuan Haji K. M. Abdul Kassim	} The Singapore Bar Committee.
(11) Mr. N. A. Mallal	
(12) Mr. T. E. Atkinson	
Mr. N. A. Mallal	Mr. A. Osman and others.

2. Agreed that Mr. N. A. Mallal and Mr. T. E. Atkinson be further examined tommorrow, Tuesday, 15th January, 1957, at 2.45 p.m.

(Adjourned till Tuesday, 15th January, 1957, at 2.45 p.m.).

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#### 4th Meeting

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TUESDAY, 15TH JANUARY, 1957

2.45 p.m.

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PRESENT:

The Honourable Mr. Speaker (*in the Chair*).  
 The Honourable Inche Abdul Hamid bin Haji Jumat.  
 Inche Abmad bin Ibrahim.  
 The Honourable Mr. C. H. Butterfield, Q.C.  
 Mr. Goh Cbew Chua.  
 The Honourable Mr. W. A. C. Goode, C.M.G.  
 The Honourable Mr. J. M. Jumabhoy.  
 Mr. R. Jumabhoy, C.B.E., M.C.H., J.P.

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1. Mr. N. A. Mallal and Mr. T. E. Atkinson were further examined.
2. The Committee deliberated.
3. *Agreed* that the Committee should meet again on Wednesday, 6th February, 1957, at 2.45 p.m.; and on Thursday, 7th February, 1957, at 2.45 p.m., if required.

(Adjourned till Wednesday, 6th February, 1957, at 2.45 p.m.).

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**5th Meeting**


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WEDNESDAY, 6TH FEBRUARY, 1957

**2.45 p.m.**

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PRESENT:

The Honourable Mr. Speaker (*in the Chair*).  
 The Honourable Inche Abdul Hamid bin Haji Jumat.  
 Inche Ahmad bin Ibrahim.  
 The Honourable Mr. C. H. Butterfield, Q.C.  
 Mr. Goh Chew Chua.  
 The Honourable Mr. W. A. C. Goode, C.M.G.  
 The Honourable Mr. J. M. Jumabhoy.  
 Mr. R. Jumabhoy, C.B.E., M.C.H., J.P.

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1. The Committee deliberated.
2. *Agreed* (i) that the late representations received be taken into consideration; and (ii) that these late representations, and any others received before the finalising of the Report, shall form part of the Report.
3. *Agreed further* that the Committee should meet again on Tuesday, 26th February, 1957, at 2.45 p.m., and on Wednesday, 27th February, at 2.45 p.m. if necessary.

(Adjourned accordingly till Tuesday, 26th February; 1957, at 2.45 p.m.).

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**6th Meeting**


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TUESDAY, 26TH FEBRUARY, 1957

**2.45 p.m.**

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PRESENT:

The Honourable Mr. Speaker (*in the Chair*).  
 The Honourable Inche Abdul Hamid bin Haji Jumat.  
 Inche Ahmad bin Ibrahim.  
 The Honourable Mr. C. H. Butterfield, Q.C.  
 Mr. Goh Chew Chua.  
 The Honourable Mr. W. A. C. Goode, C.M.G.  
 The Honourable Mr. J. M. Jumabhoy.  
 Mr. R. Jumabhoy, C.B.E., M.C.H., J.P.

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1. *The Bill considered, clause by clause.*  
*Clauses 1 to 40 inclusive agreed to.*

*Clause 41:*

*Amendment proposed*, in page 12 lines 12 to 14. to leave out all the words after "law" to the end. -(Mr. R. Jumabhoy).

On Question put, "That the words proposed to be left out, be left out",- the Committee divided: Aye 1, Noes 6, Abstentions nil.

<i>Aye</i>	<i>Noes</i>	<i>Abstentions</i>
Jumabhoy, R.	Abdul Hamid bin Haji Jumat. Ahmad bin Ibrahim. Butterfield, C. H. Goh Chew Chua. Goode, W. A. C. Jumabhoy, J. M.	Nil

Amendment accordingly *negatived*.

*Clause 41*, agreed to.

*Clause 42:*

*Amendment proposed*, in page 12. line 15, after "for" to insert "probate or".-(Mr. W. A. C. Goode).

Question put, and agreed to.

*Clause 42*, as amended, agreed to.

*Clause 43:*

*Amendment proposed*, in page 12 line 27, to leave out "and", and insert "or".-(Mr. W. A. C. Goode).

Questions put, and agreed to.

*Further amendment proposed*, in page 12, line 33, to leave out "A".-(Mr. W. A. C. Goode).

Question put, and agreed to.

*Another amendment proposed*, in page 12, after line 37, to insert-

"7 Muhammadan Law, by F. B. Tyabji."-(Mr. W. A. C. Goode).

Question put, and agreed to.

*Clause 43*, as amended, agreed to.

*Clauses 44 and 45*, agreed to.

*Clause 46:*

*Amendment proposed*, in page 13, line 29, at the beginning to insert-

"Subject to the provisions of section 41 of this Ordinance".-(Mr. W. A. C. Goode).

Question put, and agreed to.

*Clause 46*, as amended, agreed to.

*Clauses 47 to 65* inclusive agreed to.

*NEW CLAUSES**New clause after clause 40*

New clause, after clause 40, brought up and read the First time, viz:-

*"Testacy.*

**41.**-(1) Where after the commencement of this Ordinance a Muslim dies domiciled in the Colony leaving a will and leaving any person who is, under, the school of the law of Islam to which the deceased belonged at the time of his death, entitled -

(a) to a share in the estate of the testator; or

(b) to take the residue or any part thereof, of the estate of the testator

Powers for Court to vary will of testator to make provision for heirs.

then, if the court on application by or on behalf of any such person finds that the will does not make provision or sufficient provision for that person in accordance with the school of law of Islam to which the deceased belonged at the date of his death, the court shall make an order, not inconsistent with such school of law, varying the will of the testator in order that provision or, sufficient provision in accordance with such school of law shall be made out of, the testator's net estate for that person.

(2) In determining, in what way and as from what date provision for any person ought to be made by an order under subsection (1) or this section, the court shall, as far as possible, ensure that the order does not necessitate a realisation that would be improvident having regard to the nature of the testator's estate and the interests of the heirs as a whole.

(3) An order under this section shall not be made save on an application made within six months from the date on which probate or letters of administration in regard to the testator's estate is first extracted.

(4) Where an order is made under this Ordinance, then for all purposes, including the purposes of any written law relating to estate duty, the will shall have effect, and shall be deemed to have had effect as from the testator's death, as if it had, been executed with such variations as may be specified in such order.

(5) A certified copy of every order made under this section shall be sent to the probate registry for entry and filing and a memorandum of the order shall be endorsed on or permanently annexed to the probate of the will of the testator or the letters of administration with the will annexed as the case may be.

(6) For the purposes of this section:-

- (a) "net estate" means all the property of which a testator had power of disposal as beneficial owner at the time of his death less the amount of his funeral, testamentary and administration expenses, debts and liabilities and estate duty payable out of his estate on his death;
- (b) "heirs" includes the sharers and residuaries of the estate of a deceased person, according to the law of Islam;
- (c) "residue" means that portion of the estate (if any) which is left over after the sharers according to the law of Islam have received the shares to which they are respectively entitled; and a "residuary" means a person entitled to take the residue or any part thereof;
- (d) "share" means the definite fraction of the estate allotted to a person under the provisions contained in the law of Islam and "sharer" means a person who is entitled to such a share."-(Mr. W. A. C. Goode).

Question, "That the clause be read a Second time", put, and agreed to.

Question, "That the new clause be added to the Bill", put, and agreed to.

*New clause, after clause 45*

New clause, after clause 45, brought up and read the First time, viz:-

"Saving  
cap. 17.  
Cap. 35.

Unless otherwise expressly provided in this Ordinance the provisions of this Ordinance shall be without prejudice to the Probate and Administration Ordinance and the Wills Ordinance."-(Mr. W. A. C. Goode).

Question. "That the clause be read a Second time", put, and agreed to.

Question, "That the new clause be added to the Bill", put, and agreed to.

*Consequential renumbering of clauses*

Motion made, "That amendments to numbers of clauses in the Bill consequential on the addition of new clauses be made."-(Mr. W. A. C. Goode).

On Question put, *resolved* in the affirmative.

Motion made, "That the Bill, as amended, be reported to the Assembly."-(Mr. W. A. C. Goode).

On Question put, *resolved* in the affirmative.

(Adjourned till Tuesday, 5th March, 1957,  
at 2.45 p.m.)

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**7th Meeting**

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TUESDAY, 5TH MARCH, 1957

**2.45 p.m.**

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PRESENT:

The Honourable Mr. Speaker (*in the Chair*).

Inche Ahmad bin Ibrahim.

The Honourable Mr. C. H. Butterfield, Q.C.

Mr Goh Chew Chua.

The Honourable Mr. W. A. C. Goode, C.M.G.

ABSENT:

The Honourable Inche Abdul Hamid bin Haji Jumat (with apologies).

The Honourable Mr. J. M. Jumabhoy (with apologies).

Mr. R. Jumabhoy, C.B.E., M.C.H., J.P.

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Draft Report, proposed by the. Chairman, brought up and read the first time, as follows:-

1. The Muslims Bill was committed to your Committee on the 5th day of November, 1956, and the Assembly resolved as follows:-

(a) "That the minutes of the evidence taken before the Select Committee on the Muslims Bill in the previous session of the Assembly be referred to the Select Committee on the Muslims Bill."

(b) "That it be an instruction to the Select Committee on the Muslims Bill to consider amendments to the Bill to provide that no Muslim shall dispose of his property by will except in accordance with Muslim law."

2. Your Committee held seven meetings.

3. At their first meeting held on the 28th day of November, 1956, your Committee agreed that written representations on the Bill should be invited from the public through the media of the Press and Radio Malaya, and that reference to the two resolutions set out in paragraph 1 above should be made in the notice to the public. The closing date for written representations was the 10th day of December, 1956.

4. Written representations received are annexed to this Report as Appendix I, umbered Paper S.C. (Muslims Bill) as hereinafter appearing. Those received on or before the closing date were from:-

- (1) The Tamil Muslim Union-Paper No. 1;
- (2) Mr. A. Osman and-others-Paper No. 2;
- (3) Mr. Nazir Mallal-Paper No. 3;
- (4) The Singapore Malayala-Muslim Cultural Association-Paper No. 4;
- (5) Mr. M. Sulaiman Marican and others-Paper No. 5;
- (6) The All Malaya Muslim Missionary Society-Paper No. 6;
- (7) The Singapore Bar Committee-Paper No. 7;
- (8) Mr. Abdul B. Rahaman-Paper No. 8;
- (9) "Muslim"-Paper No. 9.

Other representations received after the closing date were from:-

- (10) Mr. Mahat and others, residing at Seletar-Paper No. 10 undated (received on 31st December 1956);
- (II) The Muslims, Kampongs of East Singapore-Paper No. II undated. (received on 18th January, 1957);
- (12) M. I. Ibrahim & Co., and others-Paper No. 12 dated 28th January, 1957 (received on 2nd February, 1957);
- (13) The United Malays National Organisation-Paper No. 13 dated 26th January, 1957 (received on 30th January, 1957);
- (14) Residents of Kampong Pachitan, Changi Road, Singapore 14 Paper No. 14 dated 31st January, 1957 (received on 6th February, 1957).

5. At a meeting held on the 12th day of December, 1956, your Committee agreed that those persons or bodies who had by that date sent written representations should be invited to say whether they wished to give oral evidence.

6. As a result of replies received, your Committee heard evidence on the 14th and 15th days of January, 1957, from the representatives named below:-

<i>Names of Representatives</i>	<i>Representing</i>
(1) Mr. M. I. Abdul Azeez	} The Tamil Muslim Union.
(2) Mr. M. Muhammad Suleiman	
(3) Mr. A. Subair Mohamed	} The Singapore Malayala-Muslim Cultural Association.
(4) Mr. P. K. Abdul Kader	
(5) Mr. Mohamed Musa	
(6) Tuan Haji K. I. Muhiudeen	} Mr. M. Sulaiman Marican and others.
(7) Mr. A. K. A. Abdus Samad	
(8) Mr. Moulavi A. Abdul Jaleel	
(9) Mr. S. M. Mohamed Thahir	
(10) Tuan Haji K. M. Abdul Kassim	} The Singapore Bar Committee and Mr. A. Osman and others.
(11) Mr. N. A. Mallal	
(12) Mr. T. E. Atkinson	The Singapore Bar Committee.

The Minutes of Evidence taken are annexed to this Report as Appendix IV.

7. In accordance with the resolution of the Assembly set out in paragraph 1 (a) above, the Minutes of the Evidence taken before the Select Committee on the Muslims Bill in the previous Session were placed before your Committee and are annexed to this Report as Appendix V.



8. In accordance with the resolution of the Assembly set out in paragraph 1 (b) above, your Committee considered amendments to the Bill to provide that no Muslim shall dispose of his property by will except in accordance with Muslim law.

9. Representations made on this aspect of the Bill centred on whether or not a clause contained in the Muslims Bill which was introduced in the previous Session and which lapsed on prorogation of the Assembly, should be included in the present Muslims Bill committed to your Committee.

10. This Clause (referred to in this Report as "old Clause 47") reads as follows:

"47. Notwithstanding anything contained in any written law of the Colony of Singapore, the provisions of the Law of Islam shall be applicable in the case of any Muslim person dying testate on and after the appointed day."

11. It became apparent to your Committee that there was a great deal of misapprehension as to the effect of including or excluding old Clause 47 in or from the present Bill.

12. Subsection (3) of section 26 of the Muslims Ordinance (Chapter 46 of the Revised Edition) reads as follows:-

"26-(3) Nothing in this Ordinance contained shall be held, to prevent any Muslim person directing by his or her will that his or her estate and effects shall be administered according to the law of Islam."

Paragraph (3) of Clause 40 of the present Bill repeats subsection (3) of section 26 of the Muslims Ordinance as quoted above. The Muslims Ordinance does not contain any section similar to old Clause 47.

13. It has been represented to your Committee that any attempt not to incorporate old Clause 47 into the present Bill would, in effect and in fact, break or alter the Islamic law of inheritance.

14. This clearly is not so. In making wills Muslims have, and have always had, freedom to follow the Islamic law of inheritance. (Section 26 (3) of the Muslims Ordinance quoted above, which the present Bill seeks to preserve in paragraph (3) of Clause 40). The inclusion of old Clause 47 would deprive Muslims of that freedom, and would mean that no Muslim could dispose of his property by will except in accordance with the Law of Islam. On the other hand, the exclusion of old Clause 47 would, in effect, preserve that freedom. It follows, therefore, that the exclusion of old Clause 47, in effect and in fact, would not break or alter the Islamic law of inheritance.

15. Your Committee, after careful consideration of all representations made, have agreed that Muslims should not be deprived of the freedom above-mentioned, and therefore make no recommendation in respect of any amendment of the nature envisaged in the aforesaid instruction of the 5th day of November, 1956.

16. Your Committee, however, are satisfied that a real fear exists that there might be hardship in cases where Muslims by will did not make provision or sufficient provision for persons entitled to inherit under the Law of Islam. Your Committee have, therefore, recommended the addition of a new clause aimed at giving relief to such persons on application to court.

17. A reprint of the Bill, incorporating all the amendments to the Bill recommended by your Committee, is annexed as Appendix II.

On Question put, *-Resolved*, "That the Chairman's Report be read a second time, paragraph by paragraph."-(Mr. W. A. C. Goode).

*Paragraphs 1 to 12 inclusive*, agreed to stand part of the Report.

*Paragraph 13:*

*Amendment proposed*, at the end to add-

"It is clear from paragraph 12 that this is not the case. In making wills Muslims have and have always had freedom to follow the Islamic law of inheritance."-(Mr. W. A. C. Goode).

On Question put, amendment agreed to.

*Paragraph 13*, as amended, agreed to stand part of the Report.

*Paragraph 14:*

*Amendment proposed*, to leave out the whole of paragraph 14- (Mr. W. A. C. Goode).

Question put, and agreed to.

*Paragraph 15:*

*Amendment proposed*, to leave out the whole of paragraph 15-(Mr. W. A. C. Goode).

Question put, and agreed to.

*Paragraph 16:*

*Amendment proposed*, to leave out the whole of paragraph 16 and insert a new paragraph to be numbered 14 as follows:-

"14. After careful consideration of the aforesaid instruction and of the representations made, your Committee are satisfied that a real fear exists amongst the Muslim community that there might be hardship in any case where a Muslim does not make sufficient provision by will for the persons entitled under the law of Islam to share in his estate. Your Committee are also satisfied that Muslim opinion generally is in favour of a provision to enforce the observance of the law of Islam by Muslims and therefore recommend the addition of a new clause which requires the court on application to make an order varying the will of a deceased Muslim testator to bring it into conformity with the law of Islam."-(Mr. W.A.C. Goode).

Questions put, and agreed to.

*New paragraph numbered 14* agreed to stand part of the Report.

*Paragraph 17:*

*Amendment proposed*, to leave out "17" and insert "15"-(Mr. W. A. C. Goode),

On Questions put, amendment agreed to.

*Paragraph 17, renumbered 15*, agreed to stand part of the Report.

On Question put, -*Resolved*, "That this Report, as amended, be the Report of the Committee to the Assembly."-(Mr. W. A. C. Goode).

The Committee adjourned.

## **APPENDIX IV**

## MINUTES OF EVIDENCE

MONDAY, 14TH JANUARY, 1957

PRESENT:

Mr. SPEAKER (*in the Chair*)

The Hon. Inche Abdul Hamid bin Haji  
 Jumat.  
 Inche Abmad bin Ibrahim.  
 The Hon. Mr. C. H. Butterfield, Q.C.

Mr. Goh Chew Chua.  
 The Hon. Mr. W. A. C. Goode, C.M.G.  
 The Hon. Mr. J. M. Jumabhoy.  
 Mr. R. Jumabhoy, C.B.E., M.C.H., J.P.

Mr. M. I. Abdul Azeez and Mr. M. Muhammad Suleiman, representatives of the Tamil Muslim Union, attended and were examined.

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14 JANUARY 1957

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*Chairman*

1. Gentlemen, can I have your names to start off with? — (*Mr. Muhammad Suleiman*) My name is M. Muhammad Suleiman. (*Mr. Abdul Azeez*) My name is M. I. Abdul Azeez.

2. You are officers of the Tamil Muslim Union? — (*Mr. Suleiman*) Yes.

3. The Members of the Select Committee have before them your letter of 5th December, 1956\*, in which you enclosed a copy of a letter which you sent to the Press? — Yes.

4. Could you first inform Members of this Committee approximately how many Muslims you represent? — Our Union represents about 5,000 Muslims.

5. Am I correct in saying that your Union urges that the law of Islam should apply to Muslims dying testate? As it stands now, it applies to Muslims dying intestate. Is that your representation? — Yes.

6. In your letter, to the Press, you did state at page 2:

"Why is it wrong basically to extend the principle conceded in the case of intestacy to a case of testacy? Because the individual's freedom is curbed to the extent of 2/3rds in disposing of his wealth. And in whose interest is it curbed? In the interest of his wife, his children and his parents. Is it unjust to say to him, 'you shall not disregard your responsibility to your family and you shall leave 2/3rds to them leaving yourself free to dispose of 1/3rd as you may wish.'"

That, briefly, is the pith of your argument? — Yes.

7. When you refer to similar legislation as regards a Muslim dying intestate, you refer to the present law? — Yes.

8. And the present law, you do know, is reproduced in clause 41 of the Bill. Is that correct?— The point that was raised is not there.

9. Have you clause 41 of the Bill No. 68 before you? — Yes.

10. It reads as follows:

"In the case of any Muslim person dying intestate after the 1st January, 1924, the estate and effects shall be administered according to the Law of Islam, except in so far as such law is opposed to any local custom which prior to the 1st January, 1924, had the force of law; Provided that any of the next of kin who is not a Muslim shall be entitled to share in the distribution as though he were a Muslim."

That is the present law. Are you satisfied? — We are not satisfied, but we will leave that matter to the Committee.

11. In what way are you not satisfied? — Because the Muslim law must be followed if a man dies with a will or without a will, as has been the practice for the last 1,400 years. This only applies to Muslims and therefore we believe that, in all cases, the Muslim law should be applied to the Muslims.

12. So that in the case of a Muslim marrying a non-Muslim wife, you do

not think that there should be any provision for a non-Muslim? — Yes, only if he has provided according to the Muslim law.

13. So your answer is that there should be a provision for a non-Muslim? — Yes. In that case, we will leave the matter to the Committee.

*Mr. R. Jumabhoy*

14. On the proviso to clause 41, what do you think of a Muslim who wants to change the law of Islam by legislation? As Muslims, will you allow that? — No.

15. You are against that definitely? — Yes.

16. In other words, you do not want inserted the proviso about the next of kin being provided? — What we want is to follow the Muslim law.

17. May I, Sir, point out that the Chairman of the Muslim Advisory Board agrees with that view and he is writing to the Government suggesting that proviso be left out? You are satisfied, I hope? — Yes.

*Mr. Butterfield*

18. This relates to the passage in the copy of the letter which is reproduced in Paper S.C. (Muslims Bill) No. 1\* which you, Sir, read a moment ago:

"Is it unjust to say to him, 'You shall not disregard your responsibility to your family and you shall leave 2/3rds to them leaving yourself free to dispose of 1/3rd as you may wish.'"

The question I should like to ask is this. It is my understanding that, according to the law of Islam, it requires that the 1/3rd should go to charity. Is that not right? — Not necessarily, Sir. It is up to the man to leave it in whatever way he prefers — to charity or to whatever he wishes.

*Chairman*

19. The answer is that it need not be confined to charity? — It is not necessary. He can do what he likes.

*Mr. Butterfield*

20. The witness says that he can do what he likes with the 1/3rd, so that

he can leave it to the family? — He can leave it to his brother.

*Chairman*

21. Can he leave 1/3rd to his next of kin? — He can.

22. He can leave that 1/3rd to his next of kin even though they have been favoured under Muslim law to the extent of 2/3rds? — Oh yes, he can.

*Inche Abdul Hamid bin Haji Jumat*

23. The witness says that the person concerned can leave 1/3rd to his next of kin, that is to say, to his sons or his daughters. Is that what he means, or does he mean that 1/3rd should be equally divided according to the Muslim law? — It should be equally divided according to the Muslim law, in addition to the 2/3rds.

24. So, in other words, he can make his will but the question of this 1/3rd crops up when he fails to give something to a charitable institution or to some of his friends? — Yes.

25. So he cannot dispose of the 1/3rd unequally. For instance, he may like one son better than his other sons and he may like to leave a bigger share to him. Can he do that? — No, he cannot.

*Mr. R. Jumabhoy*

26. Am I to understand that, according to Muslim law, 1/3rd can be disposed of at the will of the owner of the property? — Yes.

27. Can he give away 1/3rd to non-Muslims? — To anybody.

28. There is nothing in the Koran to prevent that? — We cannot go into this question very deeply. But it means that 1/3rd can be given to charity or anyone, even to Muslims or non-Muslims.

29. In other words, this proviso should not be there because a Muslim still has the right to dispose of his property to anyone? — Yes, but here it is generally stated. There is no mention of 1/3rd of the property. It only

mentions the next of kin who is a non-Muslim. That is actually what this clause 41 says.

