

17th March, 1921

THE
LEGISLATIVE ASSEMBLY DEBATES
(Official Report)

FIRST SESSION
OF THE
LEGISLATIVE ASSEMBLY, 1921



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LEGISLATIVE ASSEMBLY.

Thursday, 17th March, 1921,

The Assembly met in the Assembly Chamber at Eleven of the Clock.
The Honourable the President was in the Chair.

QUESTIONS AND ANSWERS.

CIVIL SUITS IN DELHI COURTS.

482. **Mr. Darcy Lindsay :** Will the Government be pleased to state what is the number of civil suits filed in the Delhi Courts in the years 1917, 1918 and 1919 which are still unheard ?

Mr. S. P. O'Donnell : It is understood that the word 'unheard' is intended to include 'partly heard but not yet decided' because there have of course been many hearings in the pending suits. A statement is laid on the table showing the position as regards these suits at the end of February 1921.

Figures for the Small Cause Court, where work is disposed of expeditiously, are not given.

Statement showing the number of civil suits filed in the courts in Delhi in the years 1917—1919 which are pending at the end of February 1921.

Name of Courts.	Year.	Institutions.	Still pending.
District Judge's Court	1917	11	<i>Nil.</i>
	1918	9	„
	1919	12	„
Sub-Judge's Court	1917	542	<i>Nil.</i>
	1918	719	5
	1919	837	203
Munsif's Court	1917	1,545	4
	1918	1,472	10
	1919	1,590	81

SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS.

483. **Mr. Darcy Lindsay :** (a) Will the Government be pleased to state whether the summary procedure on Negotiable Instruments provided under Order XXXVII of the Civil Procedure Code has been applied to any court in the Capital of India ?

(b) If the answer is in the negative, will the Government be pleased to state whether they propose to take the necessary steps to so apply it at an early date?

Mr. S. P. O'Donnell: (a) Order XXXVII of the First Schedule to the Civil Procedure Code has not been applied to any of the Civil Courts in Delhi.

(b) Before the order can be so applied it would be necessary for Rule 1 to be amended. This can be done by the High Court at Lahore acting under section 122 of the Code or by the Indian Legislature. The Government of India will consult the Chief Commissioner of Delhi as to whether such action is desirable.

MEMORIALS FROM SECRETARIAT EMPLOYEES.

484. **Mr. Sambanda Mudaliar:** (a) Have Government received any memorials from the members of the Upper and Lower Divisions of the Imperial Secretariat service since the issue of the Home Department Resolution No. 1062-Est., dated the 27th May 1920, pointing out a number of anomalies which have been produced by the said Resolution, and if so, whether any action was taken, and with what result?

(b) Are the Government aware of the fact that rise in prices has affected all alike but the relief granted has been uneven and unequal with the result that some have been benefited considerably whilst others have received little or no benefit? If so, are the Government taking any steps:

(i) to accord uniform treatment, or

(ii) to fix a minimum percentage of increase commensurate with the increase in the cost of living?

Mr. S. P. O'Donnell: The Honourable Member is referred to the answer which I gave to a similar question asked by Sir P. S. Sivaswamy Aiyer on the 10th March 1921.

INCREMENTS ON THE TIME-SCALE BASIS.

485. **Mr. Sambanda Mudaliar:** Are the Government aware that the prescription of a monetary limit as the basis for calculating increments on the time-scale in the case of Assistants placed in the Upper Division on its formation in 1909 will oblige these men to render between 25 to 30 years of service before they can hope to reach their maximum?

(b) Will the Government be pleased to state whether they have allowed the maximum to be reached in 20 years or less in the case of any services, and, if so, will they please name them? If the answer be in the affirmative, do the Government propose to consider the desirability of providing for the men in the Upper Division to attain their maximum in 20 years?

Mr. S. P. O'Donnell: It is probable that some of the Assistants now in service will have to put in from 25 to 30 years' service before they can reach the maximum pay of the time-scale now sanctioned for the Upper Division of the Secretariat, but this is inevitable in the period of transition from a graded system to a time-scale. In a number of services the maximum can be reached in 20 years; if the Honourable Member so desires, I will have a list of such

services prepared and sent to him. The time-scale for the 1st Division of the Secretariat 200—15—500 is a 20-year scale, that is, men who are appointed to that Division will reach the maximum after 20 years' service in it. Assistants of special capacity can reach the maximum more rapidly by promotion to the upper time-scale beginning at Rs. 375 in which the increments are Rs. 25.

UPPER DIVISION ASSISTANTS IN THE UPPER TIME-SCALE.

486. **Mr. Sambanda Mudaliar** : Do the Government propose to consider an increase in the proportion (15 per cent.) of Upper Division Assistants in the Upper time-scale to 25 per cent. or at least up to the number of permanent Superintendents in each Department ?

Mr. S. P. O'Donnell : The matter is being considered in connection with certain memorials which have been received from Secretariat Assistants and Clerks.

SPECIAL TREATMENT IN HARD CASES.

487. **Mr. Sambanda Mudaliar** : With reference to the Home Department Resolution of the 27th May 1920, quoted above, which provides for special treatment being accorded in hard cases, will the Government be pleased to state :

- (1) how many hard cases have been recommended by the various Departments ?
- (2) in how many of these hard cases special treatment has been accorded and how many have been thrown out ?

The Honourable Mr. W. M. Hailey : (1) The total number of cases in which recommendations have been made by the Departments concerned for a relaxation of the rules laid down in the Home Department Resolution No. 1062, dated the 27th May 1920, is 58.

(2) Special treatment was accorded in 33 cases and the remaining 25 cases were left to be dealt with in accordance with the ordinary rules in the Resolution.

DINDIGUL-PALGHAT RAILWAY.

488. **Mr. Sambanda Mudaliar** : (a) Will Government be pleased to state whether the proposed Dindigul-Palghat Railway will be taken up for execution during the financial year ? If not, when will it be possible to commence work ?

(b) Will the Government be prepared to construct and work it as State Railway ?

Colonel W. D. Waghorn : (a) The construction of the Dindigul-Palghat Railway will not be taken up during the current financial year. Owing to the abnormal state of the money market and the high prices of labour and material, this project has been kept in abeyance for the present, and Government are unable to say when it will be possible to commence construction work on this line.

(b) The Government of India are not at present in a position to construct the proposed line from State funds.

QUARTERS FOR INDIAN SECRETARIAT ASSISTANTS.

489. **Mr. Sambanda Mudaliar:** Will the Government be pleased to state:

(a) the capital cost of residential quarters of the C, D and E types intended for the Indian Secretariat Assistants and Clerks in Raisina and the corresponding figures for quarters intended for European Assistants and Clerks of the same status and pay?

(b) the details of the articles of furniture and their cost supplied to the above two classes of Assistants and Clerks?

Colonel Sir S. D'A. Crookshank: (a) and (b). The Honourable Member is referred to the answers given by Sir Claude Hill to questions asked in the Imperial Legislative Council on the 21st March 1919, by the Honourable Mr. V. J. Patel. The questions and answers will be found printed in the *Gazette of India*, dated 5th April 1919, Part VI, pages 832-834. I have supplied the Honourable Member separately with copies of the statements referred to in clauses (c) and (d) of the answers.

The final cost of these quarters is not yet known.

In addition to the furniture shown in the list then furnished, it has been decided to maintain a reserve stock of the following articles of furniture to meet demands from the occupants of the Indian Clerks' Quarters:

Chairs, easy.
Chairs, ordinary with arms.
Tables suitable for writing or dressing.
Beds, new.
Almirahs, shelf.
Teapots.
Bookshelves (better class).
Meatsafes.
Tubs.
Commodore.
Towel racks (strong).
Bathboards (plain tops).
Wash stands with toilet sets.
Mirrors.

Mr. Sambanda Mudaliar: May I ask a supplementary question, Sir? Having regard to the difference in quantity and the value of the furniture supplied to clerks, Indian and European, will Government be pleased to take early steps to remove this inequality?

Colonel Sir S. D'A. Crookshank: I shall be very glad to take action on what the Honourable Member wishes to have inquired into; but perhaps it would assist me in doing so if the Honourable Member would come and discuss with me personally.

QUARTERS FOR INDIAN ASSISTANTS IN RAISINA.

490. **Mr. Sambanda Mudaliar:** (a) Is it a fact that the design of the C and D types of quarters built for Indian Assistants in Raisina is found to be unsuitable and insecure against thefts?

(b) If the answer is in the affirmative, what steps do Government propose to take to remedy these defects ?

Colonel Sir S. D'A. Crookshank : (a) and (b). As regards unsuitability, the reply is 'No.' Reports of cases of thefts have been made and the question of raising the courtyard walls is under consideration.

RESIDENTIAL BUILDINGS FOR INDIAN CLERKS.

491. **Mr. Sambanda Mudaliar :** Do Government propose to consider the desirability of placing before a Committee of representatives of this Assembly the designs of residential buildings for Indian clerks to be constructed hereafter in Raising for approval and suggestions before it is decided to adopt those designs ?

Colonel Sir S. D'A. Crookshank : Government do not consider that any useful purpose would be served by accepting the Honourable Member's proposal ; but any suggestions advanced will be carefully considered in the Public Works Department. I may mention that designs have already been discussed and examined in detail by representative Indian Clerks, and, in this connection, the Honourable Member is referred to clause (a) of the answer I gave to a question put by Khan Sahib Mirza Muhammad Ikramulla Khan in this Assembly on 22nd February 1921.

TANNING SCHOOL.

492. **Mr. Sambanda Mudaliar :** (a) Will Government be pleased to state if they have any proposal to start a tanning industry and school for training in the art of tanning skins in any of the important commercial cities of India ?

(b) If so, at what cost and when ?

The Honourable Sir Thomas Holland : I take it for granted that by the word 'Government' the Honourable Member means the Government of India.

(a) The Government of India have formulated a scheme for the establishment in Calcutta of an Imperial Tanning Institute in which it is proposed to combine a tanning research institute, a tanning school, a demonstration tannery and a demonstration boot and shoe factory.

(b) The details of the scheme have not yet been worked out but the approximate cost of it, as roughly calculated at present, will be :

Non-recurring.

	Rs.
Capital charges for land, buildings, plant, machinery, etc.	16,00,000

Recurring.

	Rs.
(i) Demonstration tannery	28,000 per mensem
(ii) Demonstration boot factory	11,000 per mensem
(iii) Tanning School and Research Institute	13,000 per mensem

against which is to be set off the proceeds of the tannery and the boot factory which it is proposed to conduct on commercial lines.

Owing to the financial situation the consideration of the scheme has had to be deferred for the present and further progress will depend on the possibility of providing funds.

PAPER CURRENCY RESERVE.

493. **Mr. M. K. Reddiyar** : Will the Government be pleased to state :

(a) what has been the actual loss in rupees to the Paper Currency Reserve caused by the transfer of a portion of the Reserve to London, through Council Drafts, and its retransfer to India through Reverse Councils ?

(b) if it is a fact, that Lord Lytton made a statement in the House of Lords acknowledging that the figure of Rs. 35 crores as a loss to the Indian exchequer, was substantially accurate ?

The Honourable Mr. W. M. Hailey : I would invite the Honourable Member's attention to the reply which I gave to Question No. 515 on the same subject by Mr. Venkatapatiraju. That answer supplies the necessary qualifications to Lord Lytton's statement.

CALCUTTA DOMICILED COMMUNITY INQUIRY COMMITTEE.

494. **Mr. A. D. Pickford** : Will the Government be pleased to state :

(a) Whether it is the case that a letter addressed by the Secretary of the Calcutta Community Inquiry Committee on the 18th September 1920, to the Adjutant General in India was replied to on the 24th of February 1921 ?

(b) whether it is the case that the letter of 24th February 1921, made no attempt to deal with the subject-matter of the letter of 18th September 1920, but requested that the matter be referred to the President of the Anglo-Indian Association—a body no longer in existence—who would, no doubt, address His Excellency the Commander-in-Chief further on the subject ?

(c) whether Government will be pleased to inquire into the reason for the delay in dealing with the letter in question ?

May I point out a clerical error ? The Calcutta Community Inquiry Committee should be the Calcutta Domiciled Community Inquiry Committee.

Sir Godfrey Fell : (a) Yes.

(b) Yes. It is however understood that the Anglo-Indian and Domiciled European Association has now had its name changed to the Anglo-Indian Association.

(c) Government have inquired into the reason for the delay in dealing with the letter from the Secretary, Calcutta Domiciled Community Inquiry Committee, dated the 18th September 1920. They much regret, that owing to an entire misapprehension as to the scope and functions of the Calcutta Domiciled Community Inquiry Committee, a full reply was not sent to this letter. The matter is being taken up, and a reply will shortly be sent regarding the points specified.

Mr. A. D. Pickford: May I ask a supplementary question, Sir? Is it not the case the change of name is only in the form of a Resolution at a conference and has not actually been given effect to?

Sir Godfrey Fell: I am not an expert on this subject, Sir. But the letter informing us of this change of name was a letter in the name of the Association, signed, I think, by the Secretary, Mr. Hardless.

NEW UNIVERSITIES IN INDIA.

495. **Lala Girdhari Lal Agarwala:** (a) Will the Government be pleased to lay on the table the correspondence and proposals about the establishment of new universities in India?

(b) Do the Government of India favour the idea of establishing a university at Agra and another at Cawnpore?

Mr. H. Sharp: (a) The Government of India are not in a position to place on the table the correspondence about the establishment of new Universities in India.

(b) Any proposal put forward by the Government of the United Provinces for the establishment of a University at Agra or Cawnpore would receive sympathetic consideration.

POST OFFICE AND RAILWAY MAIL SERVICE IN THE PUNJAB.

496. **Mr. T. M. Hussain Sahib Bahadur:** (i) Will Government be pleased to state the number of clerks, Inspectors and other Supervising Officers employed in the Post Office and Railway Mail Service in the Punjab showing separately the number of (a) Muhammadans, (b) Hindus, and (c) other nationalities, and the percentage of Muhammadans to men under (b)?

(ii) In case there is a low percentage of Muhammadan employees in the Post Office or Railway Mail Service, what steps do Government propose to take to equalize their proportion?

Mr. C. A. Innes: (i) *Post Office:*

Muhammadans 766, Hindus 1,419, Others 204. Percentage of Muhammadans to Hindus 54.

Railway Mail Service:

Muhammadans 160, Hindus 521, Others 84. Percentage of Muhammadans to Hindus 81.

(ii) This question does not arise as the proportion of Muhammadans to Hindus in the Post Office and Railway Mail Service together compares not unfavourably with the proportion of the Muhammadan to the Hindu population of the Province.

The Honourable Mr. W. M. Hailey: Sir, I lay on the table the information promised in reply to a question by Mr. Rangachariar on the 17th February 1921, regarding the number of appeals and petitions to the Chief Revenue Authority under the Excess Profits Duty Act.

Statement showing the number of appeals and petitions to the Chief Revenue Authority under the Excess Profits Duty Act.

Provinces.	No. of appeals and petitions received.	No. summarily rejected.	No. heard on merits.	No. in which assessments were revised or modified.	REMARKS.
Madras . .	290	21	256	188	
Bombay . .	380	3	366	287	11 pending.
Bengal . .	145	20	80	67	9 withdrawn and 30 pending.
United Provinces .	62	4	57	33	1 pending.
Punjab . .	114	...	101	79	21 rejected after hearing, 1 returned for fresh decision and 18 pending.
Burma . .	7	...	7	6	
Bihar and Orissa .	8	3	5	4	
Central Provinces	
Assam	
TOTAL .	1,006	51	872	664	

The Honourable the President: I have to inform the Assembly that His Excellency the Governor General has been pleased to nominate the Honourable Mr. Hailey as a Member of the Standing Finance Committee.

THE BUDGET—THE INDIAN FINANCE BILL.

FINAL STAGE.

The Honourable Mr. W. M. Hailey: Sir, I beg to move:

‘That this Assembly do recommend to the Council of State that the Bill further to amend the Indian Tariff Act, 1894, the Indian Post Office Act, 1898, the Indian Income-tax Act, 1918, and the Super-tax Act, 1920, and to amend the Freight (Railway and Inland Steam-vessel) Tax Act, 1917, be referred to a Joint Committee of this Assembly and of the Council of State and that the Joint Committee do consist of 20 Members.’

I have no doubt, Sir, that the House will desire that I should place before it some explanation of the reason why I make this particular motion. The Finance Bill, as we may call it for short, was formally introduced before this Assembly on the 1st of March last. The first stage, therefore, has been passed. Now comes the second stage; and I propose to explain briefly to the House firstly, why I have proposed that the Bill should be referred to a Committee, and secondly, why I have proposed that it should be referred to a Joint Committee of both Houses. In the second stage of a bill the rules provide three courses as alternatives for action. I would refer Honourable Members to Article 68 in the Hand Book giving the matter in brief. I could have

proposed to the House that the Bill should be taken into consideration or that it should be put to a Select Committee, or thirdly, that it should be circulated. Now the House will probably agree with me that it was unnecessary to move for circulation, because the matter has been very fully placed before the House and before the country as the result not only of my Budget speech on the 1st of March, but of the general Budget debate following. I think, as a matter of fact, that the Bill itself has already been published in most of the newspapers. Then, as between the other two alternatives, the process of moving for consideration involves first that the general principles of the Bill should be discussed, and when the motion for consideration has been passed, the amendments should then be considered. Now, the general principles of the Bill have, I think, been discussed very fully in the course of the two days debate which we devoted to general discussion of the Budget. In itself the Bill merely proposes by the alteration of a number of schedules of different Acts to give effect to detailed proposals for taxation which are necessitated by the deficit shown by the Budget. I doubt in consequence whether the House would desire that further opportunity should be given for the discussion of the general principles.

Then, as I said before, the rules provide that when the motion for consideration has been accepted, the House should at once proceed to consider amendments. Now I urge that before amendments of the number and complexity of those which are before us are considered, it would be advisable that they should be deliberated at, what I may describe as a round table committee of members representative of the Assembly, a committee which can hear witnesses, who attend to put forward the case of bodies, institutions or persons affected by the taxation. That is a very important stage in the consideration of all taxation proposals, of any wide scope and the House, I am sure, will agree that it will be far more convenient that such witnesses, if they are to be heard, should be heard by a committee rather than their representations should simply be placed in writing before the House. It is for this reason, that I have proposed instead of asking that the Bill should be taken into consideration, that it should be placed before a committee. Let me say at once that the reference to a Select Committee and the fact that it is returned to the House after consideration by a Select Committee does not bind either individual members of the committee or Members of the House in any way.

Any member of the committee who dissents from his colleagues on that committee can append his note of dissent. He can afterwards, if he wishes to do so, move amendments to which he has referred in that note of dissent. And of course Members of the House who are not members of the committee can equally move any amendment they desire when the Bill comes up after consideration by the Select Committee. Now, Sir, so much for one part of my case,—the reason why I have desired to refer the Bill to a Select Committee.

Now comes the second part,—the reason why I have proposed that it should be referred to a Joint Committee of the two Houses. It is, of course, necessary that any Bill, even a Bill for taxation, should be passed by both Houses. I have only to refer to section 83 on page 30 of the Handbook. Now, when a Bill that has been passed by one House after reference to a Select Committee goes to the other House, then that other House does not appoint another Select Committee. By referring the Bill to a Committee of the originating House, therefore you avoid in any case that stage—the Select Committee stage—in the second House. But you do not avoid the fact that in that

[Mr. W. M. Hailey.]

second House numerous amendments may be brought forward which could perhaps have been obviated if a Joint Committee had considered the Bill before it went to the second House. That, I consider, is the gain by referring the matter now to a Joint Committee. It is a saving of labour for the legislature generally. If the second House has numerous amendments which it desires to place in the Bill, then it returns the Bill to the first or originating House with these amendments in them. For the facility of the disposal of business, it is obviously desirable that these amendments should be as few as possible; because, if the second House insists on the retention of its amendments, then you are involved in all that awkward and somewhat dilatory procedure which is provided for in section 93 onwards of the Handbook. That is a contingency which most of us, I think, would wish to avoid.

