5th April 1929

LEGISLATIVE ASSEMBLY DEBATES

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OF THE

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LEGISLATIVE ASSEMBLY.

Friday, 5th April, 1929.

The Assembly met in the Assembly Chamber of the Council House at Eleven of the Clock, Mr. President in the Chair.

SHORT NOTICE QUESTION AND ANSWER.

CLASH BETWEEN SHIAHS AND SUNNIS ON THE NORTH-WEST FRONTIER.

Khan Bahadur Sarfaraz Hussain Khan: (*a*) Has the attention of Government been drawn to the report published in the *Hindustan Times*, dated the 3rd April, 1929, page 7, under the headings *Shiah-Sunni clash in Frontier* and *Heavy Toll of Human Lives*?

(*b*) If so, is the report correct?

(*c*) If it is correct, will Government be pleased to state what steps they propose to take in this direction with a view to save human lives and property?

Sir Denys Bray: Yes, the report is in the main correct. Eighteen months ago the Shiah Orakzai were driven out of some of their hereditary lands in Tirah after heavy fighting. The trouble arose originally from a feud among the Shiahs themselves, the weaker party calling in the Afridis and Sunni Orakzai to their aid. Though the Shiahs are now united, they have hitherto failed to eject the Sunnis, who remain in possession of valuable Shiah lands. Last week there was a recrudescence of fighting, so far without a decision.

The whole of this tribal affair has taken place in tribal territory across the administrative border. While making every effort to bring about a peaceful settlement, Government have up to the present, refrained from intervening by force of arms. They have, however, guaranteed protection to the evicted clans in their lands, near the border of which they are still in possession, and relief measures have been concerted in the form of labour on roads and employment as border levies.

Khan Bahadur Sarfaraz Hussain Khan: Have Government taken any actual steps in the matter?

Sir Denys Bray: I can add nothing to the rather complete answer I have just given.

Khan Bahadur Sarfaraz Hussain Khan: On a previous occasion, there were similar troubles and Government sent some aeroplanes and dropped bombs. Is this a fact, and if so, cannot Government adopt the same steps to put an end to this trouble?

Sir Denys Bray: I have already told the Honourable Member that Government have guaranteed protection to the evicted clans in a certain guaranteed area.

ELECTION OF A PANEL FOR THE STANDING COMMITTEE FOR EMIGRATION.

Mr. President: I have to inform the Assembly that, up to 12 Noon on Thursday, the 4th April, 1929, the time extended for receiving nominations for the Standing Committee to advise on questions relating to Emigration in the Department of Education, Health and Lands, the number of candidates nominated for election to the panel is equal to the number required. I therefore announce that the following sixteen members are declared to be duly elected:

1. Haji Abdoola Haroon,
2. Nawab Sir Sahibzada Abdul Qaiyum,
3. Rao Bahadur M. C. Rajah,
4. Haji Chaudhury Mohammad Ismail Khan,
5. Sir Darcy Lindsay,
6. Lieut.-Colonel H. A. J. Gidney,
7. Rev. J. C. Chatterjee,
8. Mr. S. C. Mukherjee,
9. Sir Hari Singh Gour,
10. Mr. K. Ahmed,
11. Mr. Anwar-ul-Azim,
12. Sayyed Hussain Shah,
13. Mr. Muhammad Yamin Khan,
14. Lala Tirloki Nath,
15. Sir Purshotamdas Thakurdas, and
16. Sardar Bahadur Sardar Jowahir Singh.

ELECTION OF MEMBERS TO THE GOVERNING BODY OF THE CENTRAL COUNCIL OF AGRICULTURAL RESEARCH.

Mr. President: I have to inform the Assembly that up to 12 Noon on Wednesday, the 3rd April, the time fixed for receiving nominations, five nominations were received for election to the Governing Body of the Central Council of Agricultural Research, out of which three candidates, namely, Pandit Nilakantha Das, Mr. Amar Nath Dutt and Mr. T. A. Chalmers, have since withdrawn their candidature. As the number of the remaining candidates is equal to the number required, no election is necessary. I therefore declare the following two persons to be duly elected:

1. Mian Mohammad Shah Nawaz, and
2. Mr. Mukhtar Singh.

(POINT OF ORDER.)

Mr. President: I should like, at this stage, to hear the views of Honourable Members on the point of order on the Public Safety Bill.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I wish to rise to a point of order.

(At this stage the Honourable Mr. J. Crerar rose in his place.)

Diwan Chaman Lall (West Punjab: Non-Muhammadan): Sir, I should like to know whether this is a pre-arranged business between Sir Hari Singh Gour and the Home Member.

Mr. President: Order, order. Mr. Crerar.

The Honourable Mr. J. Crerar (Home Member): Sir, with your permission, I should be glad to have an indication from you as to the precise points on which you propose to invite opinions. I wish to suggest that two points may conceivably arise of a distinct character. The first is whether it is the desire of the House that the discussion on the Public Safety Bill should be proceeded with, and my submission on that point is that that question will naturally and normally arise on a motion in the name of Mr. Jogiah, which is already on the paper. The other point relates to the question of the powers of the Chair to direct the scope of the debate. I submit, with the utmost deference, that the discussion on the first point would naturally and normally take place on the motion I have mentioned, consequently the point on which you propose to invite opinions is presumably the specific point of the powers of the Chair as distinct from the desire of the House to proceed with the discussion. I would respectfully submit that the discussion should be limited to that specific point.

Mr. President: The two points on which I desire Honourable Members to express their views are these. First, whether it is possible to have a real and reasonable debate on the motion that has been made by the Law Member in connection with the Public Safety Bill, in view of the pending prosecution at Meerut. And the second point on which I desire Honourable Members to express their opinion is the power of the Chair to intervene at this stage.

Pandit Motilal Nehru (Cities of the United Provinces: Non-Muhammadan Urban): Sir, at the outset I desire to thank you for the opportunity you have given to this House to discuss the two points which you have just mentioned.

It is clear that you are under no obligation to hear any Member of the House on any of those two points, and that it is for you, Sir, to give your ruling independently of what the Members might think either on this side or the other. I take it therefore that it is a special concession which you have shown to the House, and we are very grateful to you for that.

Now, Sir, the two questions that you have mentioned are very serious and important questions. The Government attach very great importance

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to the second question, namely, your powers, and I shall, therefore, with your permission, first deal with it and then deal with the first question.

Sir, it is stated, on behalf of the Government, that the Government have an absolute discretion in the matter of putting forward such legislation and at such time as it thinks proper. There cannot be the slightest doubt as to the correctness of that proposition. But, Sir, that proposition depends upon a variety of other considerations which you have to consider, because every measure and every motion whether it relates to a Bill or a Resolution, which comes up before the House, is subject to a certain procedure, and that procedure, Sir, is subject to the controlling authority of the Chair. Now, in this particular case, while conceding the general right of the Government to bring forward any piece of legislation they desire, and at any time they desire, I submit that such discretion of the Government must be subject to the rules and the Standing Orders and of the principles underlying those Rules and Standing Orders.

Now, I wish to draw your attention to the relevant Standing Orders on the subject. The first Standing Order that I would refer to is No. 30. I am taking the various stages which must be gone through when any motion is before the House. Standing Order 30 lays down a general rule that:

"A matter requiring the decision of the Assembly shall be brought forward by means of a question put by the President on a motion proposed by a Member."

So that, whether it is a Bill or any other motion, it has to be brought forward by means of a question put by the President on a motion proposed by a Member. That is the first step. What is the second step? The second step is to be found in Standing Order No. 32:

"After the Member who moves has spoken, other Members may speak to the motion in such order as the President may call upon them. If any Member who is so called upon does not speak, he shall not be entitled, except by the permission of the President, to speak to the motion at any later stage of the debate."

So that, after the Member who moves has spoken, there is the right in the House, there is a right in every Member of the House, to speak, of course in such order as you call upon him, except where that right has been waived by any particular Member by not rising to speak when you called upon him.

Now, the third step is what is to be done or how the debate is to be regulated. For this we have Standing Order 29. There is of course the liberty of speech, but subject to the restrictions mentioned in Standing Order 29, which, among other matters, lays down that:

"No speech shall refer to any matter of fact on which a judicial decision is pending."

We are only concerned with this, and I am not referring to other restrictions. So that, so far we have the right of Members, whom you are pleased to call upon to speak, to speak generally, with this exception that they cannot refer to any matters of fact on which a judicial decision is pending.

The next Standing Order to which I would call your attention is No. 34, which relates to closure. The debate under the preceding Standing

Orders has proceeded to a certain stage where the closure may be moved and therefore the Standing Order says:

"At any time after a motion has been made, any Member may move 'That the question be now put', and unless it appears to the President that the motion is an abuse of the rules or these Standing Orders, or an infringement of the right of reasonable debate, the President shall then put the motion 'That the question be now put'."

Now, Sir, that at once gives the whole principle upon which the procedure of the debate in this House is to be based. You, Sir, are the sole judge as to whether there has been a reasonable debate upon a motion, and if a motion to put the question has been made and you are of opinion that it is being made in abuse of these rules or the Standing Orders, or is an infringement of the right of reasonable debate, you are at liberty to disallow it. In fact, it is your duty to disallow it.

The Honourable Mr. J. Crerar: Put the question?

Pandit Motilal Nehru: Yes, the closure; and the debate will proceed and proceed upon the same lines which I have already indicated, subject of course to the restrictions mentioned in Standing Order 29. Then, Sir, sub-clause (2) of Standing Order No. 34 specifically refers to the Government Member who moves a Bill. It shows that he is no exception to the rule, and is, on the contrary, subject to your controlling authority in this matter as much as any other member. It says:

"At any time after a motion has been made in respect of a Bill promoted by a Member of the Government, that Member may request the President to put the question, and unless, it appears to the President that the request is an abuse of the rules or these standing orders, or an infringement of the right of a reasonable debate, the President shall then put the question."

I will take an extreme case. It will not do for my Honourable friend, the Home Member, to rise and say, "I move the Bill", and at the next moment to ask you to put the question. That would certainly be an infringement, not only of the right of reasonable debate, but also of the proprieties of the House.

Now, we come to sub-clause (3), and that gives you one instance in which the motion may proceed to be voted upon without being debated when you, in the exercise of your discretion, think that the matter has been reasonably debated, and agree to put the question. In that case the question shall be put without any amendment or debate. Sir, my point in referring to these Standing Orders is that they clearly show what are the matters which must be subject to a reasonable debate; what are the matters which do not admit of any debate and must be put at once after the motion is made. They also show that, in the conduct of the proceedings and of the debate, there shall be no abuse of the Standing Orders, and there shall be no infringement of the right of reasonable debate. Now, there is another instance of a motion being put to vote without much debate, and that is in Standing Order 37:

"If a motion for leave to introduce a Bill is opposed, the President, after permitting, if he thinks fit, a brief explanatory statement from the Member who moves and from the Member who opposes the motion, may, without further debate put the question."

That is the restriction. Besides these provisions, we are all familiar with the procedure when the guillotine is applied to a debate on Demands for Grants. Now, those are the specific instances in which the rules

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expressly exclude the right of any debate whatever, whether reasonable or not. Barring those cases, I submit that the right of reasonable debate is a right which is a fundamental right of this House. It is a right which must in the very nature of things, belong to a deliberative body which is asked to give its opinion, after a full and due consideration of the question put before it. If it were otherwise, of course there is no reason why we should all be here Now, Sir, my contention is that, if there is a motion which is an abuse of the rules and the Standing Orders to such an extent that you cannot move it and adduce arguments in its favour and arguments against it, without impinging upon some rule or other—and we will only take here the relevent rule, namely the rule that matters *sub judice* should not be brought into the debate—suppose such a case does arise what is to happen? I am asking you to take an extreme case, which is the only true test, *viz.*, a case where admittedly a Bill comprises only such matters as are the subject of a pending case awaiting judicial trial. I will show later that the Safety Bill is neither more nor less than such a measure. The general right of the Government to bring in any piece of legislation before this House and at any time being accepted I ask whether it will be possible, in the case I am assuming, where every provision of the Bill, every clause of the Bill is either the same as the allegation of some plaint or complaint, or directly or indirectly involves the question which is raised at the trial, whether that Bill can be subjected to any debate whatever. I am simply assuming it for the present, but will show later that the case before us is on all fours with the case I am assuming. If there can be a measure where you cannot say anything, either in support of or against it, without infringing the rule regarding matters *sub judice*, how can it be said that any reasonable debate can be held in this House? I submit, Sir, that a Bill like that would itself be vitiated by reason of being in itself an infringement of the right of reasonable debate; but I may add also of the proprieties of the House. Well, that being the case, it only remains for me now to show that the present is a case where no reasonable debate can be held without referring to matters *sub judice*. And if I succeed in showing that, I submit that I shall have made out my case that this is a measure which is affected by the very disability which is attached to the speeches of the speakers and is vitiated thereby.

Now, Sir, I have carefully gone into the provisions of the Bill and the very learned speech made by the Honourable the Home Member, as also the complaint against the accused persons which he was good enough to lay before this House. I find that it is impossible, in discussing the one, to get away from the other. What the Honourable the Home Member says in his statement which he made yesterday is this:

"For this purpose"—

that is to say the debate,

"they do not require to refer to any detailed allegations which will be for the adjudication of the Court, and they are of opinion that nothing need be said which would prejudice a matter which is before the Court."

Now, Sir, what is the matter before the Court? The description by the Honourable the Home Member of that matter is this:

"Whether the thirty one accused persons, or any of them, have entered into a conspiracy to deprive the King-Emperor of the sovereignty of British India."

That is the charge, I admit, and therefore, to this extent, it is a matter before the Court because the Court has to determine whether the charge is true or not. But this, like all other charges made against accused persons, is practically an inference from the facts upon which it is based. In order to find out what are the matters of fact, not matters of law and inference, which are awaiting determination by the Court, you have to see, not merely the relief sought, *viz.*, that a man should be convicted, or that certain property should be awarded to the plaintiff, but the facts upon which the relief is based, and which will have to be proved in the course of the trial by one side, and disproved by the other side. If you look at the complaint, you will find that all the facts and the circumstances mentioned in the first five paragraphs thereof are statements which have been repeated almost exactly in the same words in this House by the Honourable the Home Member. What do they come to? They come to this: "That there is an organisation in Russia which aims, by armed revolution, to overthrow all the existing forms of Government." That is number one. The next is that this organisation, which is called the Communist International, "carries on its work and propaganda through various committees, branches and organisations"—named here in the complaint—which include "a sub-committee concerned with Eastern and Colonial affairs, the Communist Party of Great Britain, which is a section of the Communist International,—the Red International of Labour Unions, the Pan-Pacific Trade Union Secretariat, the League against Imperialism, etc.". These are all channels through which the propaganda of the Communist International is carried to various parts of the world. That is allegation number two in the complaint.

Then, paragraph 3 goes into the ultimate objects of this propaganda, which is said to be carried on through these various committees and sub-committees. The objects are: "The incitement of antagonism between capital and labour, the creation of Workers' and Peasants' Parties, etc., the introduction of nuclei of such communists, with illegal objects as aforesaid, into existing trade unions, etc., the encouragement of strikes, hartals and agitation, propaganda by speeches, literature, etc., and the utilisation and encouragement of any movements hostile to the Government." This is number three.

Now, Sir, you will be pleased to observe that there is not a word said here up to this about the accused It was found necessary, in order to introduce the part taken by the accused in this matter, to state the very foundation of the movement, that is, that an organisation exists in Russia, that it carries on its propaganda by various means and through various committees, and that its objects are so on and so forth. Now, we come to the first mention of the names of the accused:

"That in the year 1921, the said Communist International determined to establish a branch organisation in British India, and the accused Sripad Amrit Dange, Shaukat Usmani and Muzaffar Ahmed entered into a conspiracy with certain other persons to establish such branch organisations with a view to deprive the King-Emperor of his sovereignty of British India."

Mind you, a conspiracy, not to deprive His Majesty of the sovereignty of India directly, but as a result and consequence of all these activities from Moscow to India. The first premise here is that these societies exist and carry on their propaganda in a particular way, and that they have a particular object, *viz.*, the overthrow of all Governments. The second premise is

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that certain accused persons entered into a conspiracy to establish branch organisations for the purpose of carrying out that object. The conclusion is that, by doing so, they have conspired to deprive the King-Emperor of his sovereignty of British India. So that the depriving of the King-Emperor of his sovereignty of India is not an independent fact, but follows from other facts which have to be proved both for the purpose of the Bill and that of the prosecution. You cannot prove a man's mind except by proving the acts he has actually done. The common foundation you have to prove is the various things contained in paragraphs 1 to 3.

Then comes paragraph 5.

"That, thereafter, the various persons including the accused were sent to India by the Communist International through the medium of one of its branches or organisations with the object of furthering the aims of the Communist International."

Now, Sir, it is not for me to go into the merits of this complaint, but it is evident that mere "aims" cannot be criminal. The allegation here is that the furthering of the aims of the Communist International was taken up by certain persons, who came from outside India and established branches in India.

Then we come to paragraph 6, and there it is stated as an inference from what has gone before, that these accused who live in different centres of British India have conspired with each other to deprive the King-Emperor of his sovereignty of British India.

The 7th paragraph is that the accused have met and conspired together in various places, and in pursuance of such conspiracy as aforesaid the accused formed the Workers' and Peasants' Party at Meerut and there held a conference, and therefore it is prayed that these accused persons may be punished under section 121A. The facts that are mentioned here are precisely the same as have been relied upon to justify the Bill, as I shall now proceed to show by reading the speech of the Honourable Member. I shall read just a few passages so as not to detain the House at any great length. This is what he said:

"I propose now to summarise very briefly the most important facts relating to this movement which directly concern India. In 1919, the Communist Party of Russia established in Moscow an organisation known as the Third Communist International, whose aim was defined as the promotion of revolution throughout the world for the purpose of setting up an International Communist Republic."

