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PROCEEDINGS
OF
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LAWS AND REGULATIONS

VOL. LVII

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PROCEEDINGS OF THE INDIAN LEGISLATIVE COUNCIL ASSEMBLED UNDER THE PROVISIONS OF THE GOVERNMENT OF INDIA ACT, 1915.
(5 & 6 Geo. V, Ch. 61.)

The Council met at the Council Chamber, Imperial Secretariat, Delhi, on Monday, the 10th February, 1919.

PRESENT:

His Excellency BARON CHELMSFORD, P.C., G.M.S.I., G.M.I.E., G.C.M.G., G.C.B.E., Viceroy and Governor General, *presiding*, and 53 Members, of whom 46 were Additional Members.

INDIAN CRIMINAL LAW (AMENDMENT) BILL.

The Hon'ble Sir William Vincent:—"My Lord, before I introduce the Bill which will come under discussion to-day,—the Indian Criminal Law (Amendment) Bill,—I should like to take the opportunity of answering a question which was put to me at the last meeting of this Council. In the course of the debate on the Criminal Law (Emergency Powers) Bill, which is based, as is the present Bill, on the recommendations of the Rowlatt Committee, some Members of this Council expressed the view that they might have been able to support the measure if it had been of a temporary character, and towards the close of the debate I was specifically asked by my Hon'ble friend Mr. Banerjea what the intentions of Government in this matter were. It was clear that no single member of the Government could take the responsibility of answering immediately a question of that moment. Since then, however, I have ascertained the views of the Government of India and am authorised to state that the Government of India are willing that this Bill should remain in force for a period of three years only after the conclusion of peace. We believe that there is a precedent for this course in

the procedure adopted in the United Kingdom at one time over the Irish Coercion Act. In that case the Act was put in force for three years at first, but I ought to say it had to be extended afterwards for another two years. We have that precedent for the course which we propose to pursue, and Hon'ble Members are so convinced that the Reforms will change the whole attitude of this revolutionary party, that I think that in deference to their views we ought to meet them to this extent.

"Turning to the Bill which is before the Council to-day, I do not think I need waste much time in explaining the reasons for introducing it, as they are the same as those which I mentioned on the connected Bill on Friday. All the provisions of the Bill are based on the recommendations of the Rowlatt Report, and it remains for me only to describe, as shortly as I can, the provisions of the different clauses. The Bill, I should say, differs from the Bill I introduced last week, in that it is intended to make permanent changes in the ordinary criminal law of the land. The first clause deals with the possession of a seditious document and is based on Rule 25-A. of the Defence of India Rules, which rule has been in force for some time. It provides that any person who has in his possession a seditious document intending, that is, with the deliberate intention, that the same shall be published or circulated shall, unless he proves that he had such document in his possession for a lawful purpose, be punishable with imprisonment which may extend to two years.

"Clause 3 of the Bill merely authorises a District Magistrate to direct a preliminary inquiry to be made by the police in the case of certain offences, a prosecution in which cannot at present be launched without the sanction of the Local Government. In practice, it is often necessary to have such inquiries made before the Local Government can decide as to whether a prosecution should be launched or not.

"Clause 4 of the Bill makes a modification in section 343 of the Code of Criminal Procedure. That section prohibits the offer of any promise or threat or inducement to any accused person to make a statement save to the extent provided specifically in sections 337 and 338 in the case of conditional pardons. It has been found that this provision of the law interferes with a promise of protection to an accused person who is willing to give King's evidence, but is really afraid of violence, indeed often of being murdered, by his confederates; the intention is to enable Government to offer such protection to a person who is prepared to give evidence if protected.

"Clause 5 of the Bill introduces another new section into the Code of Criminal Procedure, and provides that where a person is accused of an offence against the State, that is, an offence under Chapter VI of the Indian Penal Code, evidence of the fact that he has previously been convicted of a similar offence, or that he habitually and voluntarily associates with any person convicted of such an offence, shall be admissible against him.

"There is only one other clause of the Bill to which I need refer, clause 6. This provides that when a man has been convicted of an offence against the State, for instance of waging war against the King, or conspiring to wage war against the King, then the Court may order him to execute a bond for his good behaviour for a term not exceeding two years after the expiration of his sentence. The new section is analogous to the present section 565. Further, where the Court has made such an order, the Local Government is, if the security is not furnished, authorised to impose restrictions upon the person so convicted in order to restrain his criminal activities after release from jail. The restrictions are that he shall not enter, reside or remain in any area specified, shall reside or remain in any area, shall abstain from addressing public meetings for the furtherance or discussion of any subject likely to cause disturbance or public excitement, or of any political subject, or for the distribution of any writing or printed matter relating to any such subject.

"The details of this Bill, my Lord, are in my judgment more a matter for Select Committee than for examination in this Council. At the same time, it is my duty to explain, as briefly as I can to the Council, what the proposed changes in the law are. With these words I introduce the Bill and move that it be

referred to a Select Committee consisting of the Hon'ble Sir George Lowndes, the Hon'ble Pandit Madan Mohan Malaviya, the Hon'ble Mr. Shafi, the Hon'ble Mr. Muddiman, the Hon'ble Mr. Sastri, the Hon'ble Nawab Saiyad Nawab Ali Chaudhuri, the Hon'ble Mr. Kincaid, the Hon'ble Mr. Khaparde, the Hon'ble Mr. Banerjea, the Hon'ble Mr. Fagan, the Hon'ble Mr. Patel, the Hon'ble Sir Verney Lovett, the Hon'ble Sir James DuBoulay, the Hon'ble Mr. Emerson and myself, with instructions to report on or before the 6th March 1919."

The Hon'ble Mr. V. J. Patel:—"My Lord, I beg to move— 11-11 A.M.

'That the consideration of this Bill be deferred till six months have elapsed after the expiry of the term of office of this Legislative Council.'

My Lord, at the outset I must say we are thankful to your Excellency's Government for the announcement that this measure and the measure we were discussing the other day are to be brought on the Statute-book for a period of three years only . . . ."

The Hon'ble Sir William Vincent:—"May I explain, my Lord, I did not say this in regard to the present Bill, which it is intended to bring permanently on the Statute-book."

The Hon'ble Mr. V. J. Patel:—"It is then clear that, so far as this measure is concerned, it is intended to be a permanent addition to the law of the land; we are at present not concerned with the other measure at all. The grounds on which I supported my amendment on the first Bill are the grounds on which I support this amendment. Let us see what the provisions of this measure are. Clause 2 of the Bill proposes to insert a new section in the Indian Penal Code, section 124-B, making the possession of a seditious document penal. The law of sedition in this country, to put it briefly, is this, the Indian Penal Code was drafted in the thirties of the last century; there was no section on sedition inserted then, nor was it inserted when it was revised in 1860; it was for the first time in 1871 that the section on sedition found a place in the Indian Penal Code, but then it was distinctly laid down that the publication of the words itself, unless it was followed by actual disturbance in the country, would not be an offence. Then again in 1898, further alteration was made, and it was laid down that mere publication of the objectionable words would be an offence. It is now proposed, my Lord, not to be satisfied with merely publication of the words but the possession of any document containing objectionable words shall also be penalised. The next stage perhaps would be to penalise a person who thinks sedition. Then again hitherto sedition was restricted to words directed against His Majesty or the Government established by law in this country. But it is now intended to go further and to provide that a person would be punished if the words are directed not only against His Majesty, or the Government by the law established, in this country, but also against officials generally or any individual officer, meaning thereby that if, for instance, an accused person who has been acquitted by a Magistrate were to contribute an article in a newspaper detailing the circumstances under which he was being treated and the manner in which he was treated whilst in police custody by a particular policeman, and if these words are likely to directly or indirectly affect what is described in the section as the use of criminal force against that policeman . . . ."