*Chairman*

30. I think the witnesses are being confused. We are talking about testacy and not intestacy. The proviso deals with intestacy. I think, if we confine our questions to testacy in the first instance, the witnesses will be in a better position to answer the questions. The answer of the witness, I think, is that in so far as 1/3rd of a testator's property is concerned, he can will that 1/3rd to any person he likes, be he a Muslim or otherwise? - Yes.

31. That is your understanding of the Muslim law, I take it? — Well, the disposal of that 1/3rd is left to the free will of the man who owns property and he can dispose of it to whom he likes.

32. We have the opinion of Mr. N. A. Mallal who will, in fact, be giving evidence before this Committee and he says in his letter dated 28th February, 1956\*:

"It must be borne in mind that a Muslim testator cannot dispose of this one-third in favour of any of his next-of-kin. This one-third, if it is given away, must be given away to persons other than his next-of-kin."

That is the opinion of Mr. Mallal. Do you agree with it? — It is not necessary to stress the next of kin. The 1/3rd can be given to anybody, whoever he is.

*Chairman*] So that your point is that this 1/3rd can be given to the next of kin, whereas Mr. Mallal says that this 1/3rd, if it is given away, must be given away to persons other than the next of kin?

*Mr. Goode*

33. I am afraid there is a misunderstanding. What I think the witness stated is that you cannot bestow any part of the 1/3rd on a next of kin. In other words, you cannot say, "I like this son and I will give him an extra share." If you want 1/3rd given to the next of

kin, it is the whole estate that is divided equally? - Yes, equally.

34. According to the shares? — Yes.

*Chairman*

35. Your point then is that if 1/3rd of the estate is, in fact, willed to the next of kin, it must be willed in the proper shares? - Yes, according to the law.

36. And you say that under the Muslim law, that can be done? — Yes.

37. That this 1/3rd can be willed to the next of kin in the proper shares? - Yes.

38. Therefore, in so far as that is concerned, that is where you differ from Mr. Mallal who has informed us that the 1/3rd, if it is given away, must be given away to persons other than his next of kin? - It is not necessarily so. The disposal of this 1/3rd lies within the absolute right of the man, and if he is leaving it to his next of kin, it must be shared proportionately, otherwise there will be no unity amongst them.

*Chairman*] I think we will get more information from Mr. Mallal when he appears before us.

*Mr. Butterfield*

39. In the case of intestacy, are there any special rules regarding this 1/3rd? Must it go to charity - (*Mr. Azeez*) No.

*Mr. J. M. Jumabhoy*

40. Perhaps this will throw a little light on the matter. There is a paragraph in the *Principles of Mohammedan Law* which says:

"A Mohammedan cannot by will dispose of more than a third of the surplus of his estate after payment of funeral expenses and debts."

But there is this proviso: you can dispose of 1/3rd provided you have obtained the consent of the heirs thereto? — (*Mr. Suleiman*) That is a different thing.

*Mr. J. M. Jumabhoy*] Coming back to the proviso to clause 41 which reads:

"Provided that any of the next of kin who is not a Muslim shall be entitled to share in the distribution as though he were a Muslim."

I can quite see the point of Mr. Suleiman and Mr. Azeez that it is against the law of Islam that a non-Muslim should share in the property of a Muslim dying intestate; but taking into consideration the mixed society here where you have people of all races and religions and the inter-connection between the Muslims and the non-Muslims in many matters, will it be objectionable here if we have this proviso in the law, as it would be objectionable if this were a Muslim country?

*Chairman*

41. The question, I think, is that in Singapore there is, in fact, a multi-racial society. Would it therefore be as objectionable in Singapore as it would be in a Muslim country if the proviso to clause 41 which we have read is written into the law in Singapore? Is that clear enough? - In other words, you want to know whether we would leave it in the Bill, but our opinion is this: It must not be left in the Bill. According to our Muslim Shariah law, we do not want anything included but we leave this to be decided by the Committee.

42. In other words, you do not wish to give an opinion and that you will leave it to the Select Committee? — Our opinion is that it must not be against the Muslim law.

*Mr. Butterfield*

43. I would like to know whether the membership of the Tamil Muslim Union is for the most part made up of persons domiciled here or in India or somewhere else? — As far as the question of domicile is concerned, it came up very recently. We are merchants of long standing and, as far as I myself am concerned, I have been here for the last 25 years, since 1932. We stay here permanently and we go away only for holidays for certain periods.

44. Is it the intention perhaps of these persons to go back to the land of their fathers to retire and die instead of staying on here? - It depends on the individual himself whether he wishes to retire to his country or not. We have our businesses and estates here, so that if a man dies in India or even here, his property is divided according to the will he makes in this place.

*Mr. J. M. Jumabhoy*

45. In your letter to the Secretary of the Select Committee dated 5th December, 1956\*, you state ". . . and views with alarm the dissatisfaction that will arise amongst the Muslims of Singapore." That indicates that the Tamil Muslim Union holds the view that the majority of Muslims are in favour of inserting this clause 47 in the Bill? — Yes.

46. Are you aware that there are certain Muslims here who are opposed to this clause being put into the Bill? - I have heard so and some people have signed their names to that effect without knowing what they were actually signing for. Those are the members who oppose this clause.

47. You mean that they have made a representation. Are you aware of any opposition? - Yes, I am aware of some opposition.

48. You said something about some people signing? - Yes, they went round and got signatures here and there. When these people asked what it was that they were signing, they were told that it was for a *wakif* property.

*Chairman*] I do not think that we can accept statements like that. If they are not satisfied, they can make further representations.

*Mr. I. M. Jumabhoy*] We must gauge the amount of dissatisfaction that will arise and to what extent.

*Chairman*

49. The answer I obtained from the witnesses earlier on was that they represent about 5,000 Muslims. Is that correct? - Yes, but, in fact, we represent most of the Muslims as well.

50. When you say "most", can you give us the percentage you represent?  
- About 70 per cent.

*Mr. Butterfield*

51. The Tamil Muslims, I take it?  
- South Indian Muslims.

*Chairman*

52. There are other racial Muslims, are there not? — Yes.

*Mr. R. Jumabhoy*

53. Sir, I have a question to ask arising from the proviso to clause 41. If a Muslim is staying in a different State, can he change the laws of the Koran? - He cannot.

54. Do you agree that he cannot go against the tenets of the Koran? — Yes, he cannot go against them.

55. So, in a place like Singapore, it does not mean that the next of kin should not get anything because he is staying here. The Law of Islam must be followed. Is that correct? — Yes, the Law of Islam must be followed.

*Mr. Goode*

56. I have only one question to ask arising out of the other one. Suppose in a Muslim family in Singapore, one of the children married a non-Muslim, as not infrequently happens, and they had a child who is not a Muslim, do you think that that child should inherit or should not inherit? - According to the Muslim law, the child should not inherit.

57. Yes, I am aware of that, but do you think that the child should inherit or not? — According to the law, it is not so, but if it is the individual who has made a mistake, he should rectify it.

58. Would you think it was wrong if the parent saw to it that that child did get some share during his lifetime? — Nobody can stop him from doing that.

59. If he leaves it after his death? — The Muslim law must be followed.

*Mr. R. Jumabhoy*

60. Suppose the child becomes a Muslim after he is born and comes of age, will the witness still say that he does not get his share? — He will get his share.

61. But if he is the offspring of a non-Muslim person, therefore he is not, according to the religion of Islam, a "proper" child. Is that correct? — (*Mr. Azeez*) We are not considering whether or not the child is a proper child, but he is entitled to get any share of his father's property. That is proper.

62. My question is this: Is it correct to say that a Muslim cannot marry a non-Muslim? — (*Mr. Suleiman*) That is correct.

63. Can he marry a Christian? — Yes, according to the law-

64. And Hindus? — No, not Hindus.

65. The followers of the Book only can marry but they are not entitled to the property? — Well, if that is allowed, that must be gone into in detail. They are then entitled to the property.

66. You are not certain of the Koranic law? — If the father wants to give, there is no objection.

*Mr. Goode*

67. Will there be any objection if he puts it in the will? — In such cases, it is up to the father, Sir.

*Inche Abdul Hamid bin Haji Jumat*

68. This is arising out of the question put by the Chief Secretary. The witness said just now that if a Muslim marries a non-Muslim and the child becomes a non-Muslim, the father should not make a will leaving any property at all to his son who is not a Muslim? - Yes.

69. But then, on the other hand, the Muslim law provides that a person can will away 1/3rd of his property to anyone he likes. So, can he will away 1/3rd to his son who is not a Muslim? — I do not find any objection there.



*Chairman*

70. Have you any other representation you care to make? — Regarding clause, 47?

71. You have covered all your points? - Regarding clause 47, that must be included in the new Bill.

*The witnesses withdrew.*

Mr. A. Subair Mohamed, Mr. P. K. Abdul Kader and Mr. Mohamed Musa, representatives of the Singapore Malayala-Muslim Cultural Association, attended and were examined.

*Chairman*

73. Gentlemen, we are on Paper S.C. (Muslims Bill) No. 4.\* You are representatives of the Singapore Malayala-Muslim Cultural Association. Can I have your names, please? — (*Mr. Mohamed Musa*) My name is Mohamed Musa. (*Mr. Subair Mohamed*) Mine is A. Subair Mohamed. (*Mr. Abdul Kader*) Mine is P. K. Abdul Kader.

74. Members of the Select Committee have before them your letter dated 9th December, 1956.+ Could you first inform the Committee how many Muslims in Singapore do you represent? — We represent over a thousand Muslims in Singapore.

*Mr. R. Jumabhoy*

75. Do you represent the whole Muslim section of the Indian community? — (*Mr. Musa*) Our Association started very lately. Within a very short period, however, we will be in a position to enlist about 5,000 members.

*Inche Abdul Hamid bin Haji Jumat*

76. What do you think is the total population of the Malayala-Muslims in Singapore? - We think the total of the Malayala-Muslims in Singapore to be between 5,000 and 6,000.

*Mr. Butterfield*

77. I would like to know whether they are for the most part Singapore men who have made their homes here and their children will grow up and live here, or whether they are men who look to India as their home to go back to some time when they get old? — This is a difficult question to answer.

72. We have your representation. Do you wish to say anything further? - No.

*Chairman*] Thank you very much indeed for coming, gentlemen.

Political changes are coming soon in Singapore and I should say that most of them would decide to remain here and be loyal to this country and they will, as Malaysians, stay here. There may be a few who will likely go to India but, of course, most of them will choose to stay here as Malaysians.

*Chairman*

78. Do they own property? — The Malayala-Muslims are not very rich as compared with the other communities in Singapore, but there are quite a number who own properties here but, of course, they would be no comparison to any community because most of them are doing small businesses and owning one or two small houses. So, therefore, I think they have a right to take particular interest in the Bill, which is before the Select Committee because they also own properties.

*Mr. Butterfield*

79. I am only interested in the question of domicile. They keep in touch with relatives in India and they go back to India? — They may because now, when we have these immigration restrictions, you see people coming here either to see their relatives or as tourists. They may go back to visit their former country and if they like it, they may be going back, but most of them are Malaysians in the true sense of the word.

*Chairman*

80. Do a number of them have homes in India? — Their homes are in Singapore.

81. Their families are there? — Yes.

\* Appendix I, p. 13.

+ Appendix I, p. 13.

82. Coming back to your representation, gentlemen, briefly, you urge that a clause on the lines of the old clause 47 of the previous Bill be added to this new Bill? - Yes.

83. Would you like to enlarge on that? — Our Association looks upon properties as the most valuable rewarding possession of a man. With property in the hands of a man, he could play havoc and we think the Government, which at one time thought fit to include that clause 47, should not have omitted it. So, according to Islamic law, a man may dispose of 1/3rd of his property as he likes. The Islamic law is very clear about inheritance. It says that the property must be given to his real legal dependants. It does not say anything beyond that. When a certain law lays down that a property must be given to sons and daughters, that is most equitable. So we think that that law is quite sound and it will stand the test of time; and if the man so wishes to dispose of his property, he may do so but that right of his should not go beyond the 1/3rd of his property.

84. When you talk about legal dependants, you do agree that in Singapore you have cases where Muslims have married non-Muslims. Would you say that a non-Muslim wife is a legal dependant? — I hope the Committee will excuse me. I am not a legal man to understand all the implications of the term "legal dependants", but what I say is that the Government which has thought fit to introduce the Muslims Bill should also decide, in the case of a Muslim who marries somebody from a community other than the Muslim community and he has an offspring, whether that dependant should have the right to inherit his father's property. The Government did say that the Muslims require separate legislation. I think it is an important question but so far there have been few cases of Muslims being converted to other religions or people from other communities being converted into Muslims. There may be one or two exceptions and I think it is

up to this Committee and the Assembly to have the last say in the matter.

85. As far as your organisation is concerned, would there be any objection if provision is made in the case of next of kin who are non-Muslims? — With the feeling which each community has, it is rather a complicated question and I think we did not study that aspect of the Bill. Also, since we have come to make representations and you still ask us to give our opinion, I think, in fairness, we should be given more time.

86. You are not compelled to answer any question? — To be frank, we did not consider it in detail.

87. You do know, of course, that there is a clause in the present Ordinance which is reproduced as clause 41 of the present Bill. There is a proviso to that clause which says that, in the case of intestacy, any of the next of kin who is not a Muslim shall be entitled to share in the distribution as though he were a Muslim. That has not been objected to in the past, to your knowledge? — I am not aware of any objection.

*Mr. Goh Chew Chua*

88. Suppose a Muslim married a non-Muslim wife and he died intestate, and, as you say, 1/3rd of his property can be willed away to any person, can she, as the legal wife, get 1/3rd of her husband's property? — First of all, when a Muslim marries a non-Muslim wife, that question will have to be decided by this Assembly because otherwise it can become a very important matter.

*Mr. R. Jumabhoy*

89. Are the witnesses here to give evidence as Muslims? — Yes.

90. Would they like anyone to change the Law of Islam and the law of the Koran? — Surely we would not like that.

91. So if the Committee goes against the Law of Islam, you, as Muslims, would not like that? — Surely we would not like that.

92. You know that a Muslim is not allowed, according to the Law of Islam, to marry any non-Muslim girl who is not a follower of the Book. Followers of the Book are Christians and Jewesses, and Muslims are allowed to marry such people. Possibly you are aware of that. But other than that, the Law of Islam does not recognise the marriage of a Muslim other than to a Muslim as a proper marriage? — Yes, that is correct.

93. So, in other words, if he marries such a person, you agree that this person should not get any share according to the Muslim law? - I would maintain that the person should not get any share.

94. Do you agree then? -Yes.

*Mr. Butterfield*

95. There are two or three questions that I would like to ask these gentlemen. They are aware that this Bill and the existing law both provide that there is nothing to prevent a Muslim directing that his estate should be administered according to the Law of Islam. I just want to establish the fact that they are aware of that? - Yes, we are aware of that.

96. I take it that they are also aware that both the present law and the provisions of the Bill now proposed contain a provision to the effect that if a Muslim dies intestate, his estate shall be administered according to the Law of Islam? - Yes.

97. I just want to make it clear. Why do they want now in the law to insist that a Muslim shall not make a will except in accordance with the Law of Islam? - It is due to many reasons. A Muslim may like to dispose of his property not in accordance with Islamic laws. Suppose he has somebody who has rendered him some service and if he is grateful to the man, he can, by neglecting his dependants, transfer the whole of his property to this man. So if a provision is left like that, then that man, if he is a man who is inclined to neglect his family, can dispose of his property to another person and make his dependants suffer.

*Chairman*

98. The point is, do you want the State to legislate that a Muslim must be a "good" Muslim? - In that case, we have the Legislative Assembly here which is the law-making body in this Colony. We have the Standing Orders to follow, and although a man has rights as an individual, he cannot go against the Standing Orders. We know that when people are elected to the Legislative Assembly they are responsible to the people and they must further the cause of the people of Singapore and, as such, we believe in the individual integrity of each man elected. Then we need Standing Orders to guide him.

99. The point is, why do you want the State to legislate that a "bad" Muslim should be a "good" Muslim? - We do not ask the State to interfere in the religion of a certain individual and make him a good Muslim, but I think we always make laws to prevent a man from becoming bad. We have always that safeguard.

*Mr. Butterfield*

100. Am I to understand, Sir, that the Association which these gentlemen represent will be satisfied if the legislation, which will affect all communities irrespective of their religions, will adequately safeguard the rights of the dependants of a deceased? - This Bill has been brought up by the Government. If the Government thought that there was no such necessity, then this Bill would never have come before a Select Committee and we would also not have had an opportunity to appear before this Committee and give oral evidence.

*Chairman*

101. I do not think you understood the question. The point is this: Your fear is that a Muslim might deprive his next of kin of his or her proper inheritance. Now, would you be satisfied if there is legislation not only to protect the next of kin of a Muslim but also the next of kin of any member of any other community? There may be "bad" Christians who would not leave their

properties to their wives. So would you be satisfied if there is legislation to provide for the next of kin, no matter to which religion they belong? Should all be protected? - In that case, a Muslim will have to set aside his property for non-Muslim dependants as well. Since this Bill itself is called the Muslims Bill and its purpose is not to provide for the safeguarding of the dependants regarding the inheritance of Muslim property; I think it is a serious setback so far as the Muslims are concerned.

*Mr. J. M. Jumabhoy*

102. Coming back to this 1/3rd question. There is nothing to prevent a Muslim from giving away 1/3rd of his property to a non-Muslim wife. Is that so? - Yes.

103. So that if he has a non-Muslim wife or children by a non-Muslim wife, that 1/3rd could be provided for their maintenance? - It could be, yes.

104. Taking into consideration the mixed racial community in Singapore which does not exist in Muslim countries, would you have any objection if Government retained this clause which provides "that any of the next of kin who is not a Muslim shall be entitled to share in the distribution as though he were a Muslim."? — The laws of Islam are such that you cannot break them as you like and remake them. Whether or not a community is composed of many religious sects is an entirely different matter. These laws of Islam are to be followed because they have been revealed to the Prophet according to Islamic beliefs. They do not change whether we have a multi-racial community or a multi-religious community or we have a single community of people belonging to the same religion. That is my answer to that question.

105. I have here, Sir, "Principles of Mohammedan Law" by Moolah who says that bequests in excess of the legal third may be invalidated but may be rendered valid by the consent of the other heirs. The reason for this testamentary power exists solely for the

benefit of the heirs. This interprets the Muslim law as being explicitly for the purpose of providing for heirs and that testamentary restrictions on a Muslim are for the purpose of providing for heirs. Now, if a Muslim has a son who is by a non-Muslim wife, morally, and possibly by civil law, he is as much an heir as the other sons by a Muslim wife and ranks in the same status as them. Therefore if Muslim law is applied and if it is harmful to one particular descendant of a man who happens to be the son of a non-Muslim wife, would you still persist that that harm should be done to that one particular son as against the benefit of applying Muslim law for the benefit of the other heirs? — In Singapore I am not aware of Muslims marrying non-Muslims. There may be one or two cases, but that situation does not arise because it is not prevalent in Singapore. So the Government which thought fit to introduce the Muslims Bill should have made that position clear. That is the view we have to take.

106. It does follow that if there are not so many cases, then there is no harm in keeping the clause so that it will apply to only a small number of cases? - The Muslims as a whole in Singapore are not aware of these cases. Had they been aware, they would have made representations regarding that clause as well.

*Chairman*] I do not think that we can force the witness to give an opinion one way or another.

*Mr. Butterfield*

107. I was wondering, in the community to which they belong, is it the normal practice for them to make wills? — We never make wills and there have never been mixed marriages. So we are not aware of that.

*Mr. Butterfield*] The position therefore is that under the law as it stands and under the law as it is proposed, these gentlemen are concerned that their property will be administered according to

the Law of Islam in the case of a Muslim dying intestate. So far as they are concerned, are they not satisfied and happy with the present position?

*Chairman*

108. The question is: Are you not happy with the present position in so far as your community is concerned? You have just told us that members of your community do not make any wills and that it is not the practice to make wills, so that whether clause 47 is in or not, it will not make any practical difference to your community? - So far as our place is concerned, that is correct.

109. But on religious grounds, you would prefer clause 47? - Yes.

*Mr. J. M. Jumabhoy*

110. I think the answer is not quite clear. "So far as our place is concerned" would apply to a particular place in India. So far as those in Singapore are concerned, would it make any difference to them? - I am not aware if there is a change.

111. But, of course, in the absence of clause 47, any Muslim can leave his property to an outsider and you want to prevent that? - Yes.

*The witnesses withdrew.*

Tuan Haji K. I. Muhiudeen, Mr. A. K. A. Abdus Samad, Mr. Moulavi A. Abdul Jaleel, Mr. S. M. Mohamed Thahir and Tuan Haji K. M. Abdul Kassim, attended and were examined. Mr. K. S. Das assisted in interpretation.

*Chairman*

116. We are on Paper S.C. (Muslims Bill) No. 5\*. Can I have your names, gentlemen? — (*Tuan Haji K. I. Muhiudeen*) My name is K. I. Muhiudeen. (*Mr. A. K. A. Abdus Samad*) My name is Abdus Samad. (*Mr. Moulavi A. Abdul Jaleel*) My name is Abdul Jaleel. (*Mr. S. M. Mohamed Thahir*) My name is Mohamed Thahir. (*Tuan Haji K. M. Abdul Kassim*) My name is Abdul Kassim.

117. We have your letter dated 8th December, 1956 +, which was signed by approximately 249 people. Am I right? — (*Tuan Haji Muhiudeen*) Yes.

*Mr. Goode*

112. I think the witnesses' primary concern is to have clause 47 put in the Bill so that Muslims cannot make a will which contravenes Muslim law? — Yes.

113. Have you any view of the date from which that should be done? For example, if we make a law of this, any existing wills which do not comply with Muslim law will be invalid. Do you think that we should give time to enable people to change their wills or do you think that we should do it straight-away? — I am suggesting that a Select Committee should be appointed to go into the position that will arise in the case of wills made before the coming into force of this new legislation.

114. That is one of the tasks that this Committee has to consider. I was wondering whether you will give us any view? - I cannot answer that.

*Chairman*

115. Have you anything further to add? - No.

*Chairman*] Thank you very much indeed for coming, gentlemen.

118. All of them are Muslims? — Yes.

119. In that letter, you do urge that the Law of Islam should apply to Muslims dying testate as it does now to Muslims dying intestate. That is what you have stated in your letter? — Yes.

120. The present law as regards intestacy is contained in clause 41 of the Bill. Clause 41 reads:

"In the case of any Muslim person dying intestate after the 1st January, 1924, the estate and effects shall be administered according to the Law of Islam, except in so far as such law is opposed to any local custom which prior to the 1st January, 1924, had the

\*Appendix I, p. 14.

+ Appendix I, p. 14.

force of law: Provided that any of the next of kin who is not a Muslim shall be entitled to share in the distribution as though he were a Muslim."

That is the present law. You will be satisfied if that principle is written into the law as regards testacy? - It means that a non-Muslim is entitled as though he were a Muslim.