(This is the first paragraph of the complaint)

"A thesis published by this body in 1920 expressly contemplated the direction of activities towards India and the East. . . . They were actively resumed in 1925 and 1926 when a communist emissary, calling himself Allison or Campbell, started the formation of Workers' and Peasants' Parties in India in pursuance of the programme. He was followed by two others who took up the task and have since been zealously pursuing it with an increasing band of associates, including persons convicted in the conspiracy case already referred to, to the great injury of the country and in particular to the great injury of its industrial population."

Then, Sir, he goes on and says:

"These movements have excited a lively and active interest recently in two foreign organisations which are communist in aim and inspiration,—the Pan-Pacific Trade Union Secretariat and the League against Imperialism."

These are also mentioned in the complaint, and it is stated that branches of these are established in India. Now, Sir, when the motion to refer the Bill to a Select Committee was being discussed, I took the opportunity to state my own personal experiences in regard to the League against Imperialism, and it would appear from what I said and from what other Honourable Members said, that it was not a fact, as alleged against the League against Imperialism that it was a communist body. Similar facts alleged against some of the other associations mentioned by the Honourable Member were not admitted in this House, nor were likely to be admitted at the trial. Both are the subject of discussion and the subject of proof. Then the Honourable Member goes on to say:

"Among the various sources from which they have come may be mentioned the Red International Labour Union, the Profintern, another communist body, the Central Council of Trade Unions of Moscow and the Communist Party of London. Without these powers or precautions against the alien movements, the Bill would be defective in an important particular."

Now, Sir, if you look at the Bill, what is its foundation? The foundation of the Bill is in the Preamble, which runs as follows:

"Whereas it is expedient, in the interests of public safety, to check the dissemination in British India from other countries of certain forms of propaganda. . . . "

That is the starting point. It has been taken exception to in this House and will again be taken exception to in the course of the debate on the consideration of the Bill, after receipt of the Select Committee's Report.

There are, if I may say so, two pivots upon which the whole Bill turns: the first is the Preamble, which I have just read, and the other is the definition of the person to whom this Act applies. These are the real sheet anchors of this Bill. If you take out those clauses, nothing remains of the Bill, because the other clauses merely say what will happen if a person, to whom the Act applies, does certain things or does not do certain things. But our quarrel is as to who should or should not be a person to whom the Act applies. Sub-Clause (3) (*c*) says:

" 'person to whom this Act applies' means any person who is a member of, or is acting in association with, any society or organisation, whether in British India or elsewhere, which advocates or encourages any such doctrine or activity, etc. etc."

The position, therefore, is this. In order to prove a person guilty and otherwise liable under this Act, all that has to be shown is that he is a person to whom the Act applies; *viz.*, a person who is acting in association with any society or organisation, whether in British India or elsewhere, which advocates or encourages any such doctrine or activity, etc. That is the whole kernel of the Bill. The rest are all provisions to carry out the intention of Government as to how such a person is to be dealt with. But what we seriously object to is that there should be any person to whom this Act should apply; and if there is no person to whom the Act can apply, the Act is useless. That, Sir, is the way in which we oppose this legislation. We say that, in the first instance, it is not true that a case has arisen when it should be expedient, in the interests of public safety, to check the dissemination in India and other countries of such doctrines, and in the second place, we say that it is not true that a man who is a member of any of these organisations, or is acting in association with any of

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these societies, should be a person to whom this Act is to apply. These are, Sir, the very facts—the two most important facts which have got to be established in the Meerut case; and that being so, I submit that no reasonable debate can be held in this House on the most important questions involved in the Bill because they are similarly involved in the prosecution which is pending.

The Honourable the Home Member has been pleased to assure us, and you, Sir, that the Government will give every assistance to the President in ensuring that, on their part, the rule which prohibits reference to matters of fact, on which a judicial decision is pending, is not violated. Now, Sir, it is easy enough for the Honourable the Home Member to give such an assurance in a thin House like this, as he is confident of his voting strength and expects the House to pass the Bill without saying anything necessary to justify it. It is we who have got to oppose the Bill, who have got to go into the very genesis of the Bill and to expose the motives which lie behind the Bill, and in doing so, I submit we must necessarily go into matters which are the subject of inquiry. I therefore submit that there can be no doubt that this motion itself is open to the objection to which every speech, if made in support of it, or at least against it would be open.

Sir, the general principle, as I have submitted, is to secure to this House a right of reasonable debate. You are the guardian of that right, and it is for you to see that that right is not taken away from any Member of this House. In a case like this, I submit it is being taken away not only from one or two Members of this House, but from the whole Opposition. We cannot, I declare, proceed to our satisfaction; we cannot do justice to ourselves and to this Bill, unless we attack the very genesis of it, unless we attack these two central and cardinal points which I have mentioned, namely, the Preamble and clause (c) of the definition of the person to whom the Act applies, without, at the same time, going into matters which are the subject of trial in the Meerut Court, and that being so, I submit that the decision taken by the Government is not sustainable, and that, by allowing this motion, you will be allowing an infringement not only of the right of reasonable debate, but also the principle upon which the very existence of this Assembly and of all deliberative bodies in the world depends. I do not wish to take up the time of the House any more, but I would conclude with the hope that Honourable Members will not look at the mere letter of the rules, but that they will look to the underlying principles and the very basis of representative institutions of this character, and when you do that, there can be no denying the fact that the one principle which underlies all the rules and Standing Orders is that, in every case where the right is not specifically taken away by the rules themselves, or where it is not waived by the person who wants to exercise it, that right cannot be defeated circuitously or in a round about manner, by bringing forward a matter which, on the face of it, or which, when you come to examine it more closely, is not a matter which can be debated upon without, in some way or other, going into facts which are the subject of inquiry or trial in a Law Court. . . . .

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): But none of these 31 accused in the Meerut case are being mentioned in the Bill and its objects and reasons?

Pandit Motilal Nehru: We are talking of principles now, and we have nothing to do with persons. I submit that, if you act on those principles, you will find that the rules and Standing Orders do not authorise a procedure which would render them nugatory and of no effect whatever. My Honourable friend, the Home Member, may stand up and say " Well, it is the sweet will and pleasure of the Government that this law be passed, I move, Sir "—and he sits down. Well, he is at liberty to do that. What are we to say? We have got to satisfy ourselves, we have to satisfy the House, that this is not a measure to be passed, and therefore, when we stand up and give our reasons, what do we say? We say that it is entirely wrong to say that this Third Communist International has any such objects as are attributed to it, but even assuming that it has some of those objects, it is entirely wrong to say that those objects are in any way being propagated by these persons, because the guilt of these persons can only be an inference from their belonging to certain associations. The whole complaint is, as I have stated, a repetition of what is contained either in the speech of the Honourable the Home Member or in the Bill. I therefore submit, Sir, that it is perfectly within your rights to direct that a further debate on this Bill is impossible, and that being so, the Bill itself cannot be proceeded with.

Sir Darcy Lindsay (Bengal: European): Sir, I thank you for giving me this opportunity for placing before you the views of my Group. I have listened with great attention, Sir, to the weighty words of my Honourable friend, the Pandit, but I have quite failed to appreciate that he has in any way shown the House that the Standing Orders provide for such a course as was indicated, Sir, in the statement which you made to the House a few days ago. I admit, Sir, that the Honourable the Pandit has, at great length, tried to show how a debate might be muzzled, and he has argued as to the underlying intention of the Standing Orders. He also referred to what he terms a real debate. I hope, Sir, he does not wish to infer that the many debates we have had on this subject hitherto have been unreal. . . . .

Pandit Motilal Nehru: I said reasonable. I did not say real debate.

Sir Darcy Lindsay: I understood you to use the words " real debate ". However, Sir, I do not propose to deal particularly with the question of Standing Orders, because I agree with my friend that there is no Standing Order which grants the power to the Chair that your statement implies that you possess. I would rather deal, Sir, with the powers and rights of the Members of this Assembly. If you will permit me, Sir, I will read some notes which I have put down on this subject as they might be more lucid than extempore speech. I and my Group have carefully considered the statement made by you as to the position likely to be created if there is further discussion on the Public Safety Bill, and are of opinion that action such as is outlined in your statement arrogates to the Chair powers which would deprive the Members of the Assembly of their legitimate rights. As I understand it, you, the President of our House of Assembly, would thereby practically be assuming the position of a dictator, and usurp, if I may say so, the privileges secured to us as Members of the Assembly, by depriving the Members of freedom of action and the fulfilment of their legitimate rights, for the statement indicates that, unless the Government decide to postpone consideration of the Bill pending the Meerut trial or

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withdraw the Meerut case, you may, under the circumstances, not allow Government to proceed further with the Bill at this stage. You particularly refer to Standing Order No. 29, but surely, Sir, this has reference to what may or may not be discussed, and does not debar the further consideration of a measure actually before the House that has been already fully discussed and now emerges from Select Committee for final disposal.

As to whether further discussion is really necessary or will take place, is a matter of conjecture (*Some Honourable Members from the Swarajist Benches*: "No, no"), but it is the duty of the Chair to see that the debate, if any, does not transgress Standing Order No. 29. I say debate, if any, for there may be none, and it is, I maintain, quite competent for you to secure the decision of the House without debate if such a course is considered as under the circumstances desirable. You also, Sir, have full powers under Standing Order 36 to clear the gallery. (Laughter from the Swarajist and Nationalist Benches). All that can be said has already been said, both here and at Simla, and further debate is hardly likely to affect the issue. (*An Honourable Member*: "There are sixty amendments "). I maintain, Sir, it is for the House to decide whether it wishes to proceed with the Bill, and it is not for the Chair to deny to the House the opportunity.

What gives me grave concern is the more serious constitutional question that arises in the possible assumption by the Chair of certain extraordinary powers I claim it does not possess, and in my humble opinion, would be dangerous for it to possess. I submit, with all due deference to the Chair, that the duties and powers of the President are clearly defined, and do not include the stoppage, at the discretion of the Chair, of a part heard motion that is under discussion of the House. To thus limit our powers to legislate is to my mind unthinkable, and you, Sir, are the last person to create so arbitrary a procedure and precedent that might have a far-reaching effect and render the course of Government business impossible and equally so the work of the Assembly.

Is it possible that a measure, once introduced into this House, can be made out of order simply on the grounds that certain individuals have been arrested under the ordinary law, and that the grounds of arrest are similar to the basis of the measure under discussion in this House? If such a contention were admissible, the business of this House could be indefinitely blocked.

Further, the line indicated in your ruling would prevent Government asking for powers, and this House granting or refusing them, to deal with a particular emergency which had previously necessitated arrests. That position has arisen on several occasions in the House of Commons, but the Speaker has never taken the action contemplated in your statement.

Mr. President: Was the point raised there?

Sir Darcy Lindsay: Yes, a similar point, Sir.

An Honourable Member: That is the trouble.

Sir Darcy Lindsay: I further submit that, even if such extraordinary powers were held by the Chair as your statement indicates, and which I cannot admit, the time to exercise the same has past. . . . .

Mr. President: Will the Honourable Member give me the references to the House of Commons cases?

Sir Darcy Lindsay: I will.

For the Bill is again before the House and debate thereon has commenced and is proceeding. The full facts of the Meerut case were known to you, Sir, as well as to other Members of the House, and we have all had ample opportunity to examine and study the position. No point of order was raised at the proper time, and I take it, for the very good reason that no point of order arises. . . . . .

Pandit Motilal Nehru: May I ask the Honourable Member what he considers to be the proper time?

Sir Darcy Lindsay: At the time the motion was moved for consideration. No word was said at that time.

Mr. K. Ahmed: Before Mr. Jayakar started speaking.

Sir Darcy Lindsay: Before Mr. Jayakar started speaking.

Mr. M. R. Jayakar (Bombay City: Non-Muhammadan Urban): I drew the attention of the House to that point.

Sir Darcy Lindsay: And the debate must in all equity proceed. I can assure, you, Sir, that my Group are as jealous of the rights of the Members of the House as you yourself, or any other Member, and I raise strong protest at any action of the Chair which would, in our opinion, infringe upon our legitimate rights. We have always tried, Sir, to assist you in maintaining the dignity of your high office, and we look to you to exercise the powers that have been given to you with continued wisdom and caution. I respectfully ask you, therefore, to decide so that the Government may proceed with the Bill in the ordinary course and leave to the Members of the House their right to accept or reject it.

Nawab Sir Zulfiqar Ali Khan (East Central Punjab: Muhammadan): I thank you heartily for giving me this opportunity to express not only my own views, but the views of my Group (*An Honourable Member*: "Louder please "), on the controversy which has unfortunately arisen in this House. I have listened very carefully to the very eloquent speech which the Leader of the Swaraj Party has made on this question. I have also very carefully listened to the able exposition of the point by the Honourable Member on my right, and I take this opportunity to say that, although I have very great respect for the Leader of the Opposition, I may state on this occasion he has not shown that legal acumen (Ironical laughter from Congress Benches), that usual clarity which he generally shows on questions before this House. I have come to this House with an open mind, and I wanted to listen to his speech and to the way in which he would deal with it. I must say that I am very much disappointed that he has not convinced the House with regard to the soundness of his arguments.

An Honourable Member: Are you speaking for your Party now?

Nawab Sir Zulfiqar Ali Khan: With regard to the arguments placed before the House by my friend on the right, I agree entirely with what he has said in his speech.

An Honourable Member: Will you repeat them?

Mr. President: Order, order.

Nawab Sir Zulfiqar Ali Khan: The question is confined to two main points. The first is whether, by proceeding with this debate, any real and useful purpose can be served, and the other is, as outlined by you, whether the President has power to intervene to stop the debate. Now, Sir, I think, as we are striving, and I hope the Opposition will entirely agree with me, that we are striving for some greater latitude in the way of democratic Government, it is rather a nice question, a very interesting question, whether the President can intervene to stop the discussion. I think that the very existence of this Assembly depends on the rights which the Constitution gives to the Members of the Assembly. I think that, if the President deprives the Members of the Assembly of the liberty which they enjoy by virtue of that Constitution, although we may have very great regard and very great respect for him, he should be warned that his intervention to stop the debate may not be according to the democratic constitution not only of this Assembly but of others.

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Mr. President: That is to say, I should allow the Honourable Members to refer to matters which are *sub judice* ?

Nawab Sir Zulfiqar Ali Khan: I will come to that. I have seen many meetings of the different Parliaments in Europe, and I had the good fortune to listen to very heated debates, and I can assure you and my Honourable friends that my conclusion, after seeing those debates and talking to Members of those Assemblies and Parliaments, is that those Members are extremely jealous of the powers which they enjoy under their constitution. Sir, no democratic Assembly can exist if its rights and freedom to talk are curtailed by the President. What is the use of asking for a democratic government, when the President strangles a debate or arbitrarily rules out the wishes of Honourable Members? I cannot imagine that the Home Member can expect that the Members will pass this law, but he has every right to put his measure before the House, and it is for the House to determine whether it shall pass it or not. It is to be debated on the floor of the House, and you, in the capacity of President, have to regulate the proceedings and see whether the Honourable Members transgress their rights or not, but I venture to say that the President has no right to strangle a debate.

Mr. Rafi Ahmad Kidwai (Lucknow and Fyzabad Divisions: Muhammadan Rural): Points of order have to be decided by the House?

Nawab Sir Zulfiqar Ali Khan: Yes. (Laughter.) With regard to the cases which are *sub judice*, I feel that a debate can very well take place here without referring to any of those cases. A score of other conspiracies may be hatching and who knows perhaps more arrests may take place. Are the Government to be prevented from introducing measures to protect the liberties and the lives of the people? We know, Sir, what propaganda the Soviet Government or the Communist Government are spreading all over the world. Every nation and every country in Europe has shut its door against these propagandists. Have we no right in India to shut our doors against them? Are not the Government entitled to protect the lives and the property of the people, especially those who cannot have any voice in the matter? I think it is the duty of the Government to see that such propaganda is not introduced into this country. Sir, with these few words I think the debate must proceed.

Mr. M. R. Jayakar: Sir, I must frankly say that I am to some extent responsible for having started this question before this House. By taking it up as a point of order, you have agreed with the view which was contained in the proposal I made to the Government. No doubt there is this great distinction, that I did not wish to urge my view as a point of order. I merely raised it as a suggestion to the Government, and I am free to confess that, if the Government had then accepted my suggestion, this difficulty would never have arisen and they would have obtained the credit of having acceded to a reasonable suggestion made by the Opposition. There is a considerable amount of common ground between the points raised by you, Sir, in your statement and the view which I submitted to this House, I submit that your view is right. I will not go into all the questions of prejudice which have been raised by the two previous speakers. Whether you assume the role of dictator, or whether the rights of criticism of this House are curtailed are points which, to a hard-headed lawyer like me, are absolutely outside this controversy. If the rules, either expressly, or by necessary implication, give you the power of being a dictator, you must exercise such a power. If such rules permit you, Sir, to decide certain questions arbitrarily, which amounts to an interference with the privileges of this House, you must enjoy that right. I do beseech my Honourable friends not to allow their minds to be obscured or clouded by these *a priori* arguments which do not touch the real question. The only question before the House, and it is a very neat and simple question, is whether your powers, Sir, to exclude the complete consideration of this measure do not arise by necessary implication from the express terms of the Standing Order No. 29.

Sir Darcy Lindsay: We do not want implication. We want the rule.