The Hon'ble Sir George Lowndes:—"The Hon'ble Member is not correct; it says instigating the use of criminal force."

The Hon'ble Mr. V. J. Patel:—"If these words directly or indirectly are likely to instigate the use of criminal force against that policeman who is alleged to have maltreated that accused person, and if that newspaper comes into possession in the ordinary course of some person who was a subscriber, that subscriber is likely to be hauled up before a Magistrate, and, unless he proves that he came by that document in a lawful manner, he will have to suffer the consequences. That, shortly put, is the section which we are considering.

The trial will not necessarily be in the ordinary Court of law, because we have, in considering this Bill, to take into consideration the provisions of the other Bill under which the Governor General in Council under the provisions of that law, will be empowered to declare that in any particular area crimes under Chapter VI have been prevailing including this crime also. On such a declaration being made, the trial of the individual concerned will take place not in the ordinary Courts of law, but the Local Government will be empowered to make certain orders and then an investigating authority will be appointed and so forth. It is not that the Bill is to be considered by itself, but this Bill has to be considered along with the provisions of Chapters II and III of the other Bill. Now, coming to clause 5, we find that the fact that the person accused has previously been convicted of an offence under Chapter VI of the India Penal Code will be a relevant fact, and the fact that he has been associating with another person who has been convicted of any offence under Chapter VI shall also be a relevant fact. Hitherto previous conviction is admissible in evidence in two cases. Firstly, if the accused gives evidence that he is of good character, the prosecution is entitled to adduce evidence of previous conviction to show that he is a man of bad character; and, secondly, where on a trial of certain offences a man is actually proved to be guilty, and it is necessary for the prosecution to convince the Magistrate that a heavier sentence should be given to him, then in that case previous conviction is under certain circumstances admitted in evidence. It is now proposed to go further and to provide that in cases under Chapter VI previous conviction shall be a relevent fact for all purposes. The section does not stop there, my Lord . . . ."

The Hon'ble Sir George Lowndes :—" My Lord, I think I ought again to intervene. The Hon'ble Member is no doubt quite unintentionally misrepresenting the law in this connection. He has failed to refer to the most important class of cases in which a previous conviction is relevant. I refer to section 14 of the Evidence Act, which says that 'where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.' It is upon the lines of this section that the clause has been introduced into this Bill. My Hon'ble friend, I am sure, did not intend to omit section 14 of the Evidence Act from consideration in this discussion."

The Hon'ble Mr. V. J. Patel :—" Will my Hon'ble friend say whether a previous conviction has ever been admitted in evidence except under the two circumstances I just now mentioned ? "

The Hon'ble Sir George Lowndes :—" Certainly; in numberless cases. The commonest case of all is with reference to the passing of false coin.

The Hon'ble Mr. V. J. Patel :—" I beg your pardon. But this section goes much further than that. By this clause in cases under Chapter VI evidence of previous conviction of any offence under that Chapter is made admissible under any circumstances. Not only that, but the clause goes further and says 'the fact of association of an accused person with a person convicted under Chapter VI will also be a relevant fact.' Well, my Lord, so far as that is concerned, it is a most dangerous innovation in the law of evidence. I believe several people are in this as well as in every other country associating themselves with people who have been convicted of sedition, and if on their trial under Chapter VI, the fact of their association with a person convicted of sedition is to be admitted as evidence, I do not know where it would lead us to.

" Then with regard to the last clause, clause 6. It is proposed to call upon an accused person convicted of any offence under Chapter VI 'to furnish security, and if he does not do so, he is to be called upon or rather he is to be directed not to enter, reside or remain in any area specified in the order; he is also to be called upon to reside or remain in any area in British India so specified';

and he is further to be directed 'to abstain from addressing public meetings for the furtherance or discussion of any subject likely to cause disturbance or public excitement, or of any political subject, or for the distribution of any writing or printed matter relating to any subject'.

"My Lord, hitherto, so far as I have been able to understand it, the policy of the law has been to deal leniently with the first offenders. In fact, section 562 of the Criminal Procedure Code makes provision that certain offenders shall be warned and discharged on the first occasion. It is only when a man is a habitual offender, when a man is convicted more than once, in that case, under certain circumstances, he is to be called upon to furnish security. That policy is proposed to be reversed. By this clause the first offender is to be dealt with not leniently but harshly. On a person being convicted of sedition, he is to be called upon to furnish security, and if he does not furnish security, he is called upon to do so many things. Now, that is reversing the present policy of the law in this respect. In fact, section 565A is proposed to be inserted under the existing heading 'Previously convicted offenders' and not under 'first offenders.' The heading in the Criminal Procedure Code is 'previously convicted offenders,' and under that heading this section is proposed to be introduced. But the most dangerous part of the section, is that which deals with public meetings. A man who is convicted of sedition, is not only called upon to furnish security, but when he fails to do it, he should abstain from addressing any public meeting connected with any political subject, however innocent it may be, whether it causes or is likely to cause any excitement in the public mind or not. That indeed is a very dangerous part of this clause. I do not think I need take up the time of the Council, but I do think that any attempt to pass this measure will create great agitation, and I trust that your Excellency's Government will carefully consider the situation."

The Hon'ble Mr. Surendra Nath Banerjea:—"My Lord, I beg to move the amendment* which stands against my name But before I do so, Your Excellency will permit me to recognise on my behalf as well as on behalf of my colleagues here . . . ." 11-29 A.M.

His Excellency the President:—"Mr. Banerjea, you cannot move your amendment until this amendment has been disposed of. I know there is an amendment down in your name, but you must wait till the present amendment is disposed of."

The Hon'ble Mr. Surendra Nath Banerjea:—"I was following the liberty that was given to me on the last occason . . . ."

His Excellency the President:—"Yes, to mention it and to say that you will not make another speech."

The Hon'ble Mr. Surendra Nath Banerjea:—"It will be a very short one. I will not take up more than five or six minutes if your Excellency will grant that permission."

His Excellency the President:—"Yes."