121. In other words, according to the law, if a wife is a non-Muslim, she shall be entitled to share in the distribution of the property as though she were a Muslim in so far as intestacy is concerned? — (*Tuan Haji Abdul Kassim*) The marriage of a non-Muslim woman to a Muslim is not valid according to Muslim law. She is not the legal wife of the Muslim.

122. She ought not to share in the case of intestacy? - She ought not to share.

123. So am I correct in saying that you also want the existing law to be changed in that respect? — (*Tuan Haji Muhiudeen*) The point is that if the wife is a Christian or a Jewess, she is accepted as one who can be married by Islamic law, and therefore she is not a stranger. Therefore those who believe in the Book are entitled to marry as Muslims.

124. So far as you are concerned, the followers of the Book who marry Muslims should be entitled to share in the inheritance? - Yes. The number of cases we read in a book entitled *Outline of Muhammadan Law* which deals with this particular point are numerous.

125. Would you like to enlarge on that? — This has been dealt with in full on page 81 of that book.

126. But is it correct to say that, in your opinion, the "followers of the Book"-I am using your expression-who marry Muslims ought to be allowed to share in the inheritance? Is that a correct statement?- — (*Tuan Haji Abdul Kassim*) Yes. According to Islamic law, that is the proper thing to do.

*Mr. Goode* Sir, the question you put was: Should they be able to inherit? I have an idea that the answer you are getting is that they can inherit according to Muslim law.

*Chairman*

127. Is the answer given "inherit according to Muslim law" or "should inherit according to Muslim law"? — If the wife is not a Muslim but she is the wife of a Muslim, she does not.

128. But if she is a 'follower of the Book, a Christian, shall we say? — She must become a Muslim before the marriage.

129. So that it is not correct to say that a follower of the Book who is not a Muslim can, under Muslim law, inherit a Muslim's property? — (*Mr. Abdus Samad*) If a Muslim man marries a non-Muslim, but she is a Christian or a Jewess, she is entitled to inherit under Muslim law.

*Mr. R. Jumabhoy*

130. Is it correct to say that Islam allows the marriage of a non-Muslim girl, if she is a follower of the Book, to a Muslim? — (*Tuan Haji Muhiudeen*) From this point of view, I think, yes.

131. My next question is: Is a Muslim allowed to get married to any non-Muslim girl if she is not a follower of the Book? — Fundamentally, no.

132. In other words, the Law of Islam makes an allowance of the marriage of a Muslim to a non-Muslim who is a follower of the Book, and not otherwise? - What I understand is that a Muslim can marry anybody he likes. On the question of succession, the point will arise whether or not according to law she will be accepted as a Muslim and if a woman is a Christian or a Jewess, then she is regarded as a Muslim. For the time being, she becomes a Muslim in that she is a follower of the Prophet and a believer in Jesus Christ. It is very simple. Then she will be entitled, but in the Koran and in every other book, a Muslim can marry a Jewess or a Christian and the woman can remain in her own religion. She is called a follower of the Book. If the same person is a Hindu or a fire-worshipper, the marriage is not recognised. He must go through another form of marriage before a Kathi.

*Mr. Butterfield*] On this last point, I want to make this clear, Sir. Do I understand that if a woman who is either a Christian or a Jewess marries a Muslim—she being a follower of the Book — she cannot inherit unless she formally becomes a Muslim? I understand that the marriage is valid but the question of succession might be different.

*Mr. R. Jumabhoy*] Before that question is answered, I would just like to protect the witnesses. I do not think that the witnesses have come prepared for such a question and seeing that they are consulting each other, in fairness, we must give them time.

*Chairman*

133. I have already said before—I have not said it to these witnesses—that witnesses are not compelled to answer any questions. So if you are not certain of any answer, gentlemen, please say so and that will be recorded. The question is in order. If you are not prepared to answer it, you can say so? — Sir, if the marriage is valid in Islamic law, then the woman should also be allowed to inherit. It follows that she can.

134. So that if a Christian girl marries a Muslim, she is entitled under Islamic law to inherit? — (*Mr. Abdus Samad*) That is correct.

*Mr. R. Jumabhoy*

135. Sir, the proviso to clause 41 reads:

"Provided that any of the next of kin who is not a Muslim shall be entitled to share in the distribution as though he were a Muslim."

Now, will you, as Muslims, like to change the laws of the Koran as laid down and which have been going on for 1,400 years? — (*Tuan Haji Muhiudeen*) Is it on the question of the next of kin who is not a Muslim?

136. Let me make it clear. Islam says that a non-Muslim next of kin shall not participate in or inherit any of the property of the testator. That is the Muslim law or Koranic law. Would you like that to be changed? — I am very sorry but I think that the words "next of kin" generally mean relatives.

*Chairman*

137. I think the question really is: Do you, as Muslims, wish the Islamic law to be changed at all? — No.

*Mr. R. Jumabhoy*] That was my question.

*Chairman*

138. You do not wish the Islamic law to be changed? — No.

*Mr. J. M. Jumabhoy*] This proviso is the existing law at the moment since 1924. Have they made representations that this proviso should be deleted in the existing law before this Bill ever came up?

*Chairman*

139. The first question is: Were you aware of this proviso in clause 41? — We knew of the existence of this law and we were waiting for an opportunity to speak against it.

*Mr. J. M. Jumabhoy*

140. In their letter to the Select Committee dated 10th December, 1956\*, the witnesses made no reference to this proviso. No opportunity was taken for a request to delete that proviso in the proposed Bill? — We were only frightened of clause 47 being completely deleted from the Bill which gave us more concern than the proviso.

*Chairman*

141. You did not, in fact, focus attention on clause 41? — No.

*Mr. J. M. Jumabhoy*

142. If questions on this particular clause had not been asked, would the witnesses, on their own volition, have made representation for the deletion of the proviso? — Yes, we would have taken steps.

*Mr. J. M. Jumabhoy*] Why did they not take steps, Sir?

*Chairman*

143. The answer is that they did not focus attention on clause 41? — (*Tuan Haji Abdul Kassim*). I was not aware of the proviso to clause 41.

*Mr. J. M. Jumabhoy*

144. Now that they are aware of this, would they make such a representation now to the Select-Committee expressly

asking for the deletion of that proviso? - If that is contrary to what is laid down in the Koran, I would like the proviso to be removed.

*Mr. R. Jumabhoy*

145. Will you be happy if that proviso is deleted? — We will be happy if it is deleted.

*Mr. J. M. Jumabhoy*

146. The conditions obtaining in Singapore are different from those obtaining in other Muslim countries. Here you have different races living together. You have Indians, Chinese, Muslims, Christians, and so on. The conditions here are therefore different and there are marriages between Muslims and other people who are not followers of the Book, for instance, the Chinese. Now then, taking into account those circumstances, would you still press for this proviso to be deleted when you know that the son of a Muslim by a Chinese wife has to be disinherited entirely, as against the son of a Muslim by a Muslim wife? - Our marriages are conducted in accordance with Muslim rites. Even if she belongs to another race, she must become a Muslim.

147. What will be the position then if she does not become a Muslim? — Then we insist on the deletion of that proviso.

*Chairman*

148. Even though it might disinherit a son who is not a Muslim? - Yes. (*Tuan Haji Muhiudeen*) Islam as a religion has never limited itself to one people at all. It is practised by many races and many people. In Egypt, there are Christians, Jews and heathens just like in any other country. Singapore is not a country of very many races. There may be three or four races and the number is small as compared to other countries. If one goes to Bengal, he can see so many different races there. The point is that Islam has thrived among people of different races. The provision allows that a person who is not of the Book shall inherit, that is to say,

the testator can provide 1/3rd of his estate to a stranger. That means he is not even one of his own people.

*Mr. H. Jumabhoy*

149. Arising out of that question, can you change the religion of Islam because of different conditions prevailing in different countries? - No.

*Inche Abdul Hamid bin Haji Jumat]*

Sir, it is very conflicting to follow. I remember one witness saying that if a Muslim marries a non-Muslim, then that woman or wife is not entitled to any property.

*Chairman]* I think the first answer that we got was that if a "non-Muslim of the Book" shall we use that expression-married a Muslim, she was entitled to share. That is the first answer we had. But if a non-Muslim not of the Book married a Muslim, she is not entitled to share.

*Inche Abdul Hamid bin Haji Jumat ]*

If a Muslim marries a non-Muslim, is she entitled to the property of her husband?

*Chairman*

150. I will put the question round the table. The question is: Can a non-Muslim girl of the Book who marries a Muslim inherit if she remains a non-Muslim? — (*Tuan Haji Abdul Kassim*) We are not certain of what is laid down in the Koran at the moment but we want time to ascertain whether it is so. (*Mr. Moha med Thahir*) and (*Mr. Abdul Jaleel*) Our answer is the same as that of Tuan Haji. Abdul Kassim. (*Mr. Abdus Samad*) Yes, she can.

*Inche Abdul Hamid bin Haji Jumat*

151. Is it correct to say that 1/3rd of the property of a Muslim can be given to anyone he likes? - (*Tuan Haji Muhiudeen*) Yes.

152. Suppose a Muslim marries a non-Muslim who is not a follower of the Book, the Muslim husband can give away 1/3rd of his property to his non-Muslim wife? — (*Mr. Abdus Samad*) If the marriage is null and void



from the beginning, then the husband can give 1/3rd of his property to that party.

153. But, on the other hand, if he dies intestate, then the wife does not get anything? - No.

154. Assuming that he has three children from a non-Muslim wife, and they are Muslims, can these three children get all his property? If the marriage is null and void and if the wife is not entitled to inherit, the question of the children's inheritance is remote.

*Chairman*

155. They are illegitimate? — (*Tuan Haji Muhiudeen*) Yes. If she is a follower of the Book, then she can inherit as a Muslim.

*Mr. J. M. Jumabhoy*

156. I have one question arising out of that. Is there any objection in Islam to the law putting its hand on this 1/3rd and enforcing that the non-Muslim wife and the children of a non-Muslim wife should be provided out of this 1/3rd, which is the testator's right to will away? - Sir, I will object to that because this provision will give a free hand to an individual. If we limit this clause, then we are going contrary to the law.

*Mr. Goode*

157. My question is a different one. I would like to know who these gentlemen are. I understand that they support the Tamil Muslim Union but they do not belong to it? — No, we are members of different organisations.

158. What is the difference between these gentlemen and the representatives of the Tamil Muslim Union whom we have also heard? — We belong to the same group but we have different sections and organisations.

159. Do these gentlemen have a President among them? - Yes.

160. And the gentlemen who represent the Tamil Muslim Union? — One of them is the Secretary.

161. Does he also express your views? — Yes. It is only a question of understanding the Law of Islam.

*Chairman*

162. So can I say that the 249 Muslims you represent are also members of the Tamil Muslim Union? — They are from "Ratheeb Majlis".

163. Are they members of the Tamil Muslim Union? - The majority are members of the Tamil Muslim Union.

*Mr. Butterfield*

164. Following on that, I wonder whether they represent persons who are domiciled in Singapore or do they, in due course, look to other countries as their homes? - We are discussing the domicility of the property and not that of the individual.

*Chairman*

165. Your answer is that you do not think that that is relevant? — Yes, that is not relevant.

*Mr. Butterfield*] I would like to say this. We are concerned that if we are going to legislate, we can legislate for persons who are domiciled here. Therefore I want to know whether these gentlemen speak for such persons or for persons who look to other countries as their homes?

*Chairman*

166. I think what we want to know is this: Is it or is it not correct to say that the people that the witnesses represent have made their homes in Singapore? — Yes. They have no intention of returning to India to bury their bones there. If a person knows where he will die, he will make preparations accordingly. I know of many Muslims going to Mecca and they come back to Singapore and die. If I am not domiciled in this country, the law of the country will not apply to me.

*Chairman*] I do not think we should debate this point.

*Inche Abdul Hamid bin Haji Jumat*

167. Coming back again to the distribution of property, if you have a

Muslim who marries a Muslim wife, and he has three children one of whom on reaching the age of 21 years becomes a Hindu, would you say that that son should be entitled or ought to be entitled? - No.

168. On the other hand, a Muslim is entitled to do away with 1/3rd of his property? - That is correct.

*Inche Abdul Hamid bin Haji Jumat*] So a Muslim can give away 1/3rd of his property to his son who has embraced Hinduism. Do you think it is logical for two of his sons who are Muslims to get less than this son who becomes a Hindu?

*Chairman*] That is a matter of opinion. I think the witnesses need not answer that question.

*Mr. Butterfield*

169. Do these gentlemen belong to a community the members of which customarily make wills? — We have one or two rich men who have made wills which have been annulled in the Federation.

*Chairman*

170. The majority of the members of the community do not make wills? — They do not, That is the answer.

*Mr. J. M. Jumabhoy*

171. On this clause 47 of the old Bill which they are all anxious to have included in the present Bill, in the letter of 8th December, 1956\*, at the very bottom, they say:

"... and views with alarm the dissatisfaction that will arise amongst the Muslims of Singapore if some such provision is not incorporated in the Bill now -before the Assembly."

What is the extent of the feeling amongst Muslims that such a clause should be incorporated in this Bill? - Sir. I was made to understand that

there are a few people living around Arab Street going about collecting signatures so as to give them the freedom to dispose of their property as they will, and quite a large proportion of the people have represented to us to say that we should make representations to this body that clause 47 be included. Therefore I would say that there is quite a considerable section of people who are concerned with the present state of affairs, especially a certain group of people who are trying to get signatures.

*Chairman*

172. We were told that the membership of the Tamil Muslim Union was round about 5,000. Are you speaking for 5,000 Muslims or for more? — I do not want to exaggerate. I have not heard of 5,000 Muslims but quite a considerable number have asked, "What have you done for us?", or words to that effect. We have made representations to Mr. R. Jumabhoy.

173. I think Mr. J. M. Jumabhoy wishes to assess the strength of the representation that is being made? — (*Mr. Abdus Samad*) Sir, the two unions, the Tamil Muslim Union and the "Ratheeb Majlis", embrace all the Indian Muslims in Singapore.

174. That is about 5,000? — 28,000, Sir.

175. Do you claim to speak for 28,000 Muslims? - That is correct. (*Tuan Haji Muhiudeen*) Quite a number of these people have made representations.

176. I do not think we can enter into a debate about it. So Mr. Samad assures the Select Committee that his delegation today and the Tamil Muslim Union are speaking for 28,000 Muslims. Is that so? - Yes.

*Chairman*] Thank you very much indeed for coming, gentlemen.

*The witnesses withdrew.*

Mr. N. A. Mallal and Mr. T. E. Atkinson, representatives of the Singapore Bar Committee, attended and were examined.

*Chairman*

177. Gentlemen, we are sorry to have kept you waiting. We were a bit longer with the last delegation than we thought. Mr. Mallal and Mr. Atkinson, you are both here for the Singapore Bar Committee? — (*Mr. Mallal*) Yes. (*Mr. Atkinson*) Yes.

178. Mr. Mallal, you are also here for signatories to a letter dated 4th December, 1956, appearing on Paper S. C. (Muslims Bill) No. 2\* and the number of business firms, etc., who have signed this letter is 52. Is that correct? — (*Mr. Mallal*) Fifty, Sir.

179. About fifty, shall we say. Could you indicate how many Muslims you think they represent? — You can take it that they represent at least fifty. Some are firms with partners, but you can take it that the people who actually signed have their support in what has been stated in the letter.

180. They are not signing for other Muslims? - No.

*Mr. J. M. Jumabhoy*] I see here from the list supplied that the signatories are A. Osman and others, together with Paper S. C. (Muslims Bill) No. 2 from Messrs. Mallal and Namazie. Is that representation to follow after this?

*Chairman*] Mr. Mallal is representing them as well.

*Mr. J. M. Jumabhoy*

181. None of them are appearing before us? - None.

*Chairman*

182. Shall I address Mr. Mallal in the first instance? — (*Mr. Atkinson*) Yes, we did decide that it would be more appropriate for Mr. Mallal to start.

183. And you can always add to his answers? - I can add a few words.

184. Am I correct in saying that the representation of the Singapore Bar

Committee, as well as of the 50 business firms, is directed at the clause which was numbered clause 47 in the previous Bill? — (*Mr. Mallal*) That is so.

185. And this clause, for the record, reads:

"Notwithstanding anything contained in any written law of the Colony of Singapore: the provisions of the Law of Islam shall be applicable in the case of any Muslim person dying testate on and after the appointed day."

- Yes.

186. I might also inform you, gentlemen, that the minutes of the evidence taken before the Select Committee on the Muslims Bill in the last session have been referred to this Committee and therefore, that evidence is also before this Committee and I think you, Mr. Mallal, did give evidence in the last session. Now would you care, Mr. Mallal, to summarise the objections raised against this clause 47? — Sir, what you have said just now lightens my task considerably as I do not have to repeat what I said in the previous Select Committee. I have also made representations in writing and those representations, no doubt, are before you. Today I shall merely confine myself to pointing out to this Committee that Shariah laws which deal with inheritance and succession are not laws which must be obeyed by all Muslims. Sir, there seems to be an impression that because a person is a Muslim he must in every case carry out the directions of the Muslim law and that he must not make a will giving away more than 1/3rd of his property. Today, Sir, I would like to tell you that in Islam there are certain things which are called *Fard*, which are things which you must do if you are a Muslim, like prayers five times a day, fasting and so on. Then there is another lot of things which are called *Haram*, that is, things which you must not do, like drinking intoxicating liquor, eating pork, and gambling- those are the things

which are absolutely forbidden. In between these two categories there are certain things which you are advised to do, but if you do not do those things, you do not incur divine wrath. Those are things called *Mandoob*. Then there are things which you are advised to refrain from doing. Those things are called *Makruh*. There is another lot of things which are called *Jaiz* which you may or may not do. Sir, perhaps it will be appropriate—by the way, Sir, am I exceeding any time limit, for I may take half an hour or so?

*Chairman*] It entirely depends on Members of the Select Committee. Inche Abdul Humid has to leave shortly. I think some other Members possibly would rather hear Mr. Mallal when their minds are a bit fresher, if I may put it that way.

*Mr. R. Jumabhoy*] I think we should hear what the witness has to say in full; whether or not it is today is another question.

*Chairman*] The suggestion is that Mr. Mallal completes his speech today. He could then come back tomorrow at 2.45 p.m. to give further evidence. Is it the consensus of opinion that we should carry on?

*Hon. Members indicated assent.*

*Chairman*

187. Please carry on, Mr. Mallal? — Sir, with your permission, I should like to refer briefly to the conditions prevailing in Arabia at the time of the advent of Islam. At that time, the people were mostly nomads, or what we call Bedouins. The rest lived in towns. When our Prophet Mohammed started to preach the religion of Islam, there were certain rules which were observed by the tribes around Mecca and Medina as to succession and, according to those rules, females never inherited at all. The only persons who could inherit were males, and through males, but they never inherited through female ancestors. The wealth of those tribal people consisted mostly of camels, goats, sheep and

slaves. Our Prophet Mohammed was a great reformer and he reformed the rules then prevailing regarding distribution of property of a deceased person and he brought about the reform which resulted in females sharing in the estate of a dead person. The full results of the reforms are seen in the present laws of Islam with regard to succession and inheritance. At the same time, Sir, he and the Caliphs who followed him introduced very complicated systems of criminal law, the laws of partnership, laws of contract and laws of evidence. Now, according to the Muslim law which prevailed then and which has prevailed for many centuries afterwards, the killing of an infidel who was not the subject of a Muslim ruler was not an offence nor was the killing of an apostate an offence. So you could kill an infidel and you could kill an apostate with impunity. Certain other remarkable or undesirable features of this criminal law were that the penalty for adultery, for example, was death by stoning or by flogging. Flogging or stoning was prescribed depending on the person who committed adultery. The penalty for defamation was flogging and the penalty for theft was amputation of one hand or of both hands. For consuming forbidden beverages, you were liable to 40 strokes of the lash. Then there were penalties prescribed for crimes against the person. The principle of those penalties was like for like. If somebody hit me and broke my tooth, I could go before a court and the court will allow me to hit the accused and break his tooth, and the same if I lost an eye or suffered any other form of injury. Then there was another law under which —

188. Has this anything to do with clause 47? - Yes, very much.

189. I just cannot follow how it has? - I am coming to it, Sir. Then, every offence was compoundable and the complainant could say, "I will compound the offence if the accused person

will give me so many camels", or whatever was prescribed in the schedule. Similarly we had certain laws of evidence which cannot be acceptable at the present time. What I am trying to tell you is that the criminal laws of Islam and the laws of evidence have been abolished in most of the Muslim States, and to abolish the criminal laws or abolish the laws of evidence is no less a sin, if it can be considered a sin, than abolishing the laws of inheritance. They are merely laws made for the distribution of property or, in the case of criminal laws, punishment of offenders. So if a Muslim State can abolish Muslim criminal laws and laws of evidence, surely a Muslim State or any other State can abolish or need not apply Muslim laws relating to succession and inheritance? This has definitely been done in Turkey and, I am informed, in Syria and Egypt too. An article appeared in the *Singapore Standard* of 6th December, 1956, in which the writer says positively that in Egypt now you can make a will leaving your property to any person you think fit. Similarly, the writer says that if you die intestate, your property is not only shared by, your widow and children but also by your grandchildren. You will remember, Sir, that under the ordinary Muslim laws of inheritance, the grandchildren, if there are children, cannot inherit if their father has died, except among the Shias — I think Mr. Jumabhoy is a Shia. Among the Shias the grandchildren can inherit but among the Shaffeis, the grandchildren cannot inherit, and the people of Egypt are mostly Shaffeis. According to this article, the grandchildren can inherit the estate of a Muslim who has died intestate. Now, Sir, when we speak of a will according to Mohammedan law, we must remember that, at the time when the rule was prescribed that a man could leave 1/3rd by will and the other 2/3rds he could not leave by will, the majority of the people in Arabia were illiterate and therefore it, was not necessary for a Muslim, when making a will, to make it in writing. It could be made

in the presence of a number of people by saying, "I leave 1/3rd of my property to so and so", and even if it is in writing, according to the rules of Islam, it need not be signed by the testator or by any witnesses. That was the position with regard to wills. Later on during the times of the Caliphs, the court had a man who acted as an official distributor of the estate—I have forgotten his name in Arabic—and on the death of any person dying intestate or testate, he got hold of the property and would say, "Your share is this and you take this one. Your share is that, and you take that one." That is how estates were distributed. We have advanced considerably since that date and I submit that if we introduce the proposed law now in Singapore we will be harming the community considerably. The nature of a man's property and assets has changed considerably during the past 50 or 100 years. Muslims own businesses, shares in companies, interests in partnerships, properties, and so on. As I said before, as soon as a Muslim dies and unless all the members of the family who are entitled to inherit come together and agree to carry on, the man's business and property must be sold and the estate distributed. This puts an end to family businesses and family properties and we must avoid that at all costs. If the insertion of a clause such as is proposed is going to do any good at all to the community, I will be in favour of it, but in my submission, it is not going to do any good to anybody. Sir, we know that here we have large estates belonging to people who died many years ago. One of the well-known instances is that of Mr. Syed Mohamed bin Abdul Rahman Alsagoff. Both Mr. Atkinson and I are at present interested in this estate. He left a will in 1868 and he died soon after that. He left properties which were at that time sworn at less than \$50,000. At the present moment, the properties are valued at more than \$40 million. One of the properties is then property known as Perseverance Estate, or Geylang Serai, where a large number of Malays

live. These people pay ground rent and build houses and live there. I think the biggest collection of Muslims in Singapore is in Geylang Serai. If Mr. Alsagoff had not been allowed to make his will, and tie up his property Perserverance Estate would have been sold for a few hundred dollars many years ago and, at the present moment, the cut-up property would have been in the hands of the Chinese and others and there would not be a Malay community in that place in such numbers and of such importance as it is today. That estate is due for distribution in another four years' time. Another property belonging to that estate is the Raffles Hotel. I am proud to be able to say that a building like Raffles Hotel belongs to Muslims. Sir, if our estates are going to be sold immediately after we die, we Muslims will not be able to own any large businesses, insurance companies or banks. It is just not possible. Another thing which occurs to me, Sir, is that the provision of the Royal Instructions dated 24th February, 1955, may delay the passing of this Bill if the clause proposed to be inserted is, in fact, inserted. Sir, we know that there is an urgent need for the establishment of the Shariah Court and that such a court should be established without further delay, but I am afraid that if this controversial clause is inserted in this Bill, the Bill will have to be sent to London—pursuant to section 7 of the Royal Instructions. Sir, I suppose Members of this Committee are aware of this. Already the people are complaining that considerable delay has taken place in the establishment of the Shariah Court. They say that it should be established as soon as possible. I had a few other points to make but I do not intend referring to them as the ground has already been covered by me in my letters to you and by the evidence which I gave the last time.