I have now, Sir, attempted to make my own point of view clear to the House. I rest my case on this ground, that the procedure which I now propose will result in a certain saving of labour to the legislature itself and a certain saving of time. I hope that the House will accept my assurance when I say that the saving of time is not so important from our, that is the official point of view as it may prove to be from that of the legislature and of the public. We are here at the disposal of the legislature, and it is a matter of very little moment to us if the disposal of this Bill by the legislature is deferred some days or even weeks. That, as I say, is a matter of comparatively small moment to us. But there is another aspect of the case which I think it is well that I should make clear. Trade and Commerce generally has, hanging over it, certain proposals in regard to taxation and to tariffs, and it is in the interests of trade that those questions should be settled one way or the other as soon as possible. I see that the point is so well appreciated, Sir, by many of us in the House who are concerned in the commerce of the country that I need not dilate on it. I will only refer, as one typical case, to the fact, that we have received very numerous telegrams from different interests concerned and, in particular, we have received large numbers of telegrams from merchants in regard to the amendment which has been put forward on the subject of the taxation of silver. Now, this is obviously causing a great deal of disturbance in the minds of dealers, both in Bombay and in Calcutta. And I for one should be very glad indeed to set their minds at rest as to the action which we are going to take, either one way or the other, in regard to taxation of this description. I quote this only as one illustration; and I see that it is unnecessary for me to dilate on that aspect of the case. I desire only to make it clear that I have put forward this proposal not as involving any restriction on discussion—for I want the very fullest and freest discussion of every item of this Bill—but as likely to lead to a saving of some time to the legislature and some anxiety to the many commercial interests concerned.

Dr. H. S. Gour : Sir, the question which the Honourable Finance Member has raised, raises an important question of constitutional law, which I take leave to state shortly before this House. The House will bear with me when I state, that under section 67(a) of the Government of India Act, which is printed in this Handbook, the power to vote on the Budget is reserved exclusively and solely to the Members of this House. [See section 67(a), clause (6), page 59.]

Now, the position is this—and I think it is a position which has been conceded by the other House—that all matters relating to the Budget and supplies

shall be exclusively discussed, debated and decided upon by the Members of this House. Is the Finance Bill an independent piece of legislation or is it merely part and parcel of the Budget intended to validate the provisions of the Budget and to give effect to its accepted provisions? I venture to submit, that two opinions are possible on this point. First, that the Budget provisions are the principal provisions relating to the raising of revenue in this country and if it is once conceded, as it must be conceded, that the power to vote supplies vests exclusively in this House, I submit, it must be conceded as a matter of necessary implication that the power to find money for the purpose of validating the provisions of the Bill must equally rest solely on the responsibility of this Assembly. In other words, the Finance Bill is merely ancillary to the main purposes of the Budget. If there was no Budget, this Finance Bill would not exist. It is merely intended to legalise the operation of the Budget for the ensuing year and as such it has no independent existence. Now, I beg to ask, that if the power to vote supplies rests exclusively with this House, should not also the power to adopt a measure for the purpose of finding money necessary for the purpose of carrying that Budget into effect rest equally and solely with this House? It is merely a validating Bill intended to give effect to the provisions accepted by this House.

Now, Sir, if that be the view acceptable to the House, I submit, that the Council of State have no jurisdiction to go into this question, dealing as it does with the money bill. I am perfectly certain, Sir, that if this question had been raised in the House of Commons, the answer would admit of no doubt. The question was debated in 1909-10 and the order which is given in May's Parliamentary Practice at pages 322 and 323 sets the matter at rest so far as the British House of Commons is concerned.

The Honourable Finance Member has, no doubt, a lurking suspicion of an objection of the kind I raise, and, therefore, he has drawn the attention of this House to a provision which lays down that :

'Except as otherwise provided by, or under this Act, a Bill is not to be deemed to have been passed by the Indian Legislature unless it has been agreed to by both Chambers.'

Now, you will observe the qualifying clause which controls the whole section, 'except as otherwise provided by, or under this Act'. 'Except as otherwise provided', and not necessarily *expressly* provided by this Act. We know as lawyers that a provision may be made expressly or by necessary implication, and I venture to think, that if section 67(a) clause (6) is correctly read, there would seem to be a necessary provision underlying that section that all money bills shall be passed by the Members of this House and this House only. I therefore submit, that Article 83, of this Manual does not trouble me and does not stand in the way of the argument that I am advancing. Is there anything else in the whole of this book which militates against the contention that I am advancing? I submit, there is not. On the other hand, may I be permitted to point out the practical difficulties of a situation that might arise and may be created by referring this Bill to a Joint Committee of both the Houses?

Suppose we were to accede to this motion. Now, it is provided in the rules, that an equal number of Members of this Assembly shall sit with an equal

[Dr. H. S. Gour.]

number of Members of the Council of State. The Members of the Council of State will ask us :

' You want us to pass this measure. First satisfy us that the Budget which you have passed is a righteous Budget. Otherwise, we shall not be a party to the passing of this measure. Discuss with us clause by clause, item by item, and explain to us why you have passed these measures which entail such a heavy expenditure on the public revenue.'

If we are to take them into our confidence, in duty bound we ought to discuss with them every item of this Budget, in other words, there must be a re-discussion of the whole Budget before the Members of that House. Is that contemplated by the Government of India Act, section 67 (a)? What the Legislature has excluded,—and expressly excluded from the purview of the other House—would be let in indirectly by the course which the Honourable Finance Member invites us to adopt?

Now, Sir, before the Members of the Select Committee, or rather of the Joint Select Committee commit themselves to this proposal, I have already told you that they will be within their rights, and in fact, I submit further, that it will be almost obligatory on us to explain to them the reasons which have induced this House to pass the Budget. But if the Select Committee of that House is convinced, it, by no means, follows that the Council of State would be convinced. The Honourable Finance Member has told us in words which can admit of no mistake that all Bills must be passed by the two Chambers.

Now, let me take you through the next stage of discussion. If this Finance Bill goes to the whole House, namely, the Council of State, the Council of State would be perfectly justified in saying :

' You must lay all your cards on the table. Justify to us every provision of this Budget, every item that the Assembly has voted. Otherwise, we do not feel bound to pass this Finance Bill. We do not accept the responsibility of finding you the money when we have no control over your expenditure. We will not pass this Finance Bill unless we are satisfied that the Budget which you have formulated is a right Budget which entails an additional taxation for which you want this House to commit itself.'

I ask you, if you were Members of the Council of State instead of being Members of this Assembly, would that be an unnatural course to adopt? Suppose for the sake of argument that the powers conferred upon this House under section 67 (a) of the Government of India Act were the powers conferred upon the Council of State, and suppose, for the sake of argument, that the Council of State had passed this Budget and you had the power under the Act of passing a Bill consequential upon the passing of the Budget, can you say, Sir, that the Members of this House would not be within their rights to say :

' We do not wish to pass nor are we justified in passing a measure the necessity of which has not been disclosed to us.'

And would that not lead to the discussion of the whole Budget over again? It may be, that it may lead indirectly to the discussion of the Budget, but what difference is there between a direct and an indirect discussion when the ultimate object to be achieved is the passing of a Finance Bill? And would this House ever commit itself to an enhanced taxation if it is not given power to go to the constituents and say :

' We have passed this additional taxation because we saw the necessity of it.'

But if the tax-payers were to be told that you were blindfolded as regards the necessity of the Budget, but you were merely concerned in passing the consequential measure, would not the constituents say :

'You had no business to pass a measure which you are not prepared to justify before the constituents.'

Now, I submit, that may not occur in every case, but at the same time I venture to think, that it is an attitude of mind which this House would certainly adopt if the position had been reversed. What guarantee have we, that the Members of the Council of State would not utilise the opportunity that you give them of taking them into your confidence on the subject by a joint committee for the purpose of facilitating the passage of the Finance Bill? This is a question which, I think, requires serious consideration. This is the first Budget of its kind and this is the first Finance Bill of its kind. We have no precedents and, because we have no precedents, we must be extremely careful to see that we do not create a bad one. If once this House decides that the Council of State have the power to chop, twist and turn the Finance Bill according to its pleasure, we shall be relegating our sole responsibility by taking the Council of State into our confidence upon a measure upon which the Act of the Legislature vests this Assembly with sole and undivided authority. I submit, Sir, this question should not be lightly treated. It is a question of grave constitutional law and one upon which this House should deliberate before committing itself to the proposal of the Honourable the Finance Member.

Another thing that I wish to bring to the notice of Honourable Members and of the Government in this connection is, that if it is once conceded that all Money Bills which form an integral item of our annual Budget are to go as a matter of legal obligation to the Members of the Council of State, we shall have completely to re-write section 67 (a) of the Government of India Act and the provision which underlies it. Even if the clause 'except as otherwise provided' did not exist in article 83 of the Legislative Assembly Manual, I would still contend, that, as a matter of necessary obligation, if section 67 (a) is to be worked in its true spirit, that this Assembly is given the sole right of passing a validating measure. I feel, Sir, that this is a question upon which I am entitled to invite the opinion of this House.

Now, I pass on to the other two questions raised by the Honourable the Finance Member. The first is as regards the economy of time. Now, Sir, I fail to see what economy of time would be effected by appointing a Joint Committee of both the Houses at this stage. May I point out to you, Sir, that, assume that a Joint Committee of both the Houses is appointed here and now. Let me assume for the sake of argument that the Members of the Joint Committee would be unanimously of opinion that this Finance Bill should be passed in all its integrity as drafted by the Government. Even then, I submit, the Bill must be passed first by this House and then by the Council of State or by both the Houses simultaneously. The controversy which centres round this Finance Bill may be postponed but it cannot be materially delayed. The controversy which centres round this Bill, I submit, may be relegated to a week or two weeks, but the main question underlying the constitutional rights of this House and of the other House must be debated both in this Assembly and in the Council of State. How is there then going to be economy of time? And, I would ask you, Sir, that after the Select Committee returns its report, what is the procedure?

[Dr. H. S. Gour.]

Let me read it to you. I invite your attention to page 27 of this Manual. It says: 'After the presentation of the final Report of a Select Committee on a Bill, the Member in charge may move that the Bill as reported by the Select Committee be taken into consideration.' I shall leave out the rest of it, because it is a procedure that the Bill as reported by the Select Committee be recommitted either without limitation or with respect to particular clauses or amendments only or with instructions to the Select Committee to make some particular or additional provision in the Bill, or that the Bill as reported by the Select Committee be re-circulated for the purpose of obtaining further opinion thereon.

Now, I beg to ask, that assuming for the sake of argument that this is a plain-sailing Bill and that the Members of the Joint Committee unanimously vote that this Finance Bill without any amendment, out of the innumerable amendments of which notices have been given and which have been circulated to Honourable Members, be passed, we have still to consider this question in the two open Houses, and there again the question which I am raising before you here to-day would be considered by the Members of both the Houses, and, unless this question is settled once for all, the economy of time for which the Honourable the Finance Member pleads is not likely, I submit, to be materially affected.

One word more, Sir, and I have done. It is perfectly true, that the Government of India Act as well as the rules framed under that Act do not expressly provide for the passage of a consequential validating measure by this House as the House having limited monetary control over the finances of the Government of India. It is equally true that the general provisions relating to legislation provide that a measure of legislation should be passed by both the Chambers. But there is a principle which lawyers know and which is a cardinal principle of the interpretation of Statutes. That principle is *specialia generalibus derogant*, that where a special power has been conferred upon a particular body, that body must of necessity possess that power to the exclusion of any general power or to the detriment of any general provision applicable limiting that power. Now, I submit, the general provision relating to the passage of legislative measures generally cannot, I submit, derogate from the special powers which this Assembly possesses under an express provision of the Government of India Act. I, therefore, submit, that appealing to first principles, and apart from the statutory provision contained in the Government of India Act or in the rules framed thereunder, I would still say that if there was nothing expressly curtailing and limiting the power of this House, this measure should be the sole concern of this Assembly.

Lastly, Sir, I submit, it was pointed out, if I remember aright, by Lord Selbourne's Parliamentary Committee that the procedure of the House of Commons was as far as possible to be followed in the conduct of business of this House. I cannot for a moment bring myself to believe that the controversy which was raging in 1909 and 1910, when, I believe, Sir, you were a Member of the House of Commons, a controversy which settled once for all the right of the Members of the House of Commons to pass a Money Bill which could not be challenged by the other House, was not before the Members of the Joint Parliamentary Committee; and, I think, that this question must have occurred to the Members of the Joint Parliamentary Committee when.

they drafted what is now to be read as section 67A of the Government of India Act. It will be remembered that the Montagu-Chelmsford Report wanted to constitute the Council of State as an independent revising chamber, and it is a well-known fact that it is no longer an independent revising chamber. Consequently its powers which were defined by the Montagu-Chelmsford Report have been much curtailed by the subsequent legislation, and I think, Sir, in this connection it must have occurred to the astute lawyers who sat on the Joint Parliamentary Committee that this question regarding a Money Bill must of necessity arise in the Legislative Assembly which had been clothed with the sole power of passing the Budget and voting thereupon.

I, therefore, think, Sir, that the Joint Parliamentary Committee must have thought that the power to vote on the Budget, a power which could only be exercised by the Legislative Assembly, if it has also the power of giving effect to its volition, that this Budget shall become for the time being the working Budget of the Government of India. And how is it possible, that if we are to determine that certain taxation shall be levied upon the country, we should ask somebody else who is not responsible for the levy of taxation to join and concur with us in the levy of that taxation, when he has taken no part whatever in our deliberations for the purpose of determining its propriety? I submit, therefore, Sir, that the Members of the Council of State would feel somewhat awkward having to pass a measure of a purely fiscal character for the purpose of legalising the levy of taxation, the propriety of which is not open to that House to discuss. I feel that even on the ground of expediency, therefore, even on the ground of propriety, Members of that House may justly complain that they cannot be made party to a measure of legislation for which this House and this House alone should be responsible. These are questions which I ask the Honourable the Law Member and the Honourable the Finance Member to seriously consider; and, before a precedent is created, let us be sure that our power in respect of the Budget is open to revision by the other House; and unless this House is prepared to admit that its power of passing the Budget can be revised, supervised and controlled by the other House, this House, I submit, must not yield readily to the proposal which has just been moved.

Mr. T. V. Seshagiri Ayyar : Sir, upon the constitutional question just now raised, I must say, that I do not share the difficulties pointed out by my Honourable friend. Now, if you turn to this section 83, the language is this: 'except as otherwise provided by or under the Act.'

It is not otherwise provided that the Council of State has no power of revision over Money Bills. What is provided is, that the Legislative Assembly has the power to pass the Budget. That is the provision in the Act, not the contrary provision; and, I think, Sir, it is a well known canon of construction, that where power is given to a particular body unless it is expressly taken away, you cannot by implication say that that power has been destroyed. Under those circumstances, having regard to the language of section 83, I am not troubled to the same extent regarding the constitutional point, as my Honourable friend, Dr. Gour.

But, Sir, on the question of expediency and justice, I think the Honourable the Finance Member should not press the Resolution which he has brought forward. Now, Sir, the words which you spoke, not very many hours ago, are still ringing in my ears, that we of this Assembly who have the privilege

[Mr. T. V. Seahagiri Ayyar.]

of sitting here should do nothing for which posterity would blame us, should create no precedent which would be resented by posterity and which would be regarded as having enabled anyone to take away the rights which we possess; and, Sir, all of us are anxious that this Assembly should in course of time be as great, as powerful and as efficient as the House of Commons; and, therefore, we should try to see that the powers which have been given to us are not taken away from us. I think, Sir, I had the information from you—I hope I may use that information—that it is not the practice in the Houses of Parliament to constitute joint select committees except in one instance, namely, where the question of codification comes in; that is to say, where there are a large number of Acts that have been passed and the only question is one of redrafting those Acts and consolidating these various Acts into one whole, then only it is the practice of the Houses of Parliament to constitute joint select committees. No doubt, there is a standing joint committee on Indian affairs; that has nothing to do with Bills or with select committees; but the ordinary practice, as I understand, is this, that no Bill which is to be passed by both Houses can be referred or has been referred hitherto to a joint committee consisting of Members of the House of Commons and of the House of Lords. Under these circumstances, the question arises whether there is any reason or ground for departing from the wholesome practice which obtains in England and of instituting a departure by appointing a joint select committee.

Now, Sir, the Honourable the Finance Member told us, that there would be a saving of time. My Honourable friend, Dr. Gour, has pointed out, that there would be no saving of time. I do not think, as a matter of fact, by the procedure which is sought to be adopted, there will be any saving of time. Now, take for example, the case where there is a dissenting minute in the Joint Select Committee, and supposing by virtue of the fact, that the Council of State has an equal voice with us in the deliberations, certain amendments are carried which this Assembly, a majority of it, does not approve of. What would be the result? We will have to reject them; the matter will have to go again before the Council of State; the Council of State may stick to their own opinion; and then there will be a joint session. I do not think there will be any saving of time by the procedure which has been recommended by the Honourable the Finance Member. Now, that is not the only difficulty which this Assembly will be labouring under by acceding to the proposal which the Honourable the Finance Member has suggested. Sir, this Assembly consists of about 146 Members, and the Council of State consists of about 60 Members. Under the Rules, as they stand at present, if a joint committee is appointed, there must be an equal number of Members of both Houses in that committee, that is to say, there will be 10 Members of this Assembly and 10 Members of the Council of State. The result is, that the Council of State will have a voice disproportionate to its strength. Under the rules, as they stand at present, if there is equality of votes, the motion is lost,—I am not quite sure if the President has a casting vote; under these circumstances we will not be acting prudently in acceding to a joint committee. On the other hand, we will be setting a very bad precedent, which posterity will blame us for, by acceding to the proposal that this Bill should go before a Joint Select Committee. Sir, I am not anxious, I have never been anxious, to say that the Council of State has not got as good a voice in regard to legislation as we have, and it is desirable that they should have it, but it will not

mean any disrespect to them if we say that we stick to our rights. We want to have this Bill passed by ourselves, and then we will send it to them. I do not think, the Members of the Council of State will have any reason to complain if we say that we shall not part with our rights, because if we do so posterity will blame us and we ourselves will not be discharging our duty properly to the country. Under these circumstances, Sir, I think the proposal which emanated from the Honourable the Finance Member should not be acceded to by this House.

Dr. Nandlal: Sir, when I read the provisions of section 88, I find that the courses suggested by the Honourable the Finance Member seem to be provided there. His argument, so far as the number of courses are concerned, is correct, but the question before this House is this, whether one of the courses suggested by the Honourable the Finance Member should be adopted or not. I am sorry I have got to differ from my Honourable friend, Dr. Gour, so far as the interpretation of section 83 is concerned. I think the provision is quite clear. It says:

‘Except as otherwise provided by or under the Act a Bill is not to be deemed to have been passed by the Indian Legislature unless it has been agreed to by both the Chambers, either without amendment . . . or’;

We may omit the concluding portions. There is the Interpretation Act, and there is a very luminous commentary on the subject of Interpretations. Certain principles are laid down, the gist of those principles in a nutshell is, that the question of convenience is to be given prominent consideration, and that, not only the question of convenience, but the question of the ultimate effect also. If I apply those principles to the interpretation which has been so ably put forward by my Honourable friend, Dr. Gour, then I feel constrained to say, that I differ from him. Therefore, the Bill can only be passed when it has passed through both the Chambers of the Indian Legislature. But there is something in favour of Dr. Gour, though it is not very forcible. When I interpret clearly clause (6) of section 67A, the words are eloquent and they seem, to a certain extent, to support Dr. Gour's views. Now what are those words? ‘The Legislative Assembly may assent or refuse its assent to any demand or may reduce the amount referred to in any demand by a reduction of the whole grant.’ Perhaps some of you may think, that it is beside the point, but I reply at once, that it is not, and you will admit it when you hear the consequential result that I have arrived at. He had probably the conception of a different idea which seems to have been propounded in these two sub-clauses (6) and (7). Then we come to clause (7). That provides as follows:

‘The demand as voted by the Legislative Assembly shall be submitted to the Governor General who shall, if he declares that he is satisfied that any demand which has been refused by the Legislative Assembly is essential to the discharge of his responsibilities as if it had been assented to, be . . .’

We may omit the concluding lines in order to save the time of this Honourable Assembly. So far as the question of refusing or reducing the demand is concerned, there cannot be the slightest doubt that it is the Legislative Assembly alone which has got full power and competency to decide the matter. If the Legislative Assembly does not assent, that is to say, if it refuses to do so, then there is no other body, much less the Council of State, which has got any power, whatsoever, to vote money for the Government. The Governor General in Council only has got certain powers

[Dr. Nandlal.]

which are embodied in the provision I have already read. My Honourable friend, Dr. Gour, seems to have been induced, by reading the provisions of these two clauses, to think that the other Chamber of the Legislature has no jurisdiction over money Bills.