The Hon'ble Mr. Surendra Nath Banerjea:—"My Lord, before I address myself to the amendment which stands against my name, I desire to acknowledge on my behalf as well as on behalf of my colleagues here, the fact, and gratefully acknowledge the fact, that the Government has shown some deference to public opinion by making the Bill which has been referred to the Select Committee temporary. But, my Lord, our objections to the Bill,

* That in the motion for referring the Bill to Select Committee, for the words 'on or before the 6th of March, 1919.' the words 'within six weeks after the passing in Parliament of the Reform Bill to be introduced to give effect to the Montagu-Chelmsford Report' be substituted.'

however, will remain and our attitude will be largely determined by the form and the shape in which the Bill emerges from the Select Committee.

"My Lord, I can only hope that the Government, acting in the spirit which it has displayed to-day, will recognise the clear pronouncement of public opinion and modify the Bill which has already been referred to Select Committee and this one in such a way as to remove the alarm and anxiety which these Bills have created in the public mind. I desire to put one question to my Hon'ble friend the Home Member, and I hope he will be able to give me a specific answer in regard to it, that is, whether he will not consent to put in the Bill a specific statement to the effect that it is to be confined only to anarchical and revolutionary crimes. My Lord, I trust that this Bill, the one which we are just considering, will be only temporary, or that it will be altogether dropped. There are only two matters to which I desire to call your Excellency's attention, namely, clause 2 of the Bill which says :—

'Whoever has in his possession any seditious document intending that the same shall be published or circulated shall, unless he proves that he had such document in his possession for a lawful purpose, be punishable, etc.'

"My Lord, this is a new and, I say, a dangerous innovation in the present law. We are all here familiar with the conditions of village life. Village life is often apt to be disturbed by party and sectarian feuds. An enemy of mine may take it into his head to send me by post a seditious leaflet, and it may remain on my table and immediately he may give information to the police. The police search my house and find this leaflet on my table. I had not paid the slightest attention to the matter, but the burden of proof is thrown on me. My Lord, it will be a serious matter, a grave cause for anxiety, if a provision of this kind is enacted into law.

"My Lord, there is one other matter to which I desire to refer; and that is section 5, clause (*b*) :—

'That such person has habitually and voluntarily associated with any person who has been convicted of an offence under that Chapter.'

Now in the case of the joint-family, it is a very serious matter. Take the case of a brother who has been convicted and comes to his family, lives with his relations; are they to be liable to the provisions of this section? My Lord, this is a matter which may well create uneasiness in the public mind. There are other matters to which my friend has called attention. I do think that a Bill of this kind is necessary; I do hope and trust that it will be made temporary or altogether dropped. I prefer the latter. It is a Bill which has excited alarm and apprehension in the public mind, and it seems to me that it does not stand upon the same footing as the other Bill, and therefore I appeal to your Excellency's Government to drop it altogether."

11-34 A.M. **The Hon'ble Dr. Tej Bahadur Sapru** :—"My Lord, in speaking to the motion which has been put before the Council by my Hon'ble friend, Mr. Patel, I do not wish to cover the same ground as was covered by myself and many of my colleagues on the last occasion when the first Bill was moved by the Hon'ble the Home Member. My Lord, so far as questions of policy or expediency are concerned, they were dealt with at great length by many of us on the last occasion, and I would submit respectfully that the same considerations apply to this Bill as do to the last Bill, but there are just one or two matters with special reference to this Bill which I should like to place before your Lordship and before the Hon'ble Council. My Lord, after the announcement which has just been made by the Hon'ble the Home Member, we find that the first Bill is going to be of a temporary character. Now, so far as this Bill is concerned, it is going to be, at any rate that is what has just been stated by the Hon'ble the Home Member, to be a permanent addition to the Statute-book. But, my Lord, quite apart from that distinction, I will beg the Council to consider whether this Bill is not one which requires to be treated on a footing of its own. My Lord, the leading feature of this Bill is that it creates

an absolutely new offence which is to be found in clause 2 of this Bill. It says :—

'Whoever has in his possession any seditious document intending that the same shall be published or circulated shall, unless he proves that he had such document in his possession for a lawful purpose, be punishable with imprisonment, which may extend to two years, or with fine or with both.'

Now there are two points which arise with regard to this clause. In the first place, it makes it penal to possess a seditious document. In the next place, it casts the burden of proving that the possession was for a lawful purpose upon the accused. Now, my Lord, I do not think that any one of us, howsoever high his position may be, would be safe from molestation under the provisions of this section. I venture to submit, my Lord, that not even the Hon'ble the Home Member would be safe. Every day he has got to deal with seditious documents, and I have found him bringing seditious documents to this Council to read to us and warn us against. If there is some enterprising policeman somewhere about this Council Chamber, my Lord, he can make himself immortal in the history of this country by laying hands on the Home Member, and then it will be for Sir William to call your Lordship and every one of us in evidence to show that he was holding these documents for a lawful purpose. Of course we shall be prepared to swear that he was holding them for a lawful purpose, but until that is proved, the presumption will be that the Hon'ble Sir William Vincent was holding those documents for an unlawful purpose. My Lord, I ask you to imagine a position like that. Therefore, my Lord, I submit that this is a most vital and a most far-reaching change, and I will beg your Lordship and your Lordship's Government to consider whether it is wise to rush a measure like this through without giving the country sufficient time to consider its consequences. Where is the hurry for a measure like this? Why not circulate it among the Local Governments? Why not invite criticism from Judges of the High Court? Why not invite criticism from the public? My Lord, I would submit that the least that the Government can do is, that they should republish this Bill and circulate it among the Local Governments and the High Courts and invite public opinion freely. I do not think this Bill stands on the same footing as the former Bill does. My Lord, the last Bill was intended to cope with certain emergencies which, it is urged, have arisen or which may arise in the near future, and it was considered desirable from the point of view of the State that there should be a more speedy and a more summary procedure available to Courts of law or to other bodies in dealing with cases of that character. My Lord, those considerations do not apply to a Bill like this. Here you are making a permanent addition to the Statute-book and creating a new offence. I think the country is entitled to ask your Lordship to give it time to consider the consequences of a measure like this.

"My Lord, I will also refer to one other important circumstance which is common to both these Bills. In his speech on the last occasion, the Hon'ble Sir William Vincent, if I remember him rightly,—I speak subject to correction by him—told us that it was not the intention of the Government to strike at political movements, that it was really intended to grapple with anarchical or revolutionary movement.

"Well, my Lord, if that be so, why not make it clear in the preamble, which, as the lawyers say, is the key to an Act? My Lord, the preamble to this Bill runs as follows :—

'Whereas it is expedient to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, in order to deal more effectively with certain acts dangerous to the State.'

"My Lord, I would much rather that you were more definite about those certain acts which are dangerous to the State in your view and said plainly that those acts really are acts of an anarchical or revolutionary character. That will enable the Courts of law in any case to interpret this Bill in the manner in which it should be interpreted.

"My Lord, I do not wish to take up the time of the Council unnecessarily by referring to clauses 5 and 6, which have been fully dealt with by my

Hon'ble friend, Mr. Patel, and my Hon'ble friend Mr. Banerjea; but I do say that these are novel provisions of very far-reaching consequences, and they require very careful consideration. In fact, the more one considers them, the more is one inclined to think that the Bill has been conceived in a hurry, although it may be that it is the result of the recommendations of the Rowlatt Committee.