190. I think possibly it might be convenient for Mr. Atkinson if we hear him first and then we will reserve our questions for Mr. Mallal tomorrow. Mr. Atkinson, - would you care, to address the Committee? — (Mr.

*Atkinson*) Mr. Chairman and gentlemen, it is important that you should understand in the first place just what exactly we, that is, the Bar Committee, and, on the other hand, the sponsors of this clause are each trying to do. I suppose it will be suggested to you by the supporters of the clause that the Bar Committee are deliberately trying to prevent Mohammedan law from being applied to this country, and I therefore want to say from the outset that nothing is further from the truth than that. If the issue before the Assembly is whether a Muslim should be entitled to have his estate distributed according to Mohammedan law, then the Bar Committee would be the first to support that suggestion, because it would be within what we conceive to be the correct principle that should be followed, namely, that this Assembly should allow the members of every religious community to do what they freely and voluntarily want to do about their religion but not to force them to do what they do not want to do. The Bar Committee, I would like to interpose before going further, is entirely non-sectarian in this matter. We are recruited, Sir, from all the various communities and races in the island, without any question of religious prejudices one way or the other. In fact, in the interest of the members, I might also add that I am the only expatriate member of the Bar Committee and the other members represent practically every race and religion which practises in the colony.

191. Can I interrupt and ask you how many members of the Bar Committee are Members of the Assembly? — Just one. He is Mr. Lee Kuan Yew.

192. Please carry on? — Now, gentlemen, what we, as the Bar Committee, say is this. Mohammedan law, as applied in this colony, has been applied for years and, as far as we are concerned, we are quite happy that it should be continued forever in the following cases. First of all, in the case of any Muslim who cares to say that he

wants it to be applied. All that a Muslim has to do is to say in the form prescribed by the Wills Ordinance, "I want Mohammedan law to apply to my estate" and it will apply. Secondly, it applies even in the case of a Muslim who is too lazy or too unwilling to fulfil his religious obligations to make a will at all. If a Muslim wants the Mohammedan law to apply to his estate and he does not make a will, the estate will still be administered by Muslim law under the laws of the colony. It has been the law since 1924 and it obviously provides for every case in which a Muslim can possibly want his property to be distributed according to the provisions of the Muslim law. We, the Bar Committee, say, with all the force at our command, that this is the true principle which should apply in the civil law, because it is the civil law which is applied to the multi-racial community in Singapore.

193. Can I interrupt again just to get the facts correct? You have just said that Muslim law applies in the case of intestacy. There is a provision which reads, "... that any of the next of kin who is not a Muslim shall be entitled to share in the distribution ..."? — Yes, that is true and it is in accordance with local custom because you will remember that right from the early charters, the common law as applied in this country will not discriminate on religious grounds. It is now a statutory exception, I agree, but it is of a minor nature and I myself, after over ten years' practice, remember very few, if any, cases where it has operated with any serious significance whatever. Sir, our principle — I will repeat again and I cannot repeat it too strongly — is that the members of every community and every religious sect should have the right to be governed by their religious laws when they want to, but what we as the Bar Committee cannot accept is that you suggest that the civil power should force or coerce them by any means whatsoever into having their property or their lives ordered in accordance with provisions which they do not want applied. That is the only case

here for you are now being asked to legislate for them in such a way in this country. So far as Muslim estates are concerned, you are being asked to deal with the case of a man who, for some reasons best known between himself and his God, has decided deliberately that he does not want Muslim law to apply to his estate; and you are being asked to say, "No, we are going, with the aid of the civil power and even with the aid of the police force, to make you do this thing which you do not want to do." We say it is shocking for you as the civil power to be asked to do so in this colony, and that it transgresses all principles upon which the secular arm of the law should set about dealing with the civil law. It is ironic, looking back upon English legal history, to see how hard the law had to struggle to give a person the right to dispose of his property by will as he wanted to, and that this was won literally by fire and sword in the western countries over the course of the centuries. When it was won, it was recognised as one of the greatest achievements of the western world — the freedom of disposition by will. Thus, in the twentieth century, it seems incredible that you should be asked to force and coerce persons to leave their property in a way which they do not want to or in which they have not had their say. One asks, and I am asking with great respect for the Muslim community who apparently have strong feelings on this point: What exactly is going to be gained by coercing anybody into making his will in accordance with this principle? If a man has deliberately decided in his conscience that he is not going to let this particular part of the Muslim law apply, surely it cannot be that you, as Assemblymen, are going to prevent him from committing a sin by preventing his will from taking effect. I suggest that that is a preposterous assumption for anybody to put forward. What else can be gained by forcing a man to do something which he does not want to do? If it is thought that he is being unfair to some relatives if the Koranic law is not applied by his

will, we may be able to get them proper shares in his estate if we do what is done in England. Give to some fair tribunal the power to review a man's will and if you think that he has unfairly cut off one party, give that person the right to go to a judge and say, "This testator has left me no property and I claim that, in all the circumstances of the case, I ought to have something from the estate and he should not have left me out." Let the judge hear the arguments. That is what happens in England and what has happened since 1938. It does not require the weapon of destroying a man's freedom completely in order that justice be carried out in a manner like this. I come back again to my Bar Committee's principle, which we cannot but put before you too strongly, that in any country at any time, it is objectionable that the civil power should enforce by the civil law religious customs or observances of any sort. History has shown that once you have the position of the civil power being forced into compelling religious observances, that is going to lead to a most terrible situation. All of you, Sir, no doubt have read of the Spanish Inquisition in Spain where the civil government decided to enforce the civil law. There was a penalty for heresy and you got people burnt at the stake because their religious opinions did not coincide with those of the persons who had persuaded the Legislative Council of those days to pass the law. You had persons drowned as witches. You also had ancient Carthage in which children were burnt alive because that was thought to be in accordance with the best religious principles of the time. Gentlemen, I am not being anti-religious on this matter at all. I am speaking to you as a practising Catholic myself, and Mr. Mallal here speaks to you as a Muslim, and we both unite in saying, "You, as the secular Government, should not intervene in a matter of religious law and observances." If a man is a good Muslim and he believes that he has to leave his property in a certain way, then he is going to leave it in that way, and that is a matter for his conscience or, if for some reason his

conscience tells him the opposite, then that is a matter for him and his Creator. It is not one which you ought to interfere with at all. Once you start on the slippery slope of trying to enforce these matters by legislation, it means you will have to be prepared to send a Muslim to prison for eating pork, or to send a Catholic to prison for not going to mass and so on, and the country will be an absolute misery for everybody to live in. That is not your function and that is my submission. In the submission of the Bar Committee, you are not here to impose the principles of religious observances upon persons who do not wish them applied to them. That should be a matter of conscience and should not be compelled by law-making at all. That is the principle which I put before you and I have been asked to stress that with all the strength at my command, which I hope I have been able to. I have two subsidiary points which I want to end with and which you ought to bear in mind. The first is this. What a very foolish law it is going to be if you pass it. It will lead to two things. First of all, it will lead to those members of Islam who feel sufficiently strongly on the subject to refuse to have this law applied to them completely renouncing their Muslim faith altogether and, in the second place, those who are not prepared to go to that length will simply go to their lawyers and make a settlement of their property providing for its distribution in a way which is not acceptable by Muslim law. It is open for any Muslim, after the enactment of this law, to come to Mr. Mallal or myself and say, "All right, I will settle my property. I will name a trustee of it and after I am dead, I am going to tell my trustee to give it to X, Y and Z." That is not a will, gentlemen. You will thus have the whole thing made a laughing stock within a matter of years. These matters, you know, cannot be legislated upon finally. In the sixteenth century, the King of England tried to stop people leaving property on what we call trusts, and by coercing and threatening the nobles of the country, he eventually persuaded them to pass the



Statute of Uses which prohibited trusts and largely took away the will-making powers of the people of England in so far as land was concerned. And within 50 years, gentlemen, the courts in England had connived at a flagrant device by the insertion of three words which you, Mr. Chairman, know very well thereafter appeared in every deed and allowed the person to do exactly what he did before. All the Statute did was to make a mess of English property law. The expenses of conveyancing became high. The procedure became cumbersome and caused headaches. So if you go right ahead with this, you will not achieve what you want but you will bring in a large number of highly undesirable complications instead of getting what you really want out of it. The second point of my final remarks is what Mr. Mallal has suggested, and that is, how very unfortunate it will be for the Muslim community, if you are going to make it difficult for a man to dispose of his property in a way which will not be in the interest of his business. Why not leave him to compete with the other communities like the Chinese and Europeans who can do as they want to

do with their properties without being caught up in rules which are not suitable for a multi-racial community? I think that is all I need to say on the subject, Mr. Chairman, but I do stress again that the Bar Committee is very concerned with the problem of principle which I put before you. You must not, as legislators for the civil law, try to coerce persons to do their religious duties, however it may be camouflaged by legislation.

*Chairman]* The time is seven minutes past five. Do Hon. Members wish to question Mr. Atkinson now or reserve their questions until tomorrow?

*Mr. Goode]* I think the questions might run on and might take some time. If the other Members agree, perhaps we could go home and take thought on this eloquent submission.

*Chairman]* Is that agreed? Shall we meet at 2.45 p.m. tomorrow instead of at 2.30 p.m.?

*Hon. Members indicated assent.*

*Chairman]* Thank you very much indeed, gentlemen, for coming.

*The witnesses withdrew.*

## MINUTES OF EVIDENCE

TUESDAY, 15TH JANUARY, 1957

PRESENT:

Mr. SPEAKER (*in the Chair*)

The Hon. Inche Abdul Hamid bin Haji Jumat.	Mr. Goh Chew Chua.
Inche Ahmad bin Ibrahim.	The Hon. Mr. W. A. C. Goode, C.M.G.
The Hon. Mr. C. H. Butterfield, Q.C.	The Hon. Mr. J. M. Jumabhoy.
	Mr. R. Jumabhoy, C.B.E., M.C.H., J.P.

Mr. N. A. Mallal (representative of the Singapore Bar Committee and also of Mr. A. Osman and others) and Mr. T. E. Atkinson (representative of the Singapore Bar' Committee) attended and were further examined.

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15 JANUARY 1957

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### *Chairman*

194. Mr. Mallal, before I go round the table in the usual way, I would like to ask some questions to clear up one or two points. You will recollect that yesterday you listed five categories of precepts under the Law of Islam and —check me if I am wrong—the first was *Fard*, that is, the things a Muslim must do; the second was *Haram*, the things a Muslim must not do; the third was *Mandoob or Mandub*, the things a Muslim is advised to do; the fourth was *Makruh*, the things a Muslim is advised to refrain from doing; and finally *Jaiz*, the things a Muslim may or may not do. Could you inform us then under what category is placed the provision in respect of the willing away of one-third of the property of a Muslim? — (*Mr. Mallal*) That provision, Sir, I should say, comes under Mandoob.

195. What will be the position if you do not do as you are advised to do? - If I do not do so, in my opinion, God is indifferent.

196. Coming to the subject of willing away one-third of a Muslim's property, the Members of the Select Committee have your letter of the 28th of February, 1956\* (that is the former Paper No. 2), in which you say in paragraph 4:

"By Sections 46 and 47 of the Muslims Bill (that is, the previous Bill), it is proposed to force every Muslim testator to make a Will in accordance with the principles of Muslim Law, that is to say, that under the proposed law a Muslim testator will be able to dispose of one-third of his estate only. The remaining two-thirds will have to be divided among his next-of-kin as if he had died intestate in respect of same. It must be borne in mind that a Muslim testator cannot dispose of this one-third in favour of any of his next-of-kin. This one-third, if it is given away, must be given away to persons other than his next-of-kin."

The question that I would like to ask you is: Does that mean that a Muslim cannot give away that one-third at all to any of his next-of-kin even if he wishes to do so in the Koranic proportions? — No, he cannot do so; and when I use the expression "next-of-kin", I mean the Koranic next-of-kin and not any next-of-kin.

197. Can he give any part of this one-third to a non-Muslim wife or son? — No, he cannot, because a non-Muslim cannot inherit.

198. Another question which I think is worrying perhaps some Members of the Select Committee is this: Is a non-Muslim wife, who is nevertheless a follower of the Book, for example, a Christian or a Jewess, entitled to share in the inheritance? — No, she cannot.

\*Appendix V, pages (i) to (iii).

199. She must first be converted to the Muslim religion before she is entitled, is that correct? — Yes.

*Mr. Goh Chew Chua*] Are the witnesses happy if a Muslim has two wives - one is a Muslim and the other is a non-Muslim and the man died and left a will to the non-Muslim wife?

*Chairman*

200. The question is: Are the witnesses happy if in the case of a Muslim having two wives, one of whom is a non-Muslim and the other is a Muslim. he leaves by will all this property to the non-Muslim wife? - As the law stands at present, yes, he can leave everything he possesses to his non-Muslim wife or to anybody else.

201. Whether you are happy or not makes no difference? - it makes no difference.

*Mr. R. Jumabhoy*

202. Is a Muslim allowed by religion to marry a woman who is a follower of the Book, like a Christian or a Jewess? - A Muslim man can marry a woman who professes the Jewish faith or the Christian faith.

203. Is that marriage valid? - It is valid and is recognised by the Koran.

204. But the man's children cannot inherit? - No, they cannot inherit if they are not Muslims.

205. Are marriages between Muslims and non-Muslims who are not followers of the Book recognised? — No, they are not recognised.

206. They are null and void according to Muslim law? - Yes.

207. Turning back to the petition enclosed with your letter dated 8th December, 1956\* (Paper No. 2), can you please tell us, Mr. Mallal, although the signatories are all Muslims, to which races they belong? - They are Arabs and Indians.

208. Are these Indians also Indian Muslims from Bombay? — They are from South India, West India (that is Bombay), and Bengal.

209. The majority of the Muslims in Singapore are from South India? — That is so, yes.

210. As a lawyer, Mr. Mallal, have you come across many cases of Muslims making wills or do they die intestate? - The majority of them die intestate

211. Mr. Mallal yesterday used the word "*Jaiz*" which means the things a Muslim may or may not do. Does not that word just mean the things a Muslim may do? - It is rather difficult to explain, Sir. I used the word "*Jaiz*" in the Arabic sense. Mr. R. Jumabhoy is thinking perhaps of that word in the Indian language, which is derived from the Persian language. They more or less mean the same thing, but there is a little difference. The Indian word "*Jaiz*" (which is a Persian word also), is used in a slightly different sense.

212. In the opinion of the witnesses, is it correct to say that if this law is brought into force. Muslim businesses may have to be closed down and goodwill, if any, has to be sold? - That is so. That has happened in recent years. There are a number of such cases.

213. That is your experience? — Yes.

*Inche Ahmad bin Ibrahim*

214. Is the child of a non-Muslim wife entitled to anything on his father's death? - It all depends on the age of the child. If the child is very young, we do not know whether it is going to be a Muslim or a non-Muslim; but the assumption is that, if the father was a Muslim, then the child is a Muslim. But we can only find out whether the child is a Muslim or a non-Muslim after he has reached the years of discretion.

*Chairman*

215. Supposing the father dies before the youth reaches the age of discretion, what is the position in Islamic law?

- The position is that it will all depend on how the child is brought up. If the mother has brought it up as a Christian, it will be considered a Christian. If it has been brought up as a Muslim, then it will be considered a Muslim.

*Mr. Butterfield*

216. As regards the expression "Koranic next-of-kin" used by Mr. Mallal, I wonder if he can give us any idea of what that involves. Is that expression more restrictive? — That is so. The father and mother, if they are alive; the wife and children; if no children, then brothers and sisters; if there are no brothers and sisters, then nephews and nieces, and so on. Then the distant kindred.

217. These heirs of Indians from South India and from Bengal - I wonder if Mr. Mallal could tell the Committee - if he is in a position to do so - whether they are generally domiciled here or not. In his experience and practice here in Singapore, are people of this type regarded as being domiciled here? - Yes, I should imagine so. Their businesses are here and some of these businesses have been long established. It is however very difficult to say with any certainty whether a man is domiciled here or not.

218. Could I ask this question, Sir, whether in Mr. Mallal's experience at any rate, a large number of the Indian Muslims in Singapore are not domiciled here? We have had representations from various groups? - Yes, I think there is something in that. The majority of them would not be considered as being domiciled in this place.

*Chairman*

219. For instance, have you any experience of the Malayalam Muslims of India? - No, I should imagine they would be mostly domiciled in India.

*Mr. Butterfield*] I ask these questions, Sir, because I want, at some stage, to have an opportunity of asking both Mr. Mallal and Mr. Atkinson what their

views would be, assuming it was decided, contrary to their contentions, to include similar provision in the Bill. I wish to ask them questions as to what form the legislation would take. I am, of course, interested in the question of domicile. Perhaps I can ask that kind of question later on, Sir?

*Chairman*] Yes, certainly.

*Mr. J. M. Jumabhoy*

220. Sir, Mr. Mallal yesterday cited a number of laws which were in force before the preachings of the Prophet Mohammed, who was "The Great Reformer", according to his own words. He cited certain harsh laws such as the law that provided for harsh punishment to be meted out to those who inflicted bodily injury on others, and so on. Then he drew a parallel between those harsh laws and the reforms which caused the abolition of these laws, and he thought the parallel should be that this particular clause 47 of the Bill should not be put into the civil law system because, with the lapse of years, it would not be found to be practicable. But may I ask him, Sir, whether the laws that were found to be harsh were Koranic laws or pre-Koranic laws? - They were Koranic laws. I was referring to Koranic laws: about punishment for adultery; punishment for gaming; punishment for drinking; punishment for causing bodily injury to others, killing, and so on.

221. Mr. Mallal pointed out that these laws were abolished. Was that done by the Prophet Mohammed? — The Hon. Member misunderstood me. I was referring to certain pre-Islamic laws in Arabia—the laws of inheritance - and I said that under those pre-Islamic laws women did not inherit. Then the Prophet Mohammed reformed those laws and under the reformed laws women could inherit. That was all I said. Then I went on to say that Islam had its own criminal law based on the Koran. It had the law of evidence and the law of succession. They were Islamic laws. Muslim States since then have abolished the criminal law and the law of evidence. I thought most of

these Muslim States had abolished them, but it does not seem to be so. I understand that in Yemen they still stone an adulterer or an adulteress to death. They still have this Koranic law. I remember my father telling me not so long ago that in Afghanistan the old penalties were still exacted, but there was some talk of reforming the criminal law. Whether or not that has been done, I do not know.

*Chairman*

222. So these reforms are reforms carried out by States? — By States, yes. For example, in Pakistan, India, Egypt or Turkey, they do not have punishment prescribed by the Koran for most of these offences.

*Mr. J. M. Jumabhoy*

223. Does Mr. Mallal consider those laws, which were considered by posterity to be harsh in their application, to be on the same footing as the law which provides for heirs and for those heirs who might otherwise be cut off if that law was not continued? - They are on the same footing whether they are criminal laws, or the laws of inheritance. They have the same sanctions.

*Mr. J. M. Jumabhoy* I think Mr. Mallal has not understood my question: What I am trying to find out is whether those laws, which were supposed to be harsh in their application, should be put on a different footing from those laws which are supposed to be beneficial. There is the criminal law which provides for punishment to be meted out so harshly. Then there is the law of inheritance to provide for the heirs of a person who dies. One is a harsh law and the other is a beneficial law.

*Chairman*

224. I think the Hon. Member wishes the witness to give an opinion as to whether or not the State should legislate in cases where the Koranic laws work harshly and should not legislate in cases where the Koranic laws do not work so harshly? - In my opinion, the Koranic laws of succession are definitely harsh. For example in the old days the

Koran said that certain shares of the property of a person dying should go to his children, and the females should get a half-share of the male. If I had anything to do with it, I would give a double share to the women, because men can work whereas women cannot. But then we must remember that in those days the unit of society was a tribe. The tribe looked after the children and the women members of the tribe. If I were still living in my country, the tribe would probably look after my wife and daughters; but I am living in Singapore and I have no tribe here.

*Mr. J. M. Jumabhoy*

225. As regards the testamentary laws laid down, would the witness consider them to be harsh in their application? - Yes, they are. Immediately a man dies, his estate is vested in his heirs straightaway. It becomes a part of their property and the property must immediately be sold and realised and distributed.

226. Would Mr. Mallal consider that part of the law harsh which gives the man the freedom to will away only one-third of his property and does not give him the freedom to will away two-thirds? - I consider that harsh. I consider it anomalous that I do not have the right to do what I like with my property, although it is my property. I feel that I should be allowed to sell it in my lifetime, and after my death the directions that I have left as to how the same should be disposed of should be carried out.

227. Is that the Koranic law? — No, it is not the Koranic law, but I am entitled in Singapore to say that the Koranic laws of inheritance should not apply to me.

228. Under the Koranic law a man has the right to will away one-third of his property. I have a book here, Sir, entitled "Principles of Mohammedan Law" by Moolah, and I should like to read a small portion from it:

"This limit of one-third is not laid down in the Koran. This limit derives sanction

from a tradition reported by Abee Vekass. But though the limit of one-third is not prescribed by the Koran, there are indications in the Koran that a Mohammedan may not so dispose of his property by will as to leave the heirs destitute."

So, strictly speaking, that one-third, if he likes to will away one-third, is not the Koranic law. It is a law derived from the Hadith, from tradition. Do you agree with that? — Oh, yes.

229. So your earlier statement that it is a Koranic law is not correct? — I said Koranic heirs. We were talking of Koranic heirs.

*Chairman*] I think we have used the expression "Koranic law" really to mean the Law of Islam, which is what we are concerned with now.

*Mr. J. M. Jumabhoy*

230. As a Muslim, I would have separated the two expressions, as I thought Mr. Mallal would? - We know in the Koran there are certain things which are said and other things which are not said. Then afterwards we had our great law-givers, the four Imams, who worked out the laws of inheritance and other laws based on what was said by Mohammed. They still are Muslim laws.