Mr. M. R. Jayakar: My Honourable friend forgets that powers can arise by necessary implication. I propose to show, very clearly, that to introduce this measure at this stage in this House, is to introduce it at a time when we cannot have any adequate or real debate. It is impossible to have any real or adequate debate on this question if it is allowed to be debated at this time, and if so, I do submit that the President must have the power of excluding the Bill, because it carries out, by necessary implication, the principle of Standing Order 29. He will be compelled to stop the debate when he finds that it cannot proceed without infringing the provisions of Standing Order 29 every second minute. In fact the whole debate will have to be carried on in such a manner that you, Sir, will have to prevent every reference to facts which are most material to the debate, and I do submit that, in these circumstances, the President must enjoy the power which no doubt he will exercise with great restraint and discretion to withdraw from an illusory debate of this House the entire measure. Now, Sir, on the point whether a real debate can be carried on, on this particular Bill without going into matters which are *sub judice*, I shall state my views very briefly, and I have no doubt that Honourable Members, who review this question with dispassionate care, will have no difficulty in agreeing with me, that out of the 6 points which are *sub judice*, at least four cannot be considered without infringing the provisions of Standing Order 29. If that is so, I take the liberty of stating that a debate of that restricted character is an illusory debate, and no debate at all. I will now state the important points which are *sub judice*.

The prosecution in the Meerut case will have to prove, Sir, that there is an organisation in Russia called the Third International. I hope the

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House will follow my analysis very carefully, because a great deal of the strength of my argument lies on its critical perception. The prosecution will first have to prove in the Meerut trial, whenever it takes place, that there is an organisation in Russia called the Third International. That is point No. 1.

The prosecution will also have to prove that this Third International organisation is aiming at the overthrow of established Governments all over the world. That is point No. 2.

They will also have to prove that this organisation carries on propaganda in India. That is the third link in the chain.

They will further have to prove that there is a widespread conspiracy in this country to further the aims of this Third International. That is point No. 4.

Then two special points arise in this prosecution with reference to the accused before the Court, which I would call points Nos. 5 and 6, namely, whether carrying on communistic propaganda and activities amounts to an offence under section 121-A of the Indian Penal Code. I call it a special point arising before that Tribunal because we in this House are not concerned with it in the Debate on the Public Safety Bill. And, lastly, the point before that Tribunal will be whether the accused are members of that conspiracy, and, if so, whether they are guilty, under section 121-A of the Indian Penal Code. Honourable Members will, therefore, notice that, stated in this brief analysis, out of the six points which the Tribunal at Meerut will have to consider, four are intimately connected with the Public Safety Bill. That fact cannot be denied. The first four are the points which are involved in any real debate on the Public Safety Bill. Whatever our opinion may be about the Public Safety Bill, it is perfectly clear that, if we are now proceeding to discuss the merits of that Bill, the first four points we cannot touch. We cannot be allowed to go into the question whether an organisation in Russia exists called the Third International. That we cannot touch. Likewise we will not be allowed to touch the question whether that organisation is aiming at the overthrow of the established Government, nor can we touch the question whether they are carrying on propaganda in India. And, lastly, we cannot touch the question whether there is a widespread conspiracy in this country to further the aims of that organisation. We cannot deny that these four points are the most important points which the Meerut Tribunal will have to determine. It cannot also be denied that these four points are also the most important points in the Public Safety Bill. (Interruption by Mr. K. Ahmed.) I want to argue my case point by point without interruption, and it is not my fault that the Honourable Member who just interrupted me cannot follow the point. He will be largely benefited, if he listens in silence. It is perfectly clear that, out of the six points four points are *sub judice*. If it is so I do submit for the consideration of my Honourable friends, that any debate on the Bill, having regard to the provisions of Standing Order 29, and the possibility of their strict enforcement. —I am assuming that you will, Sir, insist upon the strict enforcement of the provisions of that Order and therefore you will have to call to order every speaker the moment he touches any of these four points—, will be absolutely infructuous, illusory and futile. I am sure that I am right in

the interpretation of this Standing Order, and I am very glad to find that the Honourable the Home Member admits the point in his statement. Let us look at his statement. He says:

"As I have already indicated, the Government will give every assistance to the President in ensuring that on their part the rule which prohibits reference to matters of fact on which a judicial decision is pending is not violated."

May I ask the Honourable the Home Member, if the President of this body should be so inclined as to strictly enforce the Standing Order 29, and the Government agree to help him to do so, what happens to the debate? Nothing substantial remains in the debate. It is a purely fictitious one. If the Government agree that Standing Order 29 entitles the President to prevent any discussion of points which are the subject-matter of the judicial decision, and if I am right in my analysis of these points which I mentioned a few minutes ago, then I submit, that the debate will be reduced to an absolute farce. We shall not be at liberty to consider these very important points involved in the merits of the Bill.

My point therefore is this—and that is, after all, the essence of the question before this House—that Standing Order 29 will have to be violated every second minute if we want to have a proper debate. If so, it comes very near the question whether, as the Honourable the Leader of the Opposition has argued, and I do not wish to cover that ground once more, you have the power, Sir, of preventing a contingency which has the effect of infringing the right of reasonable debate in this House. This is the power which I am certain the Presidents of all such bodies enjoy all over the world and, in the case before us, this power arises by direct and necessary implication from Standing Order 29. Honourable Members will bear in mind that ours is a very infant body, and we have had no time in our constitutional development to consider all the little details which arise under the doctrine of necessary implication. I am free to admit that my research into this question has not enabled me to find any Standing Order which expressly lays down that the President has that power. Perhaps my other friends, speaking after me, will be able to point out such a rule if it exists. But I say that the power does necessarily arise out of Standing Order 29, and I support my argument by saying that an infant constitution such as we have, has to be considered and interpreted in a very liberal spirit. If we were an old body like the British House of Commons, which has had more than 200 years to elaborate its constitution, so that every little contingency is foreseen and is provided for, and if in our constitution, this particular power did not exist, then it would have been a very strong argument against its exercise. But having regard to the fact that this body is not even ten years old, and also having regard to the fact that we are creating liberal conventions in this House, which must of necessity arise in the nature of implications from Standing Order 29, I do submit that it is a proper convention to be raised that, when the President finds, in the exercise of his proper discretion, that the debate must necessarily amount to a deprivation of the power of this House of having a real debate, then he must be the sole judge in the matter of allowing or disallowing such a debate. I assume that our President will be always so fair-minded and impartial that he will exercise his mind on this question with great fairness and foresight. If we wish to carry out, in their letter and spirit, the provisions of Standing Order 29, then the powers of the President must be extended. I have not been able to

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find out, during the short time at my disposal, whether such a power exists in other constitutions or not, but this is besides my present argument. The principle is clearly indicated in Standing Order 29. I agree with the view of the Honourable the Home Member, which he has stated in his statement, namely, that Standing Order 29 by the force of its terminology is confined to the regulation of the debate. That is perfectly correct, but what is the good of regulating the debate, if the regulation means that the President must silence every speaker every second minute? That is the point which we have to consider, if the enforcement of Standing Order 29 means that the debate will necessarily be carried on in an atmosphere where the President will have to stop practically every relevant speaker. He need not, of course, stop speakers like Mr. Kabeer-ud-din Ahmed (Laughter), who irrelevantly interrupts every relevant speaker, but if a speaker speaks relevantly he will have to stop him every second minute.

Mr. K. Ahmed: You are setting the example!

Mr. M. R. Jayakar: If that is the effect of enforcing Standing Order 29, and if that is the atmosphere of the debate—and at present there is such an atmosphere in which the debate will have to be carried out on both sides . . . .

Mr. K. Ahmed: On your side.

Mr. M. R. Jayakar: Apparently the Honourable Member has not read the Bill, else he would not talk with such ignorance. If that is the atmosphere in which the debate has to be carried on, I do submit, in all confidence, that the case is perilously near what my Honourable friend, Pandit Motilal Nehru, described as an infringement of the right of reasonable debate of this House, and I do submit that, instead of being carried away by catchwords such as "the liberty of the House", "the rights of the House", let us be regulated in our decision by common sense. If the liberty of the House has to be preserved, in the matter of free debate, I do submit it would be futile to deny the Honourable President such a right. If we have convinced ourselves that the debate will have to be carried on in such an atmosphere that it will be impossible for any speaker who knows the law of relevancy and wishes to talk sense, to refer to important aspects of this Bill without infringing the provisions of Standing Order 29, then it is better that the Bill should be withdrawn from an illusory debate.

There is one more matter which I wish to mention. One of the issues before the Meerut Tribunal will be whether the carrying on of the propaganda of the Third International, by stirring up trade disputes and industrial troubles, amounts to an offence in British India, under the Penal Code. Now let us look at that question This Bill makes it an offence for the first time.

The Honourable Mr. J. Crerar: No, Sir, it is not an offence.

Mr. M. R. Jayakar: Under 3 (*b*) it is an offence. It is made punishable:

"Whoever seeks to foment or utilise industrial or agrarian disputes or other disputes of a like nature with the object, directly or indirectly, of subverting by force or violence organised government, etc."

The Honourable Mr. J. Crerar: I must point out that the Bill does not make that an offence.

Mr. M. R. Jayakar: It makes it an offence that whoever is guilty of such activity comes within the clause which makes him liable to be deported. I therefore maintain that it does make it an offence, because it makes a man punishable. The Bill says, whoever does this particular act, is a person to whom the Act applies, which means, in other words, that such a person is to be deported under certain contingencies.

Colonel J. D. Crawford (Bengal: European): You have no right to make it an offence.

Mr. M. R. Jayakar: "Whoever seeks to foment, etc." This is made punishable under this Act, and I venture to submit that such activity is made punishable for the first time by this Act. Then the point arises, although it may not look like *sub judice*, whether this House, at this stage enacting that raising such industrial disputes for certain purposes is punishable, whether this fact alone is not likely to reflect to that extent on questions 4 and 5, as stated above, which will arise in the Meerut trial. Is it not likely to reflect, somewhat remotely it may be, on the important question which is before that Tribunal, whether, in propagating Bolshevist views, the accused have committed an offence in British India? I do submit, therefore, that, the two questions being in a sense allied, our decision here will reflect, however remotely, on the issue in the trial. I do submit that this is an important view which this House will bear in mind.

One point was urged, that the Bill had been before this House twice before, therefore the debate may proceed, however illusory it may be. The obvious answer is, that when the Bill was previously before the House, there was no question of *sub judice* matters, there was no Meerut trial then. The Bill came before us in a clean atmosphere. I think this is no argument at all, unless those who advance it go further and say, that, having regard to the fact that the Bill had been before the House twice before, the provisions of Standing Order 29 should be suspended. If that is the argument, I can understand it, but obviously the argument cannot proceed so far. If so, it is perfectly clear that, so long as the debate on this Bill is regulated by Standing Order 29, the Bill will be debated in an atmosphere where no real debate is possible. If so, the inherent right of this House to have a free atmosphere for debate will be curtailed.

Under such circumstances, I submit, Sir, that the President must have the right of preventing such an illusory debate, if necessary, by withdrawing the entire Bill from its operation.

The Honourable Sir Brojendra Mitter (Law Member): Sir, the learned and ingenious arguments of my friends, Messrs. Nehru and Jayakar, have relieved me of much of the anxiety with which I was oppressed when I first came in. I feared I would have to meet formidable arguments, but what I have listened to is mere sophistry.

I will take the Honourable Pandit at his word, that you are not to take these rules and Standing Orders in their letter, but to take them in their spirit. Let us take them in their spirit. Let us also

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take the expression "reasonable debate" in the true spirit. What is the foundation of a reasonable debate? That all facts and arguments, which ought to be considered before you come to a conclusion, should have been canvassed. That is a reasonable debate. With regard to the Public Safety Bill, can any one conscientiously say there has not been a reasonable debate, that all the facts have not been previously traversed?

Mr. A. Rangaswami Iyengar (Tanjore *cum* Trichinopoly: Non-Muhammadan Rural): The question is whether there should be a reasonable debate on the question before the House, namely the motion that the Bill as reported by the Select Committee be taken into consideration. A reasonable debate on that motion is the question in issue. Not any past debate.

The Honourable Sir Brojendra Mitter: I am looking to the spirit of the expression "reasonable debate", and not to the letter of that expression in any particular. (Laughter.) ("Hear, hear" from the Official Benches.) What I say is this, that so far as the provisions of the Public Safety Bill are concerned, there has been a full and exhaustive debate already.

Several Honourable Members: Question.

The Honourable Sir Brojendra Mitter: So far as the provisions of the Bill are concerned, we all know that all the facts and the circumstances, and all the arguments, *pros* and *cons* have been canvassed by this House.

Several Honourable Members: No, no.

The Honourable Sir Brojendra Mitter: In two sessions.

Several Honourable Members: No, no.

Mr. President: Order, order.

The Honourable Sir Brojendra Mitter: At the Simla session, it was this very House which discussed the matter on the floor of this House; it was discussed in the Select Committee; and, again, when it came out of the Select Committee, it was discussed in this House. This session, when it was referred to a Select Committee, it was discussed again and then again in that Committee.

Mr. K. C. Neogy (Dacca Division: Non-Muhammadan Rural): What about the sixty and odd amendments to the Bill?

The Honourable Sir Brojendra Mitter: The provisions of the Bill have been fully discussed on its introduction here. What I say is this, that if you are to look at the spirit of the expression "reasonable debate", that "reasonable debate" has taken place.

Several Honourable Members: Question.

The Honourable Sir Brojendra Mitter: There are no new facts, there are no new circumstances, there are no new arguments, which are necessary to be adduced, either in support of the Bill or in opposition to the Bill. (Hear, hear.)

Several Honourable Members: No, no.

Mr. A. Rangaswami Iyengar: Why not gag us?

The Honourable Sir Brojendra Mitter: Am I speaking or the whole House speaking? Let me take the Honourable Pandit's arguments now. I am not surprised that the Honourable Pandit has not touched upon the second question formulated by you, that is the power of the Chair.

Pandit Motilal Nehru: I began with it.

The Honourable Sir Brojendra Mitter: I am not surprised, because as the Leader of the Party which proposes to be genuinely opposed to all arbitrary power, he would not lightly surrender the rights of this House even to you, Sir.

Pandit Motilal Nehru: I spent nearly half an hour on this subject.

Mr. Jamnadas M. Mehta (Bombay City: Non-Muhammadan Urban): He must have been sleeping then.

The Honourable Sir Brojendra Mitter: Now, the question is that, on the present occasion, it may be that we are somewhat handicapped in referring to matters which have already been discussed *ad nauseam*. We may be handicapped at the present moment, for Standing Order 29 comes in the way. ("Hear, hear" and Cheers from the Swarajist Benches.)

An Honourable Member: That is a very great handicap.

Mr. M. R. Jayakar: It is only a question of degree.

The Honourable Sir Brojendra Mitter: I am coming to that. I am not disputing the fact that there may be certain common factors between the Meerut case and the grounds upon which this Bill is founded. (Hear, hear.) But those common factors are not new. Those common factors have been discussed.

Mr. Jamnadas M. Mehta: But the Meerut trial has come in only now. How could that have been discussed already?

The Honourable Sir Brojendra Mitter: These common factors have been discussed. This is what the Pandit says. I have taken down as closely as I can his own words and if I am wrong the Honourable Pandit will correct me. He said, "In this case there cannot be any reasonable debate because the facts of the petition or the complaint are identical with the reasons on which the Bill is based". This is substantially what the Honourable Pandit said. And that must necessarily be the case to some extent. When there is widespread crime, it must be necessarily so. If there is a recrudescence of crime on a wide scale and the Government find that the existing laws are not sufficient to cope with that situation they have to come to the Legislature when some people are necessarily under arrest, under the ordinary law or are being tried. Government have to come before the Legislature for further powers, whenever such an emergent situation arises. The situation must arise when some people are under arrest and trial, and upon the basis of their crimes or similar crimes, further powers are wanted. If you deny the Government the right to come to the Legislature or the Legislature the power to legislate,

[Sir Brojendra Mitter.]

or to deal with the emergent situation, upon the objection raised by the Honourable Pandit, it will paralyse the hands of the Government, will paralyse the hands of the Legislature to deal with the emergent situation. (Applause.) That shows the inherent unsoundness of the Pandit's theoretical proposition. As a matter of fact, I dare say that some of the speakers, who will follow me, will give you illustrations from England. There has been legislation in such circumstances.

Mr. A. Rangaswami Iyengar: Oh! Yes, why not.

The Honourable Sir Brojendra Mitter: I don't hear. What is it?

Mr. President: Never mind. The Honourable Member might go on.

The Honourable Sir Brojendra Mitter: Some of the speakers who will follow me will probably give you illustrations. I have not got them handy at the moment. If you ask me for a reference, I cannot give it to you at the moment. But what I say is this; that similar situations have arisen in England.

An Honourable Member: When?

The Honourable Sir Brojendra Mitter: I am not going into details. I have said so and other speakers will give the references.

Mr. President: The Honourable Member will do well to ignore these interruptions.

The Honourable Sir Brojendra Mitter: I am new to this House. (Laughter.)

Mr. President: I hope the Honourable Member will be allowed to proceed in his own way.

Mr. K. Ahmed: The Honourable Member will get familiar by and by.

The Honourable Sir Brojendra Mitter: What I say is that occasions have arisen when, during the recrudescence of crime of any particular kind when people are actually under arrest and under trial, Government have gone before the Legislature for further powers to deal with the particular species of crime. In such cases, certain common factors must necessarily exist between the crimes already committed, which are under adjudication of Courts of Law and the grounds upon which further powers are claimed.

The next point of the Honourable Pandit is this. I have already made my submission as regards the genuineness of the debate. There has been a genuine debate, all the facts, arguments and everything have been placed before the House. All that is necessary now, so far as the Government are concerned, is to state such facts, or make such statements, or advance such arguments as may not transgress Standing Order 29, which is the easiest thing possible. I can now, if I were called upon to make an hour's speech on the second reading of the Bill, easily do that without transgressing a single provision of the Standing Order 29, and at the same time be relevant all the way through. (Hear, hear.) That is the easiest thing in the world. Supposing, by reason of the handicap, we cannot place those facts fully before the House, which have already been placed before the House, supposing it is a handicap, it is our risk, because the House

may very well say, "We have not had a reasonable debate on this occasion. Although we know all about it, you have failed to convince us of the necessity of this measure." But that is our risk.