"My Lord, on these grounds, I will strongly support the motion of my friend the Hon'ble Mr. Patel and urge upon your Lordship and your Lordship's Government out of deference to public opinion in the whole country which has been very much agitated on this question, to republish this Bill at least, if you are not prepared to drop it as I would like you very much to do."

11-42 A.M. **The Hon'ble the Raja of Kanika**:—"My Lord, the Bill before us seeks to create a new offence and to introduce some peculiar innovations in the administration of criminal law. Its main provisions cannot be reconciled with the basic principle of modern jurisprudence. It is therefore that I view this Bill with grave misgivings. It has always been an accepted principle of law that the State should punish only those acts which are criminal in themselves. I venture to think that the mere possession of a seditious document should not be an offence in itself. Even if the possession be coupled with an intention to publish it, I think the State would not necessarily be justified in punishing the possessor. Suppose, my Lord, in an unguarded moment, when one's feelings have been deeply stirred, one writes a strong invective against the State with a view to publication. When calm returns, he realises his folly and seeks to destroy it. But in the meantime somebody has informed the Criminal Investigation Department, who launch a prosecution under the new law, that can only end in a conviction. The law, in other words, would punish a passing idea in a man's mind which does no harm to anybody at all. That would be a sure way to turn a loyal citizen into an enemy of the State.

"Again the protection of the innocent is a duty of the State, not less sacred than the punishment of the wrong-doer. It is therefore an accepted principle of law that the prosecution must prove a charge to the hilt before an accused person can be convicted of it. It is often impossible to prove a negative, and so the burden of proof has been wisely laid on the prosecution. It is difficult to conceive how it could be otherwise. But, my Lord, this Bill has openly violated even this fundamental rule, in providing for the insertion in the Penal Code of the proposed section 124-B. No one would be safe from its wide operation. As Mr. Banerjea has said, somebody sends a bit of seditious paper to another by post and drops an anonymous letter to the Criminal Investigation Department. The postman's visit is followed by another from the Criminal Investigation Department. And then a prosecution followed by a conviction would be a matter of course. How would the accused person be able to prove that he had 'a lawful purpose' when possessing the document? An innovation like this is bold in conception but dangerous in operation.

"I leave to my lawyer friends the discussion of details, and only wish to add that I regret I cannot lend my support to the motion before us."

11-45 A.M. **The Hon'ble Mr. Kamini Kumar Chanda**:—"My Lord, I would like to say just two words on this occasion. In the first place, I thank the Hon'ble the Home Member for the announcement he has made this morning. I thank him not so much for the concession itself, but for the fact that it shows that Government is responsive.

"My Lord, I associate myself with the suggestion that has been made by the Hon'ble Mr. Banerjea and the Hon'ble Dr. Sapru that it ought to be made to appear in the measure that it is only anarchical crimes that are aimed at and will be covered by it. I say, so, my Lord, for a particular reason. There

is, unfortunately, an impression gaining ground in the country—I know it is absolutely unfounded but there is a suspicion—that the object of this measure is to put down political agitation. That was put forward by one of the speakers at the public meeting that was held in Madras the other day. It was said there that the measure of reform that would be granted to the country will fall far short of the expectations of the country, and there would be agitation, and it was with a view to put that down that this section was introduced at this moment, otherwise there would be no necessity for a measure like this when the Hon'ble the Home Member stated the other day that there had been so much improvement in the situation to-day that the Government of Bengal felt able to release more than 1,000 young men who had been detained, more than two-thirds of the total number who were proceeded against. Therefore, it was clear that there was no necessity for such a law on that ground. But, if it is put in black and white, in clear terms in that measure that it is only anarchical crimes which will come under the purview of that Act, I think it will go a long way in allaying suspicion.

"My Lord, so far as the present Bill is concerned, which we are discussing to-day, I shall not repeat the arguments which I stated the other day on which I oppose both these Bills, or in fact any repressive legislation at this moment. I shall, with the leave of the Council, just like to put before it one piece of documentary evidence which has come into my possession since I spoke last. My Lord, I received a copy of a letter that one of the prisoners in the Andamans, who, I believe, was one of the principal accused in the Benares Conspiracy Case, sent through the jail authorities, and I am told that the jail authorities deleted 46 lines from that letter. It is dated the 27th of October last. It deals with many matters which are domestic concerns. I shall not trouble the Council by reading the whole of it, but I shall just read one extract from it. I ought to have said that the original letter has been sent, I am informed by a responsible person, to a high official, but my informant guarantees the authenticity of the copy which has been given to me and the Council can take it from me that it is correct. This is what the young man writes to his brothers:—

'I have another request to make to you and this is about our future. One of us, Mr. Savarkar, has submitted a petition to the Government of India praying for a general amnesty for all the political prisoners including exiles.

'He sent a similar petition a few years ago to His Excellency Lord Hardinge, and he got the reply from His Excellency Lord Hardinge that the amnesty was not possible under the then circumstances. But the circumstances have changed when India is going to have substantial : ...' some word is omitted here probably 'share' 'in its own government as a first step towards the final self-government. Under these circumstances, Mr. Savarkar submitted another petition and he has got the reply that his petition is under consideration.'

Then I leave out one portion.

'We are supposed to be revolutionaries, and so we have been punished; but when it is the declared policy of the British Government to grant self-government to India within a limited period, the work of revolutionaries is finished. None wants revolution for revolution's sake, and when India gets all the opportunity to develop itself in all its capacities as a nation, her sons will not plunge in fire and accept all the hardships and sufferings that necessarily follow this path. For who is there to accept suffering for suffering's sake; who is there to accept prison and gallows for their own sake?.'

"I submit, my Lord, that with all the evidence which I placed before the Council the other day, this letter goes a long way to show that there is no necessity for any repressive legislation at this moment. There is no allegation; nobody says or can say or point to any crime in the country that shows that at the present moment there is any revolutionary activity.

"My Lord, I will now turn to the Bill itself. It is a short one and contains only 5 or 6 clauses. The more salient features of it have already been dealt with by my Hon'ble friends Mr. Patel and Dr. Sapru. I would just like to point out, my Lord, that the Bill marks a further and perhaps final step in the process of expansion, or shall, I say, evolution of the criminal liability of the people of this country for sedition. We all know that in the Indian Penal Code, as it was passed in 1860, two years after the suppression of the Mutiny,

there was no provision against sedition. I think my Hon'ble friend Mr. Patel was a little inaccurate when he said there was nothing in the draft Code. I believe there was some provision in the draft Code, but when the Code was passed, it was not there. At any rate, for ten years there was no provision about sedition in the Penal Code; but in 1870, the then Law Member, Sir James Fitz James Stephen, by Act XXVII of 1870, introduced a provision which has now become 124 A. But, my Lord, he then stated distinctly on behalf of the Government—I will read out the passage from his speech—

'Nothing could be further from the wish of the Government of India than to check in the least degree any criticism of their measures, however severe and hostile—nay, however, disingenuous, unfair and ill-informed it might be. So long as the writer or speaker neither directly nor indirectly suggested or intended to produce the use of force, he did not fall within this section.'