He is welcome to his way of reading them, but, as I have already submitted, I put forward my very respectful difference of opinion. Therefore, the Bill can be sent to the other Chamber and it is a legitimate course. It is we who have to give assent, it is we who have to refuse assent, and consequently it is we who will be held responsible to the taxpayers and rate-payers. Shall we then allow another body to discuss what we ourselves ought to discuss and examine? We may say at once, that we are not prepared to avail ourselves of the superiority of their opinion. We are satisfied with our own ability, and I think we are competent to determine this point for ourselves. But the Honourable the Finance Member may say, 'Oh! well this is sentimental.' Oh! no, no, Sir! This is not sentimental at all. This is the crucial point. It was stated some time ago, that as a matter of fact, this is the only democratic body. We represent the people. We represent the masses. We are the advocates of the taxpayers, who shall have to be saddled with this monetary responsibility and, therefore, we should not shirk our duty. We shall sit here, we shall spend nights here, days and days, and weeks and weeks and months and months. We shall make the adjoining rooms our dining rooms and some of them sleeping rooms. We shall do our duty because we shall be held responsible to our people. What answer shall we give if we failed in this legitimate duty? Therefore, the suggestion which has been so ably put forward by the Honourable the Finance Member is not acceptable to us, I am sorry to say.

Being as learned as he is, he knows how to put his points very ably. He says, 'Well, I do not mind whether it will take long or be decided soon.' But in his own usually able and eloquent manner, he suggests to us that a good many telegrams have been received purporting to say that commercial people are in great anxiety to hear the result. We thank the Honourable Finance Member for this enlightenment. But we may very respectfully tell him, that we are not in favour of that sort of hurry. We, the representatives of the people, will give greater prominence to quality than to quantity. We shall give prominence to efficiency and not to the bulk of work or to work which is expedited. Expedition is nothing when compared with efficiency. It is the efficiency of the work which is admirable. Expedition has got his own value no doubt, but if a thing is done to-day and to-morrow it has to be amended, then what is the use of spending time over it? So, therefore, efficiency should be preferred to expedition. There is no second opinion on this point, so I shall not dilate on it.

Now, the Honourable Finance Member says, that time will be saved if this course is adopted. Dr. Gour and Mr. Ayyar have very ably dilated upon this question. I think greater time will be spent if we send the whole thing to the other Chamber. Some of the Members of that Chamber will co-operate with some of the Members of this Chamber, and will come to a conclusion. Then, a report will be submitted to us; we shall have to discuss that report, we shall have to go into each and every thing. Then, there will be three different processes. So, there will be no gain in time, but, on the contrary,

there may be loss of time. Therefore, I say, the course suggested in the motion is not advisable. The result which I arrive at and which I put before this House, is briefly this, that this plan should not be adopted, namely, the motion that a Joint Select Committee of both Chambers be constituted and the Bill forwarded for adjudication or determination by that Committee. This does not appeal to me. I, therefore, oppose the motion, so far as this part is concerned; which has been put forward by the Honourable Finance Member.

Sir P. S. Sivaswamy Aiyer: Sir, before proceeding to deal with the constitutional question which has been raised by the Honourable Dr. Gour, I should like to address a few remarks which I think the rules permit me to make on the general principles of the Finance Bill. While I do not wish to commit myself in any way to any expression of approval or disapproval of the policy of the Government which has landed them in the necessity for raising an additional taxation of 18 crores, I wish to express my gratification that the Government have not hesitated to resort to raising the tariff. I am wedded to no particular theory of economics. I do not worship at the altar of Free Trade or at the altar of Protection. I worship only at the altar of India. The welfare of India is my first concern, and the welfare of the Empire is the second object of my thoughts. In this connection, I am sure, everyone of us here must have read with feelings of amazement and indignation the attempt which has been made by the meddlesome merchants of Manchester to dictate to us on the question of our taxation policy. We have suffered too long from the meddlesomeness of Manchester, but now that we have got a representative legislature, we shall no longer submit to this dictation and we are determined to make that clear to Manchester. Sir, there is no ground whatever for this easily excited alarm of the Manchester merchants. The Honourable Mr. Hailey has explained in his speech that the duties he has proposed are not of a protective character, but, even if they had been, this House would not on that ground alone have refused to support them. He has clearly explained that they are entirely for revenue purposes. Is there any country in the world which would hesitate to levy import duties for purely revenue purposes? Does England hesitate to levy import duties for revenue purposes? I believe, there is no country in the world which does so.

Mr. E. L. Price: Sir, on a point of order, do these remarks arise on the motion we are discussing?

The Honourable the President: Order, order. In case there should be any doubt about the matter, Standing Order No. 39 makes it quite clear, that when a motion, such as has been moved by the Honourable the Finance Member, is moved, the principle of the Bill is open to discussion as well as the particular procedure proposed to be adopted.

Sir P. S. Sivaswamy Aiyer: Sir, tariffs are generally devised by countries with various objects, not necessarily for the purpose of protection. Very often they are devised for revenue purposes, and one of the best sources of revenue which can be easily manipulated from year to year is the revenue derived from customs. Another argument among many in favour of a tariff duty is, that it gives us a margin for negotiation with other countries in respect of tariffs. It is not, however, necessary for my present purpose to enter at length into the theory of tariffs or into a justification for the imposition of tariff duties. It is sufficient for me to say here, that we do not believe

[Sir P. S. Sivaswamy Aiyer.]

in the professions of free trade which Manchester finds it convenient to follow. Manchester very often expresses without any abashment the sense of danger which it feels itself from any proposals for revision of tariffs in the countries with which England may have dealings. Sometimes it utters philanthropic wails over the lot of the poor consumer in India, but we value them no better than we should value crocodile's tears. Now, Sir, I shall only say that it is a preposterous claim, and that if the merchants of Manchester wish to render more acute the situation in India which has been described by certain worthy gentlemen in England as a dangerous situation, I advise them to go on persisting in this policy which they have followed. If they wish to bring about a disruption of the Empire, they have only to pursue this policy. But I hope that Manchester does not represent the enlightened conscience of England or the enlightened public opinion of England any more than the House of Lords represented the enlightened conscience of England on the Punjab affair.

Sir, I regard it as a matter of the happiest augury to this country that His Majesty the King has appointed as our new Viceroy, one who has pledged himself to the pursuit of justice in larger fields than mere courts of law and who has set before himself the watchword of liberty, justice and love. It is a matter of the happiest augury that His Majesty the King-Emperor should have chosen for our Viceroy one who in his person was the embodiment of justice and who was the supreme representative, till a few days ago, of justice in England, and I am convinced that with a Viceroy following that watchword which he has set before himself we need have no misgivings of the success of our cause. Our cause is impregnable, and with a Viceroy like Lord Reading, there is no doubt, whatever, of our victory against Manchester. I have also every confidence that the Government will be firm as a rock upon this question of the import duties.

I now pass on from the question of the general principles of the Bill to the constitutional question which has been raised by Dr. Gour, and I request the House to bear with me a little while I explain the difficulties which present themselves, to my mind in accepting the view which he has so ably put forward. Sir, the question, as it presents itself to my mind, does not raise any such serious constitutional issues as it presents to the minds of some of my Honourable Colleagues here. The proposal for a joint committee of both Houses is not really forbidden by the statute notwithstanding Dr. Gour's opinion to the contrary. I am glad to find myself supported by the Honourable Mr. Seshagiri Ayyar on this point. He has told you, that there is nothing illegal in the reference to a joint committee. The question is really one of convenience or of expediency. Now, under the circumstances of the case, which is the most convenient or expedient course for us to follow? I admit, that the normal, ordinary course in regard to legislative measures is for the House in which a Bill is initiated to carry through the Bill with or without a Select Committee of its own, and then to pass it on to the other Chamber. But the statute does provide for cases where it may be desirable to refer a subject to a joint committee of both Houses. Whether a Bill shall be referred to a joint committee or not is really a mere matter of convenience to be decided upon the merits of each case.

Now, it has been said that we have got the right to grant supplies and that the right to carry through the Finance Bill follows from it as a necessary

corollary. Undoubtedly, the right to grant supplies is vested in the Legislative Assembly under the Government of India Act. But it does not follow from that, that the right or the duty to carry through a Finance Bill, or to initiate and carry through a Finance Bill in exclusion of the Upper House follows as a necessary corollary from that power. Dr. Gour referred to two sections of the Government of India Act. I am sorry to have to trouble the House with a reference to these sections. One of the sections he referred to was section 63 of the Government of India Act which says, 'Except as otherwise provided by or under this Act, a Bill shall not be deemed to have been passed by the Indian Legislature, unless it has been agreed to by both Chambers either without amendment or with such amendments only as may be agreed to by both Chambers.' Dr. Gour laid stress upon the words 'except as otherwise provided by, or under this Act,' and he referred to the language of section 67A, clause (6) as furnishing one such exception.

The language of clause (6) of section 67A is simply this :

'The Legislative Assembly may assent or refuse its assent to any demand or may reduce the amount referred to in any demand by a reduction of the whole grant.'

I can not understand how clause (6) of section 67A can possibly be construed as taking away from the generality of the procedure laid down in section 63, paragraph 2.

We must distinguish here between two processes, the right to grant supplies in the first instance and then the right to find ways and means for raising the necessary funds. Because the first matter is vested in the hands of the Legislative Assembly, it does not follow therefrom that the second matter is necessarily vested in us as an exclusive privilege. It may or may not be. Now, in a matter like this, there is no real analogy between the House of Commons and ourselves. Let me first clear the ground by saying that I am as anxious as Dr. Gour or as Mr. Seshagiri Ayyar or as any of my other friends in this House to preserve the privileges of this House. I am sure, that our worthy President, imperturbable as he looks, is equally jealous of the privileges of this House and I am sure that, even if by our want of experience of Parliamentary procedure, we should perhaps go astray, he will give us a judicious hint as to whether we are in danger of any encroachment upon our constitutional privileges.

Sir, I have come to the examination of this question with a mind fully bent upon upholding the privileges of this House. You need not, therefore, labour under any suspicion that I am disposed to surrender our rights or our privileges. I observed that there was really no analogy between the House of Commons and ourselves for this reason that the House of Commons is governed by an unwritten constitution. The Parliament is governed by a flexible unwritten constitution while we are governed by a rigid written constitution. We have, therefore, to look for our procedure, to look for our authority to the words of the Statute by which we have been brought into existence and not to the procedure of a body which has grown up with ages and whose procedure is governed by precedent, by convention and by tradition. Now, according to the conventions of Parliament, according to the unwritten law which governs Parliament, the House of Lords has no power to interfere with a Money Bill. They cannot amend or alter a Money Bill. That is settled practice. Can you say, that under the Indian Statute that is the position? I can quite understand that you may be very anxious and desirous to bring about the same

[Sir P. S. Sivaswamy Aiyer.]

state of things here. I am fully in sympathy with you there, but that can only be accomplished by an amendment of the Statute and not in the manner in which we seek to accomplish it. Supposing the Council of State alters or amends the provisions of the Finance Bill as we pass it and send it to them, can we say that they are legally not entitled to do it or that they can be restrained by a Court by an injunction from doing it, or that they would be acting *ultra vires*? I am sure that you cannot possibly affirm any such proposition. If they amend the Finance Bill, the result will be that the difference of opinion between the two Chambers will have to be settled by one or other of the means provided for in the Statute, namely, either by negotiation between that House and this or by a joint sitting. Those are the two methods for the solution of any *impasse* which may be created by reason of a difference of opinion between the two Chambers. I am aware, that the functions of the Upper House were conceived as those of a revising Chamber at the time that the Bill was under consideration by the Joint Select Committee of the House of Commons. Now, what they meant by the expression 'revising Chamber' was, that the Upper House was not intended to exercise the functions of the House of Lords which, with its enormous number of peers, has attempted to exercise, namely, the function of obstruction and opposition to the wishes of the people. There they do not confine themselves to the functions of a revising Chamber. The object of the Joint Select Committee and of the framers of the Act in conceiving the Council of State as a revising Chamber was this. They did not wish to set up a body which could hold out in opposition to the more popular Chamber for any length of time. That was the reason why they cut down their numbers to 60 and fixed our number at more than double their strength, so that, if it came to a question of a joint sitting, we should be in a position to outvote them. The only function, therefore, which under the constitution they can usefully and profitably perform is to revise the form and language of the Statutes which may be passed or to induce us to bestow more reflection or attention upon a measure which we might have passed inadvertently. That was the only reason why it was called a revising Chamber; but, as to their exact powers and functions, we must depend upon the words of the Statute. If, on a question of a Money Bill, they differed from us, we have undoubtedly got the power of solving it eventually in a manner in accord with the wishes of this Chamber which is the more popular Chamber, because, when it comes to a question of a joint sitting, we shall be in a position to outvote them and to enforce our views. But that is the only solution which the Statute provides. We are not entitled to tell them 'You have no right to meddle with the terms of the Finance Bill we have sent you. You must keep your hands off. We sent it to you merely as a matter of form. You have simply to give your assent to it'. That, I think, is not the position which under this Statute we are entitled to take. Whether you cannot get the Statute amended is another matter with regard to which I express no opinion at variance with the wishes of any other Members in this Assembly.

Sir, if we cast about for an analogy to our Assembly I should suggest our going to the Colonies, to the self-governing Dominions. Some of these have got constitutions which provide for an Upper and a Lower House, very often the Upper House consisting only of nominees as in New Zealand.

Where the Upper House consists only of nominated Members, it has been laid down by the Privy Council that the nominated Upper House brought into existence, as it was with the same powers as the Upper House in England, could not meddle with a Money Bill. But here we have to deal, not with a nominated Upper House, but with an elected Upper House, a House selected no doubt on a narrower franchise by a more limited electorate, but still an elected House. I am not aware that in the absence of any statutory restriction, such an Upper House is disentitled to deal with Money Bills. If you turn to the South Africa Union Act, you will find that there are express provisions there which prevent the Senate from going into Money Bills. I may refer you to the language of that statute. There it is said in section 60, that Bills appropriating revenue or monies or imposing taxation shall originate only in the House of Assembly, but Bill shall not be taken to appropriate revenue or monies or impose taxation by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties. The Senate there (that is, the Upper House) may not amend any Bills so far as they impose taxation or appropriate revenue or monies for the services of the Government. The Senate may not amend any Bill so as to increase any proposed charges or burden on the people. Any Bill which appropriates revenues or monies for the ordinary annual services of the Government shall deal only with such appropriation, and so on. Therefore, we have an express provision made disabling the Senate from interfering with Money Bills. Now, Sir, the real question is, is it a matter of convenience to have it settled with the machinery of a Joint Committee? Or even supposing that it is convenient, are there any predominant considerations *per contra* which should induce us to reject this course, however convenient it may be? Though I am not of the sterner stuff of my friend and neighbour, Bhai Man Singh, who will himself seek the Himalayan heights for recuperation, but will not sanction expenditure to make Delhi comfortable, I am not so ease-loving as not to be prepared to sacrifice my convenience if I thought that the interests of my country or the privileges of this House were in jeopardy. But I do not feel convinced of that. As a matter of convenience, if we now agree to the appointment of a joint committee we shall be able to have a round-table talk with the representatives of the other House. If they do not agree to our proposals, if they propose something to which we cannot agree, nobody says that this House is bound by any conclusions arrived at in this Committee. But I take it that we are all reasonable men, and that we have got sufficient discretion to choose men on the Committee who will act reasonably, who know what our wishes will be, who know what the wishes of the country will be, and who will frame their proposals in such a way as to commend them to the House and to the country at large. If we cannot place any trust in any committee, then the whole procedure for appointment of a committee may well be abolished. But we do resort to this procedure because we know from experience that it does save time. Now, if it goes through a joint committee, the committee will have an opportunity of hearing representations or objections from Members of both Houses, and to so frame its proposals as to meet these objections as far as they can. Therefore, *prima facie*, it would render the passage of the Bill easier in both Houses. But suppose you do not agree, what will follow? First of all, we must remember the provisions of the Provisional Collection of Taxes Act. That Act provides that unless we pass a Bill within one month from the date on which the announcement was made by the Finance Minister it will cease to have effect and the Government cannot continue collecting taxes. I do not know whether

[Sir P. S. Sivaswamy Aiyer.]

I have made myself sufficiently clear about this Act. It is that when a Bill is introduced into the Indian Legislative Council by a Member of the Executive Council of the Governor General and such Bill provides for the imposition or variation of any tax in the nature of customs or excise duties, and there is inserted therein a declaration that it is expedient in the public interest that the Bill should have temporary effect under the provisions of this Act, the Bill shall for the period limited by this section and subject to the provisions of this Act have effect from the date of its introduction as if it were an Act of the Governor General in Council: Provided that the Bill shall cease to have such effect if it is rejected by the Council or is not passed into law within thirty days from the date of its introduction. Now, that is one inconvenient result which will follow. Let us leave that point alone. Let us suppose that we are not troubled with the inconvenience which will follow from the Act ceasing to have effect. What we shall have to do if we reject this proposal is this. We first appoint a select committee and then thresh out the provisions of the Bill. Let us take it that it will take, say three or four days. Then it will have to come up before the Assembly, and then we shall have to send it to the Upper House. Seeing that we exhibit such hypersensitive jealousy in this matter, I say it may be taken in the same spirit by the other House. It is not unnatural if the Members of that House also exhibit some sensitiveness on their part. If they act on the principle of exercising their rights of alteration or amendment which the law confers upon them in a somewhat liberal measure, the Bill as it may emerge from the hands of the Council of State may contain a number of amendments and for the purpose of considering those amendments the Bill will have to come back to us and we shall then have to decide whether we should accept the amendments or not. If we are not prepared to accept those amendments, there will have to be a conference or negotiation, and if that fails, there will have to be a joint sitting. How long do you think that the process will last? It will last right into April, and I for one am free to confess that I do not think I shall enjoy Delhi during April. Nor do I think that the Members of this Assembly, coming as they do from long distances and not being as much at large as even myself, will not grudge the amount of time which they may have to give and the long absence from their professions or occupations and from their homes. There is a difference between the procedure in England and here. I have told you already that it is not necessary to refer it to a Joint Select Committee in England; First of all, the Budget is introduced on the 1st of April by the Chancellor of the Exchequer. Then the whole House goes into the Committee of Supply and goes on discussing it at length. Eventually the Finance Bill is passed, sometimes as late as August. For instance, the Finance Act for 1920 was passed on the 2nd of August 1920. But look at the difference in conditions between England and here. Delhi has not got the climate of England. Delhi is not so near to the outlying parts of this continent as England is to Aberdeen or Dublin. There you can go back to your home and come within 24 hours, I take it. But here, we do not sit in the continuous way that the House of Commons sits. We can only give a limited amount of time, and it is not easy for us to tear ourselves away continuously from our homes or occupations and come here. Do you think we shall be able to go on hammering at this Bill in the way that the House of Commons can during a period of say three or four months? If you say that the climate of Delhi and distance of Delhi from the outlying parts of the Empire are of no consequence, that in spite of them,

you are still determined to work during the hot weather and that you can go on with this Finance Bill, by all means do say so. I do not want that Members of this House should follow my cue in this matter. Now let us suppose that we agree to the course that has been suggested. What is the danger that Honourable Members apprehend from following this course? I submit that even if you think that it may constitute an inconvenient and an undesirable precedent, there is a way of avoiding any such consequence. I would suggest to you two solutions. The one is to enter a solemn caveat that without in any way committing ourselves to a similar practice in future years, we shall now refer the Finance Bill for this year to a joint committee. For future years what I would suggest to you, with all respect, is to appoint a committee to consider, in consultation with the Members of Government, the proper way of dealing with the Budget, as to how it should be brought, where it should be brought, in what stages it should be brought, when it may be disposed of, and how the inconveniences to the Exchequer from postponing the passing of the Finance Bill may be obviated. Let the whole question be gone into and some suitable machinery be framed which may be applicable to future years. All that I now appeal to you to do, is not to reject this motion to refer the Bill to a Joint Select Committee, but to accept the motion this year. If you think, that in spite of the plain language of the Statute we shall in any way be compromising our rights, then enter a solemn caveat without in any way committing ourselves to a similar practice in future years. Under the circumstances, I do not think that anybody can contend that you will be compromising your rights in future years. As to the future, of course, it is a matter which would require consideration and very careful consideration both by Government and by the non-official Members of the Assembly. I am sorry, Sir, to have trespassed upon your patience so long, and I beg to assure you again that I am as jealous as any of you of the privileges of this Assembly.