*Chairman*

231. Can I then summarise your last bit of evidence, Mr. Mallal? Is it your opinion then that the State should intervene wherever the Law of Islam works harshly against an individual, and it is a question of opinion as to what is or is not harsh? - That is so.

*Mr. J. M. Jumabhoy*

232. Coming to another part of the Koranic law-or, if Mr. Mallal wishes to differentiate the Law of Islam from the Koranic law (he is welcome to it), the law that says that you cannot leave your property to a non-Muslim wife and her descendants: Is the law expressly stated in the Koran? — I do not think the Koran says so, but that is the Muslim law; and under Shafei law you definitely cannot leave any property to a non-Muslim. There was a case on this point in Pahang in 1941 and the

court's decision that a non-Muslim could not inherit. But in India, by an Act passed in 1850, the position has been changed, and since the passing of that Act, a Muslim can leave one-third to a non-Muslim, and a non-Muslim heir can inherit.

233. Would Mr. Mallal agree with me if I said that, as the law stands at present in the case of intestacy, there is a proviso which says that a descendant who is a non-Muslim can share in the distribution of the property? — A non-Muslim can.

234. Would Mr. Mallal say then that it is not against Koranic law but rather against the law as enunciated by the Imams? - Yes, it is not Koranic law, but it is one of the principles of the Law of Islam.

235. So that this proviso will not go against the Koran? - Presumably no.

*Chairman*

236. I wish to get that quite clear. It is a point. This principle then, that a Muslim cannot will away more than one-third of his property, has no sanction in the Koran? - No.

237. There is nothing in the Koran, so that to say that it is against the principles of the Koran is not quite correct. It is against the principles of the Law of Islam? - Yes.

*Mr. J. M. Jumabhoy*

238. Mr. Mallal said that there is sanction for a Muslim to marry a woman who is not a Muslim, provided she is one of the followers of the Book. If that sanction is there, does it not follow that such a wife and her descendants could also participate in the inheritance? — No. In India the courts have ruled that they cannot inherit, that is to say, prior to the Act of 1850.

239. Is there anything in the Koran which expressly states that you may marry a woman who is not a Muslim and also not a follower of the Book, but that you shall not distribute to her your property on your death? - The Koran says that it has made laws for

those women who follow the revealed Book. I think that is the answer. It does not go further and say that if you have children by such women they will not inherit.

240. The Koran does not say that they will not inherit? - No.

*Chairman*

241. Neither does it say that the wives themselves should not inherit? — It does not say so.

242. That is a practice which evolved in later years? - Yes.

*Mr. J. M. Jumabhoy*

243. Does the Koran say who and who should inherit? - Yes.

244. Can Mr. Mallal tell us who and who should inherit? — It tells you there who can inherit. The father and the mother, I think, inherit one-sixth each, and the wife one-eighth, and then you have what are called the "sharers" - sisters and brothers. They will get so much. Then we come to the table of, residuaries, and they may take so much. It is all written in the Koran.

*Chairman*

245. I think the question really is: Does the Koran specify that the wife must be a Muslim? - No, it does not.

246. The practice of the wife having to be a Muslim grew up through the ages? - Yes. After all, we Muslims follow the Imams. If you read Nawawi, he tells you what Shafei law is, and that is the law binding on all Shafeis.

247. So that if the State legislates that a wife, as a wife, should inherit, that does not really offend the Koranic law, but it might offend the Law of Islam? - That is so.

*Mr. J. M. Jumabhoy*] And the same thing would apply to her children.

*Chairman*] Yes.

*Mr. J. M. Jumabhoy*

248. We come to the next point. Is it expressly forbidden in the Koran that a non-Muslim shall not inherit or participate in any inheritance? - So far as I know, the Koran does not say so.

249. Mr. Mallal made a statement earlier, Sir, that the Law of Islam does not allow non-Muslim women to participate in any inheritance, or something to that effect. Could he give us the basis of that statement? - Yes, it is based on the teachings of the Imams, and is the Muslim law.

250. Would Mr. Mallal admit that the laws as laid down in the Hadith and in other books have been subject to different interpretations at different times, and that even in India they have been the subject of court cases where interpretations have been rather obscure, and that is one of the reasons why you find many Muslims, though they may have come from the same division, have different beliefs in certain matters? - I think that every aspect of the laws of Islam has been considered by the courts, and there is no longer diversity of opinion.

251. I believe what Mr. Mallal has in mind is that what is completely settled is in India. There is case law in Arabia to establish that? - No. In Arabia apparently they still rely on old texts by Muslim Jurists.

252. Coming to another subject, Sir. The petition which Mr. Mallal has kindly forwarded to this Committee, the third paragraph of which starts off with a quotation evidently taken from the Koran: "Let there be no compulsion in religion." Could Mr. Mallal give us the meaning of this principle? - I remember having come across this quotation-by the way, this perhaps was not drafted by me, it was shown to me. But I do not think the quotation has a bearing on a matter like the present.

*Mr. J. M. Jumabhoy*] I submit, Sir, that the proper construction of these words "Let there be no compulsion in religion" is that a man should not be

forced to accept any particular religion. In other words, do not spread Islam by the sword, or something to that effect. But it does not mean that there is to be no compulsion in the observance of a particular tenet of a religion if a man has embraced that religion.

*Chairman*

253. That is debatable. Unless Mr. Malta] wishes to enter into a debate? - No.

*Mr. J. M. Jumabhoy*] The reason why I make this point, Sir, is because the petition seeks to justify its arguments on certain points, and one of the points is this "Let there be no compulsion in religion".

*Chairman*] That is a matter for argument, of course.

*Mr. J. M. Jumabhoy*] Then we come, Sir, to the next point, which is on page 2 of the petition, the paragraph which reads:

"At present any Muslim can leave a Will with directions that his property be administered according to Muslim Law. There is, therefore, no prohibition against any Muslim leaving his property for distribution according to Muslim Law. That is as it should be. We have complete freedom in the matter. But, we object to being compelled to leave our estates for distribution according to Muslim Law."

When a man embraces the religion of Islam, he has to take sides. He has to announce that he believes in one God, and that Mohammed is His Prophet. He has already agreed to accept the law as laid down in the Koran. Will it be called compulsion then if a man is asked to observe the Koranic law?

*Chairman*] Can I just interrupt? Is the Minister making a distinction between the Koranic law and the Law of Islam, as he did earlier on?

*Mr. J. M. Jumabhoy*

254. No, Sir. I will say Muslim law then? - I am not versed in theology, and I think this matter should be referred to one of the Kathis and not to me.

255. We come to the last paragraph of the petition where it says:

"These laws as to Wakaffs and Shufaa are in force so as to lessen the harshness of Muslim Laws of Inheritance and Succession ...".

Coming to the law of Shufaa, would Mr. Mallal explain first how it would lessen the harshness of the Muslim laws of inheritance? - When a man dies and he leaves property, his heirs are usually tenants in common of the property. Let us say that he has left four houses. One son will take one house; another will take another house, and so on. Then one beneficiary, let us say "A", suddenly decides that he is going to sell that particular house to an outsider, and he goes and sells it to an outsider. As soon as he has sold it, the other heirs can go to the buyer and say, "Look, you have paid \$10,000 for that house. Right, here is \$10,000. Please transfer it back to us." And the buyer does so. The heirs take the property back. Or supposing there is a business left to the heirs. Suddenly one of them decides he does not want to carry on the business and he wants to get out. He sells his share to an outsider. But the other heirs want to keep the business in the family. So they go to the buyer, refund him what he has paid out, and get the share back. That is recognised by Muslim law and by the laws of India and Pakistan.

256. This law of Shufaa has been referred to as pre-emption, Sir. If one of the heirs sells his property to a third party at a fair market price, the law of Shufaa lessens the harshness in that it compels the purchaser to sell it back to the other heirs at the same price. But there is nothing, to prevent one of the heirs from selling his property at a fictitiously high price or even at a fictitious price which would then force the other heirs to buy it back at that fictitious price. So I do not see how the harshness is lessened - The matter usually goes to court and there is quite a lot of litigation on this point. The court will have to find out what the real price ought to be and, after that, it will say to those heirs who want to buy the property back, "Instead of paying



\$100,000 for it, you need only pay \$10,000." That leaves you with quite a lot of leeway.

*Chairman*] We are now talking about "good" Muslims as against "bad" Muslims.

*Mr. J. M. Jumabhoy*

257. No. The argument put up here is that, because there is no law of Shufaa here, there is nothing to take away the harshness of the Muslim law. My submission is that that argument is not water-tight. It would apply to a number of cases possibly, but not in all cases? - But in all Muslim countries, or in countries where Muslim law is recognised, you always have these laws, that is, the law of pre-emption and the laws of Wakaff.

258. Is there in the Shufaa law any injunction or compulsion that an heir should sell his property only at the market value to a third party? - No, I do not think there is.

*Mr. Goode*

259. I am mainly concerned with trying to discover what would be the effect of the legislation on dependants. The present law provides that where a man dies intestate, the estate shall be distributed according to the Law of Islam, with the proviso that non-Muslims can take their share. That ensures that if a person is a non-Muslim dependant in the ordinary sense of the word, not, in the Koranic sense, the next-of-kin necessarily, that dependant gets a share. I would like to ask the witnesses who have come before us how far the Law of Islam will allow a non-Muslim to share. We have had conflicting reports. Would Mr. Mallal agree that when you pose particular questions, the answer may be dependent to some extent on the school of Islam to which you belong? - On that point, Sir, all schools of thought are unanimous that a non-Muslim cannot inherit any part of the estate of a Muslim.

260. So that if previous persons giving evidence told us that they found circumstances in which a non-Muslim could

share in an intestate estate and if they said that a Muslim could will one-third of his property to a non-Muslim, they were misdirecting us? - They definitely were.

261. If we provide in the law both for testacy and intestacy that the Law of Islam must apply, will that mean that hardship will be caused to a non-Muslim and the relatives? - Yes, that is my opinion.

262. If, on the other hand, we put a proviso in it, that the Law of Islam, would apply provided that a non-Muslim may share as if he were a Muslim: how far shall we be running counter to the Law of Islam? - You are going against the Law of Islam except that in certain countries, for example, India, they have passed a law which says non-Muslims can inherit.

263. So then other countries, to meet this problem, have in fact legislated limiting the application of the Law of Islam? - That is so.

264. They have done so in Pakistan? - Yes, because the same Indian Act applies, Act 21 of 1850.

*Mr. R. Jumabhoy*] Muslim jurists have laid down Muslim law which is practised in the States within the British Commonwealth. What I mean to ask is: Is it only Muslim jurists who can change the law if they want to change it at all?

*Chairman*

265. The question boils down to this: The hon. Member points out that the law, as laid down, is the result of Muslim jurists getting together and declaring the law as enunciated in the Koran and also in the Hadith? - No Sir, it is not so. The jurists have merely tried to interpret what is stated in the Koran and in the Hadith, and that is what is called the Muslim law. The jurists cannot make Muslim laws or change them.

266. The Hon. Member wishes to know whether it is not then correct to say that it is only the jurists who could

make any alteration in the Law of Islam? — The jurists cannot change laws or anything else. They merely interpret the law.

*Mr. R. Jumabhoy*

267. Who can then change the laws that are already laid down? - The State.

268. A Muslim State? - Any State can change its law.

*Mr. Goode*

269. They have done so? - Yes, they have done so.

*Mr. J. M. Jumabhoy*

270. Muslim States have done so? - Yes. As I have said, the Muslim laws of partnership have been scrapped, and also the laws of evidence. As regards the laws of evidence, only certain people can give evidence in the Muslim courts, and a man who gives evidence must be of irreproachable character. That is important. If you do not have an irreproachable character, and even if you are one of the parties concerned, you cannot give evidence. To prove that you have an irreproachable character, you have to show that you do not indulge in bad habits. You should never be seen, for example, walking about bareheaded. You should never have been caught listening to certain kinds of musical instruments and that sort of thing. All that goes against you. If you have committed an offence, then you are not a man of irreproachable character and your evidence will not be accepted.

*Chairman*

271. At any rate, the answer is that the State is the authority to make any alteration to the Law of Islam? - Yes.

*Mr. R. Jumabhoy*

272. But Her Majesty the Queen has already given freedom of religion, and so the State cannot interfere in religion. Is that not correct? - I do not know. Is the State really trying to interfere in the practice of your religion?

273. By changing something which is not Islamic? - I am afraid I do not catch the meaning.

274. British subjects have been given freedom of-religion, and the State will not interfere in religious matters. If it does so by changing something of a religious aspect, that will be going against freedom of religion? - That is so. yes. The proposal to insert the particular clause is, in fact, an interference with the right of people who follow the Muslim religion.

*Chairman*] The answer then is that if the hon. Member is correct, this clause should never be inserted.

*Mr. J. M. Jumabhoy*

275. Will Mr. Mallal call it interference by the State if it tries to make him do certain things which are in accordance with his religion? — Definitely. I always consider that a grave interference and I will certainly object.

276. In India, as I understand the position, they have imposed a law which makes Personal Law applicable to people in cases where there is no provision in the civil law? - No, that is not so. In every Indian province, there is some such provision as is referred to in my letter to you of the 28th of February, 1956\*. It reads:

"In questions regarding *Succession* special property of families, betrothal, marriage, divorce, adoption, guardianship, minority, bastardy, family relations, *Wills, Legacies, gifts, partition* or any religious usage or institution, the rule of decision shall be the Mohammedan law in cases where the parties are Mohammedans, except in so far as such Law has been altered or abolished by legislative enactment . . . or has been modified by any such customs as is above referred to."

Only in those cases will the Muslim law apply.

*Chairman*

277. Your next paragraph is relevant too? — Yes. It says there:

"In other words, in India and Pakistan a Muslim is not prohibited from disposing of his property by Will in any manner he thinks fit, but if the Will is contested, the Courts

apply the Muslim law and declare the same invalid in so far as the testator disposed of more than two-thirds of his estate."

*Mr. J. M. Jumabhoy*

278. In India, under the provisions of the Indian Succession Act, the Muslims are excluded from the operation of certain parts of the Act. So that it is possible for a Muslim to go and contest in court, in which case the Court will apply Mohammedan law where both parties are Muslims. In Singapore, Sir, the Wills Ordinance does not exempt Muslims from the operation of the Ordinance, so that, as the law stands in Singapore, a Muslim can make a will which is not valid according to the Law of Islam, and that will will be held good because Muslims are not exempted? - That is so, yes.

*Mr. J. M. Jumabhoy*] So therefore the need is felt to have express legislation instead of taking a roundabout course and exempting Muslims from the operation of the Wills Ordinance and then letting them go to court and establish case law. Here it is a simpler matter to incorporate that clause and make express provision in the law. But as to the outcome of the practical effects of inserting clause 47 or of exempting Muslims from the Wills Ordinance and then establishing case law. I see no difference. I am not a lawyer.

*Chairman*

279. I do not know whether Mr. Mallal wishes to comment on that? — I am afraid that if that clause is inserted, it is going to be the cause of endless litigation.

*Mr. Butterfield*

280. The clause to which Mr. Mallal is referring is that Muslims shall observe the Law of Islam in the distribution of estates? - I am referring to the old clause 47:

"Notwithstanding anything contained in any written law of the Colony of Singapore the provisions of the law of Islam shall be applicable in the case of any Muslim person dying testate on and after the appointed day."

As it stands, a minor can make a will under Islamic law. It need not be in writing and it can lead to all sorts of trouble and litigation.

*Mr. J. M. Jumabhoy*

281. Mr. Mallal calls it interference with a person's right if such a proviso is included in the law here. Would Mr. Mallal consider the proviso to clause 41, which says-

"Provided that any of the next-of-kin who is not a Muslim shall be entitled to share in the distribution as though he were a Muslim", also an interference with the right of a person to observe his religious precepts? - No. The man has died. He did not take the trouble to dispose of his property by will. After his death, the State takes charge. We are now talking of the acts of an individual, the acts that he does before he dies. For instance, take myself. I want to leave a will and I want to have complete freedom to will my property to anyone I like. But if I die before this is done, then it is up to the Government to regulate the succession to my property.

*Mr. J. M. Jumabhoy*] Would it not interfere with the interests of the Muslim heirs of a Muslim who has died to share part of his property with the non-Muslim wife of this person?

*Chairman*

282. I think we are getting complicated. I think probably the position is that it will interfere with some precept of the Law of Islam, but if there is hardship on individuals, Mr. Mallal thinks the State should intervene. Is that correct? - Yes.

283. If there is no other question on that aspect, gentlemen, we will turn to Mr. Atkinson. Mr. Atkinson, you did state that the civil power should not force or coerce a person to do something which he does not want to do. You continued, "It is shocking for the civil power to be asked to do so." Now, is that remark confined to the subject which we are discussing, that is, the precepts of the Law of Islam and

freedom of disposal of property, or is it meant to apply to all manner of legislation? — (*Mr. Atkinson*) It applies only to religious observances. I thought I made it plain. Naturally every kind of legislation will interfere with somebody's desires.

284. All that the Islamic community of Singapore appears to be asking the State to do is to write into the Ordinance a tenet of the Islamic faith. Now, is there any difference between that and the relevant section in the Christian Marriage Ordinance which imports the teachings of the Christian religion as regards the prohibited degrees of consanguinity and affinity in the case of marriage? — I disagree with the first part of your statement where you say that all that the civil power is asked to do is to write into the Civil Code one of the tenets of Islam. As I tried to point out at the beginning of my statement yesterday, what we are being asked to do is to force somebody, who does not want to follow the tenets of Islam, to do it, whether he wants to or not. As regards the second part of your question, there is a great difference between that and the Christian Marriage Ordinance. The Christian Marriage Ordinance is in a rather peculiar position because really it is, as it were, part of the common law of England and in England, in the days gone by (it being a Christian country), there was a mixture of what I might call civil law and religious law welded together to form the common law. But in our own time the conception is very much different indeed, and the provisions which the Bible lays down and which are incorporated in the Christian Marriage Ordinance have now been to a large extent adopted by the State in the secular field as a matter of public policy. In other words, it has come to be regarded during later years as being a good thing to enforce those precepts, not because they happened to be part of the Christian religion, but because it was thought to be a good thing for the community, and so they have been brought in. For example, the Civil Marriage Ordinance,

where you have the same prohibited degrees in regard to marriage, does not have any religious significance whatsoever.

285. It is now sociological, in other words? - Yes, it is an anomaly I admit because, originally, the Christian law became part of the common law of England, when it was a Christian country; but now I think that conception of things is very much different.

*Inche Abdul Hamid bin Haji Jumat*

286. Is it a fact that you have practised in the Federation? - Yes, I have practised in the Federation. In fact, I am a member of the Bar Council there.

287. Clause 47 of the old Muslims Bill is part and parcel of the Muslim laws of some of the States in the Federation of Malaya? — Yes, that is true. To some extent it might not be part of the written law, but certainly it is part of the law which has been laid down by the courts in such States, for example, in Johore: but the answer to that is that the religion of Islam is part of the constitution of the law. It has been laid down in the High Court, and I think the same was followed in the old Federated Malay States Ordinance. But here the religion of Islam has never been a part of our constitution.

Chairman

288. In fact, we have been told that there is no State religion? - I should imagine no. (*Mr. Mallal*) Actually the position is this. In no Muslim State in the Federation is there anything mentioned as to how a man's property is going to be distributed or whether he can make a will or cannot make a will. The Wills Ordinance of the Federation merely says the Ordinance shall not apply to Muslims. Then they have the Distribution of Estates Ordinance which says that the Ordinance shall not apply to Muslims. The State religion is the Muslim religion and therefore there is no such section written into any Ordinance.

*Mr. Butterfield*

289. I would like to ask Mr. Atkinson one- or two questions, Sir. On the basis that some provision of the kind to which he objects may be included in this Bill, I should like to have some assistance from him. I would like to know whether or not he agrees that, in the event of any amendment being made to this Bill in effect enforcing the observance of the Law of Islam by persons who wish to make wills, first of all, that we should legislate only in respect of persons domiciled in Singapore? — (*Mr. Atkinson*) I agree that would certainly lessen the hardship, but, of course, the usual rule in these cases is that you apply the local law, firstly in respect of all the movable property (wherever situated) of a person domiciled in the colony, and, secondly, in respect of all immovable property situate in the colony irrespective of where the owner happens to be domiciled on the day of his death.

290. Mr. Atkinson does agree then? - In the case of movable property, yes, but I am doubtful in the case of immovable property.

291. Mr. Atkinson would take the view that, in the event of legislation which may be introduced, it must be restricted to property situate within the jurisdiction, whether movable or not? — (*Mr. Mallal*) No, Sir. First of all, if a man is domiciled in Singapore, then the local laws apply, whether he has movable or immovable property in Singapore. But if a man is domiciled elsewhere, then his movable property here in Singapore will be distributable according to the laws of his domicile, but his immovable property will be distributable according to the laws of Singapore. Recently in the State of Johore the Courts have held that the will of a Mohammedan domiciled in Singapore but leaving property, movable and immovable, in the State of Johore was good so far as his movable property in the State was concerned, but bad so far as the immovable property of the deceased in Johore was concerned.

292. Am I right in understanding that it is the view of both Mr. Atkinson and Mr. Mallal that, in the event of legislation of this kind being introduced; it should relate only to Muslims domiciled in the colony in respect of property, whether movable or not, in the colony? - Yes.

293. You agree with that? — (*Mr. Atkinson*) I should be happy to see that done because I think it would be restricting the harshness of the law. However, it would be a most unusual law because, in the case of a person dying and leaving immovable property in the colony, the first reference that would be made would be to the laws of the colony. It seems rather odd that a Mohammedan, who has left immovable property in the colony, should be free to make a will if he was lucky enough not to be domiciled here. It does not seem logical, but I should be happy to see that done because there would be some lessening of the rigours of the Ordinance. (*Mr. Mallal*) There appears to be some misunderstanding.

294. I was talking about the testamentary capacity by reference to the Law of Islam? - Definitely no. (*Mr. Atkinson*) We both agree on that.

295. So, if then the legislation were to be unrestricted, that is, related to Muslims whether domiciled or not, do you take the view that it would have a very far-reaching effect which it would be impossible for us to foresee, in the sense that it would cover wills in respect of immovable property situate within the colony? — (*Mr. Mallal*) Yes.

296. Assuming that the validity of the wills is to be tested by reference to the new legislation, should it be restricted in its effect in relation only to wills executed after the date of the coming into force of the proposed legislation? - Yes, I think it should be so. A number of people have made wills and disposed of their properties. They have worked hard and have retired and it would be unfair on them suddenly to find one day that their wills are no good at all.

*Chairman*

297. Is not the answer that they should change their wills before they die? — I used the word "retired". They have left the country on retirement.

*Mr. Butterfield*

298. Would it be possible that it might affect the will-makers in that, although they are alive, they might not however be aware of the new legislation or might have lost their testamentary capacity owing to old age, infirmity and so on? — That is why I used the word "retired". It would not be fair to these people.

*Mr. Goode*

299. If a man has retired, presumably he would have likely acquired a new domicile. But if we worded the law to apply only to testators domiciled here and their property situated here, then these people would not, in fact, be affected? — But what about their immovable property, Sir?