So, in the words of the then Law Member, it was necessary absolutely to prove not only that the words were intended to provoke hatred against the Government, but meant to incite the use of force.

"My Lord, 28 years later, in 1898, this law was again amended. I do not complain of the amendment, but I complain of the manner in which this assurance which was given by Sir James Fitz James Stephen was whittled down, ignored. In introducing the new Bill, the then Law Member, Mr. Chalmers, said this on 25th November, 1898:—

'It is alleged that in the new section 124A, we are altering and extending the existing law under the existing section, section 124A. This criticism is mainly based on some remarks made by Sir James Fitz James Stephen, when introducing the Act of 1870. I agree that it might be inferred from some passages in his speech that he considered an appeal to force to be an element in seditious utterances. But it is a familiar rule of law that proceedings in the Legislature cannot be resorted to to interpret an Act.'

"My Lord, if I allude to this circumstance it is for the unfortunate fact that we find every now and again, that whenever a concession is made or an assurance given to the people of this country, the next moment it is attempted to take away the concession or to whittle down the assurance. But what have we in this case? Sir James Fitz James Stephen in this Council on behalf of the Government of India made a statement that to complete the offence there should be incitement and an appeal to force. But what did Mr. Chalmers say? 'It might be inferred from certain passages in his speech.' Is that a fair statement of the speech, just quoted, of Sir James Fitz James Stephen? In the second place, it is quite true that in accordance with a decision of the Privy Council references to the proceedings of the Council are not allowed in interpreting any Act. But is this Council a Court of law? Is it not the very function of this Council to look into and to decide and consider the policy of any law? Of course there would be nothing wrong if Mr. Chalmers had said 'It was the policy of 1870 to lay it down that unless there is an appeal to force the offence will not be complete; but we are going to revise that policy.' But Mr. Chalmers tries to go behind that. That is what I complain of. That is what I am afraid the Hon'ble Sir William Vincent did the other day. My Hon'ble friend Pandit Malaviya pointed out that when the Defence of India Act was passed, there was an assurance given by Sir Reginald Craddock that it was a war measure, and that after the war it would automatically expire. But it was not the war merely which induced the Government to introduce that measure. Side by side with the war—there was in existence—it was proved there was a revolutionary movement; and it was in consequence of these two facts—in consequence of the war and the existence of a revolutionary party—that that law was passed. Still, the then Home Member gave us an assurance that when the war would be over, this law would expire . . . . .

The Hon'ble Sir William Vincent:—"So it will."

The Hon'ble Mr. Kamini Kumar Chanda:—"But the Hon'ble the Home Member did not say anything about the revolutionary party.

What are you going to do to-day? You are going to perpetuate the law in another form, and when the Hon'ble Pandit Malaviya raises the question, the Hon'ble the Home Member gives no satisfactory answer, but says this Council has the power to pass the law. Nobody denies that. This Council can indeed pass any law; but the question is, whether in view of the assurance given to us it was right and proper to introduce this legislation. To come back to the Bill. In 1898, you still had to prove those two facts,—you had to prove that there was an intention to bring Her Majesty's Government into contempt. I will quote the words of the section:—

"brings or attempts to bring into hatred or contempt, or excites or attempts to excite, disaffection towards Her Majesty or the Government established by law in British India"

You had to prove intention, you had to prove publication. These two facts had to be proved. That was in 1898. But the Bill which we are asked to pass in this Council to-day ignores both these two considerations. It is not necessary to prove publication, and it is not necessary to prove the object. The object might be quite honest, but if the document is found in my house, if it is considered to come within the meaning of this section, then I am guilty.

"Never mind what my object is: I am guilty even if I do not publish it: Not only that, my Lord. In 1870 as well as in 1898 this offence was confined to utterances against the Government only, but in the present Bill we go further: Even an ordinary policeman becomes raised to the status of Government: Even anything which might incite to criminal force against a constable becomes a State offence. Suppose a policeman comes into my house and attempts to levy blackmail or extort money and I advise that he be held by the neck and turned out, that would bring me under the new section. That is my complaint that you are extending dangerously the law in this country.

"There is another step which was referred to by the Hon'ble Mr. Patel, namely, are you going to enact a law for thinking sedition? Well, I wish to point out that there is still another stage in the process: a man might not only think but might dream of sedition: In that event will the Hon'ble the Home Member attempt to put down not only thinking but dreaming also? I think, my Lord, this section is very dangerously wide, and as my Hon'ble friend Dr. Sapru has pointed out, nobody would be safe, no, not even the Hon'ble the Home Member, under the strict interpretation of the Law. It is absolutely new; it is not known in any country: I respectfully invite the Hon'ble the Law Member to tell this Council whether there is such a law in any country in the world. It is very necessary that this should be completely modified if not absolutely abandoned.

"I shall refer to two other provisions in the Bill. Under clause 3 a new section is inserted in the Criminal Procedure Code, that is to say, a District Magistrate or the Chief Presidency Magistrate may, notwithstanding anything contained in those sections or in any other part of this Code, order a preliminary inquiry by a police-officer not below the rank of an Inspector. Now, we know that this Bill is based on the recommendations of the Rowlatt Committee. But, my Lord, I speak subject to correction, I find that they do not go so far. If we read the last sentence in the Statement of Objects and Reasons, which is quoted from paragraph 186 of the Report, we find it is said 'It has been suggested to us that the powers should extend to Superintendents and even Inspectors of Police. But we cannot endorse this.' In spite of that recommendation we find in the Bill, it is stated that District Magistrates might order an inquiry by even an Inspector of Police.

"The other provision which I need refer to is clause 5, about criminal association, and the Hon'ble Mr. Banerjea's speech amply illustrates the dangers which are likely to accrue from this clause.

"For all these reasons, my Lord, I respectfully support the amendment moved by the Hon'ble Mr. Patel."