The Honourable Dr. T. B. Sapru: Sir, after the very able and lucid exposition of the subject by my Honourable friend, Sir Sivaswamy Aiyer, I do not think it is necessary for me to address the House at any considerable length. The position to-day is, that while Dr. Gour thinks or imagines that there is a point of constitutional law of considerable importance involved, one of his supporters, a retired Judge of a High Court,—I refer to my Honourable friend, Mr. Seshagiri Ayyar,—thinks in a different way, though he supports Dr. Gour's proposition on grounds of political expediency. The view taken by a late Advocate General of Madras,—I refer to Sir Sivaswamy Aiyer,—is as strong an exposition of the principle which I am going to submit before you as any one could put before this House. Well, if, however, the difference between two learned lawyers trained in India and a learned lawyer trained in England, I mean Dr. Gour, rested there, I should seriously have been disposed to reconsider the whole position. But I find, that so far as the constitutional question is concerned, an eminent member of the English Bar,—I refer to my Honourable friend, Dr. Nand Lal,—also took the same view as my Honourable friend, Sir Sivaswamy Aiyer has taken. So that, if I were addressing a jury on a question of law and not on a question of fact, I would say, 'here you have a retired Judge of a High Court and a leading member of the Punjab Bar supporting the constitutional view which I am going to ask you to accept as against one solitary member of the English Bar, the ornament of the Central Provinces'. There was, however, one remark in the speech of my Honourable , Dr. Gour, with which I am in thorough agreement, and it was that

[Dr. T. B. Sapru.]

whatever view may be ultimately accepted by this House, it was absolutely necessary and desirable that we should come to some definite conclusion for our future guidance. I am sure, my Honourable Colleague, Mr. Hailey, made the position of Government quite clear so far as their attitude with regard to this matter is concerned. He, so far as I was able to understand him, put the whole case on the ground of convenience. That case has been reinforced at great length by my Honourable friend, Sir Sivaswamy Aiyer. I, therefore, do not wish to take up the time of the Assembly by referring to considerations of convenience, nor do I wish to refer to considerations of political expediency. I will, therefore, meet some of the points of law which have been raised by my Honourable friend, Dr. Gour, this morning.

Now, the position, to my mind, is, that as a matter of fact there is no point of constitutional law involved in the whole discussion. It is really a point of procedure which is involved. It is on that ground and that ground alone that you have got to give your verdict. I shall not labour the so-called point of constitutional law at any length, but I shall briefly refer you to two or three sections of the Statute.

I will just read out to you section 63 of the Government of India Act, 1 P.M. which deals with the composition of the Indian Legislature. It says :

'Subject to the provisions of this Act, the Indian Legislature shall consist of the Governor General and two Chambers, namely, the Council of State and the Legislative Assembly.'

Then comes an important clause on which considerable stress was laid by my friend, Dr. Gour, and which I shall try to explain to you in my own way.

'Except as otherwise provided by or under this Act, a Bill shall not be deemed to have been passed by the Indian Legislature unless it has been agreed to by both Chambers, either without amendments or with such amendments only as may be agreed to by both Chambers.'

Now, I will ask you to assume that these words 'except as otherwise provided by or under this Act' did not exist in that clause. I will ask you to assume that only for the time being. Then the rest of the clause would leave no room for doubt that a Bill could not be deemed to have been passed by the Indian Legislature, which is a bi-cameral Legislature, unless both Houses had agreed to that Bill either without amendments or with such amendments as might be agreed to by both the Chambers. Then, what is exactly the significance of these words 'except as otherwise provided by or under this Act'? How do they modify the substantial portion of that section? I will beg the House to remember one provision of the Act to which no reference has so far been made and which, to my mind, supplies the key to this solution of the difficulty. If you will kindly bear with me for one moment, I will refer you to section 67B of the Government of India Act, which says 'where either Chamber of the Indian Legislature refuses to introduce or fails to pass in a form recommended by the Governor General any Bill, the Governor General may certify that the passage of the Bill is essential to the safety, protection, or the interests of British India or any part thereof', and thereupon may do certain things which are specified in the rest of that section. So that the position is this. The ordinary normal way of getting a Bill passed is putting

it before the two Houses and getting the two Houses to consent to that. But it may be that the two Houses may not agree and there may be a serious difficulty in front of the Government. Therefore, to meet an eventuality of this character the law provides, that the Governor General has got certain powers, and when the Governor General exercises those powers under the law, the Bill, although it has not been agreed to by both the Houses, shall have the same force as it would have had if it had been agreed to by both the Houses. That, I submit, Sir, is the meaning and that can be the only meaning of these words 'except as otherwise provided by or under this Act.' Otherwise, these words which are used in that section would be absolutely meaningless. Now, before I proceed further, I will invite your attention to another important section to which, I must in fairness admit, reference was made by Dr. Gour, but at the same I may say that the full significance of it was not brought out by him in the course of his argument before you. I was referring to section 67A of the Government of India Act. I will just invite your attention to two portions,—rather to 3 sub-clauses of this section. And that, I submit, puts the whole thing beyond all doubt. Section 67A says:

'The estimated—(now this clause was not read out to you)—the estimated annual expenditure and revenue of the Governor General in Council shall be laid in the form of a statement before both Chambers of the Indian Legislature in each year'.

So that it is compulsory on my Colleague, the Honourable Mr. Hailey, to lay the estimated annual expenditure and revenue of the Governor General before both the Chambers. That has been done. Then, I will invite your attention to clauses (5) and (6) of the same section. Clause 5 says:

'The proposals of the Governor General in Council for the appropriation of revenue or moneys relating to heads of expenditure not specified in the above heads shall be submitted to the vote of the Legislative Assembly in the form of Demands for grant'.

The vote is given to the Assembly and it is required that the proposals shall be placed before the Assembly. That has been done. Then clause (6) says:

'The Legislative Assembly shall assent or refuse its assent to any demand or may reduce the amount referred to in any demand by a reduction of the whole grant'.

That you have been doing during the last week or so. You have given your assent to some, you have withheld your assent from others. You have reduced the grant in regard to certain matters. Then comes clause (7), to which reference was made by my Honourable friend, Dr. Gour. It says:

'Demands as voted by the Legislative Assembly shall be submitted to the Governor General in Council who shall, if he declares that he is satisfied that any demand which has been refused by the Legislative Assembly is essential to the discharge of his responsibilities, act as if it had been assented to, notwithstanding the withholding of such assent or the reduction of the amount referred to therein by the Legislative Assembly.'

Now, the demands as voted by the Legislative Assembly have got to be submitted to the Governor General in Council, and it is open to the Governor General in Council to say that a particular demand which has been refused by the Assembly should, in his opinion, be granted. And, then, if he gives a ruling to that effect, it will have the same effect as it would have had if it had been assented to by the Assembly.

Now these are the various stages. My friend, Dr. Gour, built up an argument on this clause which I have just read out to you and the argument was this. Although there was no express statement to that effect, yet in his opinion sub-clause (7) of section 67A gave rise to a necessary implication to

[Dr. T. B. Sapru.]

the effect that you could not refer a Tariff Bill to a Joint Committee of the two Houses, the argument being, that inasmuch as the right of vote is given to this Assembly, you cannot take the representatives of the other House into consultation with you at a time when the Bill is under consideration. Now, it will be admitted by every fair-minded person, that so far as the sitting of a Joint Committee is concerned, it was contemplated by the Statute itself—or say by the rules which have been framed in accordance with the Statute and which have the force of the Statute. Now, if it was really the intention of the Legislature or if it was really the intention of those statesmen who were responsible for this Act, that at no stage should there be a Joint Committee of the two Houses, that the Tariff Bill should be considered and passed by this Assembly alone, one should have expected the Statute to have run in a different manner. On the other hand, what is it that you find? The Bill may be passed here and, quite apart from a Joint Committee, it may be sent to the other House. The other House may make any modifications or amendments; it will then come back to you. Therefore, if it was really intended either that the other House should have nothing to do with the Bill or that the other House *must* proceed independently of you or that you *must* proceed independently of them, why did not the Legislature say so in so many words? The very fact, that there is provision for a Joint Committee, I submit, shows that the Legislature contemplated the possibility, for considerations of convenience suggested to this House, that there might be a sitting of a Joint Committee. Now, here again, what is it you are invited to do? Are you invited really to surrender or abandon any right of your vote in favour of the other House? No, I say emphatically no. What you are invited to do is to ask the other House to select some of its own Members to meet some of the Members of your House, so that they may jointly consider the Bill, and after that, you part with each other, and you pass the Bill in your own House and they pass the Bill in their own House. You may make such amendments as you like, and they may make such amendments as they like. The report of the Joint Committee will no more be binding on you than it will be binding on the other House. That being the position, I submit, this fancied question of constitutional law does not, in my humble opinion, arise on the present occasion. I would, therefore, venture to submit, that whatever view you may take of the expediency of the question or of the convenience of the question, I would beg you not to commit yourself to a wrong view of constitutional law. So far as the question of constitutional law is concerned, we must be as jealous about the accuracy of it as we should be jealous about the privileges of our own House.

I do not think, that I shall be justified in taking your time further over any question of law, but there is only one remark which I shall venture to make. I have just been going through the report of the Joint Parliamentary Committee with a view to find as to whether there was anything in that report which lent colour to the view which has been so emphatically put forward before you this morning by my Honourable friend, Dr. Gour. I confess, that I have not been able to find anything there which would lend support to the view which has been put before you by Dr. Gour, and in the matter of construction of a statute, I do not think that it would be right to read between the lines what does not appear on the face of it. Therefore, I will ask you not to surrender yourself to the fear that there is any question of a constitutional character arising in this case, or imagine that you are really abandoning a valued right in favour of the other House. You are doing nothing of that

kind. You will be retaining firmly and strongly that right in your own hands and at the same time securing the convenience of the two Houses by adopting the motion which the Honourable Mr. Hailey has put before you.

Mr. Eardley Norton : Mr. President, we have had three learned Doctors, all diagnosing the same disease, and all giving prescriptions which contradict each other. Into the question of law I have no wish to enter, as I propose to found what I have to say upon considerations uninfluenced by any question of law.

Sir, we, I mean this House, are either possessed of sole and exclusive jurisdiction over all Money Bills, or we are not. If we are, this motion is *ultra vires*. If we are not, I hope that we shall begin to ask for it. I look forward to the time, I trust, not in the very far distant future, when this House shall have expanded itself from its present nascent condition into what really will be a House of Commons with sole jurisdiction over taxation. We have to look upon ourselves—we who are to-day something more than merely ephemeral and transient nonentities—we have to regard ourselves as the outpost sentinels of posterity holding the keys of the citadel. If we surrender or retreat, we shall endanger those who are coming after us. Our duty, our interests, and our honour compel us to stand firm. I am implacably opposed to any measure, however slight, which will open the gates for the Council of State to intermeddle with any question affecting money grants. We must remember that this is the first preliminary skirmish which in the years to come will develop into serious pitched battles, and I consider that we should help our successors by refusing to do anything to-day which will in any way or to any degree facilitate the introduction of the Council of State into questions of finance. If we have sole power over Money Bills, then this motion is an invasion by the Council of State upon our premises. If we have not got it, I propose that we shall use every effort to accelerate our right to possess it. Such a request must eventually be complied with. To-day heralds the advent of a fight. Let us meet it like men, not yield an inch of our ground.

I propose, however, to ask this House to reject this motion not upon any constitutional legal footing, but upon quite another ground. The question of convenience, urged at such length, I can only hope is a question which will have little effect with us. I am one of those, and I believe there are many such in this House, who have come up here at great personal inconvenience to ourselves financially. I am not complaining of it. We did it with our eyes open, and if we have chosen to surrender our professional practice, we have no one to blame but ourselves. The solution is easy, we can resign. But as a matter of fact, having come so far, I trust, and there are other Honourable Members in this House who will agree with me, that when the question is put to us of an election between our own convenience and our duty to our constituents and to our principles, the latter shall prevail. Whatever may be the inconvenience to ourselves, when we are confronted with a position such as this, which is merely the thin end of the wedge, we shall, I trust, be resolute, not merely resolute, in our opposition to the motion but resolute, however unwillingly, to postpone and possibly sacrifice our own conveniences to the duty which we owe to the people who have sent us here and to the principles we profess. As I have said, the question is whether we have this plenary and exclusive jurisdiction or not. If we have not,—I do not wish to enter into that

[Mr. Eardley Norton.]

debate—if we have not, I ask this House to begin to claim it and begin to claim it with no uncertain voice from to-day. Let us from to-day be adamant in our decision that we shall not offer any facilities of any sort which shall hereafter permit the Council of State, by any concession on our part, however diagnosed, to have a voice in the question of Money Bills. There is no need, Sir, to refer this matter to a Joint Committee. If you want a committee, there is abundance of financial and commercial ability in this House whose assistance is at our disposal. I do not for a moment wish to suggest that we embody all exclusive ability, financial and commercial, in ourselves. I gladly and readily admit, that there are men in the other House whose experience and opinions would be of great service to us, on any general question outside finance. But, on the question of money grants and the question of ways and means, I do ask this House to be strenuous and inflexible in its attitude of resistance and to reject this motion. Let me point to one serious objection to a Joint Committee. We of this House number 146 and the other House numbers about 60. Under the provisions of the rules in force, if we sanction a Joint Committee, we shall meet upon that committee, not in proportion to our respective numbers, but on a footing of numerical equality. I strongly protest against that, against all that it implies, against all to what it must lead. Why should the Council of State which has only 60 Members enjoy an equal voice on a division with a House which represents very nearly three times the number of the Council of State?

I should like to point out another very serious matter, Sir. Supposing this House brings forward on a Joint Committee a proposition, take it broadly, on a matter of taxation, and that matter is debated and the Joint Committee divides upon it; if the votes are equal, this House loses its proposed taxation, because under the rules on an equality of votes on a division, the negative is to prevail. I venture to suggest that we shall be betraying our duty and our trust to those for whom we sit, if we permit at this early stage in the history of our own evolution an interference of that sort. If the Government wants assistance, it can find within the walls of this Assembly. I do not myself personally believe that a reference to a Joint Committee will in any way expedite matters. I believe on the contrary that it will prolong discussion without effecting any useful purpose. I feel perfectly certain—and we have to look forward through the veil of the future far beyond even to-day—that we should be acting wrongly and unfaithfully if we countenance association with the Council of State on matters of ways and means. That Council—if it elects to deal with the Finance Bill—will deal with it according to its lights. The Bill may be returned to us with amendments with which we disagree. We shall return the Bill. If the other Chamber persists, then in the event of a division between the two Houses, matters will eventually come to a deadlock and both Houses will ultimately have to meet in a full session.

Now, Sir, the framers of our Constitution, I presume intentionally, have supplied us with a complete and formidable engine of resistance against the other House on these money questions. We are the preponderating House in numbers, and if we meet them in a joint session we can beat them, and I propose that we shall. If they will not give way to this House on questions of finance, very well, we will meet them in a full session of both Houses and, being armed with our constitutional majority, we shall be in a position to carry out our views in spite of all opposition. Why should we sacrifice that advantage

now? Why should we abandon it or why should we allow such a power as this to be frittered away? I hope that the Members of this House will see what all this is leading to—I do not mean on the part or on the intention of Government. It will lead year by year to a larger claim being put forward by the Council of State, to a larger abandonment of our own responsibilities and of our own trusts, and to a larger surrender of privileges which, if we do not possess them in their entirety at present, I am satisfied this House will possess within an appreciable period. Therefore, I do ask you to stand fast as well in the protection of your own interests as in the vindication of claims which by the common consent of civilised communities should belong to those with whom rests the responsibility of taxation. Even the Act, quoted by Sir Sivaswamy Aiyer, which creates the Council in South Africa shows that the trend of all modern politics is to vest the sole jurisdiction in money affairs in the democratic House. If South Africa under British tutelage asserts and enforces that claim, why should India abate one iota of a kindred right? Let us assent to nothing to-day which to-morrow may delay or embarrass our successors. If we accept this motion, we will be relaxing, it may be only fractionally, but still by a dangerous fraction, our hold upon the public purse. And the Members of this House know that what they are struggling for is this hold. At present we have place without power, and there never will be power until we get complete control of the purse. If we abate our right to insist upon keeping these preserves to ourselves, we shall be yielding the outpost to the invader. Let us be wise and faithful and strong. Let us at the first scent of battle gather our forces and men and hereafter stand united and determined to abandon nothing, to concede nothing what shall impede our right to control the taxation of the country ourselves.

I, therefore, ask you to reject this motion.

Mr. Wali Mohamed Hussanally : Sir, I move that the question be now put. (Cries of 'No, No'.)

Chaudhuri Shahab-ud-Din : Sir, the question now before the House having been discussed by eminent lawyers like Dr. Gour, the Honourable Dr. Tej Bahadur Sapru, Sir Sivaswamy Aiyer, Mr. Eardley Norton and Mr. Seshagiri Ayyar, it is perhaps too much on my part to place before the House a few observations which might appear to be quite novel.

Sir, I, as a lawyer, do not think that rule 101, that is, the rule which permits the formation of a Joint Select Committee, is constitutionally consistent with the Government of India Act. According to my light, the rule is *ultra vires* and inconsistent with the Government of India Act. Wherever that Act intended to provide a joint meeting of the two Chambers it has made express provision for it. Sir, I beg to refer to sub-section (3), section 67 of the Government of India Act. That sub-section provides :

'If any Bill which has been passed by one Chamber is not, within six months after the passage of the Bill by that Chamber, passed by the other Chamber either without amendments or with such amendments as may be agreed to by the two Chambers, the Governor General may in his discretion refer the matter for decision to a joint sitting of both Chambers ;

Provided that standing orders made under this section may provide for meetings of Members of both Chambers appointed for the purpose, in order to discuss any difference of opinion which has arisen between the two Chambers.'

Now, it is quite clear that there are two contingencies in which joint meetings might be held. The first contingency arises when for six months

[Chaudhuri Shahab-ud-Din.]

a Bill has not been passed by one of the Chambers, and the *second*, where a difference of opinion has arisen between the two Chambers.

[At this point, an Honourable Member (Babu B. P. Singh) stepped between the Chair and Chaudhuri Shahab-ud-Din.)

The Honourable the President: Order, order. The Honourable Member is committing the same Parliamentary crime that I drew attention to yesterday.

Chaudhuri Shahab-ud-Din: Thus there are these two express provisions for joint meetings either of the whole Legislature or of a few Members appointed by each House. I conclude from this, that this rule (rule 101) for Joint Select Committees is an innovation which goes beyond and against the express provisions of the Act. Had the framers of the Act intended that Joint Select Committees should be held they would not have failed to express their intention when they had made that express provision in section 67(3) about joint meetings to be held on the occurrence of contingencies mentioned in the Act itself.

Sir, there are some other objections as well which arise in this connection. Let me assume for the sake of argument that a Joint Select Committee is formed and that that Joint Select Committee has submitted its report. Where would that report go? Would it be placed before this House or before the other House or before both Houses. These are the only three possible courses and there is no fourth which I can conceive of. Now I take the first case, i.e., when the Select Committee's Report is placed before this House for consideration. This House will then be considering, what? Not a report submitted to it by its own Members but by persons who are not responsible to it and who are not its Members. I mean those Members of the Joint Select Committee who do not belong to this House. Again, the same may be said about the Council of State. When considering that Select Committee's Report, they will not be considering the Report of a Committee appointed by them or of a Committee which is responsible to them but of a Committee only a few Members of which are responsible to them. When I read the opening words of section 67, it becomes still clearer to my mind that the framers of the Act never intended that there should be any Joint Committees for any purpose excepting the two which are expressly enumerated and mentioned in the Act.

Section 67 opens thus :

'Provision may be made by rules under this Act for regulating the course of business and the preservation of order in the Chambers, etc.'