Mr. President: I am very unwilling to interrupt the Honourable Member, but will he kindly state the position of the Government as to whether they claim that they are entitled to ask the Chair to put a motion, although there has been no debate on the motion, as such debate is impossible.

The Honourable Sir Brojendra Mitter: I am not suggesting that for a single moment. (Hear, hear.) My contention is based on reasonable debate. If it is capable of reasonable debate, then I maintain that it will be your duty to put the question before the House. "Reasonable" is a relative term. Having regard to what has gone before, the Bill is capable of a reasonable debate.

Now, Sir, I wish to say one word with reference to the connection between the Bill and the Meerut prosecution. Sir, it is well known that the object of the Bill, as is the object of every legislative measure, is to make provision for the future. The object of the prosecution is to apply the existing law to the individuals involved in it. That is the fundamental difference between legislative action and a prosecution. What the Government are asking for is this, give us these further powers to deal with future contingencies, but that has nothing whatsoever to do with what has happened before.

Mr. President: On what basis?

The Honourable Sir Brojendra Mitter: On the basis of apprehended danger. Danger is apprehended. We are creating no new offence. All that we say is this: we apprehend danger, the nature and extent of which are fully known to every Member of this House, who has either listened to or read the previous debates. We are coming before this House to say that, in the light of these facts, which are already before the Members of the House, a danger is reasonably apprehended. We want to guard against that danger, and we want some powers in order to meet the situation if and when it arises. That is the position of the Government. We are not therefore in the least concerned, in the matter of this Bill, with any of the thirty one persons who are before the Meerut Court.

Diwan Chaman Lall: What is the danger?

The Honourable Sir Brojendra Mitter: I have been advised by the Chair to ignore all interruptions.

Mr. President: Excepting those from the Chair!

The Honourable Sir Brojendra Mitter: Then, Sir, I come to my learned friend Mr. Jayakar. He said, and I did not expect otherwise, he said, quite frankly, that there is no express power given to the Chair. But his argument was this—I have taken down his very words: "The President must have the power, by virtue of the provisions of Standing Order 29, in order to have a reasonable debate." That is to say, there is no express power, but the implication is that the President has the power. That is his argument. My answer to that is very simple. It is this; that this Assembly as well as you, Sir, are creatures of statute. We are not here like the House of Commons which has grown through centuries. We are not that at all.

Mr. President: Those precedents do not apply here!

The Honourable Sir Brojendra Mitter: Those precedents have no direct application here at all, none whatsoever. When we talk of residuary powers, inherent powers and things of that sort, they may very well apply to a body like the House of Commons which has got a law and a custom of its own.

Mr. M. R. Jayakar: May I ask my Honourable friend one question? The High Courts are creatures of statutes; and do they not get the same residuary powers, inherent powers, etc., which the Supreme Court in England enjoys?

The Honourable Sir Brojendra Mitter: There is express statutory provision in the Civil Procedure Code and the Criminal Procedure Code, and they come under the category of powers expressly given. Sir, what I am submitting is this. With reference to a body like the Legislative Assembly, which is a creature of statute, all its powers are confined within the four corners of the statute creating it. You may not stray one hair's breadth. When I say the four corners of the statute, I include, of course, the Rules and Standing Orders made under the statute. You may not stray one hair's breadth from the four corners of the statute, and the rules and orders made thereunder. Therefore, there is no such thing as a power by implication in so far as a creature of statute is concerned. Sir, in this connection, I shall read a passage from a well-known book. "The Procedure of the House of Commons" by Redlich. In dealing with the powers of the Speaker, ...

Mr. President: It has no application here!

The Honourable Sir Brojendra Mitter: No application; no particular order or particular rule of the House of Commons may apply here, but I am quoting an extract wherein the principles underlying those powers of the Speaker are discussed. I suppose the principles can be referred to as a guide. If you object to my referring to the principles upon which the Speaker's powers are based, then I shall not quote it.

Mr. President: Do not take those remarks so seriously. (Laughter.)

The Honourable Sir Brojendra Mitter: Sir, I shall not quote it; but I shall tell you the gist of it. The gist is this: that where a new point of order arises for which there is no express provision or express precedent, then it is not for the Speaker, but for the House to determine it. That is the principle. (Interruption.) It is quite relevant in the present case notwithstanding the interruption of my Honourable friends. It is contained in page 148 of Volume II of Redlich's book.

Honourable Members: Read it, please.

The Honourable Sir Brojendra Mitter: Well, Sir, I am in your hands.

Mr. President: I should be prepared to hear it myself. I shall be surprised to learn that the Speaker has got to leave the House to decide a new question. Because that is news to me.

The Honourable Sir Brojendra Mitter: This is the passage, Sir:

"Of great importance too are his functions upon a division. He alone puts the question to the House . . . His powers"

—that is the Speaker's powers—

"in relation to the debates have never been looked upon as entitling him to express or enforce any completely new or purely personal opinion as to what is on principle allowable in debate or otherwise. The conception lying at the root of English Parliamentary law is this, that the rules and the law deducible from the precedents in the journals and from traditional usage are reins by which the action of the House is to be kept in form and order, and that the Speaker is the person who, with firm and cautious hand, is to hold and use them for guiding the House on the lines which have been handed down. It is no part of his office to consider how he may use his power, to devise new reins or bridle for the House. The guiding principle is that the Speaker is not the master of the House, but its representative, its leader and authoritative counsellor in all matters of form and procedure."

Then it goes on:

"It is his duty to see that they are obeyed, to explain and apply them"

—that is the rules and orders—

"In principle, the supreme authority of the House is retained; it is clear enough from an express order, made so long ago as 1604, that, when precedents are not conclusive, the Speaker is to lay the matter before the House for decision."

That has been the case whenever a new situation arose. My point shortly is this: that when a new situation arises for which no express provision has been made in any rule or Standing Order, it is for the House to decide on the question, and not for the Chair. The Chair, so far as the House of Commons is concerned, only decides such questions as have precedents but so far as our House is concerned, we are an infant body, we have got a few precedents of our own and we have got our own rules and Standing Orders. If our rules and Standing Orders do not cover the point, in that case, my submission is that you, Sir, ought to leave the House to decide it.

Mr. President: Ought to or bound to?

The Honourable Sir Brojendra Mitter: As I read it, the House is the repository of its own procedure.

Mr. President: I should like the Honourable Member to make the position quite clear as to whether the Chair is bound to do it.

The Honourable Sir Brojendra Mitter: I think the Chair is bound. That is the position, I maintain. Then, Sir, my answer to my learned friend, Mr. Jayakar, is this. Mr. Jayakar's point really comes to this, that since the President is invested with powers to regulate the debate, he ought to have the power to decide a matter like this. Logically it boils down to this. Sir, it is a far cry from the President having the power, to the position that the President ought to have the power. That is the distinction to which I draw your attention.

Then the last point which my learned friend, Mr. Jayakar, made was that this Bill is creating a new offence. Probably Mr. Jayakar has not closely scanned the provisions of the Bill. If he does so, he will find that, when there is a person to whom this Act would apply, he may be served with a removal order . .

Mr. M. R. Jayakar: Is not such an order a form of punishment?

The Honourable Sir Brojendra Mitter: No, Sir, that is not punishment.

Mr. M. R. Jayakar: This is a matter of opinion.

The Honourable Sir Brojendra Mitter: It is a form of mandatory injunction, that you are not to come here but go elsewhere; it is not punishment.

Mr. M. R. Jayakar: What is it then?

The Honourable Sir Brojendra Mitter: He would not be an accused person within the meaning of the Criminal Procedure Code.

Mr. M. R. Jayakar: Is it not a penal provision?

The Honourable Sir Brojendra Mitter: No, Sir, it is not a penal provision; I say it is in the nature of an injunction that a person ought to do a certain thing; he is not an accused person.

Mr. M. R. Jayakar: It is a deportation order to be made in certain contingencies.

The Honourable Sir Brojendra Mitter: Anyhow, Sir, that is my opinion, and I am giving my opinion for what it is worth. It is somewhat irrelevant (Laughter from the Congress Benches) and not very material for the purposes of the present debate, but since the point was raised, I have ventured to express my opinion in the matter. Therefore, Sir, I submit that, on the two points that you formulated, whether it is possible to have a real and reasonable debate on the motion which is before the House, my submission is this: that it is possible to have a real and reasonable debate and furthermore I say that, if you take the words in their spirit, that debate has already taken place; and on the point of the power of the Chair to intervene at this stage, I have made my submission that it is the function of the House, with regard to the specific question that has arisen, and not the function of the Chair.

Mr. S. Srinivasa Iyengar (Madras City: Non-Muhammadan Urban): Mr. President, I have listened with considerable anxiety—I shall not say enlightenment—to the speeches of Sir Darcy Lindsay and of the Honourable the Law Member. I must submit, Sir, that when the latter said he was new to this House, I did feel sympathy for him. I would leave such a matter as this in the hands of the Chair, especially when you, Sir, have had conferences with Speakers of the House of Commons and the Dail, in England and Ireland. You, Sir, have more knowledge of the rules of procedure both in this House, by experience as President of two Assemblies, as well as by conversations with the Speaker of the House of Commons. To many, no doubt, who have got to look at the Rules, the first impressions of one description or another are uninformed. But to me, Sir, who must look at this question severely as a lawyer and as a Member of this Assembly, not swayed by any extraneous considerations, it appears that we must see if there are any legal principles to the contrary in the various appeals which have been made to you. Sir Darcy Lindsay, who acted Mussolini for the time being, said, you were a dictator or sought to be a dictator. I am afraid that rule 15 of the Legislative Rules, which says that the President shall decide all points of order which may arise, and that his decision shall be final, confers, to the extent to which it goes, real dictatorship in conferring that discretion upon the President. A point of order is what appears to the Chair as a point of order, with such assistance as it may get either from any counsel that might have been provided for it or from the Members of

the Assembly, from books of reference, or from experience. I cannot understand how the Chair has no jurisdiction to decide right as well as wrong, as the phrase goes. The jurisdiction of the Chair is undisputed and indisputable within the limits and within the areas which no doubt are now circumscribed to questions of order, questions of procedure and questions of advice even, which have got to be given, as I can easily show by referring to passages in May under that head. It appears to me that the whole of this debate is a misconception. In the first place it is assumed that, in the case of Bills, a different procedure obtains from the one which obtains in the case of questions, Resolutions and motions for adjournment. I say "No". The familiar principle, which is stated in May, is that, "Matters which are under adjudication in a Court of Law should not be brought forward in debate." That principle runs through all the categories of legislative business, whether the business is brought forward by means of a question, by a Resolution, or by a motion, or by means of a Bill. That fundamental principle cannot be infringed simply by saying that we have here a Bill. But, Sir, even in the case of Bills, there is admittedly Standing Order 29. My Honourable and learned friend says, "Show me the express rule which says that, in the case of Bills dealing with matters *sub judice* in a Court of Law, the Chair has got the right to say that the Bill shall not be taken up." I submit, Sir, no Government would bring a Bill of that description on matters which are *sub judice* in a Court of Law. Nobody can take advantage of his own wrong—much less the Government. No Government would first of all start a prosecution in order to stifle the freedom of debate in this House nor take advantage of the provisions of Standing Order 29 and then say, "Well, we have brought a prosecution there and therefore you, Members of the Opposition, have no right to refer to all those matters which you would otherwise have been at liberty to refer to; we do not propose to refer to them because we have voting strength at our back." It is a very familiar principle that no man can take advantage of his own wrong. It may be a very straightforward course which the Government has adopted in starting this prosecution, and that perhaps shows that the present law is sufficient, but that is another matter. It is obvious that the proposed procedure is calculated to deprive this Assembly, which was seized of a Bill of this description, of its right of debate. The Government themselves, having been in charge of this Bill, cannot start a prosecution and make all these matters, which are so vital to the consideration of this Bill, *sub judice*, and then prevent largely, if not totally destroy, the freedom of speech which is conferred by the statute itself, apart from the Rules and Standing Orders. Nor can they say, "Well, I will simply say, 'Sir, I move', and the Opposition should say 'I oppose' and then the closure will be applied and the Bill will be put to the vote"—a very reasonable debate has indeed taken place and the right of speech is fully exercised! (Laughter.) My Honourable and learned friend said he could make a speech for one hour upon this Bill without going into any of those obnoxious matters. He has not made such a speech as that; when he comes to make such a speech, I shall then be able to see whether he could make a speech of that description. He said he could make it very relevant. It may be relevant in his own view, but it will be wholly irrelevant and it must consist largely of repetitions if he is to go on for one hour. I submit, Sir, that the point which we have specially to consider is a very simple and straightforward point; there is no

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necessity for heat or excitement in connection with this question. I do not consider this as any very crucial question. It is a very ordinary, plain question . . . .

Mr. K. Ahmed: Why did you not object then?

Mr. S. Srinivasa Iyengar: I will deal with that at once and I will deal with it purely as a lawyer. My Honourable and learned friend, Mr. K. Ahmed, asks me, "Did you raise the objection?" I say this, Sir, my Honourable and learned friend, the Law Member, when he made the motion, referred to some legal points, and he said the object of this Bill, as it emerged from Select Committee, was to remove British communists from India. He was not in charge of the Bill and it happened that the Honourable the Home Member was prevented by illness from moving it the other day. He did not therefore deal with the facts; but I submit, Sir, that technicality is met by technicality; it is only when opposition to the Bill is raised that the Chair is bound to go into this question. It is only when my Honourable and learned friend, Mr. Jayakar, raised the point and when my friend Mr. Jogiah wanted to move his amendment that the question for the consideration of the Chair arose. Supposing, for instance, a Member in charge of a Bill moves, and the whole House agrees without any opposition. That may be a different question. Therefore, Sir, the Chair was perfectly justified in listening to the speech of the Honourable the Law Member before ascertaining whether there was any opposition to the motion. Upon that only the duty of the Chair, in my judgment, arose, and therefore the objection which is raised in the Honourable the Home Member's statement is wholly unfounded,—I shall not say frivolous to use the felicitous language of the Honourable the Law Member on another occasion . . .

1 P.M.

The Honourable Sir Brojendra Mitter: Not on this occasion?

Mr. S. Srinivasa Iyengar: I mean on another occasion. That does not matter, we are all lawyers. (Laughter.) Mr. President, my submission is, there are two or three well established rules. What is new in the instance may still be governed by an old well-established principle, the principle which is derived by analogy was applied, for instance, in the Tagore case by a very eminent Judge, Mr. Justice Willes. He said there was no express principle of Hindu law applicable, but the principle was in the law of gifts perfectly well established and was by analogy applied to the will in the Tagore case. We must, in the case of Bills, apply by analogy the principle which applies to questions, motions and Resolutions. Therefore, what applies to Resolutions, what applies to motions for adjournment, I say, applies equally to Bills, and if there is any doubt upon that matter, that doubt is completely removed by the fact that the general procedure, including the procedure relating to Bills, is mentioned in Standing Order 29. Analogy is a well established head not only of exposition but of ascertaining law—and no lawyer worth his salt would ever say that a rule deduced correctly by analogy is not to be applied. Take, for instance, a Bill. The Honourable the Law Member or the Honourable the Home Member introduces a Bill dealing with particular accused persons, or say with a particular case itself, saying that such and such persons shall be held to be guilty of such and such an

offence and shall be held to have been parties to such and such a conspiracy. It is perfectly open to bring in a specific Bill limited to a particular case of that description. But can it be said that, when the principle of the Bill is a matter pending adjudication before a Court of Law, the question can be brought forward in a debate on a Bill dealing with the very persons whose guilt or innocence has yet to be proved? My Honourable and learned friend on the other side must readily concede that such a Bill . . . .

Mr. President: Order, order. I am afraid I must adjourn at this stage. Today being Friday I must adjourn early.

The Assembly then adjourned till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock, Mr. President in the Chair.