12-1 P.M. **The Hon'ble Mr. G. S. Khaparde:**—"It is said, my Lord, that possession is nine points of law. This possession is at any rate enough to prove a man guilty very successfully any where. The section that occurred to me on reading this section was the section dealing with persons found in possession of stolen property. There it is set out that when a man is found in possession of stolen property, he is not guilty unless he knows that it is stolen property. A man may be innocent in possession of stolen property; a servant may have stolen it; he may have exposed it for sale in the market, and going there I may purchase it without knowing that it is stolen. In that case the law says a man is not to be punished unless he knows that the property is stolen. But here mere possession of a seditious document is punishable; the knowledge of the person as to whether it is seditious or not is made apparently unimportant. This, I think, is very difficult and, if your Excellency will permit me to say so, rather dangerous. Sedition is a very difficult crime to define. In fact I have read some text books which say that sedition is so difficult to define that the best that can be said is that you can say or write what you please if any thirteen persons in England or nine persons in India will approve of it. It is not seditious, and if those thirteen or nine do not approve of it, then it is seditious. So this crime of sedition is very very difficult to define: specially this portion which has the words 'instigates or is likely to instigate.' How is a man to know that it is likely to instigate? It will depend upon the personal equation of each person. I may think that this will not instigate or is not likely to instigate, and if the jury take the other view or, as in India, there are not always juries to try, the presiding Judge says it is likely to instigate, there is an end of the matter. So this offence has been found to be very difficult to define. In the case of stolen property it has to be proved; the knowledge has to be brought home to the man, either by inference or by positive evidence, that he knows the property is stolen before he can be convicted. But in this case it is not necessary that the possessor should know that a document is seditious, and it is difficult to know this. As an example of it I may say that the District Magistrate of Poona thought that a certain speech was seditious and was likely to incite people to commit crime or something of the kind, and then the High Court said, 'No, this is merely legitimate criticism; there is nothing more in it.' Now, we come to this, that a person does not know and very likely will not know, because everybody, or at any rate I suppose the majority of mankind, read their own thoughts into the papers they read; the innocent man will look upon it as innocent, whereas a policeman might look into it and say 'Oh, there is a great deal more in it than appears on the surface,' and so on. Taking these two things together, I think that this clause 2 of the present Bill makes an advance which is rather dangerous.

"Clause 5 of the Bill to me appears to go against all probabilities. Under that the fact that a person has been convicted previously of an offence is said to be relevant under Chapter VI of the Indian Penal Code; that is to say, if a man committed crime A, therefore it is very likely that he committed crime B, and by the same process of reasoning one could say that he committed all the offences in the Indian Penal Code. Ordinarily, it is believed, that when a man has committed an offence and it is brought home to him and he is punished, then the offence has been wiped out; he has endured the punishment and the presumption is that he has come out of jail a wiser man, a more law-abiding man than he was before and so on. But here notwithstanding that the man may have undergone the sentence, the stigma still taints him, and because at one time in his life he committed an offence it is held probable that he committed another. The sub-section carries it a great deal further; it says 'you may not have committed the offence, but your friend with whom you associate committed this offence. Therefore it is very likely that you will commit this offence.' This reminds me of the old stories in which, if a man committed a crime, his whole family was ordered to be punished for it. As we read in our ancient books, there was a Brahmin whose wife a cobra bit and thereupon he vowed to kill every creeping animal on earth. This Bill, like the Bill which we

discussed on Friday last, carries us back to the old law of vicarious punishment. He may be a member of a family or he may be a member of a club; other people may associate with him and for one who is guilty of an offence others must suffer. I think that section 6 really defeats itself. What is the end of punishment? The end of punishment is that a man may improve. You punish a person in order that, after he has endured punishment, he may become a better citizen and in order that he may not break the law again. But this section defeats the purpose for which it is enacted. You say he shall do certain things and he shall not do certain things; there are restrictions, judicial and otherwise; his place of residence is notified, he is watched by the police, he is known to everybody; what is he to do? There is nothing for him to do but to swell the ranks of the criminals. This law really defeats the purpose of all criminal enactments. Taking all these facts together and looking at the matter in this way, I cannot help thinking that when the Reforms come in what will happen will be this; they will be celebrated by illuminations. In Rome, they granted a triumphal entry to armies after victory; they, I suppose, marched past and the hero came last in great pomp, but in the chariot of the hero there was always a slave, and his business was to tell the hero that he was a mere man. I suppose the object was to prevent the hero from being overjoyed; I do not know what the object was, but there used to be a slave in the chariot. When the Reforms come there will be these two slaves, this Bill and its sister Bill, and the object will be a warning to this effect, 'take care, you do not do this or that or the other'. That will reduce the joy derived from the situation. I submit, my Lord, that this is a dangerous Bill, and I whole-heartedly support the amendment proposed by the Hon'ble Mr. Patel."

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, with reference to the statement made by the Hon'ble the Home Member, to which other Hon'ble Members have also referred, I will, with your Lordship's permission, make just one observation. The Hon'ble the Home Member has told us that the Government have decided to limit the duration of the Bill which was referred to a Select Committee the other day, to a period of three years. This is a fact on which the Government have to be congratulated, but I hope that the Government will further consider the matter and see their way to withdraw this Bill altogether. The statement which has been made by the Hon'ble Sir William Vincent that this will be a temporary measure..... 12-13 P.M.

His Excellency the President:—"Order, order. The Hon'ble Member cannot debate the procedure in regard to the other Bill on this Bill."

The Hon'ble Pandit Madan Mohan Malaviya:—"Thank you, my Lord, I did not intend to do so. I was referring to it merely to the extent to which it was referred to by the Hon'ble Mr. Banerjea. My point was that the Seditious Meetings Act was passed in 1907 as a temporary measure, but it was made permanent in 1911; that is a fact I wished to bring to your Excellency's notice as showing a difficulty in the way of our agreeing to the Bill, even as a temporary measure, and I hope the Government will take note of it and consider it. My Lord, with regard to this Bill now before us, I would draw attention to what your Excellency and your colleague, the Right Hon'ble the Secretary of State, said in your Report, it will facilitate discussion on the Bill before the Council. This is what is said in paragraph 150 of your Report:—

> 'There exists a small revolutionary party deluded by hatred of British rule and desire for the elimination of the Englishman into the belief that the path to independence or constitutional liberty lies through anarchical crime. Now it may be that such persons will see for themselves the wisdom of abandoning methods which are as futile as criminal; though if they do not, the powers of the law are, or can be made, sufficient for the maintenance of order.'

Now, my Lord, I submit that, in pursuance of this wise advice, the Government might yet withhold its hand from the Bill before the Council. There is no

occasion for hurry. Your Lordship and your colleague rightly hoped that men who were violent, who were misguided might be diverted from crime and see the futility of such acts, and that when a better atmosphere had been created, it would be possible for us to deal with these matters with a greater chance of arriving at correct conclusions. My Lord, in so far as this particular Bill is concerned, the request comes not to legislate in a hurry, if anything with greater force, because here it is proposed to make a permanent alteration in the Statute-book, and the alteration proposed is of a very novel and dangerous character as several speakers have pointed out. In the Statement of Objects and Reasons, there is a quotation from the Rowlatt Committee's Report which says, 'In the first place, we think that a permanent enactment on the lines of Rule 25A. under the Defence of India Act is required. That rule provides for the punishment of persons having prohibited documents . . . . in their possession or control with . . . intent to publish or circulate them.' Now, my Lord, the Defence of India Act was admittedly a war measure. When under that measure the Government found it necessary to prohibit the possession of certain documents, there was one very important guarantee and that was that the documents, the possession of which was regarded as criminal, were proclaimed and notified. Then everybody was expected to know what the document was, and it was easy for people to avoid these documents. The Bill before the Council does not define what a seditious document is except in very general terms, and every individual is expected to decide whether a document is seditious or not. Everybody knows that it is not unoften difficult to decide whether a document is seditious or not; even the Courts have differed on this point. Mr. Khaparde referred to one instance, it is probably the one to which I referred the other day. A District Magistrate arrived at the conclusion that a certain speech was seditious; the High Court corrected him and told him that it was not seditious. We also remember the cases that were considered in the Calcutta High Court in relation to the Press Act. We must not ignore the difficulty of arriving at a conclusion as to whether a document is seditious or not. It is rather hard, it is unfair, if I may say so without disrespect, to the ordinary citizen that the mere possession of a document which may be interpreted as seditious should be made penal. And, my Lord, I would ask the Government to bear in mind who are the classes of persons who are likely to fall victims to this law. They are the youthful students. Seditious documents are circulated among these poor students. If the Bill is passed, they will be expected to judge whether these documents are to be regarded as instigating the use of criminal force against any individual. Are they likely to find it easier than trained Judges to judge that the document is of a seditious character, and that it should be avoided like poison? I say not, and I apprehend that innocent students will fall victims to this very comprehensive provision of the law.