And the last two lines of the opening paragraph of the same section run as follows :

'And the rules may provide for the number of Members required to constitute a quorum, and for prohibiting or regulating the asking of questions on, and the discussion of, any subject specified in the rules.'

Now, these words do not suggest that the framer of rules could make provision even for Joint Select Committees, especially when that subject has been expressly dealt with by the framers of the Act themselves in sub-section (3) of the same section.

Sir, the next question which presents itself is the equality of numbers of both the Houses who will, if rule 101 is not *ultra vires*, constitute the Joint

Select Committee. This has already been pointed out by the Honourable Mr. Eardley Norton.

It does not require any juristic arguments to show that on the very face of it, it is preposterous, that a House which consists of more than 140 Members should contribute half the number, that is, 10 delegates or representatives, while a House which has got only 60 Members should delegate the same number of Members. That, Sir, to my mind, is so very shocking to common-sense, that it carries its own refutation with it, especially in view of the provisions of section 67 (3) of the Government of India Act, when the Legislature has not made the invidious differentiation of equalising the numbers when any measure is to be discussed by both Houses, why should such a differentiation be made by rule 101 when a select committee is to be constituted for considering the provisions of any Bill and reporting upon it. In my opinion, therefore, the rule relating to the equality of numbers is inconsistent with the express provision of the Act. It is clear from what I have said that the framers of the Act had in their minds two cases, one of which would arise when for six months it has not been possible for the one or the other House to pass a Bill in that House. It was in view of this contingency that provision was made authorising the Governor General to intervene and to call for a joint meeting of both the Houses. The object does not appear to be that an important measure, like the Finance Bill, should be rushed through a select committee containing ten representatives of *each* House who may consider it and finally place their report before either or both Houses. Sir, the Finance Bill is a very important measure; it has very far-reaching consequences, and this House has devoted, if I may be permitted to say it, about three weeks on discussing its basic provisions. Now, on the foundation thus laid, a superstructure is to be built. We are told 'Well, there are other masons as well; they are as skilful as you are; will you take them with you in the construction work?' Sir, we refuse the offer very respectfully; we will be responsible for the construction; be it good or be it bad, we take the responsibility. It is said, that the Bill has ultimately to go before the other House. Well, let that House reject or accept it when it goes to it. Let them propose amendments if they please. There appears to be some confusion on one point. With the permission of the House I would like to clear up. Some Honourable Members appear to be under the impression that unless a Bill passed by one House is accepted in its entirety by the other House or unless the amendments proposed by the other House are accepted in entirety by the original House, the measure does not become at all effective. This is not the case. Reading section 63 of the Act, I find 'Except as otherwise provided under this Act a Bill shall not be deemed to have been passed by the Indian legislature unless it has been agreed to by both Chambers, either without amendment or with such amendments only as may be agreed to by both Chambers.' Then, further on, a provision is made in section 67 (3)—I have read it already—for making up differences if there are any. Now, if one House is negligent, contumacious or stubborn enough not to pass a certain Bill which the Governor General wants it to pass, provision is made giving the Governor General certain powers. He can refer the Bill to a joint meeting of both the Houses. Provision is also made in section 67 (2) of the Act that in case of emergency the Act as passed by one House will be given the force of law by the Governor General; in which case the Governor General will submit it to Parliament, and the Act shall not have operative force until His Majesty's assent has been received. In the face

[Chaudhuri Shahab-ud-Din.]

of all these salutary and wholesome provisions where is the necessity of rushing this measure through? Why appoint a Joint Select Committee? Let the measure be referred to a select committee of this House and let it submit its report; and when the Bill is finally passed let it be placed before the other House. If that House is not willing to accept the Bill as passed or proposes certain amendments, we shall be only too delighted to consider them if they are reasonable and acceptable. Suppose a period of six months elapses. The Bill is a very important one; it is a financial measure and cannot be delayed. Section 67 (3) of the Act presupposes cases where Bills may remain pending for six months or more. If this Bill is not passed by the other House before six months, what will happen? After it is passed by this House, the Governor General—I submit—has got the power to sign it as a measure of emergency and thus give it legal force. I am not prepared to take as participants in my privileges those who are not sharers in my responsibility. Why should they share the rights and not the duty. They should wait. When our Bill comes before them, they can say what they like. With these remarks, Sir, I oppose the motion of the Honourable the Finance Member.

Sir Frank Carter: Sir, I look on this thing from a business point of view. I am a business man, and I wish to see this Finance Bill considered in a business way and by the best business men. We must remember that there are men in the Council of State, members of very prominent Chambers of Commerce in this country whom we want to assist us to discuss this Bill. They are men who are cognisant of taxes, duties, surcharges and such like; and it is desirable, I think, in the best interests of the country, that before this Bill is passed, we should obtain their opinions. I wish to preserve the privileges of this House as much as anybody, and I do not think by supporting this motion for a joint select committee to examine this Bill that I am taking away from these privileges at all. I am not a lawyer, and I am afraid I cannot argue with my friend, Dr. Gour; but I cannot see from a layman's point of view that there is anything in the Montagu-Chelmsford Report or in the India Act which excludes a Finance Bill from the procedure necessary for every other Bill. As regards the question of precedent, which was mentioned by some Honourable Members, we should be a poor lot, I think, if because we adopt a certain policy at one session we must necessarily go on adopting that policy at all other sessions.

Mr. Jamnadas Dwarkadas: I wonder, Sir, if the intervention of a layman at this stage, especially after eminent lawyers and learned doctors have waxed eloquent on this subject, can be of any assistance in coming to a decision on this important question. But it seems to me, and I am sure my friends the lawyers will also grant this, that laymen as we are, we cannot be said to be devoid of common sense which I think is the common property of sensible men. I do not for a moment, I may say clearly at the outset, see any difficulty in accepting the motion that has been brought forward by the Honourable the Finance Member. So far as the constitutional objection raised by Dr. Gour is concerned, I think his supporter, my Honourable friend, Mr. Seshagiri Ayyar, himself, and Sir Sivaswamy Aiyer and also the Honourable the Law Member have dealt with it completely and have proved conclusively that that objection cannot hold water in the slightest degree. The fact does remain, that in accordance with the sections of the Government of India Act, the power is vested in the Council of State to deal

with this piece of legislation, namely, the Finance Bill, as much as with other pieces of legislation that arise in the Indian Legislature ; that there is no distinction made between the power that is vested in the Legislative Assembly, where other legislation is concerned, and this particular legislation. It was pointed out, that that distinction does exist in the House of Commons and in the House of Lords, that the House of Lords has no power to move amendments and to send them on to the lower Chamber, that the House of Lords can only accept, and not reject a Money Bill and can do no more (Voices : ' Cannot reject '). But that distinction does exist in the House of Lords and in the House of Commons. Now, I may point out, Sir, that, if my memory does not fail me, this distinction which exists in England was pointed out, I believe, to the Secretary of State and to the Joint Committee by various members of the Indian deputations that went to England to give evidence before the Joint Committee. If I am not mistaken, many prominent Indian members insisted that that distinction should also exist in the Indian Legislature, and after a good deal of discussion it was deliberately decided that that distinction should not exist in the Indian Legislature, that so far as the powers of the Council of State were concerned, they should remain the same both in the case of other legislation as in the case of the Finance Bill. So I take it for granted that Dr. Gour's contention that by the constitution of the Government of India Act, that power does not vest in the Council of State, falls entirely to the ground.

Sir, I was greatly relieved by my Honourable friend, Mr. Eardley Norton, getting up and telling us that he would not discuss the question from the point of view of a lawyer, and he placed certain objections against accepting the motion of the Honourable the Finance Member from the point of view of one who valued the privileges of this popular Assembly and who was anxious not to part with one inch of the power that is vested in this Assembly in regard to control over finance. I fail to understand how my Honourable friend, Mr. Eardley Norton, takes it into his head, if I may be permitted to say so, to believe that by acceding to the motion of the Honourable the Finance Member we are giving up an inch of the power that is vested in us. After all, what are we doing ? We are appointing a joint committee of the two Houses, but we are not giving away all our powers to this joint committee, we are not giving them all the authority that we have of discussing and coming to a decision on this question of the Finance Bill ; we are not giving away any of our powers. We are appointing this committee with a view to deliberate upon the question of the Finance Bill in a better manner when it comes to us again after it has been shaped and reshaped by the joint deliberation of the committee of the two Houses. It is for facilitating our further discussion and decision on the Finance Bill that we are appointing this committee for the purpose of re-shaping the Bill in the light of the opinions that have been expressed here in the course of the Budget discussions by the Members of this Assembly. Now, sir, it was my Honourable friends, Mr. Eardley Norton and Chaudhuri Shahab-ud-Din, who pointed out that we should not part with an inch of the power that is vested in us, that we should be sanguine of deciding the question of finance ourselves. I think I have proved conclusively that we are not giving away, we are not parting with an inch of the power that is vested in us. I want the Members of this Assembly to remember that the Bill is going to come to us again for discussion and deliberation after it has been re-shaped by the joint committee of the Council of State and the Legislative Assembly, and

[Mr. Jamnadas Dwarkadas.]

when it comes back to us again, we have the power, as we have now also, to move amendments again, and to press for our amendments, and the Assembly shall decide to include our amendments in the Bill before it goes to the Council of State for further discussion. Now, Sir, are we diffident about our own powers of insisting on our rights of including our amendments in the Bill when it comes to us for discussion again if we happen to disagree with the conclusions that may have been arrived at by the deliberations of the Joint Committee? Shall we not have the power of persuading the Assembly to accept our amendments when the Bill comes to us here again for discussion? Have we no confidence in our own powers to nullify the doings of the Joint Committee if we find that our representatives on the Joint Committee have not been true to us? I think, Sir, we have certainly the necessary powers in this respect. And, then, when we have nullified the doings,—I take the extreme case as an illustration,—when we have nullified the doings of the Joint Committee, when the whole House as a body unanimously has nullified the doings of the Joint Committee, and when the re-shaped Bill goes to the Council of State, the Council of State will have either to accede to the suggestion made by us or will have to risk the decision to be arrived at at a joint session.

Now, Sir, the whole of this House or a very substantial majority of this House holds a particular view with regard to the Finance Bill. Are we not in sufficient numbers to overpower the number of Members that will come to the joint session from the Council of State? If, however, there are Members of this Assembly, a large number of them, who will side with the Members of the Council of State, then it will not be the fault of the Joint Committee. It will be the weakness of our own case. I submit, Sir, that there is not the slightest need to be afraid that we shall be losing anything by referring the matter to a Joint Committee of the two Houses.

An objection was raised by my friend, Mr. Eardley Norton, and also by my friend, Chaudhuri Shahab-ud-Din, as to the numbers that should represent this House and the Council of State on the Joint Committee. Why, they said, should there be an equal number? Now, I ask you to consider the process that will come into existence for the time being. Ten Members of this House and ten Members of the other House sit together to consider the Finance Bill. If there is a likelihood of the ten Members of the Council of State taking one view and holding to their view obstinately, it will be open to the ten Members of the Assembly, if they take the opposite view, to say: 'You may take this view now. You may probably get this view included in the Finance Bill that has to be sent to the Legislative Assembly. But take care, if you thus oppose us and obstruct our work here, we shall persuade the Assembly to reject the suggestions that you have made.' Certainly the ten Members have the power to say that, with the result that the Members of the Council of State will always be anxious to adapt themselves to the views of the Members of the Legislative Assembly. We can always hold this pistol against the heads of the Members of the Council of State. If you do not adapt yourselves to our view, then we have the power by the strength of numbers to persuade the Legislative Assembly to reject all the suggestions that you have made. We have all these powers in our hands. And, as a matter of fact, instead of doing harm to us, to have an equal number from the Council of State and to bring them round to our view will be a great help to us inasmuch as these ten Members in the Council of State will be a tower

of strength to us in supporting our view in that House. I say, Sir, that from all points of view, it appears to me that we shall not be losing any power that we possess in acceding to the motion for the appointment of a Joint Committee and I think we shall gain a good deal. It will show a lack of confidence in our own powers of arriving at the decision to which we want to arrive, if we threw out this motion for a Joint Committee.

I have nothing more to add but I do feel that as business men—and I am sure this House is composed of men of business—we shall be acting wisely in acceding to this motion and I am sure, that if we accede to this motion, we shall not be doing any injury to the privileges of this House.

Mr. A. V. V. Aiyar: Sir, with your permission, I rise to make one point clear to the House with reference to this discussion. I invite the attention of this House to the latter part of clause (6) of the Bill introduced on the 1st March. It declared that it is expedient in the public interest that this Bill should have temporary effect under the provisions of the Provisional Collection of Taxes Act, 1918. The precise effect of that declaration is, that the increased customs tariff rates are being collected from the 1st March 1921, the day on which the Bill was introduced in this Assembly. If the Bill is not passed into law before the end of this month, the result will be that the money which we are collecting will have to be refunded and we estimate this amount to be about 70 lakhs of rupees. I only wanted to explain this point.

The Assembly then adjourned for Lunch till Three of the Clock.

The Assembly re-assembled after Lunch at Three of the Clock. The Honourable the President was in the Chair.

The Honourable Mr. W. M. Hailey: Sir, in my opening speech I endeavoured to make it clear that the interests of Government in this matter were simply the expedition of business and nothing more. Sir Sivaswamy Aiyer further pointed out that under the provisions of the Provisional Collection of Taxes Act, unless we get through the legislation in regard to the tariffs within a month, we should be losing a good deal of money, and my friend, Mr. Ayyar, has given the House an idea of the amount, namely, 70 lakhs. That is a sum of money which, I am sure, the House, if it approves of our tariff provisions, would be very unwilling to lose. There will be no compensating advantage since the money has already been collected and would have to be returned. As I said before, although I have put forward this motion honestly in the belief, that it would lead to the expedition of business, I have no further interest in the matter. The Government is not, in any way, necessarily wedded to this course rather than to any other course; as far as we are concerned, it is a matter of procedure rather than of substance. The discussion on my proposal has, however, taken a turn which on behalf of Government I must beg leave to deprecate; I think that neither the interests of this House nor of the country at large are in any way served by attacks on the powers of the other House. The constitution of the Legislature into two Houses has been given to us by Parliament, and it can only be modified by Parliament. I am unwilling, Sir, that by remaining silent longer, and by refraining from such action as is in my power to terminate these discussions, I should lend myself to the charge that Government is prepared to stand by and allow those attacks to continue. I shall not enter into the controversial point regarding the powers of the other House in regard to taxation. It is perfectly clear to me at all events, and I fancy to the House, that the

[Mr. W. M. Hailey.]

objection on constitutional grounds raised by Dr. Gour is perfectly dead, and I shall not seek to heap stones upon its tomb. But in a case of this sort, Sir, where a large number of the Members in the House feel deeply on one side, rightly or wrongly, on what they deem to be a question of principle, while other Members of the House hold the opposite view on a question of expediency, I fancy that it is wise on our part to give way to those who express themselves on the question of principle rather than hold merely to the question of expediency. In one case you have to meet a deep-seated feeling, the frustration of which may mean subsequent resentment and friction; in the other case you have merely to run the risk of adopting a course of action which may involve delay or inconvenience. In this view, therefore, Sir, in order that discussion of a type which I have ventured to deprecate may come to a close and also that we may be free from any further chance of friction on the constitutional aspect of the case, I propose to ask you, Sir, to allow me to amend my original motion and to ask 'that the Bill be taken into consideration by the House on a date to be specified,' namely, to-morrow. I cannot pretend, Sir, that I myself consider that this is the most expedient course, but I believe, that in the circumstances it is the wisest one for me to put before the House.

The motion was, by leave of the Assembly, withdrawn.

The Honourable the President : The question is :

'That to-morrow, the 18th of March, this Assembly do take into consideration the Bill further to amend the Indian Tariff Act, 1894, the Indian Post Office Act, 1898, the Indian Income-tax Act, 1918, and the Super-tax Act, 1920, and to amend the Freight (Railway and Inland Steam-vessel) Tax Act, 1917.'

The motion was adopted.

The Honourable Mr. W. M. Hailey : I hope I may be allowed your indulgence, Sir, to make one further proposal, and that is, that I think that many of the Members of this House, under the belief that this motion would be carried and that the Bill would come before a Joint Committee, have deferred putting in amendments. If there be any such, Sir, I hope that you will so far waive the rules of the House as to allow them to put in their amendments to-day, in order that they may be considered to-morrow and on the subsequent days of the discussion.

Mr. Mahmood Schamnad Sahib Bahadur : I propose, Sir, that the Bill may be taken into consideration to-day.

The Honourable the President : The House has just decided to take the Bill into consideration to-morrow.

In reply to the point raised by the Honourable the Finance Member, I may say, that the Chair will meet the convenience of the House in that matter.

THE INDIAN FACTORIES (AMENDMENT) BILL.

The Honourable Sir Thomas Holland : I move, Sir :

* That this Assembly do recommend to the Council of State that the Bill further to amend the Indian Factories Act, 1911, be referred to a Joint Committee of this Assembly and of the Council of State and that the Joint Committee do consist of 12 Members.'

I may say that Members of this House will believe me when I say, that in moving a motion of the sort in a formula similar to that which has been dealt with this morning, that I am not in any way, I hope, showing disrespect either to the opinions or decision, or to an unfinished discussion of the House. I take it for granted, that the matter that was discussed this morning dealt purely with the financial rights of this House, and that there was no intention so far of extending the principle to other questions. We, in the Government of India, who have been associated intimately with the stage of incubation of the Reforms Scheme, have got into the habit by long practice of thinking that it is our duty to pay the greatest respect to the decisions of the Legislature and I, therefore, hope that Members will understand, that in moving this Resolution, I am not, I hope, either consciously or unconsciously, trespassing on any principle that is dear to the Members of the House.

Honourable Members will remember that I was permitted by this Assembly to introduce on the 1st of this month a Bill to amend the Indian Factories Act of 1911. The principal features of the Bill have previously received the approval of this House and also of the Council of State. These principles were put before both Houses in the form of Resolutions recommending the ratification of the Washington Labour Conventions and recommendations. Into this Bill, however, we have introduced some additional features as the result of experience in working the old Act and in consequence of the advice offered by Local Governments and by industrial bodies affected. These, we suggest, should now be critically examined in detail by a Joint Select Committee before they are placed before the Assembly for further consideration. Some of these points I mentioned on the 1st of March, and I will now direct your attention very briefly to some additional features which seem to be suitable for preliminary examination by a Committee. One feature that I did not mention before was the question of protecting the health and safety of workers by introducing, in addition to the regulations already in force, a further provision for controlling the artificial humidification of factories, and we are also suggesting measures for protecting the factory worker by placing on the employer the responsibility for ensuring the safety of factory buildings. The question also of providing a weekly day of rest as regularly as possible in continuous processes is one that will require very careful examination and drafting in order to safeguard the workers without unnecessarily handicapping the industry. As the two Houses are in general agreement on the main principles so far discussed, it seems desirable to save time by working out these details in a Joint Committee, in order that the finished products may be submitted afterwards for the separate consideration of the Assembly and of the Council of State. These are my reasons, therefore, for proposing to this Assembly that we refer to the Council of State our suggestion for the appointment of a Joint Committee consisting of 12 Members.

Sir Logie Watson: I am of opinion, Sir, that it is highly desirable to refer this important matter to a Joint Committee and that this Committee should consist of Members of the Council of State and of this Assembly. Unfortunately, there are comparatively few Members of this Honourable Assembly who are business men, and I think it is necessary on this account that we should bring in other business men from the Council of State to help us in our deliberations when considering this Bill.

Mr. N. M. Joshi: Sir, I rise to support the motion put forward by the Honourable Member for Industry. And in doing so I would like to make

[Mr. N. M. Joshi.]

a few remarks regarding the principles involved in this Bill. The first point upon which I would like to make some remarks is about the extension of the application of the Factories Act. This Act is intended to apply to factories that employ twenty men and more and which work with some power. I should have very much liked that the Bill should have been made applicable to all factories whether they work with power or not. It seems to me rather strange that Government should propose to give power to Local Governments to apply the Factories Act to factories working with ten persons or more, whether they work with power or not while they retain the condition of working with power in the case of factories employing twenty persons and more. It seems to me to be rather anomalous, and when the Bill comes before the Committee, I hope they will consider it very carefully.