Mr. S. Srinivasa Iyengar: Mr. President, I was putting the case of a Bill which directly dealt with matters *sub judice*, with the criminal liability of certain persons who were brought for trial before a particular Sessions Court. Such a case as that might not arise, but it does not take away the power of the Legislature to pass Bills of that description. Such a case is conceivable, and we have to see whether the rule by way of analogy should or should not apply to Bills. Is it the contention on the other side that such a Bill as that is not open to this objection? In such a case, the Chair will have to rule that the Bill is out of order. Of course, the proper procedure in such a case is not to say that the House has no power, or that the power of legislation is taken away from the House, but that the proper forms should be complied with. It is a mistake into which Sir Darcy Lindsay fell, into which I find other Members also fell. There is no question of taking away the power of the Legislature. The power of the Legislature exists absolutely, but the whole question is one of procedure. Just as you can say that a Bill has to be put in a particular form, whether it has lapsed or not, whether it is an old Bill or a new Bill, whether the forms of procedure including notices are complied with, similarly you have got to deal with the question whether it deals with matters *sub judice*. It is not that the House is without remedy, or that the Government are without remedy. In such a case though I am not the Law Member advising the Crown and do not like to advise them, my advice to the Government would be that they should suspend the Standing Order 29, which could be appropriately amended by a Resolution of this House, or they could have a special statute passed, tying the hands of the President, saying that without debate, without any speech, it shall be put to the vote. Such things have been done, and will be done time and again in any great crisis justifying such extraordinary procedure. If no such constitutional right of suspension is available by way of an amendment of the Standing Orders or otherwise, or by a special statute *ad hoc*, which might be passed for cases of that description, it goes without saying that the principle I have mentioned, that matters *sub judice* should not be brought up at all in the legislative forum being a matter of universal application, would

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apply. It is a preposterous thing to suggest that what cannot be made the subject of a question, Resolution or motion for adjournment, can directly be made the subject of a Bill. No lawyer can have the hardihood to say that. That is the way to test this question. Therefore, the power does undoubtedly exist. I say the Chair has got the power. It is not as if the rules of business of this House form an exhaustive code. You know that the rules of business are not exhaustive. Supposing there were no rules of business enacted, does it mean that the President cannot lay down the procedure? Therefore the President has got all the rights of the President unless his rights are taken away by express words. My submission is that the power of the Chair on the matter now in question is indisputable. Secondly, I agree with my Honourable friend, Mr. Jayakar, that Standing Order No. 29 necessarily implies this power—it is not only a reasonable implication but it is a necessary implication, for the canon of interpretation, Maxwell, Craies and various other authorities may be referred to. The canon of interpretation is that which must be necessarily implied as if it were enacted in the statute. It is not necessary that you should find the actual words in the section. Sir Darcy Lindsay may say to the contrary as a layman, but surely the lawyer Members ought to know that it is a perfectly familiar canon of interpretation, namely, that where, owing to some lacuna the Legislature meant one thing and has not expressed itself with sufficient clearness, the rule of necessary implication does enable the Court to say that, though the Legislature has not expressed itself in words, but it is plain it meant it; the rule stands as if it is enacted. Therefore, when Standing Order 29 says that a Member, while speaking, shall not refer to any matter of fact on which a judicial decision is pending, it is necessarily implied that no Bill can be brought forward on which any Member in the House can refer to matters of fact which are necessary for that Bill by reason that on those matters, a judicial decision is pending. It is the plain duty of the House, it is not only the right of the Chair—I am for the privileges of the House, I am for the privileges of the opposition which form an important element in this House—I say it is the duty of the Chair to say that if a debate cannot be had, if a just debate, a reasonable debate, just to the opposition, just to the minorities, just to all the sections of the House cannot be had in this House without infringing such a rule as that, a measure, the direct effect of which is to infringe this rule is obnoxious to rule 29. It is open to us not to say anything but to vote as we are ordered to. But I submit that every Member has the right to convert other Members to his point of view, and he has got the right to persuade people in that manner. Though it may not occur as a matter of fact, still I must proceed on the theory, the legislative theory, that Honourable Members are persons that may be persuaded to one's point of view. Therefore, it is a fallacious argument to say: "we can argue this Bill without referring to anything whatever". So you can. You can refer to ancient history, mediæval times and fifty other things, all irrelevant matters and say you must pass this Bill. My submission is it is necessarily implied that a Bill which raises such matters which are *sub judice* is like a speech out of order.

The third ground of the jurisdiction of the Chair is this. I have dealt with the rule of analogy. The second is the necessary implication derived from Standing Order 29, and the third is . . .

The Honourable Sir Brojendra Mitter: Does my Honourable friend seriously mean to say that you can confer jurisdiction by analogy?

Mr. S. Srinivasa Iyengar: What else do I mean? I do not mean jurisdiction of a Court of Law. When you use the word "jurisdiction", you use it in the wide elastic meaning which means power. Jurisdiction is not jurisdicton to try and to hang a person. I do not know what my Honourable friend means. But he is new to the House. (Laughter.) Mr. President, the third ground is the power, or jurisdiction in its extended sense, not in the sense of jurisdiction of Court of record or a Court of limited jurisdiction but jurisdiction in the sense of power—I say that that jurisdiction is the inherent jurisdiction of the Chair. The rules do not cover every conceivable case. I submit there is plenty of precedent both in the House of Commons and in this very House. I will refer to what was done with the consent and approval of every one in the last Delhi session of the Assembly.

Mr. K. Ahmed: You are going beyond your implication?

Mr. S. Srinivasa Iyengar: I wish there was one rule of business at least which put a closure upon my Honourable friend. (Laughter.) The case I am referring to is the case of the Gold Standard and Reserve Bank Bill. The then Finance Member, Sir Basil Blackett, proceeded up to clause 8 or so, and then he said he would not proceed further with the Bill and stopped the whole thing. Then he chose to bring in a new Bill. There was not a single provision in the Manual of Business to cover a case like that. You may ransack the four corners of the rules and there is nothing in the rules to cover that case. You, Sir, if I may say so, with all respect, ruled very properly on that occasion and there were plenty of English precedents to justify your ruling. You then pointed out this. I am reading from the debates of the Legislative Assembly of the 1st February 1928, page 78:

"The question raised has, in my opinion two aspects. The first is whether the method adopted by the Finance Member in dealing with the Reserve Bank Bill in the Assembly so violates the proprieties of the House as to constitute it an abuse of its forms and procedure. The second is whether the new Bill, in so far as it provides for a Shareholders' Bank as against the decision of the Assembly in favour of a State Bank is not barred by the rule of repetition contained in Standing Order 31 of the Manual."

Coming to the first point, the Chair, after reviewing the history of the case, ruled that the new Bill, which was sought to be introduced, could not be introduced. That is a conclusive demonstration of the fact that the Chair has got inherent powers not to be discovered within the letter of the various Standing Orders and legislative rules. If in one case you make an exception and say that the inherent power does exist, then it is obvious . .

Mr. President: Two wrongs do not make one right.

Mr. S. Srinivasa Iyengar: Three wrongs do not make one right and this is the third wrong. I am simply dealing with this matter as a Member of the Assembly, who takes some interest in its proceedings, and who is anxious that the Chair should not tresspass upon the privileges of the House, and that the Chair should not arrogate to itself the functions which do not properly belong to it. Equally I hold that the House and the Members of the House should not tresspass upon the rights and duties of the Chair. I am anxious that Government should have its right as well as the other Members. On these three grounds, the principle by way of analogy, the

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principle by way of implication, and lastly and above all, this inherent power, the power of the Chair is secure and is not disputable.

Then, Sir, I will deal with the other question. I will refer to what Sir John Marriott, who was himself a Member of Parliament, and who has very considerable experience of these matters, said. He says on page 517 of Vol. I: "From the 17th century the Speaker has been at once the servant and Master of the House of Commons". Therefore I say there is no use dealing with these vague generalities. We are business men. We must deal with this particular question. The question is not whether the Chair has got dictatorship. To a certain extent it has, and it is idle to say that the Chair cannot decide these points of order. Of course, the Chair can go wrong. There are appropriate methods to rectify matters if you are dissatisfied with the Chair. The only way in which the Chair can do its duty is to apprise itself as to what is right and proper and do its duty, if I may say so, thoroughly and fearlessly. I do most strongly resent the attempt made to influence the Chair by using expressions like "you have no jurisdiction", "You are a dictator", "you are interfering with the privileges of the House". It is a plain and ordinary question, and I do not see why we should unnecessarily worry ourselves over our privileges, which are wholly unaffected by your ruling.

I will now deal with the admissions made by the other side. Now, can we have a reasonable and just debate on this? By allowing the Bill to proceed, you will be gagging every Member the moment he comes within the provisions of Standing Order 29. The Honourable the Home Member, in his very carefully considered statement, said that the Government did not require to refer to any of the detailed allegations which will be for the adjudication of the Court. What they will have to refer to is the broad allegations and not the detailed allegations. That is all we are concerned with and then the Honourable the Law Member said, and very fairly said, that there are some matters which are common ground between the consideration of this Bill and the case which is proceeding at Meerut. All that he said was that there had been, in the past, a reasonable debate and there was no longer any need for a reasonable debate now. That is a different question altogether. On these two admissions, it appears to me that it is not the case for the Government that the Bill does not touch any of the material facts in the Meerut conspiracy. It seems to me quite clear that some of the important allegations are common to this Bill as well as to the Meerut case, and on that admission, I proceed. Other speakers who preceded me have dealt with the matter at length and therefore I shall confine myself to one question only. It appears to me that there has been an unnecessary confusion of thought in connection with this matter. There are two aspects from which this Bill has to be looked at. One aspect is the necessity or justification for a measure of this description, and the other aspect relates to the detailed provisions of this Bill as to whether they are appropriate provisions to be introduced in it or not. Now, I do not wish to deal with the second aspect of this Bill. I wish to deal only with the first aspect of it. The question is whether it is necessary for the Government or not to show that there is a necessity or justification for a measure of this description. Or whether they can bring forward a measure of this kind without any political or practical necessity by merely imagining that there may be conspiracies in the future? Are they to say "We have had no trouble in the past, and there is absolutely no reason whatsoever to justify

us to anticipate troubles in the future"? We know what the history of the Bill has been. The Honourable the Home Member has made the position perfectly plain in his very able speech, which he delivered on the last occasion, when unfortunately I was not present in the House. And that position is this. There is in India a communist conspiracy to overthrow this Government by force or violence.

Mr. K. Ahmed: You have been to Moscow and you must have seen things there otherwise you would have failed in the discharge of your duties.

Mr. S. Srinivasa Iyengar: Sir George Rainy also referred to this point in his speech on the last occasion and pointed out that it was not always easy to prove in a Court of Law very satisfactorily the existence of a conspiracy. He further contended that they had been trying to collect evidence for the last 18 months or 12 months and as sufficient evidence was not secured they wanted this measure. I agree with him that that is the real reason. The real reason why they wanted this Bill was that they thought there was difficulty in proceeding under the ordinary law. The Honourable the Home Member did resort to ordinary law in the case of the Bombay conspiracy and it was thrown out and therefore they wanted a Bill of this description. The only difference is in the character of the evidence and the remedies. Now, the material facts in issue are in substance the same both in the Meerut case and as to the present Bill. There is alleged to be a communist conspiracy to overthrow the Government established by law in British India by force or violence. In the Meerut case the evidence will have to be led in accordance with the Evidence Act, whereas the evidence will have to be produced in this House in the usual way it is produced in legislative bodies. In the former, you want to punish the accused under the existing ordinary law of the land, whereas, in the other case, you want a preventive legislation for the purpose of deporting people from British India. Apart from the remedies, and apart from the Evidence Act, it is obvious that the foundation is identical in both cases. The foundation is the existence of a widespread or of a sufficiently serious communist conspiracy in British India to overthrow the British Government by force or violence. It is not right to say, as the Honourable the Home Member says:

> "They are of opinion that nothing need be said which would prejudice the matter which is before the Court, namely whether the thirty-one accused persons or any of them have entered into a conspiracy to deprive the King Emperor of the sovereignty of British India."

But there are 50 other matters, which have got to be proved, before that final fact emerges and the matter you have to prove is that there is a communist conspiracy to deprive the King Emperor of the sovereignty of British India, and the 31 persons are the members of that criminal conspiracy. That is what you have got to prove. You do not suggest that there are several unrelated conspiracies and from the statement that was made the other day on the motion for the adjournment of the House, it was obvious that this conspiracy was started as early as 1921. Therefore, I submit that the fact in issue both on the Bill here and in the case at Meerut is whether there is a criminal conspiracy of this communist character to deprive the King Emperor of his sovereignty in British India by force or violence. That is the only question which we need consider. That is a fact which is pending adjudication in the Meerut Court and that is the fact which it is necessary for the Government to establish in order to have this Bill passed.

[Mr. S. Srinivasa Iyengar.]

The views of a legislature may fluctuate from time to time. You cannot say that it is not necessary for you to prove a conspiracy at all here. Of course, it is necessary to prove that there is a conspiracy. The proofs and the necessity may be different here, but still the necessity for the justification of the conspiracy must be there. It is not at all correct to say that, because this question was debated on previous occasions, it is no longer open to debate. Time and again the Chair has ruled to the contrary, and the procedure has invariably been that, at the consideration stage, the whole of the principle and policy of the Bill has been discussed. The general position of the Bill and its expediency have been urged by one side, and the lack of the necessity or the lack of statesmanship have been urged by the other side. I concede that you have discussed this matter, but new Members in the Assembly have come in and the personnel of the Assembly undergoes a change every day, and therefore you cannot say that once the Assembly makes up its mind, it stands good for ever. Supposing it gave its vote for the Bill at one stage, it may change its mind at the next stage. I have every hope that I will be able to convert my friends, the Honourable the Home Member and the Honourable the Law Member, for the purpose of this argument.

The Honourable Sir Brojendra Mitter: By good reasons you might convert us, but even an archangel cannot convert the other side.

Mr. S. Srinivasa Iyengar: We do not know on which side the archangels are and on which side they are not. I really appreciate all the force of my Honourable friend's arguments and all the vigour of a new convert. Naturally, he has got a responsibility in this matter and I appreciate it. The Meerut case is undoubtedly calculated to curtail the freedom of speech here and to trench upon matters necessary for our judgment. When they launched that prosecution, I must say they intended to deprive the Assembly —I am not attributing motives—of its right to discuss these matters. Therefore, Sir, I maintain that they cannot take advantage of what I consider was wrong on their part. I submit therefore that we cannot play with this question in the way in which we have been playing with it. I do not wish to stand as a champion of the privileges of the House, nor do I wish to be a person who will unnecessarily give to the Chair all the rights and deprive himself of all the privileges. I hope I shall be able always to claim the privileges of the House, and if the Chair interferes with them, I shall be the first to resent it. I consider the true position of the Chair is what I stated. The Chair is the representative of the House, the dignity of the House is in its keeping, the traditions and the rules of the House are likewise in its keeping. I do not understand what difference there is between the Chair and the House. The Chair is the mouth or organ of the House. The only question is whether, in this particular instance, the Chair is right or wrong in its interpretation of the rules and in claiming the power which it has claimed. It has claimed this power not for itself but as a representative of the House (Applause), and if it wishes to exercise that right, it will exercise it as the representative of the House. It claims it only in the interests of the House and for the greater utility of the House, for the purpose of maintaining the privileges of the House intact. I say you have the power by necessary implication, by rule 29, an inherent power, and your own ruling shows that we are bound by it. Therefore, for these reasons, I submit that the second question

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can only be answered in one way, namely that the Chair has the right. If the Chair has the right, how can it best intervene? Instead of a piecemeal exercise of its jurisdiction in the case of each Member, the Chair exercises the right by ruling the motion as out of order. I think it is the duty of the Chair, if it properly assesses the value of this Bill, to say that the Bill as a whole is a Bill which cannot be properly and justly discussed, having regard to the freedom of speech of this House and the course of proceedings at Meerut. I do not see why it should not intervene at this stage. I submit it has not only the right, but I consider that it is the duty of the Chair to give a ruling on this point of order, that they cannot proceed with this Bill, having regard to the history of the legislation, having regard to the admitted facts that the matters at issue here and there are identical. A great claim has been made of the necessity for and justification of the Bill. We are not here as draftsmen or lawyers to deal with the various provisions of this Bill. What is the measure? Roughly speaking it is that exceptional powers should be entrusted to the Governor General in Council to deal with this communist conspiracy. That is really what it is. That is the simple purport of this Bill. Therefore I consider for all the reasons I have stated you cannot really say that this Bill at this stage of consideration, can be discussed reasonably without infringing upon the matters which are *sub judice*. Secondly, you have got the right, not only have you got the right but you are bound, I submit, to rule, Sir, as you have done. I do not agree with the somewhat pompous statement which has been made here by the Government. I cannot understand what grave constitutional crisis arises over this, as if the Government had the right to bring up a Bill at any time. Can Government, for instance, bring up a Bill on non-official days? It can only bring up Bills in accordance with the proper procedure, and the Legislature undoubtedly has the power, and it is for the Chair, as representing the Assembly to see whether the forms have been complied with or whether they have not, or whether there is an abuse of the form and procedure. The Government want to block discussion. The pith and substance of the Bill cannot be discussed, the necessity which has been stated to be the existence of a widespread communist conspiracy, which is the subject of a trial at Meerut, cannot be discussed.

For these reasons I submit that there can be only one answer to the question you have put to us, and in my humble opinion that answer can only be in the affirmative, namely that you have the right and are bound to exercise the right to say that Government cannot proceed with the consideration of the Bill.

***Raja Ghazanfar Ali Khan** (North Punjab: Muhammadan): Sir, it is a matter of great regret that neither the Leader nor the Deputy Leader of our Party is here in his seat today. I feel sure, if Mr. Jinnah had been present here, his participation in this important discussion would have been of invaluable assistance both to the Chair and to the House.

We, the Members of the Independent Party, have very carefully considered and discussed the statements issued by the Leader of the House and the Chair. We believe that you were fully justified in giving a strong warning to the Government, in view of the past discussions on this Bill, that they should not do or say anything which would, in the slightest degree, prejudice the Meerut trial. As far as we have been able to ascertain, we could not come across any Standing Order or rule which would

*Speech not corrected by the Honourable Member.

[Raja Ghazanfar Ali Khan.]

enable the Chair to direct the Government to take any particular action on the Bill which is already before the House. This view has been supported by Mr. Jinnah's opinion, which is contained in a telegram which I have received from him this morning. The telegram reads:

"My opinion President cannot stop further consideration Bill. Jinnah."

In view of this, we would request you kindly to reconsider your statement which, after all, was merely in the nature of advice and not a final ruling, and you can use your powers under Standing Order 29 if and when such occasion arises.

In conclusion we want to assure you, Sir, that our Party has always been anxious to maintain the dignity of the Chair, and we shall do so in future as well, and if we have offered any criticism on a statement coming from you, it is only because expressions of opinion have been invited.

*Sir Hari Singh Gour: Sir, I should like to speak on this subject. I have got up eight times already, and I claim the privilege of this House to speak. (*Cries of* "Order, order" from the Opposition Benches.)

Mr. President: Order, order.

(Sir Hari Singh Gour continued to stand up.)

Mr. President: Order, order. Will the Honourable Member resume his seat?

Sir Hari Singh Gour: I will resume my seat, but I will rise up again.

Mr. President: The Honourable Member may get up a hundred times. The Chair has the right on a point of order to hear only those Members whom the Chair calls upon.