"Then, my Lord, there are paper boys selling papers and books in streets in Calcutta, Bombay and other places. A man for his own purposes wants these boys to sell or distribute documents which may come within the definition of seditious documents, and he puts them into their hands. The poor boys do not know what the documents are, and they go about selling the documents. When they are hauled up, they must prove that they possessed them for a lawful purpose. But the purpose, namely, the selling or distributing of the document could not be lawful, and the poor boys would find it very hard under this section to defend themselves. The remedy which the Bill seeks to provide against the circulation of seditious literature is not the right remedy. I would much rather that the circulation of seditious literature went unchecked among a few than that a large number of persons should be exposed to the danger of annoyance and injustice. We all agree that it is a very reasonable desire to restrict the circulation of such papers as much as possible, and to punish the offenders, so far as it could be done. But a better means should be found for doing so than the one that has been proposed. Besides, it has often happened, as some Hon'ble Members have pointed out, that seditious papers have been sent in by those who want to circulate

them by the mail to persons who do not want to have anything to do with them. During the last few years, since 1906 or 1907, a number of seditious papers have come to many of us. Many times we have sent them on to the Magistrate or to the Chief Secretary to Government; at times we may have thrown them aside, without noticing their contents fully. Do you expect a man who gets a large dâk, which some of us have the good or bad fortune of receiving, to read every document he may receive to see if it is of an objectionable character? If such a document is allowed to lie in his office or somebody picks it up, the mere possession of that document will expose him to a prosecution and punishment. My Lord, the proposed law goes much beyond what is reasonable. I submit that there should be some other means considered and adopted by which the circulation of seditious literature should be checked. We should try to enlist the co-operation of schoolmasters and teachers and parents of boys in this work. We should do so by adopting measures which will have public sympathy and support, and not by passing a drastic legislation, by the votes of official Members, which antagonises public feeling. A disregard of public feeling is the last course which should be adopted by a Government anxious to promote peace and contentment among the people which can only be done by enlisting public sympathy. I submit, therefore, that some other measure should be considered and introduced, and that the present proposal should be dropped.

"Then, my Lord, the provision in section 4 regarding a promise of protection to an accused person again is a matter which requires consideration. The proviso reads: 'Provided that a promise of protection to an accused person against criminal force or any promise properly incidental to a promise of such protection, shall not be deemed to be the use of influence within the meaning of the section, namely section 343 of the Criminal Procedure Code.'

Now the Committee say in their Report :—

> 'We think, however, that no harm can be done by amending section 343 of the Criminal Procedure Code.'

That is a very mild way of putting it 'no harm can be done.' They say 'we do not think that it is necessary to alter the section at all. Such a promise as is referred to is only an assurance that he will get what he would be entitled to in any case.' If so, why enact this provision in the Bill to make it legal that such a promise of protection may be made? It is feared that protection like that may go beyond what may be safe and right, and that it may lead some persons to wrongly implicate others or give testimony which may not be of the right character, which may not be truthful and just.

"Then, my Lord, section 5 of the Bill again is very wide and very dangerous. Here, my Lord, it is proposed to enact that 'On the trial of an offence under Chapter VI of the Indian Penal Code, the following facts shall be relevant, namely—

> (*a*) that the person accused has previously been convicted of an offence under that Chapter, and
>
> (*b*) that such person has habitually and voluntarily associated with any person who has been convicted of an offence under that Chapter.'

"Now, my Lord, I want the Government to realise what this would mean. There may be a person who has been convicted of one of the offences mentioned in Chapter VI of the Penal Code, say of having made a seditious speech or of having published an article which is held to be seditious. Then every person who may habitually and voluntarily associate with such a person is to be penalised. Therefore, he is to be treated as a moral leper in society, people are not to go near him. You will thus create a class of men who will be condemned to isolation. These men will stand by themselves; association with them will be penalised. A feeling of bitterness will thus be fostered and perpetuated in their minds, which is certainly not likely to promote peace and contentment. If it is shown that the man has again been guilty of a similar offence, he will be punished for it. But a provision like the one proposed is unjust and is likely to operate to the prejudice of the peace and contentment which

you want to promote. Let us now look at section 6 relating to an order for security on conviction for an offence under Chapter VI of the Penal Code. Punishments in this country are unconscionably heavy in many cases. Punishments in this country compare very unfavourably with sentences passed in other countries for similar crimes Now if you are going to add to a sentence which a Court may inflict upon a particular person by a provision of the kind proposed, you are proceeding in a wrong way. The Court will pass such a sentence upon a man found to be guilty as it thinks that it should. After that sentence has been undergone by the unfortunate man, let him have a chance of behaving better; let him have an opportunity of avoiding doing that which brought him into trouble. After he has suffered the punishment which was inflicted on him, give him a clean slate to write upon. Let him have a fresh start in life and breathe free.

"My Lord, a further provision in the same section says that, if a person who may be ordered to give security fails to do so, he shall have to notify his residence and any change of residence, and that in such a case he may be shut up by order of the Local Government in certain places and may be prevented from discussing any political subject. All this is calculated to create a feeling of bitterness, to create an atmosphere of non-contentment, and, I submit, that it is not right that this should be so. Let us wait. We are sure that the reforms are coming. The times have changed and will change further when the reforms have come. Of course no one can say that there shall be no anarchical or revolutionary crime after that. We can rightly hope that there will not be. But if there is, as your Lordship and Mr. Montagu have pointed out in your Report, the law is sufficient, and if it is not sufficient, when the need is found, legislation could be undertaken to meet it. For all these reasons I oppose the motion that the Bill be referred to a Select Committee.

"I request the Government to drop this measure for the present or, at any rate, to postpone it, in order that the matter may be taken up and considered in a better atmosphere. I hope the Government will consider this and deal with this Bill in a larger spirit than it did with the previous Bill which we discussed the other day.