The second point on which I would like to speak is the provisions as regards sanitary and safety arrangements. I should have very much liked that these provisions had been made in more detail than they are in the Bill before us. We all know that in India the Factory Inspectors have very little knowledge of either sanitation or safety. I am quite sure, that no exception will be taken to my statement ; although it was stated on the side of the Government one day that these Factory Inspectors possessed some technical knowledge. Unfortunately Government never said what that technical knowledge was. Under these circumstances, I should have very much liked that the sanitary provisions and the provisions for safety had been made in more detail than what they are to-day. I should have also liked that some provisions had been inserted for seeing that these factories are put in good buildings, properly ventilated and not uncomfortable. There is no provision in the Bill to ensure this fact at all. As a matter of fact, I have seen several factories in Bombay which are conducted under roofs of corrugated iron sheets and which are therefore very uncomfortable.

Then, Sir, I would like to make a few remarks about the hours of work which have been fixed according to this Bill. This Bill proposes that the factories should work 60 hours a week ; I should have very much liked, as I said in this Assembly before, that besides putting a limit on the weekly hours, we should have also a lower limit for the day's work than is proposed in this Bill. The Bill proposes that the day's work should be limited to 12 hours. Personally, I feel that this limit is too long and that it ought not to be allowed to continue. At present the factories do work for 12 hours, and I do not know what improvement we propose to make by putting the 12 hours limit in this Bill. Putting this limit will enable some factory owners to go on with the work of the factory for five days in the week and they may give a holiday for the other two days. But many Members may not know that when factories work for five days in a week it is not in the interests of the employees themselves ; the employers find it inconvenient and unprofitable to themselves that they should work for all the days of the week ; many factories work for four days or five days a week in this way. I would suggest to the Select Committee to look into this matter very carefully and reduce the limit for the day's work.

Sir, as regards the number of hours for a week, I would also suggest that the Committee should carefully consider whether they can reduce the hours from 60 to a lower limit or not. I have expressed my opinion in regard to this matter in this Assembly that our industries will not suffer anything if we

still lower down the limit of the hours of work, and I hope that the committee will consider the question carefully and will come to the same conclusion. The limit which it is proposed to put in the present Bill, namely, 60 hours, is the limit which many workers have already got in this country by their strikes, and I think they will not get any benefit by our factory legislation. On the contrary, you will only lead the people into the belief that it is better for them to rely on their strikes than rely upon Government to do them any good. I would therefore suggest, that a serious effort should be made to lower this limit.

Then, Sir, I would like to make one or two observations on the overtime which is allowed under the Bill which is before us. The Bill proposes to give power to Local Governments to allow factories to work overtime. Unfortunately there is no limit to the hours for which this overtime should be allowed. If the Government gives permission to certain factories, they may work even 13 or 14 hours a day. I think this is a serious defect in the Bill and a fixed limit should be put down for the time allowed as overtime. Then, Sir, this Bill also gives power to Local Governments to exempt certain factories, like factories on tea plantations, coffee plantations and indigo plantations. Personally, I do not see why these exemptions should be allowed at all, and I would like the Select Committee to go into this question also very carefully.

Then, there is another question about which I would like to say a few words, and it is this, that the penalties which have been prescribed for breach of law are in certain cases very inadequate. The Bill before us proposes, that if an employer commits a breach of this law he may be fined up to Rs. 1,000. I would like this Assembly to remember that when the factory owners make a breach of this law they make sometimes a thousand rupees a day, and if they go on breaking the law for a month they make Rs. 30,000; they will not mind paying Rs. 1,000 at all as penalty. I would, therefore, suggest that if this law is to be useful at all, the penalty which is to be imposed upon the employers should be quite adequate, and more than that proposed in this Bill. But unfortunately while the Bill proposes such an inadequate penalty for the employers, it proposes at the same time that a child who breaks the law in the matter of an age certificate should be punished with a fine of Rs. 50. Now, how is a child who breaks the law, sometimes consciously and sometimes unconsciously, to pay a fine of Rs. 50 I do not know; I do not know why a child should be singled out for a punishment of a fine of Rs. 50 while the employer who possesses sometime lakhs and sometimes crores should be allowed to go off with only Rs. 1,000, when by breaking the law he is able to make lakhs of rupees.

Sir, I do not wish to take up the time of this House on this question any longer as the Bill is going to the Select Committee. I have made these remarks so that the Select Committee when it considers this Bill should take them into consideration.

Mr. A. B. Latthe : Sir, there is one point with regard to this Bill on which I think I ought to make a few remarks before it is committed to a Select Committee. One of the main principles of this Bill is, that boys of certain prescribed age should not be made to work for more than six hours in a factory. Now, when we make a provision like that in the law, it is very necessary that some provision should also be made to see that during the remainder of the day the boys who are employed in these factories make the

[Mr. A. B. Latthe.]

best use of the time and devote at least part of the time to education. As Honourable Members may remember, when the Factory Bill was under consideration before the Legislative Council in 1911, this question was raised and a proposal was made to the Council to make the education of these half-timers compulsory.

But for various reasons that proposal was rejected. At the same time, however, the Member in charge of the Bill assured the House that the question would be considered and it was suggested that some provision might be made requiring the managers of factories to see that the boys who are employed as half-timers produced certificates to the effect that they attend some registered or recognised school. The House might also remember that a similar provision is also made in Japan, and the law in Japan requires that before a boy becomes eligible for employment in a factory he must bring a certificate to the effect that he has attended for a certain period a recognised school. But the condition of things in Japan and in India is somewhat different, because education there is compulsory, while it is not so here; but I think there can be no objection to provide in this Bill that these half-timers should produce a certificate to the effect that they do attend a school or that they have attended a school for a certain period before the factory manager is authorised to employ them. I think this question ought to be considered by the Select Committee. Unless some such provision is made, the very purpose for which a limit is placed on the time during which a boy can be made to work in a factory, is defeated. He may work in the mill for the stated period, but during the rest of the day he may employ himself elsewhere or waste his time and his education will entirely suffer. I am told that even the mill owners and factory owners find that the labourers in India do not develop into skilled labourers as they do in the west, and the chief reason why they do not develop into skilled labourers is that they have not got the grounding of elementary education. I think this evil could be remedied to a certain extent by embodying a provision in the Bill on the lines I have suggested.

Lala Girdharilal Agarwala : Sir, I am as much interested in labourers as in capitalists. There is one question which has to be borne in mind, and it is this. The cost of production in the Indian factories should not be increased by this legislation to such an extent that we Indians may not be able to compete with the foreign goods which are imported into this country and which are sold even at present at a much lower price than the cost of our production. I submit, Sir, there are many things which require consideration. One thing which is laid down in the proposed Bill is, that when on any one day in the year 20 persons are employed in any factory, it would come under the provisions of the Factories Act. I submit, that there are occasions, for example, for putting up a chopper in a factory, sometimes more than 20 or 25 men are required. Then, from the mere fact, that more than 25 men have been employed for that particular purpose, the factory will come under the provisions of the Indian Factories Act. I submit, that the Select Committee, if appointed, should take this fact into consideration and clear the ambiguity in this respect, and my suggestion is, that not less than 25 persons, working for one year, on an average should be adopted as a basis for bringing the factory under the provisions of the Factories Act.

Now with regard to the provision of giving an option to the Local Governments to apply the provisions of the Act to factories which employ only

10 men, I submit, it would be very injurious to the country. With regard to the limit of working hours, I submit, that in India labourers as a class do not work continuously as they do in other countries. Here sometimes they smoke, sometimes they lie down, sometimes they talk and waste time, so that if they are supposed to work for 15 hours, they really work for 10 hours. That is also a matter which should be taken into consideration. As I have already submitted, I am interested in both sides, that is the capitalists and the labourers, and having regard to the welfare of both parties, it is necessary that our cost of production should not become high.

Now, Sir, there is a provision to the effect, that if a boy above 6 years of age is found in a factory, the presumption would be that he has been there for work. I submit, that that is a very injurious provision. Generally workmen in India keep little boys of the ages of 6, 7 or 8 to go home and fetch water or food for them, so that the result would be that a child of 7 would not be able to supply to its parents in the factory if this provision is retained as it is, because the presumption would be against the child as also against the owner of the factory. I submit, these are very unhealthy provisions in the proposed Bill which require very careful consideration.

Now, with regard to the amount of work, there are certain factories in which the labourers are paid not by time but by the amount of work done. So that in those factories where the amount of work done

The Honourable Sir Thomas Holland : I rise to a point of order, Sir. I should like your ruling on the extent to which it is advisable or permissible to go into details in connection with this Bill or to make suggestions in connection with its provisions. I myself do not propose to deal with any arguments to-day except in so far as they bear on the question before us, namely, shall we refer the Bill to a Select Committee. I can assure any Honourable Member that any views expressed to-day or afterwards will certainly come before that committee for consideration, and in view of the fact that we have cut out Rs. 10 lakhs from our stationery and printing Bill, I should like to be as economical as possible.

The Honourable the President : It is somewhat difficult to lay down the exact line where the discussion of the principle verges on the discussion of a particular point. I have allowed some latitude in this discussion to-day to which the Honourable Member representing the Government has drawn the attention of the House.

Lala Girdharilal Agarwala : I was simply discussing the question of principle and not any question of detail, and my main object is, that we should not increase the cost of production by any artificial means so that we may not be able to compete with foreign goods. In fact, my opinion is, that India should progress towards its manufacture and commerce to such an extent that a day might come when we may be able to sell our machinery including steam engines, aeroplanes and steam-ships in the European markets as the best and the cheapest in the world, and I adhere to that opinion even now. So, I submit, that our legislation should proceed upon such lines that while we may be able to give proper comforts and convenience to our labourers, we should not place any hindrance in the way of capitalists and dissuade them from undertaking commercial enterprises on a large scale.

Srijut Debi Charan Barna : Sir, with your permission, I propose to say a few words in regard to the Tea Factories. It is suggested that tea factories

[Srijut Debi Charan Barua.]

enjoy the worst leave. I believe that is due only to ignorance of the state of the tea factories. Tea factories are quite different from the ordinary factories in this part of India. In tea factories we collect tea leaves on only six days of the week, and tea leaves collected to-day have to be manufactured to-morrow. In tea factories green leaves collected on Saturday have to be manufactured on Sunday, so the people working in the tea factory can have no leave on Sunday. Consequently, they enjoy the weekly holiday on a Monday rather than on a Sunday. From that point of view also, the condition of the tea factories is somewhat different. Sir, it is also to be observed that the manufacture of tea leaves depends upon the state of the weather. They have to be made fit for the purpose of rolling in the machines and for various other processes. Sometimes the leaves are ready for being rolled at the dead of night, and if they are made to stand till the following morning, the whole of the leaves will have to be thrown away because by that time they will be quite useless. So the process of the manufacture is quite different. It was suggested by my Honourable friend, Mr. Joshi, that there should be no exception in the case of tea factories, indigo factories and coffee factories. Of course, I am quite ignorant of indigo factories and coffee factories. Being a tea planter, I can say something of tea only. In tea gardens we do not require 60 hours a week even. We are quite prepared to go on as a matter of fact managing the tea gardens even with 36 hours. If they would come down to that, we are quite prepared to meet them. But we cannot work at any hour and every hour. As regards our manufacture we may have to commence our manufacture even at dead of night and finish the manufacture at 8 or 9 o'clock the following morning. When we have rolled the tea and ground the leaves, then at a particular hour it is suitable to manufacture the tea, and then the labourers will be required. Of course, in tea gardens, we set the task in such a way that it can be finished in the course of six hours even. As I say, we can manage tea gardens with 36 hours. We need not go to 60 hours. As a matter of fact, in a tea garden they rarely work for more than 36 hours a week. It is better that on the Select Committee there should be some people who, knowing that some alteration is still going to be made in the law regarding the manufacture of tea, should be able to show the Committee what is proper and what is necessary. But from the Bill I understand that certain provisions about the fixing of time and the number of hours for the tea gardens, indigo factories and coffee factories will be left alone. But, since these factories have been threatened, it is necessary that some sort of representation should be given on the Select Committee. Of course, I am not quite conversant with other factories that are being conducted in this part of the country, but one thing, I may be permitted to suggest, namely, that, instead of making a 10-hour day or a 12-hour day, an 11-hour day may be made, so that for the five days in the week they may work for 55 hours and on Saturday, the last day of the week, enjoy a half holiday. That will make labour sweet and at the same time make the factories alluring to labourers. Of course, I have not much experience of these matters and so I beg to suggest, if any more provisions are going to be altered in respect of tea factories, that adequate representation should be had on the Select Committee.

Mr. A. D. Pickford: Sir, I seem always to be finding myself in friendly antagonism to the views of Mr. Joshi. I think, speaking quite generally—I understand that this is what is required at this stage—speaking quite

generally, I think the fault that lies in his suggestions is the fault that is so common to those who take up the cause of labour now-a-days. They forget that, if the capitalist is ruined, there will be no work for the labourer. They forget also what I had occasion to say in my former argument with him, that the best argument that can be produced for the proper treatment of labour by capitalists or by employers in this country is the fact that it pays the employer. I can only presume that Mr. Joshi in desiring that the hours of labour shall be still further reduced, is profiting by experience which he may have had perhaps in a Delhi curio shop, when it is necessary to offer 8 annas for an article for which one is eventually prepared to pay one rupee—'making a bazar,' I believe, is the phrase for it. With regard to tea gardens and the like and the powers that are to be reserved to Local Governments, surely that is a reasonable provision. The circumstances of these so-called factories, though hardly deserving the name of factories in the circumstances of those specialised industries, vary so very much that, unless powers are given to Local Governments to provide for special provisions to deal with these special conditions, great injustice will be done. Now, with regard to the point raised by Mr. Latthe, I do join issue very strongly. Whose duty is it to educate the children of the country? Primarily surely the parents. Secondly, under the principle that has been accepted of late years, the State's. Never, so far as I know, the employers.'

Any such provision would be merely taking advantage of the desire of the employer to employ boys in his factory or children in his factory, to make him do something which it is not in the least his duty to do. Everybody will be in agreement as to the desirability of children being taught in spare time. For is not that the point that underlay Sir Alexander Murray's objection to Government's action, extraordinary action if I may say so, in putting up the children's statutory age beyond a point that had been considered desirable at the Washington Convention. Sir Alexander Murray made the point perfectly clear, that it is no use driving people out of a factory, unless you are going to make some adequate arrangements for occupying their spare time. We cannot turn them all into boy scouts, but I am quite sure that every employer will support any proposal that is made by the Government or the parents or the general public for providing schools or other occupation wherein these children can be occupied. But it is no part of an employer's duty. It may be it may pay him to assist in such education, but it is not his duty.

Mr. Manmohandas Ramji: Sir, I fully endorse the views expressed by my friend Mr. Pickford. What I say is this, that in our zeal to better the conditions of the workmen we should not go to a pitch that would hamper industries. As for the education of children, I quite agree with him that it is impossible for a factory owner to make an attempt of that nature any further. In Bombay that experiment was tried. Many mills started schools, but these young people would not attend them. They would while away their time outside the factory, and therefore the schools had to be closed. That is our experience in Bombay, and, unless the Government make primary education compulsory, no attempt will be effective.

In regard to the question of the reduction of hours of work, I am not going to say anything now, but on the question of fixing the age of half-timers, a big jump has been attempted, that is, from 9 years to 12 years. I may submit, Sir, that these children are sent to the factories to earn something

[Mr. Manmohandas Ramji.]

in order to help their parents in maintaining them. If they are prohibited from working up to 12 years, the result will be that a poor father or mother will have to maintain their child for three years more, and the question is, whether the condition of these poor people will permit of their helping us to carry out this measure. I say that it will be hard lines upon these poor people to be called upon at once to maintain their children for three years more. As it is, after nine years a child is allowed to contribute to his own maintenance, but under the proposed system, he will have to depend upon his father for another three years more.

Mr. K. G. Bagde: Sir, I am not going to speak much on this motion. I know that the Honourable Mover, Sir Thomas Holland, is taking great interest in furthering the cause of Indian labour. But, I think, it is my duty to offer a suggestion. This morning we have heard from one of the Honourable Members of this House that the other House chiefly consists of men of business and commercial men; I mean, they are mostly employers. The factory legislation aims chiefly at improving the lot of labour. We know that capital has been for a long time organised, and it has sufficient knowledge to guard its own interests. Unfortunately, labour has always been ignorant and unorganised. I am sorry that I cannot enjoy the enviable position of my friend Mr. Agarwalla in being equally inclined to both interests, that is, capital and labour. I do say that great protective measures are necessary to protect the interests of labour. With that end in view, I request the Honourable Mover of this motion that when he comes to make a selection of the members of the Joint Committee from this House, he will be kind enough to see that a sufficient number of men interested in labour is taken on the committee. With these remarks I beg to resume my seat.

Munshi Mahadeo Prasad: While supporting the motion before this House, I beg to submit that the committee which is being appointed to-day will take into consideration the condition of the labour in the rural areas. In the United Provinces and Bihar we have got sugar factories and indigo factories which are worked for a limited number of months in the year, and as I understand, the definition of factories as given in the Bill will govern them also. I beg to submit for the consideration of the committee that adequate consideration should be shown to these factories, and the definitions and sections should be so moulded as not to tell upon their encouragement. With these few remarks I beg to support the motion of the Honourable Mover.

Rai Bahadur Pandit J. L. Bhargava: Sir, I want to make one suggestion which may require some verbal alteration in the wording of the motion. This motion is, as I understand, moved under paragraph 68, clause 2 of the Manual of Business and Procedure of the Legislative Assembly. That clause requires that a motion may be made recommending that the Bill be committed to a Joint Committee of both Chambers. It does not require that it should be a recommendation to the Council of State. In the Chapter which deals with Resolutions also, there is no provision for making a recommendation to one House or the other. There the recommendation is made to the Governor General in Council.

Here too a simple recommendation should be made that the Bill should be committed to a Joint Committee of both Chambers, and not that there should

be a recommendation to the Council of State. If we look at paragraph 101, there too we find that :

' If a Resolution is passed in the originating Chamber recommending that a Bill should be committed to a Joint Committee of both Chambers, a message shall be sent to the other Chamber to inform it of the Resolution and to desire its concurrence in the Resolution.'

So information has merely to be given to the Council of State that such and such a Resolution has been recommended and not that any recommendation has to be made to it.

I hope, therefore, if the Honourable Member approves, he will agree to the necessary alteration being made.

The Honourable Sir Thomas Holland : Sir, I think I need not reply to the questions of detail which have been mentioned, but will promise the Members that any suggestions that have been made in the course of this discussion will be laid before the Joint Select Committee if the House to-day decides to grant the appointment of such a Committee.

There are only two points that I need answer as bearing on the immediate motion before us. One is by my friend, Mr. Bagde, who has suggested that the selection of Members for the Joint Committee should be made with due regard to the interests of labour, as well as with regard to the interests of employers. In making suggestions for the approval of the House for the Members of a Select Committee, naturally the Government in drafting a list for the consideration of the House, will take great care to see that, as nearly as possible, every interest is balanced, whether by occupation or by province or by interests. I should not myself like to run the risk of coming before this Assembly with an obviously packed list. I should not like to risk the Bill to that extent. I am perfectly sure that we will do what we possibly can to see that every interest, both provincial and by class, is represented.

The other point, Sir, is not one on which I can give an opinion. It is rather a matter I should suggest for a ruling from the Chair, as to whether it is necessary that we should accept the formula suggested by Mr. Bhargava, namely, to rule out the words 'recommended to the Council of State'. But whatever formula is acceptable to this House, will be acceptable so far as I am concerned. I am only concerned to-day to get the approval of this House to the formation—I will not even use the word 'appointment'—of a Joint Select Committee to consider this Bill.

Mr. Wali Mohamed Hussanally : Sir, there is only one point which I should like the Honourable Member to clear up, and that is the request for a Joint Committee in this case. A little while ago there was some discussion here against having a Joint Committee on another Bill. I know, Sir, that those reasons will not necessarily apply in this particular case, but, as a general rule, I think that Joint Committees should be asked for particular reasons, for instance, urgency of the matter. I should like to know if there is any particular urgency in regard to having a Joint Committee in this case. Otherwise, I think the usual course should be adopted of having our own Select Committee.

The Honourable the President : The Honourable Sir Thomas Holland, a while ago, gave an adequate explanation of the reasons that prompted Government to move for a Joint Committee in this case. I am not sure if the Honourable Member was here at that time.