Sir Hari Singh Gour: I am raising a point of order. The point of order I raise is this. I got up at eleven o'clock this morning for the purpose of raising this point of order. Unfortunately I was interrupted and therefore could not raise the point of order.

The point of order is a question which does not affect the ruling of the Chair, but it affects the privileges of the House, and it is the duty of the House . . . .

Mr. President: Order, order. The Honourable Member is only dealing with the question which has already been raised, and he is not raising a separate point of order. Sir Darcy Lindsay and Nawab Sir Zulfiqar Ali Khan have already referred to it and the Honourable Member wants to raise the same question again.

Sir Hari Singh Gour: I claim the privilege of being heard in this case. I think I have a right to be heard.

Mr. President: Order, order. I am afraid I cannot allow the Honourable Member.

Sir Hari Singh Gour: I think I am entitled to be heard on the point of order.

* Speech not corrected by the Honourable Member.

Mr. President: There is no point of order. We are already in the midst of one.

Sir Hari Singh Gour: You have not heard me, and you have no right to refuse to hear me.

Several Honourable Members: Order, order.

Mr. President: Order, order. The Honourable Member must understand the rules of the House. He has been a Member of the House for the past nine years.

Sir Hari Singh Gour: Yes, Sir. Much longer than the President himself. I know what the precedent is.

Mr. President: The Honourable Member will please resume his seat. Mr. Crerar.

The Honourable Mr. J. Crerar: Sir, as this discussion, which is of a decidedly extraordinary character, has been equally extraordinarily prolonged, I wish to speak only in the very briefest terms. The Honourable Member on the opposite side, who has just resumed his seat, rested a very great part of his case on what he called the analogy of the Standing Orders and Rules relating to motions, Resolutions and questions. Now, Sir, I desire to point out that that argument, on which the Honourable Member so much relied, is an entirely fallacious one. A Bill is a matter of a totally different character from motions, Resolutions or questions. I will give what I think is a conclusive illustration of that fact, in the terms of section 67 of the Government of India Act, which expressly contemplates the possibility of legislation by this House, with due sanction, on matters which are definitely excluded in the case of motions, Resolutions and questions. The Honourable Member, like other Honourable Members who spoke on that side of the House, relied also upon what he called inevitable implications. Now, Sir, the case, which I venture to state with the utmost respect to you, Sir, and with the greatest earnestness to the House, is that we are not concerned with implications and inherent powers, but we are concerned, and must be concerned with express powers, and my contention has been, and the contention of Honourable Members on this part of the House has been, that, in the express powers conferred upon the Chair, there is no power to remove from the jurisdiction of the House, a Bill of which it has duly and properly been seized. I do most respectfully submit that a course of that kind, a course which I trust, you, Sir, on reflection, will not consider desirable or proper to take, a course of that kind is not only an invasion of the responsibilities of Government, but it is also, as has been pointed out by more than one speaker before me—and I desire to reiterate the point—it is a very serious invasion of the undoubted privileges of Honourable Members of this House. As a matter of practical importance, I would venture to impress upon the attention of the House an argument which has been heard once already and which I desire to emphasise, and it is this: that if the view be taken that, in no circumstances, may this House be asked to legislate on matters touching on matters which are, for the time being, *sub judice* then the Government of this country and this Legislature might be deprived of the means of carrying out one of its greatest and

[Mr. J. Crerar.]

most fundamental responsibilities, that is the responsibility of maintaining public security in this country. I have been asked, and Honourable Members who spoke on this side of the House have been asked, whether any precedents could be quoted of legislation enacted while judicial matters relating to, or connected with, the matter of that legislation was still pending.

Sir Hari Singh Gour: May I tell you one thing? If two rowdies outside this House fight on the question of a Bill pending in this House, they can institute a collusive suit in a Court of Law and thus prevent this House from discussing that Bill.

An Honourable Member: Rot.

The Honourable Mr. J. Crerar: I was about to give two instances in point, that is, cases in which legislation was discussed and enacted in the House of Commons where judicial proceedings relative to the matter which formed the subject matter of that legislation were pending. One was the Protection of Person and Property Act, 1881, which was passed when proceedings for treason were actually pending, and another was the Defence of the Realm Act, which was also discussed and enacted at a time when proceedings were pending in respect of treasonable practices.

Mr. President: What are those Acts?

The Honourable Mr. J. Crerar: The first was the Protection of Person and Property Act, 1881 and the second was the Defence of the Realm Act.

Mr. President: Are they both of this Legislature?

The Honourable Mr. J. Crerar: No, both of the Legislature of the United Kingdom.

Mr. A. Rangaswami Iyengar: May I ask, Sir, whether any proceedings involving the same issues were pending in Courts of Law when these Acts were enacted?

Diwan Chaman Lall: Were any prosecution pending when the Defence of the Realm Act was passed?

The Honourable Mr. J. Crerar: I do not wish to delay the House longer. I was submitting that there were two cases in England. I submit, these two cases are precisely in point, and they were enacted at a time when judicial proceedings connected with the matter of this legislation were still pending. But, Sir, the most important point—as I emphasised in my original statement—the most important point, both in regard to the Government and in the interest of the House, as well as having regard to the position of the Chair, is whether, in point of fact, the Chair possesses these powers. We very respectfully submit to you, Sir, that the Chair has not got those powers, and even if it had those powers, they ought not to be exercised in the present case. The matter essentially resolves itself into the question whether the House is willing to consider further the Public Safety Bill, of which they are now duly seized. That is essentially a matter for the decision of the House, and

as I have pointed out, that matter can be most appropriately and conveniently discussed in the normal manner on the motion which, in accordance with the rules and Standing Orders of this House, has been duly placed on the agenda in connection with the Public Safety Bill.

In conclusion, Sir, I would venture to repeat my request that, when you announce your decision, you will, if necessary, give me an opportunity to state further the decision of the Government in the matter.

Mr. President: What about?

The Honourable Mr. J. Crerar: In the light of any ruling you may consider proper to give.

Mr. President: I have already said that I will consider that.

The Honourable Mr. J. Crerar: Can you not state it more expressly, Sir?

Mr. President: How can I, until I know what the ruling will be. I think we might now get on with the other business. Diwan Chaman Lall.

Diwan Chaman Lall: Sir, I was speaking yesterday . . . .

Sir Hari Singh Gour: On a point of order, Sir. I do not know when the President is going to give a ruling on this point. (*Cries of* "Order, order"). I am entitled to be heard on a point of order.

Mr. President: Sir Hari Singh Gour.

Sir Hari Singh Gour: The point I am raising is this. The proceedings of the House may be interrupted at any moment, save during the progress of a division, by a motion proposed on a matter of privilege when a matter has recently arisen, which directly concerns the privileges of the House, and in that case the House will entertain the motion forthwith. My submission is that, as soon as a question relating to the privileges of the House is raised, all other business must give way to that motion and that motion must be debated, discussed and decided upon, and then, and then only, the House will proceed to the normal business. That, I submit, is the real and right Parliamentary procedure, and to that I wished to draw the attention of the Honourable the Leader of the House at eleven o'clock this morning. I ask you, Sir, once more to decide this question first before further progress is made with the normal work of the House. I may point out, Sir, that we have not yet had an opportunity of guiding you as to what is the law on the subject and I respectfully submit . . .

Mr. President: The point of the Honourable Member does not arise in connection with this matter. Diwan Chaman Lall.

THE TRADE DISPUTES BILL—*contd.*

Diwan Chaman Lall (West Punjab: Non-Muhammadan): Sir, I thought Sir Hari Singh Gour, when he got up to speak, was going to raise some point of order in connection with the Trade Disputes Bill. I should have been glad if he had raised a point of order in regard to the Trade Disputes Bill, because he would have saved me the necessity of proceeding with my speech. It seems Sir Hari Singh Gour . . . .

*Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): I rise to a point of order, Sir. I understood the President decided that the matter was closed, but Mr. Chaman Lall is referring to the subject once more.

Mr. President: Diwan Chaman Lall.

Diwan Chaman Lall: The Honourable Member, Sir, has got into a state of terrible excitement . . . .

Sir Hari Singh Gour: I rise to a point of order, Sir. Can any Honourable Member of this House make an attack upon me? (*Honourable Members:* "Order, order.")

Diwan Chaman Lall: I am afraid he does not seem to realise . . . .

Sir Hari Singh Gour: The Honourable Member does not seem to realise that I have got no protection from the Chair.

Mr. President: Will the Honourable Member resume his seat? Diwan Chaman Lall.

Diwan Chaman Lall: His association with Sir John Simon has not been good for him.

Sir Hari Singh Gour: I rise to a point of order. Association with the Swaraj Party has not been good for anybody.

Diwan Chaman Lall: I am going totally to ignore Honourable Members who are prepared to sell their souls, and he is one of them.

Mr. President: Order, order. The Honourable Member has no right to make these remarks. They are unparliamentary. Will the Honourable member withdraw them?

Sir Hari Singh Gour: I want no protection from you, Sir. I can protect myself.

Mr. President: Order, order. Will the Honourable Member resume his seat? Diwan Chaman Lall.

Diwan Chaman Lall: I am exceedingly sorry, Sir. I withdraw that remark.

Mr. President: Will the Honourable Member, Sir Hari Singh Gour, withdraw his remarks?

Sir Hari Singh Gour: What remark?

Mr. President: That he does not get protection from the Chair.

Sir Hari Singh Gour: I have not got the protection.

Honourable Members: Withdraw, withdraw.

(Sir Hari Singh Gour was standing in his seat and went on to speak.)

Mr. President: Will the Honourable Member resume his seat?

Sir Hari Singh Gour: Will the Honourable the President protect me?

Mr. President: Will he resume his seat? (After a pause) Is the Honourable Member prepared to withdraw his remark?

*Speech not corrected by the Honourable Member.

Sir Hari Singh Gour: I am prepared to withdraw the remark if the Honourable Members will not refer any more to me, Sir.

Mr. President: Will the Honourable Member withdraw his remark unconditionally?

Honourable Members: Withdraw, withdraw.

Sir Hari Singh Gour: Very well, Sir, I withdraw the remark.

(The Honourable Member was still standing in his seat.)

Mr. President: Will the Honourable Member resume his seat?

(Sir Hari Singh Gour was still standing in his seat.)

Mr. President: I ask the Honourable Member to resume his seat

Mr. Muhammad Yamin Khan (United Provinces: Nominated Non-Official): Sir, I draw your attention to Standing Order No. 29, sub-order (2), which says, that, "A Member while speaking shall not make a personal charge against a Member". And as I understood my friend Diwan Chaman Lall . . . .

Mr. President: The Honourable Member knows very well the remarks have been withdrawn.

Mr. Muhammad Yamin Khan: Diwan Chaman Lall has not withdrawn that expression, Sir.

Mr. President: He has. Diwan Chaman Lall.

Diwan Chaman Lall: Sir, we were discussing yesterday the Trade Disputes Bill, clause 16; and I drew the attention of the Honourable Member to the effect of clause 16 upon what is known as a strike in any particular industry, and the Honourable Member will recalll the fact that I invited his attention to the fact that a sympathetic strike under the provisions of this clause would be considered to be illegal, and that all sympathetic strikes would, under these circumstances, be declared illegal. Sir, according to clauses (*a*) and (*b*) of clause 16 (1), a strike or a lock-out can be declared illegal if,

> "it has any object other than the furtherance of a trade dispute within the trade or industry in which the strikers or employers locking out are engaged; and is designed or calculated to inflict severe, general and prolonged hardship upon the community and thereby to compel the Government to take or abstain from taking any particular course of action."

It is obvious that, if there is a sympathetic strike, then that strike is not a strike which has the object of furthering a trade dispute within a particular trade or industry in which the strikers are engaged. A sympathetic strike presumes that it is a strike outside, of a body of men who are not engaged in probably the very same industry or trade; and if the consequence of such a strike is that there is a severe, general and prolonged hardship inflicted upon the community and if the Government are compelled thereby to alter their course of action, then that strike is, under this clause, to be declared illegal. That is one set of affairs. Now, let me draw the Honourable Member's attention to a second set of affairs, which would eventuate if this particular proviso is passed. For instance, let me take the case of a strike of workmen. If the workmen go on a sympathetic

[Diwan Chaman Lall.]

strike in respect of other workmen employed in some other trade or industry, then it would be held to be illegal if the effect of their striking is calculated to inflict severe and prolonged hardship upon the community. But it may also be a strike, not only a sympathetic strike of a body of workers not actually engaged in that particular trade or industry, but a strike in the same trade or industry, provided, however, that the objects are not merely the furtherance of a trade dispute, but the furtherance of some other objects as well. I shall give an example of the coal-miners going on strike, not necessarily with the object of getting an eight hours' day, but also with the further object—which is not a matter of a trade dispute—of obtaining the nationalisation of mines. Now, Sir, is the Honourable Member going to penalise a legitimate strike of that nature in a particular trade—not even a sympathetic strike but an ordinary strike—with the object of not only furthering a trade dispute but also with the further object of obtaining the nationalisation of mines? I ask the Honourable Member what he proposes to do? So far, strikes are not illegal, excepting where perhaps local legislation or the Post Office legislation has made such strikes illegal on the ground that they take place in any public utility service. Here, however, we are not considering a public utility service at all; we are considering the case of a strike in an ordinary trade or industry. And for the first time in the history of this country, the Honourable Member is attempting to make a strike illegal, even when the objects of that strike are perfectly legitimate from the trade union point of view, and even when those objects are not those circumscribed within the term, "dispute within a particular trade", but are objects such as those mentioned in the example I just now gave, namely, the nationalisation of the mines. Why should the Honourable Member seek power from this House in order to penalise strikes of that nature which are perfectly legitimate today and perfectly legal, and are considered both from the point of view of the trade union movement and from the moral point of view as absolutely legal? I ask the Honourable Member why he should do it? What justification has he for it? Does he think that the safety of this country and of this Government, or the peace and prosperity of the community depend upon his penalising a strike like that? If he says so, why does he not go further and penalise any ordinary strikes? What is the idea behind all this? Why not penalise all strikes, I ask? Here is a legitimate case which I have pointed out; what has the Honourable Member to say in justification of this clause for penalising strikes of this nature?

The next point I come to, Sir, is this. Let us take another example. Suppose there is a strike of the coal-trimmers and the other workmen who are engaged in the allied trade, namely, Stevedores, also go on strike in order to get better wages for their fellow-workmen. It may be that the coal-trimmers' strike will cause hardship to the community and it is declared illegal, as also the strike of the Stevedores in the allied industry. What is the result? They are declared illegal. Again I ask, what is the justification for the Honourable Member to demand that these powers should be placed in his hands in order to make strikes of this nature illegal. They are all genuine trade union movements, engaged in furthering trade disputes among workmen that belong practically to the same category as those involved in a particular trade, wanting to help their fellow-workmen who

are on strike, in order to get for them certain advantages—why should they be penalised? Why should their strikes be declared illegal? Why should these people be ordered to be sent to prison by the Honourable Member merely because hardship is caused to the community or the Government is being asked to change its course of action?

Now, Sir, let me come to the third point. I want to draw the attention of the Honourable Member to the wording of this clause once again. The wording is:

"A strike shall be illegal which has any object other than the furtherance of a trade dispute."

What does he mean by "any object other than"? I do not know if the Honourable Member has read the debates which took place in the House of Commons on this very phrase-debates, as I said yesterday, Sir, which were prolonged and very bitter—and this very point was raised in those debates. What is the significance of, "any object besides the furtherance of a trade dispute"? How is one to know what the object is—whether the object is in furtherance of a trade dispute or some other object? Can the Honourable Member—I wish the Honourable the Law Member were here—give me any criteria on which he can base a judgment as to whether strikers, who go out on strike, have an object other than the furtherance of a trade dispute? It is mere conjecture; and are you going to base your law upon conjecture? Are you going to pass your law and then leave it to the sweet will of the magistrate who tries the case as to whether a particular strike is or is not in furtherance of a trade dispute or has any object beyond the furtherance of a particular trade dispute? Further, Sir, what is the furtherance of a trade dispute and what is not? What is the other object besides the furtherance of a trade dispute? Has that been defined? Have we got any inkling as to what the intention of the Government of India is with regard to this particular matter? I submit, Sir, that this clause is so vague that it merits summary rejection at the hands of this House. I want to ask the Honourable Member to pause and to analyse this particular phrase for a moment. Suppose there is a strike and one batch of strikers has the object of furthering a trade dispute and has declared that that is its object. I do not know what that may mean—but let us take it for granted that their object is in furtherance of a trade dispute. Suppose there are ten thousand strikers on the whole and five thousand have this object in view to further a trade dispute and the other five thousand have another object. Is the Honourable Member going to declare that strike an illegal strike? Is he going to penalise that particular strike? What is the criterion as to how many workers who go out on strike should have a particular object, and how many should not have a particular object? What is the criterion? Is there a maximum fixed? Suppose ten thousand men go out on strike and 5,001 make a statement that they have a particular object in furtherance of the trade dispute. Who is going to decide whether it is in furtherance of that trade dispute? I do not think—and my Honourable friend will bear me out because he took a great deal of pains in the Select Committee and has studied the question very intimately, and he will agree with me when I say that this particular aspect of the problem was never placed before the Select Committee. These new points that have arisen in regard to the interpretation of this clause are points which should be thrashed out on the

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floor of this House and a satisfactory response obtained from the Honourable Member; and if no satisfactory response can be obtained from the Honourable Member in regard to the interpretation of this clause, then I submit there is one course and only one course open to us and that is, to reject this clause.

Now, Sir, let me come again to the question of the strike. It is said, "If a strike has any object other than the furtherance of a trade dispute". Now, Sir, what is a strike? I want Honourable Members to pay attention to the terms of its definition; and with your permission, Sir, I may refer, because it is relevant to this particular clause, to the definition that appears on page 2 of the Bill:

> " 'strike' means a cessation of work by a body of persons employed in any trade or industry acting in combination, or a concerted refusal or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment."