300. Not if we provide that the law should apply only in the case of domiciled estate property, in which case we would exclude a will made by a person resident in India in respect of his property in Singapore? — Yes, but it would be most unusual.

301. You cannot agree that it might be advantageous in doing that; otherwise if we alter the law respecting the disposition of property in Singapore, that will affect the capacity to will property by persons who may be domiciled all over the world? — Yes.

302. And unless they happen to be in touch with their lawyers or agents, they may not know about it till such time as their heirs attempt to prove the wills in Singapore? — Yes.

*Mr. Butterfield*

303. I take it that Mr. Atkinson and Mr. Mallal see nothing objectionable in principle to legislation drafted in that way, restricting it to persons domiciled here and in respect only of property

situate here, whether movable or not? — We have no objection in principle.

*Mr. J. M. Jumabhoy*] On the question of domicile, Sir. I think it would be very difficult to prove the domicile of many Indians here because they have property and houses here and they have probably married here. On the other hand, they maintain another establishment in India. So if you base your law on the basis of the domicile of the person, you will find that you will be getting into a mess later on to prove the question of domicile. I would support Mr. Mallal in saying that the law should not be based on domicile but should provide for where the property is situate. If it is situated here, then the law should apply.

*Chairman*

304. The question is really whether or not you agree that, if you base your legislation on the question of domicile, you will be faced with a number of difficulties? — I think there have been cases of domicile before the courts and somehow or other the courts have always come to the right conclusion. It is true that a number of Indian-born citizens of the United Kingdom and the Colonies have, I think, Indian passports. I do not know how they have managed it, but there it is. Where they would be considered as domiciled, I would not know.

*Mr. Butterfield*

305. I have asked a question with regard to the effective date of the coming into force of this kind of legislation, and I think Mr. Mallal took the view that it should only relate to wills executed after that date? — Yes.

*Mr. J. M. Jumabhoy*

306. Mr. Atkinson mentioned yesterday that all communities should have the right to apply their own law if they want to, but they should not be coerced by provision in the civil law in this fashion and he said this is the only case in which coercion is going to be applied. I hope he agrees now that such coercion is being applied in the case of bigamous marriages of Christians in that the civil

law does prohibit a Christian from contracting a bigamous marriage? — (Mr. Atkinson) As I made it clear at the very beginning, I think this is a very anomalous question because really, although it is part of the Christian law, it is also part of the common law of England. It is very difficult in this so-called enlightened age to say whether it is being enforced as part of the Christian law or part of the immemorial common law of England. I think the answer now really must be the latter because it has been adopted by the State as the civil law.

307. Other religious laws could be adopted by the State as secular laws. Could that be called coercion? I submit that it depends on the viewpoint of the person concerned. One person may think it is coercion. Another may not? — The test, I submit, is the viewpoint of the testator, the man who wants to make a will.

308. Would Mr. Atkinson then say that you are taking away the right of a person to dispose of his property as he pleases if that clause is put in? — Yes, in this country that is undoubtedly a correct proposition of law. In this country all persons of what we regard as full capacity have had the full right to make wills of their property ever since the time of the first Charters of Justice beginning in 1807.

309. The question of individual rights. Would Mr. Atkinson then draw the same parallel in the case of Christians that, by providing in the civil law that they should not contract a bigamous marriage, you are taking away their individual rights to marry a second wife? — (Mr. Mallal) A Christian has no individual right to have more than one wife.

*Chairman*] I think Mr. Atkinson's answer was that that precept or that teaching has now become part of the secular law. It applies not only to Christians but also to other people who do not profess religions which allow polygamy.

*Mr. J. M. Jumabhoy*

310. It does not apply to others? — (Mr. Atkinson) If the secular government of this country decided that it was a good thing to allow polygamy for all persons, the Bar Committee would be the last persons to suggest that you should retain punishment for bigamy in a Christian marriage. We would not agree with that.

311. Supposing there was no civil law prohibiting bigamy, what would be the right of the Christian individually? — That would be a matter between a Christian and his Creator, whether he decided to follow the religious law or not. It would not be a matter which the secular government should interfere with at all.

312. Would I be correct in putting it this way? Has a Christian the right to follow his religion? — It should be the right of a Christian individual either to follow it or not so far as the civil law is concerned. In the last century a Judge remarked that you could not make a Christian by an Act of Parliament and I think the same applies to a Hindu or a Muslim.

313. That is done now by an Act of the State. Christians are forced not to contract more than one marriage. Coming to the next point: Mr. Atkinson also said that if someone is cut off from a will, he can go to the court and let the judge decide. But according to how the law stands at present, if someone is cut off who is eligible according to Muslim law, he cannot get redress in the court because the court will apply the law which does not include the provisions of clause 47, and the provisions of the Wills Ordinance will be binding on the will. How would Mr. Atkinson envisage him to go to court and get redress? — I think the Hon. Member has misunderstood me somewhat. What I was suggesting was that this Committee might consider passing a law, which does not now exist, a law similar to the English Inheritance Act of 1938, which gives all dependants,

irrespective of race, creed or colour, the right to petition the court and complain that they have not been adequately provided for in the will of the testator. (*Mr. Mallal*) In those cases where they are unable to support themselves.

*Mr. Butterfield*

314. I take it that the Bar Committee would give their full support to legislation of that kind modelled on the Inheritance Act of the United Kingdom which allows all dependants to take steps to see that they are provided for? — (*Mr. Atkinson*) Yes, I think that could be assumed. I must add that this has not yet been referred to the Committee but from conversations which I have had with Members of the Bar Committee, I think that would be so. (*Mr. Mallal*) I referred to that in one of my letters.

*Mr. J. M. Jumabhoy*

315. Such a law would probably ensure that an heir, who is cut off, is not left penniless but it could not ensure that an heir could get his rightful share, according to the religion that was followed by the deceased and by the heir concerned? — (*Mr. Atkinson*) I can see no reason why the law which you may pass on the subject in this country should not provide that the judge should have regard to the religion practised by the man who has died as one of the factors to be taken into consideration. I think that would be a very appropriate thing for the law to do.

316. Then I see no difference if you include clause 47 and let the judge decide on Muslim law. That is the way it is done now? — The answer to that is that you are presupposing the judge, in every case, is going to give that heir his Koranic share. There might be some reasons which impel the judge to think otherwise.

317. The point might come up that the judge might or might not give the heir his rights under Muslim law if he goes to court? — Yes. One of the things that the court is allowed to consider in England under the 1938 Inheritance Act — and I think it is

a thing which most people will agree is very relevant — is, for example, the behaviour of the child towards the deceased in the latter's lifetime. Take an extreme example. One of the children misbehaved very badly. He attacked the father or wounded him or something of that nature. That is a thing which the judge will take into consideration when it comes to his seeing what sort of provision the father has made for this child in his will. Or alternatively, of course, if the son turns out to be extremely wealthy and the father decides that he does not need so much assistance as some of the other children, then that would be another point which the court will take into consideration.

*Mr. Butterfield*

318. Then Mr. Atkinson and Mr. Mallal might agree that any legislation which affects the testamentary capacity of anybody regardless of his domicile would be a very much graver step to take than legislation which purports to affect the testamentary capacity of a person domiciled here? — That is so

319. It would be a very serious matter for the Legislature of Singapore to alter radically the rights of persons who have not been domiciled here in respect of property? — I agree.

320. I take it that you would agree that it is of the greatest importance to preserve the application of the Wills Ordinance? — Yes. (*Mr. Mallal*) It is absolutely necessary, otherwise there would be chaos. (*Mr. Atkinson*) I was just going to add one more comment to what the Attorney-General has already said on the Wills Ordinance. If we are to have compulsory application of the Law of Islam with regard to Muslim property within the colony, I am very doubtful indeed of the feasibility of maintaining the ordinary rules of construction in regard to devises, etc., contained in wills so far as the "one-third" part of the estate is concerned. My experience in dealing with hundreds of Arab wills over the last 11 years has been that the devises which are good, on



matters such as charities, according to Mohammedan law, are almost invariably bad according to the laws of this colony.

*Mr. Goode*

321. What then would you recommend? — If indeed one has to go to these extreme lengths, I think the only logical thing would be to say that the entire construction of the will and all questions concerned with it will have to be decided by the Muslim law.

322. Rather than have a difficult situation arising? — Yes, but then that would lead to a difficult situation. There are so many complications. We would have to recognise perpetual wakaffs and the like. As a lawyer, I am, quite frankly, afraid of the consequences.

*Mr. Butterfield*

323. Have you any idea of how to deal with this problem effectively? — I do, indeed. (*Mr. Mallal*) Introduce two systems of law?

324. That would lead to a great deal of litigation? - Yes.

325. At the expense of the heirs of the deceased? — Yes.

*Chairman*) There is one other point which Mr. Mallal made. I do not know whether any Member would like to ask questions about it, and that is the fear that if this clause is, in fact, inserted, there will be a delay in the passing of this Bill which primarily has been drafted to provide for a Shariah Court.

*Mr. Goode*] I think we can deal with that.

*Chairman*] You not wish to ask questions on that?

*Mr. Goode*] We are aware of that, Sir. I think we can make a simple provision to provide for that.

*Chairman*] Has any Member any other questions?

*Mr. Goode*

326. As with so many things connected with the Law of Islam, it is very difficult to get a categorical answer to a question, and if you do get a categorical answer, usually another expert will give you a contrary one. Would it be possible to determine from these two witnesses, Sir, how to spell "Fayzee"? There seem to be two alternative spellings—one is "Fayzee" and the other is "Fyzee"? — You are probably referring to Fyzee's book. He himself has spelt his name as "Fyzee".

327. In which case we will adopt that same spelling. "Fyzee" would be the better spelling? — That is how it is spelt.

328. So you would accept "Fyzee"? - Yes.

329. There is a similar small point. Mr. Mallal in one of his representations referred to another authority by the name of "Tyabjii", and I am a little uncertain as to whether there are two "i's" or one "i"? — It is "Tyabji".

*Chairman*] We must thank the two gentlemen very much indeed for coming, not only yesterday, but also today. They have been of great assistance.

*The witnesses withdrew.*

## **APPENDIX V**

## MINUTES OF EVIDENCE

TUESDAY, 20TH MARCH, 1956

PRESENT:

MR. SPEAKER (*in the Chair*)

The Hon. Inche Abdul Hamid bin Haji Jumat. Inche Ahmad bin Ibrahim. The Hon. Mr. C. H. Butterfield, Q.C.	Mr. Goh Chew Chua. The Hon. Mr. W. A. C. Goode. C.M.G. The Hon. Mr. J. M. Jumabhoy. Mr. R. Jumabhoy, C.B.E., M.C.H., J.P.
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Enche Haji Jubir bin Haji Mohamed attended and was examined.  
 (*At the Chairman's request. Inche Abdul Humid bin Haji Jumat agreed to assist in interpretation.*)

20 MARCH 1956

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*Chairman*

1. What is your name, please? —  
 Haji Jubir bin Haji Mohamed.

2. How many Kathis do you represent? - Eleven.

3. On their behalf, you want to make certain representations in respect of the Muslims Bill? - Yes.

4. On what clause would you like to speak first? - On clause 7 which deals with the question of *wali*.

5. What would you like to say on that? - According to the Bill, only the Chief Kathi is allowed to perform or solemnize a marriage where there is no *wali*. According to Muslim law, the Kathi has the right to perform such marriages, that is to say, where the bride has not got the *wali* or the parent or the male next-of-kin.

6. Is that all you wish to say on this clause 7? — That is all.

7. So you wish that all Kathis, including the Chief Kathi, should have similar powers in respect of marriages without a *wali*? — Yes.

*Mr. R. Jumabhoy*

8. The second sentence of clause 7 (1) reads:

"Where there is a *wali* present it shall be lawful for such *wali* to solemnize marriage."

What I want to ask, Sir, is this, that even if a *wali* is present, the marriage is

always solemnized by the Kathi. The *wali* is there only to give the consent or behalf of the bride. Is it correct? — That is quite correct.

9. So a *wali* is present only to give consent on behalf of the bride but the marriage is always solemnized by a Kathi? - That is correct. According to clause 7 (1), it says that, if a *wali* is present, he has a right to solemnize a marriage.

10. In other words, the Kathis are not allowed to solemnize such marriages. Is that correct? - That is correct. According to the law of Islam, a Kathi is essential to the extent that he only registers the marriage and where he is asked to solemnize a marriage, he does it.

*Chairman*

11. But that does not prevent *wali* from solemnizing a marriage? - No.

*Mr. R. Jumabhoy*] I have attended several Muslim marriages and the procedure is this. I would like to explain this to you, Sir. There is always the necessity for a Muslim girl to have her *wali* present who appears on her behalf before the Kathi performing the marriage. The Kathi asks the *wali* to go and enquire from the girl whether she is willing to get married to so and so. He returns with the consent of the girl if she replies in the affirmative and then

only the Kathi solemnizes the marriage. That is the general custom. The *wali* never performs the marriage.

*Chairman*

12. There are several questions on that. The first question is, is it correct to say that if a *wali* is present, he is present on behalf of the girl? — That is correct.

13. Then is it also true to say that he goes to the girl, finds out whether she is willing to get married and be come back and informs the Kathi accordingly? — That is quite correct.

14. Then having obtained that information, it is the Kathi who performs the ceremony of marriage? — Yes.

15. In a case like that, the wall himself does not solemnize the marriage? — He authorises the Kathi to perform the marriage.

16. So in a case like that, it is the wall who authorises the Kathi to solemnize the marriage, but if a Kathi is not present, it is the wall who solemnizes the marriage? — He is not allowed when a Kathi is present.

17. Yes, when a Kathi is present, but when a Kathi is not present? — In a situation like that, a wali is absolutely essential.

18. In a situation where there is a Kathi? — A wali goes and asks the permission of the girl.

19. I think what is worrying Mr. R. Jumabhoy is, when does a wali himself solemnize a marriage? — It is only in an emergency case where a wall can perform the marriage ceremony.

20. So in a country like Singapore where there are Kathis, can wall, in your opinion, solemnize a valid marriage without reference to a Kathi? — That is so.

*Mr. R. Jumabhoy* Sir, it is correct to say that generally a wali is a father or a brother or an uncle of the bride. Does he ever perform or solemnize a marriage? It is not to my knowledge as far as I know.

*Chairman*

21. In your experience, is it true to say that a wali is generally a father, or a brother, or an uncle? — In order of preference, the father comes first. Then the grandfather, the brothers, and the uncles go in that order.

22. In your experience, has any of these walis ever solemnized a marriage without a Kathi? — In Singapore, I have never experienced that.

23. How long have you practised as a Kathi in Singapore? — Sixteen years.

24. Have you had information of a wall solemnizing a marriage in another country without the intervention of a Kathi? — No, Sir.

*Mr. R. Jumabhoy* If that is so that in the Haji's own experience of what he has heard and seen anywhere else, a wali cannot perform a marriage, then the provision for a wali to perform a marriage should be taken off.

*Chairman* We will come to that when we come to dealing with the Bill clause by clause. Amendments can then be considered.

*Mr. J. M. Jumabhoy*

25. I have a straightforward question on the same clause. Is it lawful according to the law of Islam for a wall to perform or to solemnize a marriage without a Kathi? — It is lawful, Sir.

*Chairman* The evidence seems to be that the practice in Singapore is that it never happens but it is quite lawful for a wall to solemnize a marriage without the intervention of a Kathi.

*Mr. J. M. Jumabhoy*

26. Is it lawful according to the law of Islam that a wall can solemnize a marriage in the presence of a Kathi? — It can be done, Sir, but the Kathi who is present there will have to record on the register that he has allowed the marriage to take place.

27. Besides the *wali*, who are the others according to the law of Islam who are allowed to solemnize a marriage? — Apart from the *wali*, the grandfather, the father.

*Mr. J. M. Jumabhoy*] What about a Kathi?

*Chairman*] Can I get this correct? I thought the grandfather was also a *wali*.

*Mr. J. M. Jumabhoy*

28. I will change the question. Who according to the law of Islam can solemnize a marriage? - A *wali*.

*Chairman*

29. That is, a *wali* then, according to the law of Islam, is the only person who can solemnize a marriage?— Yes.

30. And the Kathi only acts as the wakil of the *wali*? - Yes

*Mr. R. Jumabhoy*] I have a question arising out of the situation where a *wali* wants to perform or solemnize a marriage without the presence of a Kathi. The intention of the Bill is to get marriages or divorces registered. Will that not lead to more trouble and disputes if there is no Kathi present when a *wali* performs a marriage?

*Chairman*

31. I think the question really boils down to this. Is it your opinion that it is always better to have a Kathi present at a marriage? - Yes.

*Mr. Goode*] I have no questions to ask. Sir. The point is that the witness I think has said that it is in accordance with the law of Islam for a *wali* to perform a marriage but that it is not customary here.

*Chairman*] I think that summarises the evidence on that point. That is on clause 7.

*Mr. R. Jumabhoy*

32. I have one more question if I may ask. Can a girl and a boy get married without the presence of a wakil or a *wali* to perform their own ceremony? - No, they cannot.

*Chairman*

33. The next clause, please? — On clause 32, I would like to make reference to the Malay translation of the words "divorce and recalcitrancy". The interpretation apparently in Malay which has been done in the Public Relations Office according to this clause is incorrect and should be "nusuz". It is only a matter of interpretation.

34. You are just worried about the Malay translation of divorce and recalcitrancy? - Yes.

35. That, of course, does not arise in this Committee. The next clause, please? - On clause 41 regarding intestacy I wish to refer to the proviso of this clause reading:

"Provided that any of the next of kin who is not a Muslim shall be entitled to share in the distribution as though he were a Muslim."

36. Are you against that provision? - Yes.

*Mr. Butterfield*

37. I would like to ask a question whether it is not a fact that that has been the law in Singapore since the 1st of January, 1924? - I do not know.

*Chairman*

38. Have you anything to say on any other clauses? - No.

*Mr. J. M. Jumabhov*

39. I have a question on clause 33 (3). We left the question open the last time—the question of the Hakam getting the authority from the principals to decree a divorce. Is it according to the law of Islam that the Hakam can decree a divorce? - The Hakam, representatives of both the parties, must appear and then they have the authority either to bring the two parties together again or to decree a divorce.

*Chairman*

40. But they must have the authority from both parties before they can decree a divorce? - Yes.

*Mr. J. M. Jumabhoy*

41. Is it not desirable that the *Hakam* should recommend to the Court where a divorce is concerned and then the Court can decide? - I am of the opinion that the *Hakam* in cases of divorce should recommend to the *Shariah* Court but not to decree the divorce himself.

*Mr. Goode*] Sir, I am afraid the witness may not have understood the question because what he now says is not in accordance with the law of Islam, as he has said that the *Hakam* is allowed, if he gets the authority, to decree a divorce. As far as I know, most people would want to follow the law of Islam rather than to alter it to something that is more contradictory. I would prefer that, the question is repeated.

*Chairman*

42. I think what the witness said was that if the *Hakam* get the full authority of both parties, then they can decree a divorce and if they do not get the authority, they cannot do so? — My opinion is that in matters of divorce, the *Hakam* should recommend to the *Shariah* Court. That is my opinion. I do not say whether it is the law of Islam.

*Mr. Goode*

43. On the same point, I am not quite certain whether you made the point, Mr. Chairman—the same point that Mr. J. M. Jumabhoy was after. We have a recommendation that this section of the law should be worded to give the *Hakam* the authority to grant a divorce whether or not they have the

*The witness withdrew.*

Mr. Nazir A. Mallal attended and was examined.

*Chairman*

47. Mr. Mallal, we have before us your letter dated 28th February, 1956 \* addressed to the Clerk of the Legislative Assembly in which you also enclosed copies of letters addressed to the Secretary of the Muslim Advisory Board.

authority from the principals. Do I understand that Enche Haji Jubir is against introducing any change to give the *Hakam* authority? Do you support or do you oppose the proposal that this clause should now be worded to authorise the *Hakam* to grant a divorce whether or not the husband and wife agree? - I do not agree.

*Mr. Goode*] There is another point that I understood the Kathis wanted to give evidence and that is on clause 4 (3) (c) (iii) about the jurisdiction of Singapore by the Chief Kathi. It may be that the witness has forgotten it.

*Chairman*

44. Are there any other clauses on which you would like to address us? - Yes, on clause 7 (3), Sir. I think that in a situation where there is no wali, not only the Chief Kathi can perform the marriage ceremony but that this type of marriage should also be performed by all Kathis and I can cite instances where the parties concerned are in Pulau Bukom or in Pulau Tekong and it will be very difficult to contact the Chief Kathi on a particular day and time.

45. That is, in the case where there is no wali, a Kathi should be given the same power as the Chief Kathi? — Yes.

*Mr. Goode*

46. Could I ask a question arising out of that? What is the present position, the present custom or the present practice where there is no *wali*? — All Kathis here perform such marriages.

*Chairman*] Thank you very much, Enche Haji Jubir. You have helped us a great deal.

The first letter was dated 20th December, 1955, and the second letter was dated 23rd December, 1955. Before I ask you any questions, Mr. Mallal, am I right, firstly, in assuming that your representations are directed solely against clauses 46 and 47 of the Muslims Bill? - That is so.

48. Both clauses, in effect, provide that wills made by Muslims must be in accordance with the law of Islam? — Yes. I think it is tantamount to saying that if they do make a will, they must do it according to the law of Islam.

49. In your representations, you have pointed out certain pitfalls. Would you like to enlarge on what you have said in your letters before I ask you to answer questions? — No, Sir. I came here thinking that Members of the Committee would want to ask me questions.

50. There is one aspect that I would like to draw your attention to, Mr. Mallal. Now, you have indicated in your letters that under the Muslim law a legacy vests in beneficiaries immediately on the death of a testate? - Yes.

51. That being so, it is really incumbent on the executor to, distribute immediately? - Yes.

52. In fact, he can be forced to do so and you have pointed out that, if that happens, family businesses might be ruined and property might have to be sold at less value than its probable value. You have also indicated that the doctrine of pre-emption applies to Singapore? - It does not apply here.

53. But the doctrine of pre-emption is part of the law of Islam? - It is part of the law of Islam.

54. Now, you are also saying that in Singapore it is important to introduce the Muslim law of pre-emption but that the other communities are not likely to put up with it. Would you like to enlarge on that? - As I have explained, the doctrine of *Shufaa* or pre-emption is this. If a man dies and he leaves immovable property and he has heirs or next-of-kin-let us say, two sons. One of these sons wants to sell his share, let us say, to a Chinese gentleman. He can do so. But after he has sold his property to the Chinese gentleman, the other brother can go to the Chinese gentleman and say, "Look, you paid \$10,000 for this property. Here is \$10,000 and you must transfer this property to me." That is the doctrine

of pre-emption. It is all very well, Sir, to say that the doctrine of pre-emption will apply to Muslims in Singapore, but you cannot bind the Chinese gentleman to agree to that proposition because, if you tried to enforce in this Colony this law of pre-emption, I am sure the other communities would not like it.

*Mr. Goode J* I do not think any Member of the Committee has as yet suggested whether we should introduce the law of pre-emption, am I right?

*Inche Abdul Humid bin Haji Jumat* No.