Mr. Wali Mohamed Hussanally: I am afraid, Sir, the acoustic properties of this Hall require examination.

The Honourable the President: In relation to the point raised by my Honourable friend Mr. Bhurgava, it is a pure matter of drafting. The formula adopted in the motion standing in the name of the Honourable Sir Thomas Holland is perfectly in order. I may suggest to my Honourable friend that this Assembly cannot order or command the Council of State to do anything. They can only say to the Council of State 'we wish to have a Joint Committee appointed, and we recommend you to meet us half-way in the matter'. The formula chosen is perfectly in order and seems to me reasonable to meet the necessities of the case.

The question is:

'That this Assembly do recommend to the Council of State that the Bill further to amend the Indian Factories Act, 1911, be referred to a Joint Committee of this Assembly and of the Council of State, and that the Joint Committee do consist of 12 Members.'

The motion was adopted.

THE INDIAN LIMITATION (AMENDMENT) BILL.

Mr. S. P. O'Donnell: Sir, I beg to present the Report of the Select Committee on the Bill further to amend the Indian Limitation Act, 1908.

THE CALCUTTA UNIVERSITY BILL.

Mr. H. Sharp: Sir, I beg to move:

'That the Bill to amend the law relating to the Calcutta University, be taken into consideration.'

At the time of introduction I explained the contents of this simple Bill to the best of my ability. No notice of amendments has been received and no criticisms have been received. I think, therefore, that it is unnecessary for me to make further remarks at this stage.

The motion was adopted.

Mr. H. Sharp: Sir, I beg to move that the Bill be passed.

The motion was adopted.

THE INDIAN ELECTRICITY (AMENDMENT) BILL.

The Honourable Sir Thomas Holland: I beg, Sir, to move for leave to introduce a Bill further to amend the Indian Electricity Act, 1910.

The first general Act regulating the use of electrical energy was passed in 1903; and, after seven years of the working of that Act, it was revised and replaced by the present Act. The existing measure has, on the whole, proved fairly satisfactory, but the rate of development of electrical undertakings and the experience gained in the use of electricity, both for lighting and for power during the last ten years, has shown that there exists still certain defects and omissions which require to be remedied. Some of the defects

were first pointed out at a Conference of Electrical Inspectors held at Calcutta in November of 1915. A second conference of Inspectors and Electrical Engineers was held at Calcutta in December 1916 and went further into the matter and urged still some modification of the Act. A third conference was held in May 1918, and also dwelt on the necessity for certain changes. The successive conferences gradually narrowed down the points in which the Act needed revision, and progress towards unanimity was thus developed. The recommendations made by these conferences were reviewed, and the amendments which were considered necessary were drawn up with the assistance of the Electrical Adviser to the Government of India. Before any attempt at drafting a Bill was made, the proposed modifications, with a Statement of the Objects and Reasons, for a new Bill were circulated for the opinion of Local Governments, and, through the Local Governments, for consultation with the principal electrical associations in India and the British Indian Electrical Committee in London.

Most of the Local Governments convened conferences of the interests concerned for a reconsideration of the proposed amendments, and, on the whole, these amendments were very favourably received. The criticisms and opinions received have now been given very careful study and certain additions and modifications have, as a result, been incorporated in the Bill which is now before the House. The decentralisation of the subject of electricity was a feature of the earlier Acts of 1903 and 1910, while the Devolution Act of 1920 has already carried the matter a stage forward, and definitely transferred from the Governor General in Council to the Local Governments certain powers previously held. One matter, however, was reserved, and that is the power to make rules applicable to the country as a whole. At present proposals are under discussion in various parts of the country which may involve a single hydro-electric undertaking branching out into more than one province; and, to meet this contingency amongst other reasons, it seems necessary that we should retain some way by which uniformity in the matter of rules can be preserved. Following the precedent of the old British Act, it is not unusual still to hear of electrical legislation being referred to as if it were a matter of mere electric lighting and the use of electricity for domestic purposes. That hitherto has probably been equally applicable to India. The progress which we look forward to, however, is rather in the direction of industrial power, which in most countries altogether outweighs the purely domestic use of electricity. A start on a fairly large scale has already been made in the Bombay Presidency; and large water-power propositions are being examined in various parts of the country for exploitation for industrial purposes. Where works may hereafter be actually constructed, there can be no doubt as to their beneficial result on the prosperity of the neighbourhood; but the construction of works requires capital, and that depends in no small degree on the confidence of the investor. Unless the investor can be sure that these rules will be relatively uniform and fair, we shall be unable to attract money to take up these hydro-electric propositions. The Bill eases some of the points where the shoe pinches.

The Statement of Objects and Reasons and the separate Notes on Clauses explain fully the specific changes which it is desired to make, and I do not propose at this stage to recount them. I think the House will see that a real

[Sir Thomas Holland.]

effort has been made to safeguard the interests both of the consumer and of the supply companies, with the object of encouraging capital to extend the advantages of electric supply as widely as we possibly can with benefit to the consumer. Bearing in mind the importance that long lines for the transmission of power from hydro-electric stations may have on the industrial future of India, we have specially studied the effect of clause 5 of the Bill. It is proposed now to take enhanced powers to deal with obstructions that interfere with overhead lines. If members would like to have what is roughly a parallel illustration, one might mention the early days of the electric tramway, when each passenger insisted on stopping the car wherever he wished to get on or to alight. Progress was so slow that all soon combined to insist on fixed stopping places. So here, each individual who claims the right to obstruct an electric supply line may forget that he has to pay more because of his neighbours acting similarly. We hope, therefore, that this revision of clause 5 will be for the benefit of the people generally. Where the obstruction is on a main transmission line put up under section 51 of the principal Act, all consumers eventually bear the loss involved by the action of the obstructing party.

I might perhaps refer to one other question of change in principle. Under long-standing custom licensees now lay down conditions of supply to their consumers, and these conditions often amount practically to bye-laws. The conditions are, of course, generally desirable, but some of those that now exist are doubtfully in accordance with the law. I am sure that the House will agree that such a practice should not be allowed to continue. Clause 8 of the Bill will permit licensees to issue bye-laws as before, but with the previous approval of the Local Government, and the Local Government will also have the power to cancel what it sanctions if circumstances render such a course desirable.

At present, section 37 of the old Act excludes the operation of the Act from works under the Crown. At present the Act is not binding on the Crown, but we realise the danger to life and property which the provisions of section 37 are intended to guard against may occur just as well in the case of Government installations in cantonments and elsewhere. It is consequently proposed in clause 18 of the Bill to make an addition to section 37 of the old Act, making the rules referred to binding on the Crown as well as on all others. With that brief explanation of the principal points of change in the law that we propose, I recommend that this Assembly give permission for the introduction of the Bill.

The motion was adopted.

The Honourable Sir Thomas Holland : Sir, I beg to introduce the Bill.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

Mr. S. P. O'Donnell : Sir, I beg to move :

'That the Bill further to amend the Code of Civil Procedure, 1908, as passed by the Council of State, be taken into consideration.'

The Bill is intended to make a small alteration in the Civil Procedure Code. The Select Committee on the Bill to amend the Provincial Insolvency Act, which became Act V of 1920, recommended that section 55 (f) should be repealed. That sub-section provides for the automatic release of judgment-debtors who merely express their intention to apply to be declared insolvents. It is therefore hardly consistent with the provisions of sections 23 & 31 of the Provincial Insolvency Act. The Local Governments and High Courts who were consulted on the point generally agreed that an amendment of this sub-section was necessary. The Calcutta High Court have, however, pointed out that there are cases under the Presidency Towns Insolvency Act in which it is expedient that the Courts should have the powers conferred by section 55 (4). It is proposed therefore to make it permissive, instead of compulsory, to release a judgment-debtor under the circumstances stated in that sub-section. This will remove an anomaly which the proposal of the Select Committee was intended to meet, and will also provide for special cases in a Presidency-town.

The motion was adopted.

Mr. S. P. O'Donnell : I beg to move, Sir, that the Bill, as passed by the Council of State, be passed.

The motion was adopted.

THE MAINTENANCE ORDERS ENFORCEMENT BILL.

Mr. S. P. O'Donnell : Sir, I beg to move :

'That the Bill to facilitate the enforcement in British India of Maintenance Orders made in other parts of His Majesty's Dominions and Protectorates and *vice versa*, as passed by the Council of State, be taken into consideration.'

This Bill follows generally the lines of the Act which was passed in England in 1920 as the result of the recommendations made by the Imperial Conference of 1911. The Imperial Conference recommended that, in order to secure protection for wives deserted by their husbands or for children deserted by their guardians, either in the United Kingdom or any part of the Empire, reciprocal legal provisions should be adopted in the constituent parts of the Empire. The English Act accordingly is intended to facilitate the enforcement of Maintenance Orders made in other parts of the Empire, and section 12 of that Act gives power to extend the provisions of the Act to any part of the Empire which accords similar privileges to the orders of the Indian Courts. It is only in the case of those parts of the Empire which do afford similar recognition that this Act is intended to apply. The detailed provisions of the Bill are explained at some length in the Statement of Objects and Reasons, and I do not think I need trouble the Council with them at this stage.

MOTION TO REFER THE BILL TO A SELECT COMMITTEE.

The Honourable Dr. T. B. Sapru : Sir, I have to move an amendment which runs as follows :

'That the Bill be referred to a Select Committee consisting of Chaudhury Shahab-ud-Din, Mr. Shehagiri Ayyar, Munshi Iawar Saran, Mr. J. N. Mukherjee, Mr. Percival, Mr. O'Donnell, and myself.'

[Dr. T. B. Sapru.]

I move this amendment because the Bill raises some important questions of principle and detail, and, I believe, it will be more desirable that the various provisions of this Bill should be carefully considered in the Select Committee. I need hardly say more, but I do venture to hope that if my motion is carried, it will not be necessary probably to urge any particular amendments relating to the Bill itself on this occasion.

Sir P. S. Sivaswamy Aiyer: Sir, in rising to speak on this motion my object is only to support the motion. I have tried to follow the framework of this Bill, and I understand the principles underlying it; but I am not sure that I have been able to follow it quite closely, and I wish to refer to some of the doubts and difficulties I have felt so that they may be dealt with by the Select Committee when it comes before them.

So far as I understand the Bill, it is intended to make reciprocal arrangement for the enforcement of orders for maintenance which may be passed by a foreign Court in the British Dominions and sent up here for enforcement and summary orders which are passed by Courts in India which may be sent up to other countries in the British Dominions for enforcement. Apparently it seems to be confined to summary orders for maintenance of the kind which are passed under the Criminal Procedure Code, section 488. There are, however, other cases where orders for maintenance are passed or rather, to be more accurate, decrees for maintenance are passed in regular suits. If a summary order for maintenance passed by a Magistrate can be sent to a foreign country with the object of securing the benefit of summary execution by the foreign country, *prima facie* it would stand to reason that a decree passed in a regular suit here should be more readily capable of enforcement in the foreign Court, but evidently that is not intended to be the case. Under the Criminal Procedure Code, the maximum limit up to which amounts may be awarded by way of maintenance is only Rs. 50 per month, whereas if a wife sued her husband who had deserted her for maintenance and succeeded in getting a decree for maintenance at the rate of Rs. 500 per month or anything above Rs. 50, it would apparently not be capable of enforcement in a foreign Court. Of course, there is another remedy open to the person who has got the decree, namely, to sue upon this decree in the foreign Court. But it is not quite easy to see why this benefit of summary enforcement should be denied to a person who had gone the length of instituting a regular suit and obtaining a decree against the other party.

Another remark which I wish to make is this. There are persons under the Hindu law other than those referred to in the Criminal Procedure Code who will be entitled to maintenance irrespective of the possession of property by the person against whom the order is sought. For instance, the obligation to maintain aged parents under the Hindu law is a personal matter. It cannot be enforced under the Criminal Procedure Code, but it may be enforced by a regular suit. Whether it would or would not be desirable to make such decrees enforceable in foreign Courts is a matter which seems to deserve some consideration.

Another doubt which has occurred to me is this. I have got only a hazy recollection of the matter. I have been for some time out of touch with

recent decisions. I have a recollection that at one time the English Courts did not recognise the marriages of Hindus in this country on the ground that the personal law permitted polygamy, and that it was contrary to the laws of a Christian country. Whatever may be the theory of the Hindu law, there is no more polygamy at present in India now than there is in England. I do not know whether at the present moment the English Courts would or would not recognise the marriages of Hindus in this country, and whether they would or would not allow a defence set up in answer to a claim for the enforcement of a similar order that the marriage was between two parties whose personal law permitted polygamy. However, as I told you, I have been out of touch with recent decisions, and my recollection is somewhat hazy. However, I wish to draw the attention of the Honourable the Law Member to this matter which occurred to me when I read the Bill. These are the only points which I wish to draw his attention to.

Babu J. N. Mukherjea : May I suggest, Sir, that the name of Sir Sivaswamy Aiyer be included in the Select Committee?

The Honourable the President : The Honourable Member must speak a little louder.

Babu J. N. Mukherjea : May I suggest, Sir, that Sir Sivaswamy Aiyer's name be included in the Select Committee.

Some voice—Sir Sivaswamy's name is there already.

Babu J. N. Mukherjea : No, Sir, it is not there. I find Mr. Sheshagiri Ayyar's name but not his.

(A voice : He is not willing).

Sir Sivaswamy Aiyer : I am not willing.

Babu J. N. Mukherjea : Well, if he is not willing, there is an end to it.

Mr. Harchandrai Vishindas : Sir, I propose that the name of Sir Sivaswamy Aiyer be added.

The Honourable the President : Has the Honourable Member the permission of Sir Sivaswamy Aiyer?

Mr. Harchandrai Vishindas : No.

The Honourable the President : The question is :

'That the Bill be referred to a Select Committee consisting of Chaudhury Shahab-ud-Din, Mr. Sheshagiri Ayyar, Munshi Iawar Saran, Mr. J. N. Mukherjea, Mr. Percival, Mr. O'Donnell, and the Mover be accepted.'

The motion was adopted.

The Honourable the President : The original motion therefore falls.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

Mr. S. P. O'Donnell: Sir, I beg to move :

'That the Bill further to amend the Code of Civil Procedure 1908 be referred to a Select Committee consisting of the Honourable Dr. T. B. Sapru, Mr. Keith, Sir P. S. Sivaswamy Aiyer, Mr. N. M. Samarth, Munshi Iqwar Saran, Sir D. P. Sarbadhikari, Chaudhuri Shahab-ud-Din and myself.'

As the amendments which have been received show, there are questions raised by this Bill, some of them of a rather technical character, which will require very careful examination. It seems desirable therefore that there should be a preliminary examination by a Select Committee before the Bill comes up for final consideration.

Sir P. S. Sivaswamy Aiyer: Sir, while I am quite willing to serve on the committee which has been named by the Honourable Mr. O'Donnell, I should like to say that I am not yet prepared to commit myself to the general principle of the Bill. I have read the provisions of the Bill and, while I fully sympathise with the object aimed at, I am not sure that the remedy proposed is the right one, or has the sanction of precedents elsewhere. The object of the Bill is to award what has been termed compensatory costs. I do not know where that expression is taken from. Costs, I thought, were always compensatory. It is proposed to award compensatory costs as against persons who bring suits false to their own knowledge. As a matter of fact, speaking from my experience of over ten years ago, there is hardly a suit in the mofussil in which the defendant does not allege in the very first paragraph of his written statement that the plaintiff's suit is entirely false and fraudulent. This charge is one which is very commonly made by defendants, and I am not at all certain that the number of cases in which false defences, false to the knowledge of the defendants are set up, is in any way less than the number of false and vexatious suits. If a remedy is required, it would seem to be required in the other case also of a false defence. Another remark which occurs to me is this. I have searched the provisions of the Judicature Act. While there is a provision which authorises a Court to stay or dismiss an action on the ground that it is vexatious or false, I do not remember seeing any provision for awarding costs by way of damages or punishment for bringing a false suit, over and above the cost which a person incurs ordinarily when his suit is dismissed. The next point that I wish to refer to is that it is not fair to restrict the right of appeal against this compensatory order for costs to the extent to which it is proposed in the Bill. I merely make these observations to make it clear that I do not wish it to be taken that I have committed myself to an approval of the principle underlying the Bill. At the same time, I retain a perfectly open mind and I am in full sympathy with the objects.

Lala Girdharilal Agarwala: I support my Honourable and learned friend Sir Sivaswamy Aiyer, and I submit that the costs really incurred by the parties to the adjudication, whether a plaintiff or defendant, and those costs which are taxed bear no proportion. And I submit that there are cases in which false defences are set up, plaintiffs are harassed from Court to Court and postponements are obtained of the dates of hearing and there

is difficulty in execution. So, I submit that some provision should certainly be made to check such a practice. What is sauce for the goose is sauce for the gander. What is good for the defendant who is unfortunately put into Court without good cause should be equally applicable to plaintiff, and there should be a provision penalising false defences. And I submit that the Committee which is going to be appointed should take these matters into consideration.

Mr. T. V. Seshagiri Ayyar: Sir, I had not intended to speak upon this motion, but the doubts that Sir Sivaswamy Aiyer has raised in this connection make it necessary that I should say a few words. I believe that I have in another capacity written a pretty long minute on this question when it was circulated in the Madras High Court. As a matter of fact, there is legislation in England to punish persons who bring false and vexatious suits. In this country also for a long time there has been a provision where an application is made on malicious or vexatious grounds or where an application is brought forward—if I remember the words rightly—without sufficient cause for the attachment of property or arrest of a person before judgment, to award compensation to the person who has moved the Courts on a malicious application. I think I suggested on that occasion—the matter was then before the High Court—that there was a power in the Court relating to the improper and vexatious or illegal arrest of persons, and that it should be extended to suits. If I remember aright, I instanced a case where after a decree, a dozen applications by various persons belonging to the same family had been brought forward who were anxious to see that the person who obtained the decree does not realise the amount. Therefore, it is absolutely necessary that some attempt should be made to put down such vexatious procedure on the part of persons.

I think it is a very wise move and I congratulate the Government upon having adopted it. I entirely agree with the remarks that have been made that it should be referred to a Select Committee. The observations of Sir Sivaswamy Aiyer, who will be a member of the committee, will no doubt be considered by the Committee.

Rao Bahadur T. Rangachariar: I should like to know whether this Bill was circulated for opinion to the Bar Associations. I do not remember to have received any such in the Madras High Court Vakils' Association. I should like to know, Sir, whether the opinions of the various Bar Associations in the country have been taken. If not, I should like to move that the Bill be circulated for the purpose of eliciting opinion thereon by about the 31st July 1921. This is a very important measure making an innovation, and all that the Honourable Mr. Seshagiri Ayyar referred to was with reference to execution proceedings. This is a vital matter affecting the interests of litigants, and I do not think that it is a matter which should be rushed through like this. It is a novel procedure to be adopted in this country. I know in one case, I think it was in connection with the Sivaganga Zemindary, Sir P. S. Sivaswamy Aiyer argued it,—it was thrown out on that principle although there was no law in the country about vexatious and fraudulent suits. The suit was thrown out on the ground that it was the third or fourth claim which was made on the same cause of action. The Courts have now got power to prevent such suits being brought, that is, in the exercise of

[Rao Bahadur T. Rangachariar.]

their inherent jurisdiction which is now vested in them under section 151 of the Civil Procedure Code. Whether you speak for the plaintiff or for the defendant, it seems to be a matter of placing too much power in the hands of Courts. After all, we know the varying fates which judgments get in the hands of the Appellate Courts. Many decrees are reversed in appeal, and many a decree in appeal is reversed on second appeal, and I do not think that such a power should be given lightly to Courts. Then we know also the practice of Courts which are congested, where a sort of mild pressure is brought to bear upon people to compromise even just claims. This will be an instrument in the hands of parties to enforce compromises, and also a power in the hands of the Court to show disposal by adopting this procedure. On the whole, it is a dangerous weapon, and a novel weapon, and I do not think that we should give our assent to this matter to be legislated upon without taking public opinion thereon. I therefore move :

* That under Standing Order 39 (2) (b) the Bill be circulated for the purpose of eliciting opinion thereon by the 31st July 1921.

The Honourable the President : Amendment moved is :

* That the Bill be circulated for the purpose of eliciting opinion thereon, such opinion to be presented before the 31st July 1921.