Imagine the position. The word "strike" has never been defined before in this fashion, except in the Act of 1927—the English Act. How is it defined? What does it mean? Let me explain it to the Honourable Member. Let us take the example of the miners in Great Britain—a million of them who were given lock-out notices and having been given lock-out notices they refused, after the notices had expired, and they went out of work, to come back and they were out for seven and a half months—a million men out of work for 7½ months. If you pass this clause—this definition of strike—what are you doing? You are making illegal their action in not going back to work, even though lock-out notices have been given and there is no legal connection between the employers on the one side and the employees on the other. There is no legal nexus as between the employers and the workers; they are not bound by any legal connection; they are not bound by any economic connection; they have no part or lot in the industry; they are in the same position as dismissed servants; and yet, if you pass this particular definition of "strike", the Honourable Member can come down upon them and say, "Well, here you are doing an illegal thing, and you shall go to prison for a month". I want the Honourable Member to show me how I can get out of this difficulty and he can get out of this difficulty, and how the millions of workers, who are going to be affected by this hasty legislation, are ever likely to get out of this difficulty. Is it not against all canons of jurisprudence that I, who have got no legal status, *qua* my employer, that I who am not bound to him by any agreement, that I, who have accordingly been dismissed by him after notice, and having been dismissed, I, who refuse to go back and seek employment with him, should be penalised merely because of my refusal to go back to work after expiry of notice? And yet according to this definition, the Honourable Member knows that on a concerted refusal on the part of these men who are not legally attached in any sense of the term to the employers, and who are under no legal obligation to the employers, they would be penalised by the Honourable Member if clause 16 is passed. I am keeping in view—and I hope the Honourable Member will bear with me when I say that I am keeping in view the other two parts of clause 16 when I say this—that of these other conditions being fulfilled, namely, hardship inflicted upon the community, and the Government being compelled to alter its course of action. I am taking that for

granted: having fulfilled these conditions, we deal with a set of men who are under no legal obligation to their employers and who refuse to get back to work; and yet they are going to be penalised by the Honourable Member under clause 16.

(At this stage Mr. President vacated the Chair which was taken by Pandit Madan Mohan Malaviya.)

There is no legal relationship subsisting between either the employers or this body of men; they are absolutely free to sell their work wherever they choose, to sell their bodies wherever they choose—they have no souls to sell—and I submit the Honourable Member should not be in a hurry to pass legislation of this kind and that he should consider it carefully before he gives his consent to these wide provisions, which may entail enormous hardship—perhaps unwittingly—upon the labouring classes in this country.

Now, Sir, let me take another portion of this particular clause to show how difficult it will be for the Honourable Member to give us a clear interpretation of the phraseology that has been employed in this clause. The clause runs: "is designed or calculated . . . to compel the Government to take or abstain from taking any particular course of action." What is compulsion? It may be compulsion by the irrefutable march of events. It may be compulsion designed; it may be compulsion that is not designed; let me refer for a moment to an example that was given on the floor of the House of Commons. Now, Sir, when Mr. Sydney Webb was talking about this matter, he said this:

> "But suppose now a certain body of men go out on strike, and the result of that is that Government consider that they have been compelled, or are being compelled, to alter their decision. Then what is the significance of the word 'compelled'? I just want to say one word on that. After all, the word used here is 'compelled'. Is there any big industrial dispute which has taken place during the last 25 years in which the Government has not very quickly intervened between the two disputants? We have asked a special Ministry to undertake that, and naturally in these times of economies. . . . The function of that Ministry is promptly to inquire . . . "

Now, what the Honourable Member here is doing is this. He is setting up a machinery for the settlement of trade disputes, and he has, in the provisions of this Bill, inserted a clause to the effect that if both parties agree to refer the matter to a Court or a Board, then the Government will be obliged to set up a Court or a Board as the case may be; that is to say, it is compelling Government to do a thing that they would not have done otherwise but for the fact that both parties agree. Sir, there is no greater trade unionist in the world than Mr. Sydney Webb from the literary point of view; there is nobody who knows the history of trade unionism better than he does. The objection that I am placing before the Honourable Member is an objection which comes from Mr. Sydney Webb himself. It was on that very occasion, Sir, that the Right Honourable Sir John Simon said that mankind is divided into two classes, those possessed of commonsense and lawyers. (Laughter.) But the Honourable Member belongs to the first category, a gentleman possessed of enormous commonsense,—and I wish to say quite frankly and openly, as I said yesterday, that with regard to his own Department, he has got a very large heart. I want him to pause for a moment and consider the enormous consequences, widespread consequences, of passing this measure in this particular form, and it is for that reason, Sir, that I appealed to him

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yesterday to stay his hand and let us consider this measure over again, and let the public also consider it over again. I have given him three or four reasons as to why the phraseology which is employed in this particular clause should not be acceptable to this House. Let me give him one more example in regard to the word "compel". Suppose the cotton workers strike in a cotton factory, let us say, in Cawnpore or Bombay, and they say that they want to strike against the terrible hardship that is being inflicted upon them because of the lack of humidification in that particular factory, and they say that they want to go on strike in order to compel the Government to bring in legislation in regard to the question of humidification. Would that be covered by clause 16? I submit it would be covered. Why should a perfectly legitimate demand, made by the workers in exercise of their right to make a demand of that nature, be declared to be illegal merely because the phraseology that is employed in this Bill is utterly unsatisfactory, merely because these points have not been really considered by the authorities that are responsible for this Bill in detail, with all their implications. They have merely been borrowed bodily from provisions of this nature which exist in Great Britain, but as far as I have been able to find out, in Great Britain they have not succeeded in getting any definite legal interpretation in regard to the various terms that are employed here, because there are only three cases reported until the end of last year in regard to this matter, and all three of them deal only with the question of intimidation which is not a part of this Bill.

As regards the clauses themselves, I mean with regard to their phraseology, there has been no interpretation. Such has been the confusion, Sir, in Great Britain, that on the floor of the House of Commons the Attorney General gets up and says, that under the clauses of this Bill, almost identical clauses, a sympathetic strike would not be illegal, and the Solicitor General gets up the next day and says that a sympathetic strike is illegal. If such has been the confusion even in the Legal Department of Great Britain where the Attorney General is contradicted by the Solicitor General in regard to the interpretation of a sympathetic strike, what utter confusion will not there be in regard to the interpretation of these clauses here in this country? And if such is the state of affairs, then, I ask the Honourable Member why should he not, in regard to this matter which is not vital to the purposes of the Bill that we are discussing, drop this particular clause for the moment, and if he finds any necessity for it later on and he can prove the necessity for it to me, he can bring it up later on, and I say, Sir, if I am convinced that there is any necessity for it, I shall be the first to support him in bringing forward a measure of this character. But I confess equally frankly, that I do not see any necessity whatsoever for tacking this particular clause on to this Bill at this juncture, merely because probably we have to borrow legislation from Great Britain, and there is some vague fear in the mind of the Government that something terrible may happen if this clause is not passed. Now, let me take another example. Suppose I give notice of a week, and I am engaged on a week's notice, and suppose on the day my notice expires, there is a strike on the railways of the nature contemplated in clause 16. What would be the position of all those men who have come out and whose notice expired on the very day? What would be their position? Because if they refuse to go back to work, their concerted refusal to go back to work will be considered to be a strike, and they will be penalised. Although

they may not have had any intention whatsoever of joining a strike of this nature which is declared to be illegal under clause 16, yet merely because their notices expired on the same day the strike is declared and thereafter they refused, in a concerted manner, to go back to their employers, they are considered as strikers in the strict legal sense according to the phraseology employed in clause 16 and in clause 2. Now, I ask the Honourable Member, is there any justification for it? When a man, even according to him, and even according to the provisions of this measure, is not committing a crime, is not getting out of the bounds of the law, has no intention to get out of it, the law says you are guilty and you shall be proceeded against for having gone on an illegal strike. Is there any safeguard in this Bill to prevent people from being proceeded against in the manner I have described? There is none.

Finally, Sir, it has been urged that this question of the right to strike is of such a nature that, if you take it away, you will merely be enacting legislation which could only be considered to be slave legislation in this country. Now, Sir, if that is the position, then I ask the Honourable Member in all seriousness whether he wishes to be a party to an action of this nature being taken against the working classes in this country. He knows perfectly well the history of the trade union movement in Great Britain. He knows that there was a time when, even a combination of men who refused to work under the Masters' and Servants' Act was declared to be an illegal association. When there was a refusal, they could be proceeded against. He knows that we, on the floor of this House, have had to do away with the Workmen's Breach of Contract Act, which was one of the slave legislations of a very ancient period. We have done away with that, but now, under the provisions of this Bill, we are bringing back again the Workmen's Breach of Contract Act. For, what does it amount to? It amounts to this, that if a man refuses, in concert with his fellowmen, to engage in any particular employment, because he wishes to go on a sympathetic strike to help his fellow workmen and thereby causes hardship to the community in order to compel the Government to alter its decision, then his action will be penalised. That is number one.

Secondly, even though he may have been dismissed or discharged,—his notice may have expired even though he has no legal connection whatsoever with his employer, he is out of his job, yet if there is a concerted refusal on his part to seek employment, even then that action will be considered to be penal. I ask the Honourable Member in all fairness to the working classes, and I am making an appeal to his great sense of humanity—I want to say that out of all Members who sit on the Treasury Benches he has had to do a great deal with the labour movement of this country during his term of office and that he has done a great deal of justice to the views which it has held, and I do not want him, towards the end of his career, to do an injustice of a very serious nature to the working classes. I consider that the action of the Government, in bringing in this penal clause, is tantamount to the gravest injury and harm to the working classes. A man has a right to sell his labour or not to sell his labour as he chooses, just as a moneylender has a right to lend his money to a man or not, just as a bank has a right to loan out its money to whomsoever it pleases. But all the consequences of that that can be predicted are purely civil consequences, and it is wrong, it is unnecessary, it is unjust, it is unreasonable to inflict this grave injury upon the working classes, by making an action, which is purely legitimate, penal and to

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punish all those workers who have every right to do as they like with their labour.

(At this stage Pandit Madan Mohan Malaviya vacated the Chair, which was taken by Mr. Deputy President.)

Mr. N. C. Kelkar (Bombay Central Division: Non-Muhammadan Rural): On a previous occasion I had the misfortune to disagree with my Honourable friend, Diwan Chaman Lall, and to oppose his amendment. I am glad, on the present occasion, I am going to support his amendment, not on the personal appeal which he made to the Honourable Member in charge, but on broad humane grounds.

I do think, Sir, that, in considering this clause of the Bill, you have got to look at it from rather an extensive as well as intensive human vision. I will, first of all, point out that, in dealing with sections 15 and 16, you have got to consider two kinds of strikes. The first category is self-regarding or self-adverting strikes, strikes which are brought about for the advancement of the interests of the people who are themselves concerned in a particular industry. These I call self-regarding or self-adverting strikes. The second category of strikes is non-self-regarding or non-self-adverting strikes, that is to say, strikes intended or entered into, not for the benefit of the people in one particular industry, but in order to help people who are concerned in another trade dispute. Both these kinds of strikes are affected by clauses 15 and 16. Clause 15 has already been disposed of, and I do not wish to comment upon the decision of this House with regard to that clause. I am prepared, for one, to accept that decision, but I am entitled simply to point out that the result of this House passing that clause 15 has been to cripple the worker in respect of one particular kind of force, which he might have legitimately employed in his struggle against the employer. And what is that particular force? Swiftness of action. Clause 15 has now made it penal for a worker to go on strike without notice in certain services. But we all know that, in fighting and warfare, swiftness of action is the essence of success. When two countries are about to be at war, the chances of success lie for that country which takes the earliest action and without giving notice.

An Honourable Member: Not always.

Mr. N. C. Kelkar: Not always, but *primâ facie*. But here, in this case, by passing clause 15, you have crippled the worker in respect of the legitimate use of one kind of force, namely, swiftness of action. Now, here, by clause 16, you are going one step further and crippling him in respect of the use of another force which he might legitimately employ, namely, combination and association with other workers like him. I do assert that this right of association in affairs is a legitimate right, an inherent right in man, unless, of course, the Government choose to take it away from him by law. With regard to the wording of the clause, Diwan Chaman Lall has already pointed out the weakness of that clause in one particular. He laid before this House his difficulty as to the interpretation of the word "compulsion". I am going to point out another difficulty, and I think my view will appeal to the House. That difficulty

is in respect of the words "any action". The words are "to compel the Government to take or abstain from taking any particular course of action." Can any words be broader, or larger, or more comprehensive than that? The words "any action" may include anything, and just to reduce the thing to an absurdity, I have simply to point out that a strike may be designed or calculated to compel Government to take the particular action contemplated in section 3, namely, of making a reference to a Court or Board of Arbitration for the settlement of a trade dispute . . . .

The Honourable Sir Bhupendra Nath Mitra (Member for Industries and Labour): Has the Honourable Member noticed that the words "and thereby" are there, and thereafter that action must be consequential to a severe, general and prolonged hardship.

Mr. N. C. Kelkar: I have not caught what the Honourable Member has said.

The Honourable Sir Bhupendra Nath Mitra: Is it not that between the expressions "to inflict severe, general and prolonged hardship," and, "to compel the Government to take or abstain from taking any particular course of action," are the words "and thereby", so that primarily there must be a severe, general and prolonged hardship?

Mr. N. C. Kelkar: I see the point. There are the words "severe hardship". Certainly. But my point is this, if the action contemplated to be taken is the one mentioned in section 3, namely, reference to a Board of Arbitration for settlement of a trade dispute, even that would become penal. I assume that there is a concerted strike, that there is a big sympathetic strike, that wide discomfort has been caused to people—I quite admit all that, but I proceed further and say that the object of the general strike, or sympathetic strike, has been to draw the attention of the Government to the necessity of taking a particular action, namely, reference of the dispute to a Board of Arbitration. Even that action would be penalised under this clause.

The Honourable Sir Bhupendra Nath Mitra: Except in one single case, where both parties agree, there is no compulsion on Government under the Act to refer a dispute to a Court of Board.

An Honourable Member: It is all the worse.

Mr. N. C. Kelkar: There is no compulsion. But if the object be simply to draw the attention of the Government to the necessity of referring the matter to a Court or Board of Arbitration, is that penal? I have already admitted that severe discomfort has been caused to the public,—I am coming to that later on. But my immediate point is that the words "any action" include also an action of reference of a dispute to a Court of Arbitration. My simple point in this connection is that, just as the word "compulsion" is a very wide word, so also the words "take any action" are very wide words. Of course, there is no help for it at this moment, although I hope the Honourable Member might like to reconsider the wording in that respect.

The next point is about a sympathetic strike, which seems to be aimed at under this particular clause. It is one method of exercising the right of association in public affairs and in economic interests. That inherent

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right has now been taken away by clause 16. The question arises, why should another group of workers be allowed to strike for one kind of group of workers? I give an analogy, and maintain that they should have the right to do that. The analogy is about the right which the Indian Penal Code gives to a man to exercise the right of self-defence. The provisions of the Indian Penal Code about the exercise of the right of self-defence contemplate that a man may proceed to take certain measures, not only to prevent injury to himself, but injury to others as well. By analogy I contend that one group of people employed in a trade are entitled to take measures of self-protection, self-protection in this connection having a wider meaning. I do not think that it has been pointed out by the Honourable Member in charge that sympathetic strikes have been penalised in any other country. I do think—and I say it so long as I am not corrected—that all countries generally allow the right of sympathetic strike, and Diwan Chaman Lall just now pointed out to the existence of that sort of right in England until the Act of 1927 was passed.

My objection to clause 16 is based upon very broad grounds of humanity, and I am going to put it like this. This clause, in my opinion, if I may say so, offends against the elementary laws of chivalry. Now, you may say that I have brought into the discussion of a Bill like this a very big word "chivalry", but, after all, what is chivalry? Chivalry, if you look at the proper meaning of the word, is only protective kindness to the weak. I am not using the word "chivalry" in any flamboyant sense; I am using it in its rudimentary sense, namely, of protective kindness to the weak. Therefore, the question arises whether it would not be legitimate for one group of workers to show chivalry or for the public to show chivalry to people who are in distress and who are weak and therefore deserve protection. If we use chivalry in this sense, then it becomes obvious why we call a certain kind of action towards ladies "chivalry". Proper manners or patronising acts of kindness to ladies are called chivalry, because they are a kind of protective kindness shown to ladies on the ground that, as between the two sexes, the female sex is the weaker sex.

An Honourable Member: It is gallantry.

Mr. N. C. Kelkar: It is chivalry in its elementary sense. My point is, there is the instinct in man to show kindness or patronage to the under dog. The question is, as between the employer and the worker, is there not this relationship as between the upper dog and the under dog? And I suppose I can maintain that the employer presumably, as a rule, is the upper dog, and the worker is the under dog. Therefore, on behalf of this under dog, the human worker, as against the employer who enjoys position and points of advantage, I do claim that he should not be made to forfeit and forego the natural assistance which he is likely to get from other sections of society, and much more so, from his own kindred employed in other trades, the kind of assistance that he must get because he is weak. Therefore this clause, in my opinion, very largely is against the elementary virtue of chivalry. I consider the employer to be strong and the worker I consider to be weak, and therefore he deserves our sympathy. On the side of the employer there are already capital resourcefulness in men and human agency.