*Mr. J. M. Jumabhoy*

55. Since the law of pre-emption will take for granted that a Muslim sells a property to a third party at a proper value, but if he sells at a greater value and at a fictitious figure, once the law of pre-emption comes into operation, the other beneficiary under the will will have to buy the property at a very fictitiously high price. I suppose you say that it is a possibility? - It is a possibility and this sort of thing is being practised in India all the time and it is quite a difficult matter to find out the real price.

*Chairman*

56. In your opinion, Mr. Mallal, what is the real objection to clauses 46 and 47? - My real objection is that under these clauses as soon as a Muslim dies, leaving property, that property must be sold immediately or within a reasonable time, let us say a year or two years at most. He cannot tie up that property for any length of time. If he has any business, the business has got to be wound up. Two-thirds of his property is vested in his heirs immediately on his death and if he has shares, let us say in insurance companies or other companies, they must all be sold at once as if he died intestate and the proceeds of sale distributed among his beneficiaries. That is the objection. Firstly, you cannot tie up the property for any length of time; and secondly, you cannot leave your property to any person that you may want to leave it to or in proportions which appeal to you. That matter is discussed in one of my letters.

My main objection is that I should be forced to leave my property to my next-of-kin and I must do it in prescribed proportions. I might want to leave a little more to my daughter or to my son, or *vice versa*, according to their circumstances.

57. You have also indicated that in India and Pakistan a Muslim is not prohibited from disposing of his property by will in any manner he thinks fit? - That is so.

58. But if the will is contested, the Courts apply the Muslim Law and declare the same invalid in so far as the testator has disposed of more than two-thirds of his estate? - That is so.

59. Would you be happy if that provision is enacted in our laws? - It will be more desirable than the proposed law, that is, if we must change the present law. I have quoted relevant sections from the Punjab Act which apply with minor modifications to other provinces in India.

60. Would you like to enlarge on other aspects of your representations? - If we have the sections worded in the form of the relevant Indian sections, then at least one can obtain the consent of the next-of-kin beforehand and I can then leave my property to anyone I like. They may thus be barred from litigating and contesting my will after my death. But under the sections in question as they stand, I cannot make a will at all unless it is in accordance with Muslim law. But what I cannot understand is why this anxiety on the part of the Muslim Advisory Board to bring in this law. What is wrong with the present law?

61. They have their own views, Mr. Mallal, but I think there is another aspect. If there is no next-of-kin, a Muslim in India or Pakistan can dispose of his whole property in favour of charity or other objects? — That is so.

62. But if the law of Islam is applicable, then what happens?—This happens- that you cannot make a will unless you make it according to the law

of Islam, which says that you can will away one-third only and no more. So if you make a will and leave all your property to charity, that is not valid because you should have made your will disposing of one-third of your property only to charity. So, two-thirds go to the State.

*Mr. R. Jumabhoy*] May I refer to the question of puberty, that is, where a boy or a girl, on reaching puberty, can make a will?

*Chairman*

63. *Mr. R. Jumabhoy*, you are referring to Annex "A" of Paper No. 2 which is a letter dated 20th December, 1955, addressed to the Secretary of the Muslim Advisory Board. The relevant paragraph is marked (1). That is one of the pitfalls that Mr. Mallal has pointed out? - Yes, the wording of clause 47 is such that a Muslim minor, under that clause, will be able to make a will. The present wording of the clause reads:

"Notwithstanding anything contained in any written law of the Colony of Singapore the provisions of the Law of Islam shall be applicable in the case of any Muslim person dying testate on and after the appointed day."

You see, we have a written law in the Colony which says that you can make a will only when you have attained the age of 21 and that the will must comply with certain formalities laid down by law. But here it reads:

"Notwithstanding anything contained in any written law of the Colony of Singapore the provisions of the Law of Islam shall be applicable ...".

*Mr. R. Jumabhoy*] I am speaking of clause 47. All the laws of the Colony are applicable to persons here. Would you wish that all the Muslims should be governed by the law of Islam in everything and not by the laws of the Colony? There are many other things which are governed by the laws of the Colony. Would you like every Muslim to have the Koranic law and not the laws of the Colony?

*Chairman*] I do not think we should ask the witness that question. It is a matter of opinion. We can discuss that later on.



*Mr. J. M. Jumabhoy*

64. I would like to refer to Mr Mallal's letter dated 28th February 1956, addressed to the Clerk of the Legislative Assembly—the last two sentences in the penultimate paragraph on page 1 of Paper No. 2 which read:

"it must be borne in mind that a Muslim testator cannot dispose of this one-third in favour of any of his next-of-kin. This one-third, if it is given away, must be given away to persons other than his next-of-kin."

I would like, Mr. Mallal to explain that by this, it means that a Muslim, by Islamic law, is forbidden to will away one-third of his property to any of his next-of-kin? — That is so. You cannot leave that one-third to any of your next-of-kin. You must give it away to strangers or charities but you cannot give that to any of your next-of-kin, let if you do that, you would be preferring some next-of-kin over others. The idea is that all the next-of-kin must inherit equally according to the law of distribution. So if you have a favourite daughter and you give one-third or a part of the one-third to the favourite daughter, under; the law of Islam you are forbidden to do so. You either give the whole of your estate to the next-of-kin or you give one-third to people who are not your next-of-kin and distribute the remaining two-thirds among your next-of-kin.

*Chairman*

65. Can those other people be non-Muslims? - Strictly speaking, they should not be non-Muslims and especially among the Shafeis, a gift or a bequest to a non-Muslim is considered not valid.

*Mr. J. M. Jumabhoy*] A Muslim can then will away his property amongst his next-of-kin and, according to the law of Islam, if a person dies intestate, his property will be distributed amongst his next-of-kin in accordance with the proportions prescribed by the Muslim law.

*Inche Abdul Hamid bin Haji Jumat*

66. A Muslim can distribute his property while he is alive. Is that correct? — That is so. He can do whatever he likes with his property during his lifetime.

67. Does that not meet your case? Before he dies, he turns his company into a limited concern and leaves so much to the first son and so much to the second son? — Yes, during his lifetime, he can make a settlement of his property. He can settle it on his next-of-kin in a special way, or he can, if he has a business, turn it into a limited company and then he can give the shares to different members of his family; but if he has anything for himself when he dies, then his property will be divided according to the law of Islam.

*Chairman*

68. Would not that meet your criticism? — The trouble with most people is that they start thinking of disposing of their estate at the last moment, and then they send for a lawyer at the last minute to make their wills. If a man has vast properties and interests, he will probably think about disposing of some beforehand, but most of them do not think of it till the last moment. That is the trouble.

69. That is not against the law of Islam? - No.

*Mr. Butterfield*

70. The first question I would like to ask is whether it is not a fact that, at present, apart from the case of a Muslim dying intestate, a Muslim here is in exactly the same position as a Muslim in England with regard to the power to dispose of his property by will? — No.

71. I think it is expressly provided in the Muslims Ordinance at present that, if he wishes, he can dispose of his property, so that it shall be distributed according to the law of Islam? - That is so. There is a section in the Muslims Ordinance which gives him that right.

72. Do you regard this enforcement and observance of the law of Islam in this particular respect as objectionable in principle? — That is so. It is objectionable in that I should be forced to make my will in a specified manner.

*Mr. Butterfield*] This being a radical issue as far the Muslims are concerned, I would like you to state whether

there is any demand in the Muslim community for this change in the law:

*Chairman*

73. I think Mr. Mallal can only testify as to matters arising in his experience as a lawyer, but if he wishes, he can answer the question? — Yes, I am prepared to answer the question. I am a Muslim and I have Muslim friends. I have charge of a number of Muslim estates here and I can assure you, Sir, that, so far as I know, there is no demand for a change in the present law among persons who have properties to leave. The only persons who would, no doubt, like to see the law changed are prospective beneficiaries who fear they may be deprived of a share in the estate of their fathers. There is one case in particular which I might mention.

74. I must warn you that this Report will be published? — In that case the old man did not leave anything but a life interest to his children. He knew his children well. He left the capital of his estate to his grandchildren. There is also another case. This has raised concern among the members of the Arab community. The old man died leaving quite a lot of property, and he has disinherited — one of his sons completely and that son's children. With regard to the other sons and daughters, he has merely given them a life interest. He had probably good reasons for doing this. The only persons who have been complaining are those who have been deprived of their share in the estate.

75. That is your experience? — Yes, that is my experience, but before I finish, Sir, I see this explanatory note on page 18 of the Bill against clause 47, the second sentence of which reads:

"There has existed a general feeling for some time amongst the Muslims of the Colony of Singapore that the provisions of the Law of Islam should be applied in all cases of testacy as it is now done in cases of intestacy."

But who are these people? If they want to be governed by the law of Islam, nobody is stopping them from making a will according to the law of Islam.

*Chairman*] I think you have made that point.

*Mr. Goode*

76. The first question is this. If we enact clause 47 as it appears in this Bill, it would then mean that the law of Islam must be applied to the estate of any Muslim person dying testate on and after the appointed day. Would you expect any appreciable increase in litigation resulting from that provision? — I personally think, yes, definitely. If a man dies intestate completely, then, of course, there would not be much litigation: but if he dies testate leaving a will and he leaves one-third to certain charities or maybe to certain individuals, the question will arise as to whether this was a proper disposition of one-third of his property, according to Mohammedan law, and regarding the other two-thirds, of course, there will not be much litigation. There is one other point which I had not touched upon in my memoranda to you. It is this. In Muslim law a man can surprisingly leave a part of his property to his descendants in perpetuity so long as he gives them income of the property only, and provides that ultimately the property is to go to charity. That is considered a good bequest and the trust can go on for hundreds of years.

77. We have at present provision in the law that, where a Muslim dies intestate, his property shall be distributed according to the law of Islam? — That does not come in. He can create a *wakaf* to apply the income from those properties for the benefit of his next-of-kin so long as he says, "If I have no more descendants left, then the property is to go to charity."

*Chairman*

78. I think, Mr. Mallal, you have in your memorandum indicated that there might be litigation on other aspects of making a will? — That is because of the wording of the present clause. I

consider the idea is not sound to frame the clause as it stands. It can be changed in such a way as will carry out the wishes of the Muslim Advisory Board which are that the Muslim law shall apply in the distribution of the estate of a Muslim.

*Mr. Goode*

79. The second question relates to clause 46. Mr. Mallal indicated that he objected to clause 46. Now, if you refer to clause 46 on page 13 of the Bill, the last two and a half lines read:

... in accordance with the provision of anti subject to the restrictions imposed by the school of the Law of Islam professed by them.

It is only that part of the clause which is new. I will be grateful if Mr. Mallal can explain why he sees any objection to that clause? - Well, in my view, it tries to repeat what is said in clause 47. One refers to married women only and the other refers to any Muslim.

80. So, if it did not repeat clause 47, you would have no objection? - No. I do not understand why restrictions should be imposed at all.

81. Is it the introduction of this provision of the law and the restrictions imposed by the law of Islam that give you grounds for apprehension, and you expect from that that wills will be challenged on points of law? — Yes.

*Chairman*

82. Is it correct to say that clause 477 also embraces clause 46? - Yes, exactly.

*The witness withdrew.*

Mr. MA. Namazie, C.B.E., member of the Muslim Advisory Board, and Enche Ahmad bin Mohamed Ibrahim. Vice-Chairmen of the Muslim Advisory Board. attended and were examined.

*Chairman*

86. There is one clause—there may be others, of course—on which we at the last meeting thought, that we would like to have your advice, and -that is clause 33 (3) which reads:

*Mr. Goode*

83. The next question is quite a different one. It is on clause 41 which deals with the distribution of the estates of Muslim persons who die intestate. At the end of the clause there is a proviso which enables the next-of-kin, who is not a Muslim, to share in the distribution. Now, that clause has been objected to on the ground that it is not right for a non-Muslim person to have a share of an intestate estate of a Muslim deceased. Do you accept the clause as drafted or do you share the objection? - This is really a repetition of the clause in our present Muslims Ordinance. It has been there for a long time.

*Mr. Butterfield*

84. It is thirty years old? - Yes, since 1923. In 1924, the law was changed and this section was introduced and it has been good law up to now, but that proviso is definitely anti-Islamic; but since we are living in a country where there are inter-marriages and where all sorts of communities live together—Buddhists and Christians and so on—so far as this clause is concerned. I think it is necessary in a cosmopolitan place like Singapore.

*Chairman*

85. Your opinion is that it should be retained? - It should be retained. If this were a purely Muslim country, I could understand the objection to it.

*Chairman]* Thank you very much. Mr. Mallal. I think you have been of great assistance to us.

"The Hakam shall endeavour to obtain from their respective principals full authority— and may if their authority extends so far, decree a divorce and shall in such event, report the same to the Court for registration."

It has been suggested by the Ahmadiyah Movement in Islam that the whole

of that sub-clause should be redrafted to give the *Hakam* the right to decree a divorce or grant a *khula*. The sub-clause, as now drafted, means that it is only when the *Hakam* have the authority of the principals that they can decree a divorce. Can we have your opinion, Mr. Namazie and Enche Ahmad? — (*Mr. Namazie*) I would leave that clause as it is. In theory, marriage is a contract and it is only if the parties concerned have given full authority to the arbitrators more or less in the nature of friendly arbitrators-appointed by each side that a divorce can be decreed, so that unless there is full authority, it seems to me that they should not be given the power. That power should remain with the Court.

87. So the *Hakam's* role is really in the nature of an arbitrator? - Yes.

88. Enche Ahmad, would you like to say anything on that? — (*Enche Ahmad*) I agree with what Mr. Namazie has said.

89. It has also been suggested that the *Hakam* should also refer all matters of this nature to the *Shariah* Court. Instead of decreeing a divorce, the *Hakam* should send the parties concerned to the Court? — (*Mr. Namazie*) Yes, with the proviso that if they have full authority, they can decree a divorce.

90. The suggestion is that they should not decree a divorce and they should send the matter up to the *Shariah* Court? - If they have full authority, then this sub-clause, as I read it, authorises them to arrange a divorce.

91. You do not agree that they should be given the power to register a divorce? — When it is decreed, it will automatically be registered. In this connection, if I may take up the time of the Select Committee, there is one little change that I would like to make to clause 33 (1).

*Chairman*] We will deal with clause 33 (3) first.

*Mr. J. M. Jumabhoy*

92. Is it desirable to give the *Hakam* the power to decree a divorce rather

than when he feels that it is necessary that he should recommend to the Court?

— (*Enche Ahmad*) I think it would strengthen the hand of the *Hakam*. If possible, a reconciliation should be effected but unless the *Hakam* has the power of forcing the issue, as it were, he might not be able to get the parties concerned to agree. Of course, they have to work under the rules which are to be provided.

*Mr. Butterfield*

93. Can I take it that they have to work under the rules which are to be prescribed under the Ordinance? — Rules ought to be made.

*Chairman*

94. Your suggestion, then, is that rules ought to be made under clause 65 to govern the actions of the *Hakam*? — There are forms which can be adopted.

95. Mr. Namazie, you wanted to say something on clause 33 (1)? — (*Mr. Namazie*) Yes, if I may make a suggestion with regard to clause 33 (1) the first line of which reads:

"If satisfied that there are constant quarrels ...".

*Chairman*] We have already dealt with that, Mr. Namazie. Now, gentlemen, Mr. Namazie and Enche Ahmad are here. Are there any other aspects of the Bill that you want clearing up?

*Mr. R. Jumabhoy*] Yes, I have a question on clause 47. What I want to ask these two gentlemen is this. This is a British Colony and everyone is governed by the laws of the Colony. This is not an Islamic State. The purpose of the Bill is to help women from being divorced and to give them protection. That is the main object of the Bill. So why bring in this clause 47 as a recommendation to force a person that he should make a will according to the law of Islam?

*Chairman*] Your question, Mr. R. Jumabhoy, is whether that clause ought to be introduced into the laws of the

Colony and Mr. Namazie and Enche Ahmad can give their opinion on it if they like but, of course, they are not bound to.

*Mr. Goode*] I think the question was: Do they think that it should be done and, if so, why?

*Chairman*

96. Mr. Namazie and Enche Abroad. is it your opinion that that clause ought to be introduced into the laws of the Colony? — (*Mr. Namazie*) For myself, yes. It is the unanimous view of the Muslim Advisory Board. (*Enche Ahmad*) I agree with that.

*Mr. J. M. Jumabhoy*

97. I have another question on clause 47. There is one argument which has been put up against that clause, and that is, if a Muslim dies, the property will be sold within a reasonable period and it is probable that this will prevent property being tied up and businesses have to be broken up. Has thought been given to that angle? — (*Mr. Namazie*) The whole policy of the law is against accumulation and tying up forever. We have got in English law the rules against perpetuities and accumulations and the Islamic law is quite clear on this point, but it is quite possible for an individual to take his son into partnership and so provide that, the business is not dissolved.

*Chairman*

98. At his death, what happens to his own share? — Before his death, he can provide, through a partnership deed, that the business shall not be dissolved but shall continue and it is also possible to provide that the son gets his share.

*Mr. R. Jumabhoy*] Regarding this recommendation by the members of the Muslim Advisory Board, may I ask here whether this Board is constituted of nominated members or elected members?

*Chairman*] I do not think that is a fair question. You can find your information from the records.

*Inche Abdul Hamid bin Haji Jumat*

99. On clause 47, Mr. Namazie has said that it is possible for a Muslim to distribute his property while he is still alive; in which case would it not meet the objections which some people have put forward to this Committee? — Yes, he is at liberty to do so during his lifetime.

*Chairman*

100. There is also a suggestion revolving round clauses 46 and 47 that estates might be involved in litigation, if clause 47 is enacted. For instance, on the question of a Muslim giving away one-third of his estate, there may be litigation. It has been suggested that, in certain cases, charities are charities under English law and not under Muslim law and therefore there might be litigation, and there are other aspects of the whole matter which might invite litigation. Have you any fears that if clause 47 is enacted, there will be an increase in litigation in so far as the Muslims are concerned? — I do not think that this clause is likely to affect litigation one way or the other. If the question as to whether it is a charity under English law and not under the Muslim law arises now, then it will arise equally under the clause.

*Mr. Goode*

101. Surely, without this clause, you can only contest a will on ordinary grounds of the laws of the Colony but if this clause is introduced, you can contest a will which has been carefully drawn up by a competent lawyer in accordance with the laws of the Colony. You can contest it on the ground that that will does not comply with the tenets of a particular sect of the Islam religion? — That is correct.

102. So I think this will lead to litigation. The will can be, scrutinised with a view to challenging it? — That is correct. It is possible that litigation will result.

103. How far will the lawyers be in a position to advise their clients on Islamic law? — (*Enche Ahmad*) They will have to learn the law. I think that the cases that have been litigated in the Colony have been cases where the charities are good under Muslim law but have been held to be bad under English law.

*Chairman*] Of course, I only mentioned charities as an example. There are other aspects to be considered.

*Mr. Goode*

104. The point, I take it, is that further litigation which may take place might be prevented? — Yes.

*Chairman*

105. On the capacity of making a will according to the law of Islam, a minor will be able to make a will so long as he or she attains puberty. Then the question might arise as to whether he or she has attained puberty? — (*Mr. Namazie*) The Muslim Advisory Board has suggested that this clause should not affect the formality of the will or the provisions of the Probate and Administration Ordinance.

106. I do not think those representations have reached us? — This clause should be confined to the distribution of the estate.

107. So your support of clause 47 is really on the aspect of distribution? — Yes. (*Enche Ahmad*) On the substantive law of distribution.

108. As for the format of the will, attesting and so forth, you prefer to retain the present law of the Colony of Singapore? — (*Mr. Namazie*) Yes.

*Mr. Butterfield*

109. I have one or two questions to ask. On a point which has been dealt with, I take it that the proposals which have been put up by the Muslim Advisory Board would ensure that the observance of the clause will not result in infringement of the rule against perpetuities? — Yes.

110. I would like to know whether Mr. Namazie takes the view that this Bill would be defective if clause 47 were excluded from the Bill, having regard to the fact that the Bill is designed to repeal the existing law relating to marriages and divorces and to create a *Shariah* Court to deal with matrimonial matters. I would like to know whether the Bill is being, in any way, emasculated if clause 47 is omitted? — It will not, be defective but it will certainly disappoint a large number of people.

111. On that point, perhaps I can ask this question. Mr. Namazie says that it will disappoint a large number of Muslims. I would like to know why this is so, having regard to the fact that, under the existing law, a Muslim is free to dispose of his property according to the law of Islam, which has been the law of the Colony ever since the second or the third Charter and which has been written into the existing Muslims Ordinance? — If I may say so, laws are made for the law-breaker and not for those who keep them.

112. Am I to understand, Sir, that the Government of this Colony, which is not a Muslim State, should legislate to ensure the observance of a particular religion by persons who claim to be members of it? — My answer is simple. You have here a Muslim community of, roughly, ten per cent, the vast majority of whom want this change and I see no reason why, if it is going to affect them only, there should be any hesitation in giving effect to their wishes.

*Mr. R. Jumabhoy*] Are their wishes ascertained by votes or by a referendum?

*Chairman*

113. It has been pointed out that the present law enables a Muslim person to draw up his will so that his estate and effects should be administered according to Muslim law. Will that not meet the urge of those people who really want to

dispose of their property according to the law of Islam? — (*Enche Ahmad*) The present law enables a Muslim to go against the Muslim law.

*Mr. Butterfield.*

114. On that basis, would you consider it right that the Legislature should legislate for the observance of teachings of the Mohammedan law, observance of the fast and so on? Is there any difference in principle? — It is difficult to draw a line between religion and law. This is a matter of law.

115. I would like to know whether the Muslim community is concerned because they think the members of the community should observe the Muslim law in this respect, or whether they are concerned that dependants of Muslims may be left destitute. What is the reason? — There is no provision in the present law to provide for a family and that is one reason that has led to this proposed change.

116. Would the community feel that its wishes are adequately met if legislation is introduced on the lines of the English Family Provisions Act which is designed to ensure that dependants shall not be left destitute and which will apply to all communities? — (*Mr. Namazie*) The chief difficulty is this. There is certainly one class which is not provided for in the English law. The ascendants are beneficiaries in any scheme of Islamic distribution. They will certainly not benefit under the English law. (*Enche Ahmad*) If it comes to the Muslim law, there is the problem of polygamy, the problem of the rich merchant having a wife in India and a wife in Singapore; under the present law, he can leave everything to his Indian wife.

117. Do you know whether, in fact, the Muslim community feel that, having regard to the events of the past and because dependants might be left destitute, this legislation is necessary? — (*Mr. Namazie*) I can think of one case of a very substantial estate where a son and grandchildren by that son were disinherited.

118. Is it on that account? — This legislation has been on the anvil for at least eighteen months and events have merely brought it to the forefront.

119. Am I to understand that Mr. Namazie takes the view that it is not objectionable in principle for the Legislature of this Colony to legislate for the enforcement of the observance of the particular tenets of a particular religion? — Well, the point is that you have the provisions of the Muslims Ordinance. You have stated that this Ordinance shall apply to Muslims. All we ask for is an extension of what you have already decided in the past and that you should take one step more and do what you have done in the case of intestacy, that is, to apply the provisions of the law of Islam in the case of testacy also. If you are satisfied that it is the wish of the community, and if it is only applicable to that community, I see no objection to providing this change in the Bill.