Mr. A. B. Latthe : Sir, I support the amendment which has been moved by my Honourable friend Mr. Rangachariar. The House will remember that in the Statement of Objects and Reasons it is stated that the provision which is intended to be made is framed on the analogy of a section in the Criminal Procedure Code. But I think it must be obvious to every lawyer that the analogy between the Criminal Procedure and the Civil Procedure is not a very convincing analogy. What may be very necessary in a Criminal Court and what may be a very necessary protection for the accused need not be a necessary protection for a defendant.

Then my learned friend Mr. Seshagiri Ayyar told us that there is a similar provision in the English law and so we may have a similar provision here. But it must be remembered that in England it is not one subordinate Judge who is sitting in judgment in civil cases. They have got the jury system, and the question whether a claim is a false one is decided by the jurors there. In India circumstances are quite different. One individual is called upon to decide whether a claim is an absolutely false and fraudulent claim, and to invest one individual with such powers is, I think, a very dangerous thing. Especially if you look at the Bill, you will find that the safeguards which have been provided for in the Criminal Procedure Code do not find a place there. I think in the circumstances it would be very expedient that the Bill should be circulated for opinion.

The Honourable Dr. T. B. Sapru : I may, at the very outset, say that I have no objection to the Bill being circulated for the expression of opinion generally. At the same time, I think it is necessary for me to point

out that the Bill was circulated to Local Governments, and the Local Governments consulted the various High Courts.

I have been reading the opinions expressed by the various High Courts and you will take it from me that the bulk of those who have been consulted were strongly in favour of the principle underlying this Bill. There were some who did not take that view. At the same time, I feel that there will be no harm in circulating the Bill so as to elicit the opinion of the legal profession and the public generally.

There are one or two observations which I should like to make with your permission, Sir. Sir Sivaswamy Aiyer, first of all, asked us to what exactly was the significance of the words 'compensatory costs'. I am sure he remembers that there is a provision to the same effect in the Criminal Procedure Code, I am referring to section 250, Criminal Procedure Code. He will also remember that the provisions of the English Vexatious Suits Act are, if anything, even more drastic than the provisions of this Bill are. I may remind the House that, under the English Vexatious Suits Act, if a person is found habitually to bring false suits, it is open to the Attorney General to move the High Court to, (what would have been described in old days) non-suit him at once. It is a question of policy now to consider as to whether we would like to have any such provision in India. Speaking for myself, with 25 years' experience on the civil side, I can say that the number of false defences as well as false suits arising out of certain matters both under the Hindu and the Muhammadan Law is appalling. I will just illustrate my meaning with reference to a very common class of suits. When a Hindu father has taken a loan, then begin a series of troubles. The creditor brings a suit, and if he is not properly advised, he brings a suit against the father alone. He gets a decree, and when he starts with the execution of the decree, then follow suit after suit by one son or another. All the time the gentleman who is inspiring these suits is the father behind the scene, and what we find is that the son mercilessly attacks the character of the father in order to save the property. I must have, I confess, appeared in hundreds of these suits both for the sons, and also for the fathers. Similarly, what the Hindu son is to the father in such suits, that the Muhammadan wife is to the Muhammadan husband. Once a decree has been obtained against the Muhammadan husband, there is very often a suit filed on behalf of the Muhammadan wife to save the property on the ground that the property had been transferred to her in lieu of dower. Well, I can multiply hundreds of illustrations of this character. Now, the result of this habitual litigation is that our national credit is suffering, and I will tell you from my personal experience that if a Hindu father, who is a member of a joint Hindu family, goes to a Bank to take a loan, the very first question that the Bank ask him is how many sons he has got, and then he is asked what are the purposes for which he takes the loan, and even, when he is apparently satisfied, the banker will not give him a loan for anything less than 9 per cent. and sometimes 12 per cent., while in the case of any other person he may demand only 6 or 7 per cent. So that, from the economic point of view, it is necessary to put a stop to this evil. The question is as to whether this moderate Bill which is being sought to be introduced is likely to meet that evil. Personally speaking, I feel, and feel very strongly, after considerable experience, that it does not go far

[Dr. T. B. Saprú.]

enough. Perhaps you may have to have a stronger Bill, but I will not ask the Assembly to commit itself to any definite opinion. I myself am open to conviction, and I am sure that the other Members of the Select Committee will approach this question with an absolutely impartial mind.

Sir P. S. Sivaswamy Aiyer: My question was where they got this compensatory costs from?

The Honourable Dr. T. B. Saprú: I believe the expression compensatory cost was intended to mark the displeasure of the Court. Probably that phrase has been taken from some Statute, but I am not in a position to say where it has been taken from.

As regards the question of the right of appeal, I have no doubt that the Select Committee which will meet when the Bill has been referred to it will give the utmost possible consideration to that matter. As I say, and other lawyers know, it is a very delicate question as to how far an appeal lies against an order or decree awarding cost, and there is a considerable difference of opinion among the High Courts on that question. I am prepared to admit that the question requires very careful consideration, and it is for this reason that I am prepared to accept the amendment moved by my friend, Mr. Rangachariar, and we will see that the Bill is again circulated and opinion is elicited in view of the remarks made by several of the speakers this afternoon.

Dr. H. S. Gour: Sir, as the Honourable Mover has accepted the amendment, may I throw out a couple of suggestions to him for the purpose of enlarging the scope of this Bill? The experience of the Honourable the Law Member is also my experience as regards false defences. We have here to deal not only with the crying evil of false suits, but also of false defences and, while in the case under reference the Bill punishes and penalises a plaintiff for instituting a false suit, it makes no provision whatever for a vexatious and false defence. I, therefore, submit that, when the Bill goes back to the country for eliciting the opinion of the public, the Honourable the Law Member may be pleased to order that the opinion of the public may also be obtained as regards the possibility of enlarging the provisions of this Bill so as to cover the various evils from which the litigating public suffer. I would also in this connection wish to add one remark to what has fallen from the Honourable the Law Member. It is perfectly true that under the existing Code a decree for costs as such is not appealable, but in a matter of this kind where a person is penalised in a sum of money paid to another person in what would ultimately be a summary proceeding, recourse to an Appellate Court for the purpose of rectifying an erroneous order passed by the Court below would seem to be justifiable. I submit, therefore, that any compensation paid, whether by way of costs or by way of a solatium to the party aggrieved, should invariably be the subject of an appeal. I admit that it might probably prolong a case, but, at the same time, I submit that it is in consonance with the established principle of law that any penalty levied upon a subject should be appealable to the highest tribunal. This is all the more necessary in view of the fact that many cases are tried by stipendiary and honorary judges who have not that capacity and experience as to distinguish between a

case which is not proved and a case which is demonstrably false. Now we know, as a matter of fact—in fact it is one of the things which the judges make free use of—the issue is not proved, therefore, the plaintiff's suit is false, and it seems they confuse what would be called the Scotch verdict of non-proven with what is a false case; and, as there is no provision in the Code of Civil Procedure to distinguish between these two classes of cases, it will often happen that, merely because the judge has found a certain issue against either the plaintiff or the defendant, he characterises the case as false, thereby entailing the penalty which this Bill prescribes. I therefore submit that, in order to prevent, or at any rate to minimise, the abuses which I foresee from the working of this Act, when it is applicable to the whole of British India, some salutary provision, by way of appeal, seems to be indispensable.

Now, Sir, certain speakers have spoken about the advisability of having a measure of this character on the Indian Statute-book. My learned friend, the Honourable the Law Member, has referred to the English Vexatious Proceedings Act. I beg to submit that not only have we precedents in the English law, but our own Statute-law affords sufficient precedents for the purpose of justifying this measure. In addition to what the Honourable Mr. O'Donnell has stated in the Statement of Objects and Reasons, we find in the existing Code of Civil Procedure a provision that, where an attachment has been taken out by a plaintiff against a defendant for a vexatious and frivolous reason, compensation to the extent of one thousand rupees may be decreed by the Court against the plaintiff.

Now, that, I submit, is the underlying principle which is enlarged in this measure, and I therefore entirely concur with the aims and objects of the Bill, and I ask the Honourable the Law Member to enlarge its provisions by placing it before the public and asking them whether the abuses which this Bill is intended to check are not otherwise so numerous as to justify its extension and enlargement.

Mr. Eardley Norton: May I ask the Honourable the Law Member, if they are not privileged, which way do the opinions of the High Courts of Madras and Bengal, respectively lean?

The Honourable Dr. T. B. Sapru: So far as Madras is concerned, I can tell the Honourable Member that, except for two or three judges—I am speaking from recollection—the rest of the judges favour the principle of this Bill, including Mr. Seshagiri Ayyar whose opinion I have read with great profit. So far as Calcutta is concerned, there, too, the opinions of the majority of the judges were in favour of the principle of this Bill.

I believe the Bombay High Court were not in favour of the Bill. So far as the Allahabad High Court is concerned, excepting one Judge, the rest of them were entirely in favour of the provisions of the Bill, but I am speaking only from recollection.

Mr. J. Chaudhuri: May I offer a suggestion to the Honourable the Law Member, Sir? What my friend, Dr. Gour said was with regard to false defences. But there are provisions already for awarding exemplary costs against a defendant. There is another question regarding which the Judges

[Mr. J. Chaudhuri.]

in England have been complaining of late, and that is that defendants who have no defence put in a written statement for taking time and keeping the plaintiffs out of their money or dues; they put in some pretence or other to put off the claims of the plaintiff; and if my Honourable friend has followed the complaints that are now being made in English Courts and which are very common in this country as well, he may consider whether these abuses may be met by legislation. So my suggestion is that, whenever these practices are resorted to for simply delaying justice, it may not be out of place to provide for them in this Bill.

Munshi Mahadeo Prasad : Sir, as I understand the proposed legislation is the result of certain persons obtaining decrees *ex-parte* in different districts from the places where the defendants reside. Those decrees were the subject of investigation by the Criminal Investigation Department a few years ago. After that when a decree was obtained they used to transfer the decree to the place where the defendant used to reside and put it into execution there. After several months the defendant was informed of the fact that a decree was obtained against him *ex-parte* by a certain person. Supposing the defendant lives in Benares and the decree is passed against him in Calcutta, he has to go the whole length from Benares to Calcutta to make inquiries as to the procedure adopted by the plaintiff, the decree-holder. He will have to choose his course of action, whether he files a suit against the decree-holder for a declaration that the decree was obtained against him in that Court by fraudulent means without service of summons, or he applies in the Miscellaneous department to have the decree set aside. Now, Sir, if this law is to be passed, I submit that it will not be of much use to the plaintiff who files the declaration suit of the decree obtained in Calcutta as of no use in Benares. That point will have to be taken into consideration by the Select Committee. I submit that it is a tortuous act to obtain a decree *ex-parte* and under false pretences. If a person has a false case brought against him, he has his remedy in law, to file a suit for compensation against the person who has obtained the decree against him. There might be cases in which a suit is filed for Rs. 50 or Rs. 100; the defence raised is that the suit is false and the Court dismisses the suit for Rs. 50, but awards as compensation Rs. 500 against the plaintiff. Unless we have a right of appeal, I do not think the law will be of much use. There are Courts who have got their own idiosyncracies for compromise, who have their own idiosyncracies preventing right suits to come into Court; that fact should also be taken into consideration. There are Honorary Courts also in several parts of India without any jury in accordance with the English system. That fact also should be taken into consideration in this case. I submit, Sir, that the legislation proposed is welcome to the country, but we must take into consideration all the sides of the question. I beg to submit that the amendment moved by my friend, the Honourable the Law Member, is worthy of much consideration.

Mr. Harchandrai Vishindas : I move, Sir, that the question be now put.

The motion was adopted.

The amendment :

' That the Bill be circulated for the purpose of eliciting opinion thereon such opinions to be presented before the 31st day of July 1921 '

was then adopted.

THE INDIAN PENAL CODE (AMENDMENT) BILL.

The Honourable the President: The Assembly will now resume discussion on the motion of Mr. S. P. O'Donnell :

' That the Bill further to amend the Indian Penal Code 1860 be taken into consideration.'

MOTION TO REFER THE BILL TO A SELECT COMMITTEE.

The Honourable Dr. T. B. Sapru : In view, Sir, of the discussion which took place on the last occasion over this Bill and also in view of the various amendments which have been notified by various Honourable Members, I have considered it necessary to send notice of the amendment which I am going to move now :

' That the Bill further to amend the Indian Penal Code, 1860, be referred to a Select Committee consisting of Mr. Keith, Mr. O'Donnell, Rai Jadunath Majumdar Bahadur, Mr. J. Chaudhuri, Lala Girdharilal Agarwala, Sir P. S. Sivaswami Aiyer, Dr. Gour, Mr. Muhammad Hussain Sahib Bahadur and the Mover.'

I hope it will be realised that it will be a much more satisfactory way of dealing with the various amendments which have been notified to us to take them into consideration at the time the Bill is put before the Select Committee. I need hardly say more in support of the motion.

Mr. Harchandrai Vishindas : Have the members consented ?

The Honourable Dr. T. B. Sapru : I took the precaution of writing to every one of them and I have got their consent in writing.

The Honourable the President : The question is :

' That for the words ' be taken into consideration ' the words ' be referred to a Select Committee consisting of Mr. Keith, Mr. O'Donnell, Rai Jadunath Majumdar Bahadur, Mr. J. Chaudhuri, Lala Girdharilal Agarwala, Sir P. S. Sivaswami Iyer, Dr. Gour, Mr. Muhammad Hussain Sahib Bahadur and the Mover ' be substituted in the original motion.'

Mr. Amjad Ali : Sir, the amendment which I move is this :

' That the Bill further to amend the Indian Penal Code, 1860, be circulated for the purpose of eliciting opinion thereon by the 30th of March 1921.'

Now, Sir, 30th March is very near, and I think unless I am permitted to put it later there will not be any use in my moving this amendment. I pray therefore you will permit me to alter it to the 30th of April. If permission is given by the Honourable President I may move my amendment and discuss it.

The Honourable the President : The Honourable Member has the permission of the Chair.

Mr. Amjad Ali: Sir, of the three courses left to the Honourable Mover in charge of the Bill he has chosen the second one. The law gives him.....

Mr. Harchandrai Vishindas: I rise to a point of order. The Honourable Member gave us to understand that he was going to move the amendment before he spoke; he must tell us what the amendment is. I think that is the proper order you have yourself insisted upon.

The Honourable the President: I think the Honourable Member did read it. The difficulty arose when he came to the last words when he found that they would not suit his purpose unless he changed the date. The Honourable Member did read his motion.

Dr. H. S. Gour: May I rise to a point of order, Sir? If I understood the position aright, the position is that the Honourable Dr. Sapru's motion to commit the Bill to a Select Committee has been carried.

The Honourable the President: Order, Order. The Honourable Dr. Sapru's motion has been substituted for Mr. O'Donnell's original motion, and it is now the main question before the House, to which Mr. Amjad Ali is moving an amendment.

Mr. Amjad Ali: My original amendment was that the Bill be circulated for the purpose of eliciting public opinion thereon, but the 30th of March being so close, I sought the permission of the Chair to substitute the 30th of April for the 30th of March, and it was open to the President to give me permission, and in view of that permission I now move my amendment which runs as follows:

'That the Bill be circulated for the purpose of eliciting opinions thereon by the 30th of April.'

Sir, I am sure the Honourable Member in charge of this Bill will realise that in this sort of legislation it is necessary and important to collect public opinion in the first instance. It should be the paramount duty, I should say, of the Honourable the Law Member being in charge of the very important department to know in the first place the views of the public, and then he is at perfect liberty to move any amendment he pleases. Now, if public opinion is sought on the subject, and if the Honourable Member in charge of the Bill finds that it is against the passing of the Bill, I think the law requires him to move that the Bill be submitted to a Select Committee. Now when a motion that the Bill be circulated for the purpose of eliciting opinions thereon is carried, and the Bill is circulated in accordance with that direction, and the opinions are received thereon, the member in charge, if he wishes to proceed with the Bill thereafter, must move that the Bill be referred to a Select Committee unless the President, in the exercise of his power to suspend the standing order, allow the motion to be made that the Bill be taken into consideration. That course is open to him. I appeal to him therefore in a matter like this instead of choosing this course, he should give the public an opportunity to express their views on the matter. My reason is this. If that opinion received by this Assembly is against the passing of the Bill and if after the receipt of this opinion

from the public the Honourable Mover of this amendment insists upon the Bill being proceeded with, then he is bound under the law to ask for a Select Committee. In that case we will get two very important things, namely, public opinion and the opinion of the Select Committee. Now this Assembly having before it both the views of the public and the views of the Select Committee, will be in a better position to pronounce their well-considered and mature judgment on the subject. I, therefore, see no reason why the Honourable Member should grudge that privilege which has been accorded to the public and to their representatives by law. I, therefore, appeal to the Honourable the Law Member again that before asking the House to vote on his motion, namely to refer the matter to a Select Committee, he may be pleased first of all to accede to my request, namely, that the Bill be circulated for the purpose of eliciting public opinion thereon so that the House may be in a better position and everything may be done on a sound principle and there may be no cause for grumbling in any quarter. I, therefore, suggest that this Bill, and also any other Bills to come in future should be circulated for the purpose of eliciting public opinion, and I hope the Honourable Member in charge will accede to my request.

The Honourable Dr. T. B. Sapru: Sir, I do not think it is necessary for me to make any long reply to the pathetic appeal that has been addressed to us in behalf of public opinion by my Honourable friend there. Apparently, my Honourable friend is under the impression that this is a Bill intended to impose certain penalties on the public, whereas the real fact is that it is a Bill intended to remove those penalties. I cannot conceive of any class of men in this country who would be very happy at the prospect of any penalty being retained, and therefore I do not think that the Government would be serving either the public or my Honourable friend's object by circulating the Bill among the public at large. But let me tell the House that before this Bill was taken in hand, the Government consulted the various High Courts, the Judicial Commissioners, and all the Local Governments, and it is in response to the bulk of the opinions expressed to the Government that this Bill has been framed. Such amendments as have been suggested by various members here are really intended to make improvements in the Bill, and my Honourable friend is very much mistaken if he thinks that the amendments that have been notified are really in the nature of an opposition to the Bill. It is for that reason that I have considered it necessary from the drafting point of view and from the legal point of view that a Bill of this character should go before a Select Committee. I venture to hope that the sense of the House will be with me and that the House will consider it wholly unnecessary to make any further reference to the country. That is all I have to say, sir.

Rai Bahadur Pandit J. L. Bhargava: Sir, I rise to oppose the amendment moved by my Honourable friend Mr. Amjad Ali. This Bill in its nature is quite different from the ordinary Bills. It aims at relaxing the rigour of the existing law and the sooner it is passed the better.

Mr. Harchandrai Vishindas: I move that the question be now put.
The motion was adopted

The Honourable the President: The question is :

'That the Bill further to amend the Indian Penal Code, 1860, be circulated for the purpose of eliciting opinion thereon by the 30th of April 1921.'

The motion was negatived.

The Honourable the President: The question is :

'That the Bill further to amend the Indian Penal Code, 1860, be referred to a Select Committee consisting of Mr. Keith, Mr. O'Donnell, Rai Jadunath Majumdar Bahadur, Mr. J. C. Chaudhury, Lala Girdhari Lal Agarwalla, Sir Sivaswamy Aiyer, Dr. Gour, Mr. Mahommed Hussein Sahib Bahadur and the Honourable Dr. Sapru'.

The motion was adopted.

The Honourable the President: All the amendments on the paper now fall to the ground.

Before declaring the adjournment of the House, I have to say that it has been represented to me that some inconvenience will be caused to the Moslem Members of the Assembly by the arrangement made on the spur of the moment to sit to-morrow. I hope, however, that if I adjourn the House for a mid-day adjournment rather earlier than usual, and make the adjournment rather longer than usual, that will meet the wishes of the Muhammadan gentlemen concerned.

Khan Bahadur Saiyid Muhammad Ismail: On behalf of the Muhammadan Members of the Assembly, I thank you for giving us this concession. It was only with a view to draw your attention, so that in future the Muhammadan Members may not be put to any inconvenience, that we have written that letter. We do not propose that the meeting should not be held to-morrow.

The Honourable the President: I am glad to have that assurance from the Honourable Member.

The Assembly then adjourned till Friday, the 18th March 1921.