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He has also staying power and has got the sympathy and support ordinarily attracted by money power. First of all he has got the capital which the worker has not got. Then he has got resourcefulness in human agency. If the workers go on strike, he can, with his capital, employ another set of workers. Then he has got the staying power. Supposing the mill industry has stopped, he can live on his own. He is not absolutely ruined simply because the mill has stopped work for a certain time. Lastly, he has got sympathy and support which money generally attracts, because in this world, wealthy people generally attract the support of the people. With regard to the employee, he is inherently poor, uneducated and unorganised and has not got the staying power. When therefore you contrast the conditions pertaining to the employer and the employee, you will at once admit that, between the two, the employee is the weaker party, the under dog, and therefore chivalry demands that the public should side with the employee and the worker, and the worker, in his turn, is entitled to appeal to society and get their help.

Now, I come to the question of inconvenience and discomfort. I do admit that, when there is a general strike or sympathetic strike, a certain amount of inconvenience and discomfort is caused to the public, but that is a natural consequence, and the public, to a certain degree, do submit very calmly and quietly and appreciate that inconvenience and discomfort caused by general strikes. Now, among the society there may be certain hard-hearted people also. Reading about the general strike in England, I came across one remark made by people who were compelled to go on foot because the tramways had gone on strike. The man who was going on foot said "You may wear away my shoes and boots, but you can never wear a single corner of my heart". Of course we get people like that in any society, but these are exceptions, and if you take a plebescite in conditions like this, you will find that 80 people out of 100 in society are willing to undergo that inconvenience and discomfort, because that has the effect of attracting the attention of the Government and the powers that be to the particular grievance which has got to be remedied. Now, 80 per cent. of people are likely to sympathise with the worker and the striker, rather than with the employer, because, in the human mind, you will always find this instinct of chivalry or generosity. Even in ordinary games and sports, you will find that that chivalry comes into play. Now, chivalry is mainly directed towards securing equalisation of conditions in a fight. When there is a weak party fighting with a strong party, the instinct of humanity operates in the direction of securing equality of conditions for the weaker party in that fight. And we see that expressed, not only in fights, but in ordinary games and sports as well. In the old world duel, we know that there was equality of conditions secured by the weaker party being allowed to choose his own weapons, and to choose his own ground. That secured the equality of conditions. Even in playing billiards, if there is going to be a game between strong and weak players, the strong player, of his own accord, gives points, because he appreciates that true success is only when there is equality in the game. So, whenever there is a necessity to handicap the stronger party, he is handicapped, and thus the conditions are equalised. When men play cricket against women, they play with the left hand, whereas women play with the right hand, simply because there is the human instinct, the sporting instinct, to secure equal conditions. By all these illustrations I do want to impress upon the mind of this House one thing, namely, that, whenever

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there is a fight between a strong party and a weak party, the human instinct naturally gravitates towards securing the equality of conditions in that fight.

Now, what is the point in this particular case of clause 16? The general strike or the sympathetic strike is a strike which is calculated to draw the attention of the Government, and to put on the side of the weaker party, namely, the worker, the weight of the public sympathy, and thus to equalise conditions. You have, by clause 15, already deprived the weaker party of one factor of potency, and now by clause 16, you are depriving him of another, and thus disturbing the balance or the equality of conditions. If you are to keep the equation proper as between the worker and the employer,—force is equal always to mass multiplied by density and the speed of motion. If I am wrong in my mathematics, I hope somebody will correct me. Force on momentum is the result of these three factors—mass, density and the speed of motion. That is my conclusion. So, in the case of the employer, what is the equation of force or momentum? It is capital, resources, staying power and organisation. These are factors on his side, and the combination of these four factors is the result operating on his side. Now, on the part of the worker, what is the equation? Numbers, swiftness of action, combination, and public sympathy. These four factors go to make up the equation on the side of the worker. Now, if you are really human-minded, and if you have got any sense of justice, you would not disturb these equations. Whereas the employer has his equation undisturbed, you are depriving the worker of that equation on his side, by depriving him of one more factor, namely, public sympathy, which he is entitled to have, because he is the weaker party. On all these grounds, which are based on the sense of humanity, I do say that you are doing a very great wrong to the worker, because you are dealing with him unjustly, showing partiality to the employer and putting a sort of discount upon the worker. Therefore, I support this amendment.

Lieut.-Colonel H. A. J. Gidney (Nominated: Anglo-Indians): Sir, I do not intend to appeal to the Honourable Member on the ground of chivalry, because chivalry and business are incompatible factors; nor shall I emulate my friend, Diwan Chaman Lall, by telling the Honourable Member, that he needs intelligence one day and then appealing to his heart the next day, because I believe the Honourable Member has a sufficient quantity of both head and heart to do justice to the situation. My friend, Diwan Chaman Lall, has discussed this matter in such great detail that he has left one almost bankrupt of new facts. Whether these facts appealed to the Honourable Member during his moments of sleep yesterday or during his moments of wakefulness today, I am not prepared to state, but I have great doubts about clause 16 in my mind, and I desire the Honourable Member to be kind enough to clear that doubt away. My reason for talking on clause 16 is on account of that doubt. If you will look at clause 16 of the Bill, you will find that it is headed by the following words: "Special provision for Illegal Strikes and Lock-outs". That, *ipso facto*, connotes that there are legal strikes also, because, here you are making provision for illegal strikes. I think the Honourable Member will agree with me when I say that all strikes, including sympathetic strikes, are legal, and that no strikes are illegal. It therefore seems to me that the

purpose of this clause is to convert a legal strike into an illegal one, and this conversion is effected by the introduction of sub-clauses (*a*) and (*b*) into clause 16. Now, Sir, I am not prepared to discuss on the floor of this House, whether this conversion is necessary or not, but I believe clause 16 is taken from the English Trade Disputes Bill. In this connection, one has to consider the fact that conditions of labour in India are different to those in England. Be that as it may, the question of including sub-clause (*a*) I can understand, but sub-clause (*b*) is full of doubt to me. I shall not weary the House by repeating the arguments of others on this point, but I wish to ask the Honourable Member if he will, if necessary with the aid of the Law Member, give this House the legal definition, or a definition sufficient to clear the doubts in my mind, of the words "severe, general and prolonged", and in doing so, might I ask the Honourable Member his opinion on the following case? Supposing a certain railway, a department of labour with which I am very familiar, decided to demonstrate its displeasure of, or disagreement with, say a certain objectionable act on the part of the Government or against a certain order issued by the Agent of that Railway, or say against the coming to India of the Simon Commission, and it decided to call a general strike for one day only, will that be considered to be falling within the purview of this clause and be interpreted as causing a severe, general and prolonged hardship? My friend behind me says, "Yes". We will imagine that this objectionable order is not removed by the Agent and the men again go out on strike for one day the next week and repeat this for many weeks. Will you say that it is a strike and that it comes under sub-clause (*b*) of clause 16? Has it caused severe, general and prolonged hardship?

The Honourable Sir Bhupendra Nath Mitra: It is a question of fact.

Lieut.-Colonel H. A. J. Gidney: How? I should like you to clear that point. Now, supposing I resorted to the Welsh system of causing a railway strike, or to be more correct, creating such a complete disorganisation of work as to cause cessation of work on a railway. Some years ago in Wales serious disorganisation of the railway system was caused, not by calling a strike, but by "working to rules", and it was done in this way. A Station Master has a number of duties to perform about half an hour before an important train passes his station. He goes to the distant signal and examines it. The signal is a mile away, it takes him an hour to go there and back and when he comes back he finds that he has detained the train a whole hour. This is repeated at all the important stations on the Railway, with the result that the entire system is disorganised and work ceases. In other words the effect is similar to a strike. Does this come under sub-clause (*b*) of clause 16?

The Honourable Sir Bhupendra Nath Mitra: My answer is that the instance the Honourable Member is referring to relates to the same industry, and that it cannot, therefore, come under any circumstances, within the mischief of clause 16.

Lieut.-Colonel H. A. J. Gidney: I have not finished my statement and the Honourable Member is a little bit premature.

Supposing along with that railway there is another group of employees connected with coal mines close by, and they take action in sympathy

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with the original strikers of the railway or, say, the Loco. department of the Railway strike in sympathy with the traffic branch, will they be held to be strikers, as per sub-clause (*b*) of clause 16?

These are the likely instances which I desire to be explained. Such instances, I submit, are not capable of the interpretation of sub-clause (*b*) and weaken its potency, and Government must explain the position. My vote will depend on the explanation the Honourable Member gives, for it was with that object that I joined the debate.

Pandit Thakur Das Bhargava (Ambala Division: Non-Muhammadan): Sir, yesterday I submitted to the House that, unless and until a person is possessed of a particular intention and knowledge obnoxious to the interests of the society or any individual he could not be held guilty of an offence. Yesterday we were dealing with clause 15, and those who came within the mischief of that clause were persons who were responsible for their own acts. Today, while dealing with this clause, we are dealing with a class of people who need not be responsible for the consequences of their own acts. This clause, in a manner, deals with vicarious responsibility. It has been said time and again that a person has got an absolute right, an inherent right, to withdraw his labour, and if he does that, there is no moral or legal principle which will make him guilty.

The law relating to general strikes is based upon two assumptions, No. 1 that an individual withdraws labour sympathetically in a trade or industry, whose disputes do not concern him, and secondly, that such a system of labour is designed or calculated with a particular motive. Now, Sir, the general law regarding vicarious liability does proceed from the assumption that the person on whom this responsibility is sought to be foisted has got a particular knowledge or a particular intention.

I will refer you, in this connection, to the analogous provisions of section 145 and section 149 of the Indian Penal Code. In these two sections, which deal with unlawful assemblies, the principle involved is the one which is involved in cases relating to general strikes. A perusal of those sections will establish that, unless and until it can be said about a man that he knew that particular assembly was unlawful, or that he knew that particular consequence was to result from the acts of those with whom he was in association, he cannot be held guilty. Section 145 runs thus:

"Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished, etc."

And similarly, Sir, section 149 lays down:

"If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."

Now, Sir, clause 17 deals with the penal consequences, and according to this clause any person who declares, instigates, incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out, which

is illegal under the provisions of section 16, he shall be punishable, etc. This clause 17 does not contemplate that the person who is held to be guilty is in any way affected with the knowledge that that strike is designed or calculated to bring any hardship, or with the knowledge that any strike has the object which is mentioned in clause 16(*a*).

Now, Sir, it is clear from the general law and the implications of the provisions of clause 16, that, if there is a strike in furtherance of a trade dispute within a particular trade or industry, any number of workmen can take part in the strike. They can go to the limit of inflicting any "severe, general and prolonged hardship upon the community," even though it may "compel the Government to take or abstain from taking any particular course of action." And if any person sympathetically-minded wants to help those persons, he can help the strikers in all possible manners. Even the workmen in other trades and industries are competent to help those who have struck work in all possible ways except one way, that is by a cessation of work.

May I humbly inquire when the law gives such a freedom to all workmen to give all sorts of help to their fellow workmen, why this particular kind of activity, cessation of work in another industry, has been regarded as a kind of activity which is sought by the law to be prohibited, and similarly when workmen in one trade or industry can behave in a manner which will bring the normal condition of the community to a standstill and paralyze its normal life, what justification is there for prohibiting cessation of work in other industries when the result is the same?

Now, Sir, in every ordinary penal law, you will find that it is the act which attracts certain consequences. You condemn a man, you punish a man because he is guilty of this act or that act, whereas in this clause you find that, if the consequences are of a particular nature, independently of the justifiability of that act, those who commit that act which is calculated to lead to, without its actually resulting in, particular consequences are held guilty. Now, Sir, my main objection to this clause 16 is that this will enact a law which will work really a very great hardship upon the community. As a matter of fact, those persons who have anything to do with designing or calculating the infliction of any hardship, if there be any such people, will always remain behind the scenes and you will never be able to catch them. Now, Sir, who are those who lead strikes? It is not the ordinary man. Those who design or calculate to inflict these hardships, which are mentioned in clause (*b*), are not the rank and file, and are not even people who lead the labourers. There might be one or two men in whose head the whole design may be founded, unless such assumed design is a pure concoction or friction and that design or that calculation may never be known to those who instigate any strike or take part in a strike. I want to know, why these people, who do not entertain or know this design, should be regarded as guilty, for the guilt of those who have a design or who calculated in a particular manner. Even if this particular consequence does not enter into the calculation of an ordinary man, he is held guilty under clause 17. I maintain that it is not fair and just to make him vicariously guilty for the design and intention of another person. Sir, this is a legal objection and I expect the Honourable Member in charge of the Bill will kindly take the trouble of explaining the illegal provisions of clauses 16 and 17 in the light of this objection.

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I submitted sometime ago, and I have to repeat again, that when a Government takes it into its head to provide for contingencies which are very remote, it always commits a mistake. It will be said that if the contingency is so remote, if the thing is not likely to happen, what does the country lose and what do the labourers lose if these provisions are enacted? Sir, it rests on those who want to get powers under these provisions, to justify their action. They must explain what necessity has arisen that the law of England relating to general strikes should be copied in India. In the opinions that have come from the various Governments, the House will find that no Government has said that there is any near prospect of any general strike of the nature contemplated in clause 16. Anyhow it is clear that it makes an absolutely innocent activity of a workman penal. The workman, as a member of the community, has got the same right as any other person possesses of helping his fellow workmen to get relief and justice, and this clause takes away that right from him.

Sir, these provisions are quite new, even to the law of England, and I do not think that there are any authorities on the point which have considered the vague and indefinite words used in this section. In the first place, as has been pointed out, the word "severe" has not been defined. What will be a severe hardship, I want to know and who will decide this? When a case goes to Court, the Court will be called upon to decide whether the particular hardship designed or calculated was to be a severe, general and prolonged hardship and that design and calculation then shall have to be imputed to that man in the rank and file, who never knew that any hardship could be caused. Let me illustrate. Suppose today a strike takes place, which involves about 100 men. Then, there is a sympathetic strike next day, which involves 500 men, and a week after, there is another strike. Now, severe and general hardship may be ascribable to the last or third strike. What would happen to these workmen who stopped on the second occasion on the assumption that it could never have entered their calculation that the hardship due to their strike could be severe at all or a prolonged one, or a general one? As the strike proceeds, more and more labourers come in and more and more organisations come in and it is the totality of the effect from which it may not be difficult for a Court of Law ultimately to judge that the effect is that the hardship has been caused, but for those who struck for the first time, or the second time, or the third time, when the effect was not so great, it is impossible to judge beforehand what other organisations are coming into the field, and what other labourers are joining in the movement, so that it is physically impossible to predict, or to foretell, what workmen and what organisations will ultimately join the strike, and whether the strike will cause hardship, which is contemplated in clause 16(*b*). If the whole situation cannot be foreseen at least at the inception stages of a general strike, it becomes impossible for any person to commit this offence, knowingly and deliberately. This clause would make people guilty when they never intended to commit any offence, because, instead of considering the act, this clause considers the consequences. Then, again, Sir, these words "within the trade or industry" are themselves of very doubtful importance. I do not know whether the different departments in the same trade will not be taken to constitute separate trades

by themselves. Spinning and weaving are different branches of the same trade.

Lieut.-Colonel H. A. J. Gidney: Traffic joins in sympathy with loco.

Pandit Thakur Das Bhargava: My Honourable friend suggests traffic and loco. There may be other examples. I know that in clause 3 (*a*) and (*b*) an attempt has been made to define particular trades and interests, and the extent to which labourers can strike sympathetically. But I maintain that these two illustrations, or these two examples given in (*a*) and (*b*) do not cover up all the possible contingencies that may arise.

Now, Sir, it is not only the penal consequences that will follow in the case of a man for an innocent act of his, *i.e.*, the withdrawal of labour from a particular industry; but the civil consequences also will follow. In clause 16 (2) you find the words that:

"It shall be illegal to commence or continue or to apply any sums in direct furtherance or support of any such illegal strike or lock-out."

Now, as I have submitted, if a strike in its inception is lawful, and subsequently it becomes unlawful as a result of certain circumstances, I do not know how that strike, which was originally lawful, could be declared illegal from the very commencement, purely from the accident of its continuance, as we find according to the words contained in clause 16 (2). Further, this clause makes an encroachment of a very dangerous character into the civil law of India. We all know that a person is liable to damages if he behaves in a particular manner to the detriment of another person. But in this case, a person is liable to damages, not because of his own act, which is innocent, but because, by a fiction of law, that act, although innocent, is fraught with penal consequences. I want to know, Sir, on what principle of law it is justifiable to say that a person, who does not want to work, should be made to pay damages. If his act is innocent and yet it is capable of being penalised in this manner, as contemplated in clause 16 (2), and also clause 18, it is abundantly clear that these provisions of clause 16 (2) and clause 18 are unjustifiable and mischievous.

From all these standpoints, Sir, I submit that legally speaking, this clause 16, and also clauses 17 and 18, contain provisions of a most dangerous character and encroach upon the domain of sacred individual rights. Perhaps, if there is a peculiar situation in the country, I can understand those individual rights may be sacrificed in cases of emergency, in order to safeguard the rights of the community as a whole. But there is absolutely no justification for taking away individual rights for a contingency which nobody can foresee. A perusal of clause (3) of the Bill would establish that it is not in the power of any one party to compel the Government to refer disputes to a Court of Inquiry or to a Board of Conciliation. Now, Sir, it may happen that a strike takes place, which involves, say, 5,000 workmen, and the Government sleep over the matter; they do not take it into their heads to refer the trade dispute to a Board of Inquiry or to a Conciliation Board. What would happen then? The situation will grow from bad to worse and will continue to develop, and the Government will sit tight over the matter, a situation to the development of which the Government will be a party, by not taking any action

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and by its supineness, with the result that it will end in penalising innocent people. If there is a trade dispute, the extent of which will inflict great hardship upon a community, even then it is not obligatory upon the Government to refer the matter to a Court . . .

Mr. Deputy President: Does the Honourable Member want to speak long on this motion? If we cannot finish this debate today, then I think we had better resume it tomorrow.

The Assembly then adjourned till Eleven of the Clock on Saturday, the 6th April, 1929.