*Chairman*

120. Is it the wish of the majority of the community? — Yes, the majority.

*Mr. Goode*

121. Mr. Namazie spoke just now of having a new wording which would, in his own view, and, I think, in the view of the Muslim Advisory Board, be more satisfactory. Could I just confirm my impression, which is that it takes the form of deleting clause 47 and amending clause 40 and putting a provision into clause 40? I have a redraft of clause 40 which says:

"Notwithstanding anything contained in any written law no Muslim person shall dispose of his property by will except in accordance with the provision of and subject to the restrictions imposed by the school of law (*Madzhab*) professed by him."

Then a sub-clause reading:

"Nothing in this section shall affect the provisions of the Will Ordinance or the provisions of the Probate and Administration Ordinance."

I understand, Sir, that it provides that no Muslim shall dispose of his property contrary to the law of Islam. but in so

far as the provisions of the Will Ordinance and probates and the proving of wills are concerned, that does not prevent his getting as much assistance as he can from the existing Ordinances of the Colony. If a Muslim did leave a will which complied with the probate legislation of the Colony but not drafted in the Islamic way, what would then be the position? Would it be invalidated? - Yes, to the extent that it is bad by Muslim law.

*Chairman.*

122. The will will become invalid and the person would die as if intestate. That is not your intention? - The answer is that the formality of the will should be adhered to but the distribution of the estate should be according to the law of Islam.

*Mr. Goode*

123. So that I am (right in saying that you would not wish a will to be rendered completely invalid because, in one respect, you would merely wish the defect to be corrected and the rest of the will to be valid. It will need re-drafting. I have another question on clause 46. The existing law reads:

"Muslim married women, may with or without the concurrence of their husbands, dispose by will of their own property."

Then a new addition is put into this clause which reads:

"in accordance with the provision of and subject to the restrictions imposed by the school of the law of Islam professed by them."

Now, if we get a satisfactory redraft of clause 40 on the lines I have just mentioned, you would have no objection to deleting the addition to clause 46 stopping at the word "property"? — No.

124. In other words, we shall make a provision which is now made by the latter half of clause 46 and not by an addendum to clause 46? - Yes.

*Chairman]* Now, are there other clauses, on which Members would like to ask questions?

*Mr. J. M. Jumabhoy*

125. I have a question on clause 7 (1). It has been suggested to this Committee that, because of physical limitations, the Chief Kathi may not be able to answer all the calls that may be made on him to solemnize marriages if there is no *wali* present, and therefore it is desirable that the Kathis should be given the power to solemnize marriages where there is no *wali* present and the power should not be confined only to the Chief Kathi. I would like to hear opinions on that? — (*Enche Ahmad*) This will only apply to a small group of Muslim marriages. It will not apply to a Hanafi or Shiah marriage because, under those laws, *walis* are not necessary. It will apply only to the Shafeis and it will only apply where there is no *wali*-father, brothers, uncles. In our opinion, this will be a very small proportion of marriages taking place in the Colony and I personally do not agree that it is physically impossible for the Chief Kathi to deal with such marriages. We feel that this is wise because we find from experience that this right given to the Kathis has been abused in the past. Just to take an example, a boy brought a girl at 2 a.m. to a Kathi's house saying that a *wali* could not be obtained and the marriage was performed. We feel that the only way to control the matter is to place the authority on one responsible man. Such special authority can be given by a Ruler in the Malay States and this authority is given to some Kathis and not to all. So we are not breaking any fresh ground.

126. What will happen if the Chief Kathi is sick? — Then it is always possible to appoint some other person to act for him.

127. The second sentence of clause 7 (1) reads:

"Where there is a *wali* present it shall be lawful for such *wali* to solemnize marriage." Who are, according to the law of Islam, allowed to perform or. solemnize marriages? — Primarily the father, the grandfather, the brother —



*Chairman*

128. In other words, a *wali*? — Yes.

*Mr. J. M. Jumabhoy*

129. When does the *wali* come into the picture? The Kathi, according to our law, is only the registering officer and, strictly speaking, his presence is not necessary for the validity of a marriage. He can become a *wali* when there is no proper *wali* present but where there is a *wali*, it is he who performs the marriage and it is only for convenience that he transfers his power to the Kathi.

130. It would mean a *wali* can solemnize a marriage without the presence of a Kathi? — (*Mr. Namazie*) Yes, except that our law says that it must be registered within a certain time.

*Mr. Goode*

131. Arising out of this question, I am going to propose a redraft of sub-clause (1) of clause 7 which, at the moment, consists of two sentences. The first sentence of the present sub-clause (1) is, in effect, repeated lower down in sub-clause (3). The redraft of sub-clause (1) is a very simple and straightforward sentence:

"It shall be lawful for the *wali* of the woman to be wedded to solemnize the marriage according to the law of Islam."

I would like to enquire from the two gentlemen before us whether putting that as sub-clause (1) will, in fact, have the effect of, shall I say, encouraging a *wali* to solemnize a marriage without going to a Kathi. I consider the practice in Singapore is that most invariably they have the Kathi present. Will the putting of this sub-clause into our law, as it were, upset their custom? Do you see any danger? - **No, I do not** think so. (*Enche Ahmad*) There are even cases where the father performs the marriage but the Kathi is present. It is the father who solemnizes the marriage. (*Mr. Namazie*) It is possible but I think it is unusual.

*Chairman*] The evidence seems to be that it is lawful for a *wali* to perform a marriage without the presence of a Kathi but the practice is for the Kathi to be present.

*Mr. Goode*

132. So you see no danger in that? That is the point I want to make? — No.

*Inche Abdul Humid bin Haji Jumat*

133. My question is on clause 41, the proviso of which reads:

"Provided that any of the next of kin who is not a Muslim shall be entitled to share in the distribution as though he were a Muslim."

An objection has been placed before this Committee that this whole proviso should be deleted from the clause?

(*Enche Ahmad*) That is a suggestion we have made.

*Chairman*

134. Is it suggested that the whole proviso should be deleted? - Yes.

*Mr. Butterfield*

135. It has been the law for thirty years that proviso? - Only in Singapore and Malacca.

136. Has it been unsatisfactory? - I know of no case in which that has been applied. The only reported case is in Pahang.

137. I take it that it is because it is not strictly in accordance with the law of Islam that you want something on the lines of clause 47 inserted? - Since it is for the Muslims, yes.

*Mr. Goode*

138. My question is on the same point. As I see it, the proviso to clause 41 is consequential in that, if we are providing, in the case of a Muslim dying testate, that the property should be disposed of in accordance with the law of Islam, then therefore we should also provide, in the case of intestacy, that a non-Muslim should not get a share in the distribution of property because it is contrary to the law of Islam. The

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question that I would like to ask is that in a place like Singapore, we must, I think, recognise the fact that marriages do take place between communities and it is possible that you may have a marriage between two parties who come from families with different religions and that may lead, I would suggest to cases of hardship where, shall we say, a son perhaps leaves the Muslim religion and changes to another religion and he would by this be disinherited. Do the witnesses in front of us consider that this may lead to hardship in the light of the community in which we live? — (Mr.

*Namazie*) I am quite prepared to admit that the possibility visualized by Mr. Goode might arise.

139. You are prepared to accept that? This is the suggestion that has been made by the Muslim Advisory Board and I must abide by it. (*Enche Ahmad*) It was unanimously agreed.

140. You agree that it is a point we ought to consider? - (Mr. *Namazie*) Yes.

*Chairman*] Thank you very much, Mr. *Namazie* and *Enche Ahmad*. You have been of great help and assistance to us.

*The witnesses withdrew.*

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ANNEXE "A" TO APPENDIX V

**Paper S.C. (Muslims Bill) No. 2**  
**MALLAL & NAMAZIE,**  
Advocates and Solicitors

Commissioners for Oaths

22A Malacca Street.  
28th February, 1956.  
Singapore, 1.

Our Ref: NAM/OAA/

The Clerk of the. Legislative Assembly.  
Singapore.

Dear Sir,

*re* MUSLIMS BILL.

In December last, I made certain representations to the Secretary, Muslim Advisory Board, regarding the provisions of Section 46 and 47 of the Muslims Bill. I enclose herewith copies of my letters dated the 20th and the 23rd December to him and I shall be glad if you will place the same before the Select Committee of the Legislative Assembly which has been appointed to consider the said Bill.

Enclosures  
(a) and (b)

To what I have already stated in the said letters. I wish to add what may not be quite evident to a layman, that we have at present an Ordinance known as the Muslims Ordinance, Cap. 57, which, by Section 26 (3), provides as follows:-

"Nothing in this Ordinance contained shall be held to prevent any Muslim person directing by his or her Will that his or her estate and effects shall be administered according to Muslim Law."

Accordingly, a Muslim can make a Will, in Singapore, directing that his estate shall be administered according to Muslim Law. He can also make a Will disposing of one-third of his estate and directing that the remaining two-thirds should be distributed according to Muslim Law. Most Arab Wills are in this form.

By Sections 46 and 47 of the Muslims Bill, it is proposed to force every Muslim testator to make a Will in accordance with the principles of Muslim Law, that is to say, that under the proposed law a Muslim testator will be able to dispose of one-third of his estate only. The remaining two-thirds will have to be divided among his next-of-kin as if he had died intestate in respect of some. It must be borne in mind that a Muslim testator cannot dispose of this one-third in favour of any of his next-of-kin. This one-third, if it is given away, must be given away to persons other than his next-of-kin.

It is no doubt appreciated that Singapore is not a Muslim State. Since the foundation of Singapore, the people here have had freedom of worship, freedom of thought (although some persons dispute this) and freedom to acquire property and dispose of it in any manner thought fit either during life or by Will after death. The religious beliefs and customs of the people have not only been not interfered with but also have been recognized by the Courts, by virtue of the Charters and Legislative enactments. But, in no case have the laws of this country ever interfered with the right of an individual to dispose of his property in any way he thought fit. The proposed law is designed to interfere with the liberty of the individual to dispose of his property by Will in

favour of persons of his choice and it is possible that such legislation is against the principles of the Charters and *ultra vires the* legislature.

As I have already pointed out in my letter to the Secretary, Muslim Advisory Board, the proposed legislation will, put an end to Muslim family businesses and family properties. The harshness of the Muslim law of Wills and Inheritance was appreciated many centuries ago and, in order to mitigate this harshness, the doctrine of "Shufaa" or "Pre-emption" was introduced and became an integral part of the Law of Islam. This doctrine of "Shufaa" or "Pre-emption" is law in India, Pakistan, Arabia, Egypt, and, I believe, other Muslim countries. Briefly, the law of "Shufaa" or "Pre-emption" may be stated thus:-

If A and B have inherited immovable property from their father and A has sold his share of the property to X for, say \$10,000, after the sale has been completed B, by paying the sum of \$10,000 to X can compel X. to convey the property to B, so that it may remain a part of the family property.

On page 667 of "Muslim Law As Administered in India and Pakistan (1954 Edition) by K.P. Saxena" the learned author says:-

"The grounds of justification for the right of pre-emption are the following:-

1. The hardship and inconveniences of a joint owner would be greater than those of a stranger vendee, and in having him as his participator, it may happen that he may be required to abandon his property.
2. The democratic conception underlying the Muslim Law of inheritance tends to disintegrate the family property and the law of pre-emption considerably mitigates the evil.
3. Sharaya-ul-Islam has allowed this right, as division would cause loss and damage.
4. The Hidayah has given recognition to the right of pre-emption to prevent apprehended inconvenience.
5. Again it explains that the ground principle of shufaa is the conjunction of property and its object is to prevent the vexation arising from a disagreeable neighbour."

Under the Muslim Law the right of pre-emption arises (1) in respect of immovable property only and (2) after the property has been completely transferred by the vendor to the vendee, so that the vendor's interest in it ceases.

In a place like Singapore, it is impossible to introduce the Muslim Law of "Pre-emption:" the other communities are not likely to put up with it. Since the law of "Pre-emption" cannot be introduced and enforced in Singapore, it is suicidal for the Muslim Community, from an economic point of view, to have Sections 46 and 47 of the Muslims Bill enacted as part of the laws of Singapore.

I see that the provisions of Section 47 go much further than the laws in force in India and Pakistan. In those countries, the relevant sections, with minor modifications in various Provinces, read as follows:-

"In questions regarding *Succession* special property of families, betrothal, marriage, divorce, adoption, guardianship, minority, bastardy, family relations, *Wills, Legacies, gifts,* partition or any religious usage or institution, the rule of decision shall be the Mohammedan Law in cases where the parties are Mohammedans, except in so far as such Law has been altered or abolished by legislative enactment . . . or has been modified by any such custom as is above referred to."

In other words, in India and Pakistan a Muslim is not prohibited from disposing of his property by Will in any manner he thinks fit, but if the Will is contested, the Courts apply the Muslim Law and declare

(iii)

the same invalid in so far as the testator disposed of more than two-thirds of his estate.

Accordingly, in India and Pakistan if a man has no next-of-kin he can dispose of the whole of his property by Will in favour of a Charity or other objects. In Singapore it is proposed to apply Muslim Law to every Muslim Will, whether it is contested or not. The effect of Sections 46 and 47 of the Muslims Bill will be that if a Muslim has no next-of-kin and he disposes of the whole of his estate by Will, in favour of a Charity or other objects, he will be declared to have died intestate as to two-thirds of his estate; and this two-thirds will go to the Crown as *bona vacantia*. Surely, it could not have been the intention of the draftsman of Sections 46 and 47 of the Bill to benefit the State at the expense of charities and friends in case where the testator has left no next-of-kin.

Another objection to these two Sections is that their provisions are against the Comity of Nations. Section 47 of the Bill provides that the provisions of the Law of Islam shall be applicable in the case of any Muslim person dying testate on and after the appointed day. Let us take the instance of a Muslim "X" domiciled in Hongkong and living in Singapore. He dies in Singapore, leaving movable and immovable property in Singapore. By his Will, he leaves the whole of his Estate to his wife. Under Section 47 of the Muslims Bill, the Courts here must declare the Will invalid and distribute his estate movable and immovable according to Muslim Law. But, according to Comity of Nations, the essential validity of a Will as regards immovable property is governed by the Law of the place where the property is situated. The essential validity of a Will of movables is governed by the laws of the testator's domicile. Section 47 seems to cover the case of every Muslim, no matter where domicile, so long as he has property in Singapore. In my opinion it is highly undesirable to legislate for every Muslim testator who leaves property in Singapore, regardless of this domicile.

Yours faithfully,  
Sgd. Nazir Mallal.

**Enclosure (a)**

*20th December, 1955.*

The Secretary,  
Muslim Advisory Board,  
Singapore.

Dear Sir,

I understand that the Muslim Advisory Board has sponsored the MUSLIMS BILL which was presented to the Legislative Assembly on the 21st ultimo.

I write to point out the implications of the provisions of Section 47 of the Bill, should the same become Law. That section provides that "notwithstanding anything contained in any written law of the Colony of Singapore the provisions of the Law of Islam shall be applicable in the case of any Muslim person dying testate on and after the appointed day."

I have the following comments to make on the said Section:-

(1) A Muslim minor will be enabled to make a Will, contrary to the provisions of Section 4 of the Wills Ordinance: as, according to Muslim Law anyone who has attained puberty can make a Will. The question of whether a person has attained puberty can give rise to endless litigation.

(2) Under Muslim Law, a Will need not be in writing. A verbal declaration in presence of witnesses is sufficient. If the Will is in writing it need not be attested. Under the new Law, is it really the intention to disregard the provisions of Section 6 of the Wills Ordinance governing mode of execution of Wills?

(3) According to the Mufti of Johore, the Will of a Muslim, if in writing must be attested by two witnesses who must be Muslims. I cannot find any authority for this in any of the text-books on Muslim Law. If the Mufti's opinion is correct, and since very few members of the Bar are deeply conversant with the provisions of Muslim Law, very few Wills will turn out to be valid.

(4) Under strict Muslim Law, a non-Muslim cannot be lawfully appointed an executor of the Will of a Muslim. According to the provisions of said Section 47, it will not be possible for a Muslim testator to appoint a trust company or a non-Muslim as an executor.

(5) The position of an executor under Muslim Law is not the same as the position of an executor under the English Law. An executor under Muslim Law is a mere "mutuwali" and the immovable property of the Testator does not vest in him. Since the property does not vest in him, he cannot sell without an order of Court. An executor under Muslim Law is in the same position as an executor under Hindu Law and the Privy Council has held that Section 9 of the Limitation Ordinance does not apply to such an executor, as, no property becomes vested in him for any specific purpose. Where a testator leaves a small estate, the beneficiaries are bound to suffer hardship, since everytime the executor wishes to sell any property he has to make an application to the Court.

(6) According to Muslim Law applicable to Shafeis, a bequest to a non-Muslim is unlawful. Is it the intention to enforce this rule of Shafei Law in Singapore?

(7) An executor under Muslim Law, once he has accepted office, is a "mutuwali" or "trustee" of the property for the benefit of the beneficiaries. But he cannot be removed by the Court. Is it the intention to take away the Court's jurisdiction to remove trustees for misconduct, etc., which the Court has under the Trustees Ordinance?

(8) Under Muslim Law, a legacy or the estate vests in the beneficiaries immediately on the death of the Testator and the executor has no power to postpone

the sale of the properties of the Estate, with the result that many Muslim estate in India had to be realised at ruinous prices. Accordingly, it was provided by Section 337 of the Indian Succession Act that the Executor was not bound to pay or deliver any legacy until the expiration of one year from the testator's death. In Singapore, the same position will arise as in India prior to the enactment of Section 337 of the Indian Succession Act.

I could enumerate many other pitfalls which Section 47 will provide, should it become law, but I think that what I have already stated should suffice to make you realise the inadvisability of including such a section in the Bill. I trust that Sections 46 and 47. of the Bill will be withdrawn.

Apart from legal considerations, is it really wise, in a place like Singapore, to deprive a Muslim of the right which he has had until now, of disposing of his property by Will in any manner he thinks fit? According to Muslim Law, a testator cannot will away more than one-third of his estate. The remaining two-thirds vest in his heirs or next-of-kin immediately on his death. He cannot tie up the property for any length of time. If he is a businessman and has founded a thirds vest in his heirs or next-of-kin immediately on his death. He cannot tie up immovable property it must be partitioned or sold immediately. Family businesses and family properties cease to exist immediately after the death of the testator. In India and Pakistan, as a result of this system, large Muslim estates and important families have completely disappeared and where once a man owned vast estates his descendants own nothing or only a minute area of the original estate.

I have it on good authority that both in Pakistan and Egypt attempts are being made by the respective Governments to modify the provisions of the Muslim Law in regard to Wills and Inheritance.

Here, in Singapore, the Muslim Community is backward so far as commerce and industry is concerned. The Muslims should be encouraged to found business houses which will last a considerable time and to leave properties for the maintenance and support of their descendants, as long as the English Law will allow them to do so. By the proposed legislation, you will not be doing a service to the Community. On the other hand, you will be doing a disservice to the Community in the sphere of trade and industry. Can you imagine, where the Alkaff, the Alsagoff and other rich Arab and Indian families would be, had the founders of these families no power to tie up their properties for the maximum length of time allowed by the English Law?

I would, therefore, earnestly request that for the time being at least nothing should be done to interfere with the present law. If your Board is anxious to carry out reforms among the Muslims there are other numerous channels for their energies.

According to the Explanatory Note attached to the Bill, there has existed a general feeling for some time amongst the Muslims of the Colony of Singapore that the provisions of the Law of Islam should be applied in all cases of testacy. I have handled numerous Muslim estates and have known numerous Muslim Testators and the only persons who have expressed a desire for a change in the Law have been improvident next-of-kin who have been deprived of a share in the estate or have been given only a life interest.

If your Board feels that in some cases, and such cases are rare, the Testator has left nothing to his next-of-kin and such a state of affairs should not be allowed, then, perhaps, you may consider introducing a law on the lines of the English Inheritance (Family Provisions) Act 1938.

Yours faithfully,  
(Sd.) Nazir Mallal.

**Enclosure (b)**

23rd December, 1955.

The Secretary,  
Muslim Advisory Board,  
Singapore.

Dear Sir,

*Re Muslims Bill.*

Further to my letter to you of the 20th instant, a number of further points have occurred to me and I proceed to refer to them.

By Section 101 of the Evidence Ordinance, the Courts in the Colony are obliged to construe Wills according to the Rules of Construction which would be applicable thereto, if they were being construed in a Court of Justice in England. The English Rules of Construction of Wills are very different from the Rules of Construction which are applied in construing Muslim Wills. Under Section 47 of the Muslims Bill, Muslim Wills will have to be construed according to Rules of Construction applicable to Muslim Wills. But are our Courts competent to apply principles of Muslim Law in the construction of Muslim Wills? In India, Pakistan and other Muslim countries we have men learned in Muslim Law, who can be called upon to give expert evidence on Muslim Law and Rules of Construction of Muslim Wills. Even in the Federation of Malaya, they have Muftis to whom such matters can be and are often referred for their opinion. In Singapore, I doubt very much if we have any one who has a deep knowledge of Muslim Law.

We have a number of Muslim business men in the Colony known as "Kutchi Memons." They come from that part of India which is known as Kutch. They became converts to Islam not so very long ago. The Kutchi Mentors in India have by custom acquired the right to dispose of their entire estates by Will. I feel certain that Kutchi Memons will object very strongly to being deprived of their right to dispose of their entire estate by Will.

Again, the people known as "Khoja" Muslims, and there are some of them in Singapore, are by Indian Law, so I understand, entitled to dispose of whole of their property by Will.

Muslims from different parts of the world and belonging to different schools of thought reside here and have made Singapore, together with people of other religions and persuasions, the cosmopolitan business centre that it is. In my view, it is folly to impose upon all Muslims resident in Singapore, whether they like it or not, the provisions of Muslim Law. I, for one, as a matter of principle, object *very* strongly to being forced to leave my property to persons I may not want to leave it to: or, forced to leave it to my next-of-kin in shares prescribed by law regardless of their needs and circumstances. In my own case, I would rather that what little I may die possessed of went to my wife and daughters than to my son. My son will, I know, be able to look after himself, whereas my wife and daughters may not be able to provide for themselves.

It is inherent in the Muslims Law of Wills that 2/3rd of the estate of a Muslim testator must be divided among his next-of-kin as on an intestacy. This means that if a Muslim testator owns a business he cannot leave it to such of his sons as he knows are capable of carrying it on. I know of two cases in which Muslim businessmen have made Wills leaving their businesses, in one case to the eldest son, who has the necessary business experience, and in the other case, to two out of his four sons who have shown some aptitude for business. Provision has been made for the maintenance of the other sons. Under the proposed law, these businesses will have to be wound up and the proceeds of sale divided among the next-of-kin.



In another case which has been brought to my notice, the businessman has, I am told, no children and he is proposing to leave his business to his wife and a distant relation who has been his partner for some time. This businessman, apparently, has brothers in India who have been fighting him for many years, now over some property in India and they almost killed him when he was last in India. Under the proposed law these very brothers will inherit the greater portion of his estate.

I feel that the Bill has not been given sufficient publicity and the nature and the implications of the changes in the law visualised by Section 46 and Section 47 of the Bill are not really appreciated by the Muslim public of Singapore. Once they realise what it is all about, there is bound to be opposition to the Bill.

Yours faithfully,  
(*Sd.*) Nazir Mallal.