"There is only one other matter to which I would invite attention. At page 28, paragraph 35 of their Report, the Rowlatt Committee say:—

'Lastly, we have had placed before us a number of statements. In some cases these have been made by approvers, who have been willing to give evidence, but in most cases they were made by persons, in custody, who are not so disposed. There are a very few statements and those only as to particular incidents, made by police agents and members of the public. The great mass of the statements are by persons in custody other than approvers, and as to these we must offer some comment and explanation. Unfortunately, with few exceptions, we have felt bound to treat these statements as confidential'.

"My Lord, later on in the paragraph they point out how they were hampered by this fact.

'The above considerations have hampered us considerably in fortifying, by way of reasoning upon evidence disclosed upon the face of this Report, the conclusions at which we have arrived. They have robbed us of the power to cite particular deponents by name, to set forth the circumstances of the making of the statement, to discuss his means of knowledge and the corroboration which he receives from independent statements or ascertained facts.'

"Now I submit, my Lord, that if these statements are not placed before the general public, they should, at any rate, be available to the Members of this Council who have to vote upon the Bills passed here, and I made the request when speaking on the other Bill that these papers may be supplied to Members of this Council. Finally, I submit that the ordinary procedure which is prescribed for dealing with Bills should be followed in the case of this Bill, namely, that the motion to-day should be limited to the introduction of the Bill, that the Hon'ble the Home Member should drop the latter part of the proposal, namely, that it should be referred to a Select Committee, and that the Bill should be circulated for opinions; that when these have been obtained, the Bill should be taken up at the next meeting of the Council in Simla, and the question of referring it to a Select Committee may then be decided".

The Hon'ble Rao Bahadur B. N. Sarma:—"My Lord, I heartily join the other Hon'ble Members, who have congratulated the Government for being responsive to public opinion in the matter of the Emergency Powers Bill. I only hope that at the Select Committee stage it will be possible so to modify the Bill as to obtain the general approval of the public at large. 12-30 P.M.

"Now coming to this Bill, my Lord, I only wish to add a few remarks to what have fallen already from Hon'ble Members on this side of the Council. I think, taking the first section, it is widely enlarging the scope of Chapter VI of the Indian Penal Code. Hon'ble Members will see that at present under Chapter VI it is only the assaulting or threatening to assault certain august members of His Majesty's Government, the Viceroy, Members of Council and so on, with a view to prevent them from exercising their functions, that is made an offence of State. Now sedition has been defined of course generally in the next section, and the Government have wisely seen their way to limit the operation of that clause by confining it only to such documents as instigate the use of criminal force. I understand and appreciate therefore the limitation imposed by this clause in the definition of seditious document. But, my Lord, the danger is that, in trying to protect honest police-officers in the discharge of their duty, the Government have so enlarged the definition of a seditious document and so enlarged the scope of Chapter VI of the Indian Penal Code as to bring within the meaning of the word 'sedition' a new class of offence altogether. For instance, the section says 'that any person who publishes a document which instigates directly or indirectly, or is likely to instigate the use of criminal force against His Majesty or the Government established by law in British India, or against public servants generally or any class of public servants or any individual public servant,' will be considered guilty of publishing a seditious document. But supposing a public servant has a private quarrel and persons aggrieved by the conduct of that public servant write to one another asking whether it would be advisable to give a sound thrashing to that public servant, not in relation to the discharge of his public duty, not with a view to commit any offence under Chapter VI of the Indian Penal Code, but for a different purpose altogether. Well a document of that description would certainly be a seditious document within the meaning of clause 2, although nothing may be done in pursuance of the communication. I therefore respectfully submit that, in trying to protect police-officers and others who, in the arduous discharge of their public duties, expose themselves to imminent risk, in trying to protect them, the Government have so widely enlarged the scope of the section as to make it perfectly dangerous. Therefore, I respectfully submit that it would be impossible for this Council to accept that definition of a seditious document. I think, therefore, that there should be a certain restriction to cases instigating the use of criminal force for the purpose of committing any offence under Chapter VI of the Indian Penal Code, and that might perhaps meet the situation to a certain extent. Then the other observation I would make, my Lord, is this. We have in the Explosive Substances Act made the possession of an explosive substance an offence under certain circumstances, but it is there indicated that it is only the making of explosive substances, or knowingly having in possession or control such explosive substances as to give rise to a reasonable suspicion that it is not for a lawful object, would be an offence, unless the person accused can show that he made it or had it in his possession for a lawful purpose. The words used in dealing with the Explosive Substances Act are much more elastic for the benefit of the accused person than the words employed in this clause. Here the possession of a document, I take it, would be an offence only if it was intended that it should be published or circulated. The more possession would not be any offence whatsoever. If it was with an intent to publish or circulate it, unless it be for a lawful purpose, it might be an offence. But then you throw the onus on the wrong individual in establishing the offence which is created by this section. You do not say that where the intention to publish or circulate is proved affirmatively by the prosecution. In order to escape from the charge the man has to

prove that the publication or circulation is intended for a lawful purpose. The onus is not thrown for that purpose upon the accused person, but as I take it, the offence sought to be created by this section makes such possession by itself penal, unless the man can prove a lawful purpose. If it is not so I hope it will be made clear. As it stands there is a grave danger of mere possession itself being a presumptive evidence of guilt under this Chapter. I hope therefore that section 2 will be so modified, if the section is ever to be placed upon the Statute-book (which I see no reason to endorse), as not to create a new kind of crime enlarging the scope of the word sedition, and further safeguarding the presumption of innocence at least to the extent provided in the case of the Explosive Substances Act.

"Then I have only one or two remarks to make with reference to clause 4. With reference to this clause I certainly see that the promise of protection itself should not render any statement made by the person inadmissible, but the question would be as to whether an offer of money, a pension or a gratuity in case a person is injured or in case he is killed, a pension to his family, would come within section 4. That is a matter of doubt. If it is intended that a person should be offered a pension or gratuity under such circumstances there is grave danger, I submit, in enlarging the scope of the present law. I do not think the Rowlatt Committee intended to enlarge the scope of the present law. Of course they say to make the present law clearer would be a perfectly innocuous proceeding and might lead to the clearing up of various doubts and difficulties which are felt in the actual administration of the law as it stands.

"Then, my Lord, I entirely associate myself with the observations made by Hon'ble Members with regard to clause 510-A. It would be absolutely dangerous to enact that a person who has been unfortunately convicted of an offence under section 4 should be boycotted. I do not see there is much danger in the case of the undivided family, because I do not think it will be voluntary association, it will be an involuntary association within the meaning of the clause; members of the family have naturally to associate with other members of the family. But apart from that, I think there is a grave danger in this boycott movement being inaugurated under Government auspices, because, as has been pointed out, it would render the convicts desperate, and it might lead to more harmful consequences than can at present be imagined.

"Then turning to the last clause, I am doubtful as to what was meant by the scope of this clause. If a person gives security as he may be directed to do by the Court which convicts him, is he still to be asked by the Government not to publish, not to do this or not to do that as is provided for in clause 6. The Rowlatt Committee does not seem to contemplate that at all. It is only in case he is not able to furnish the security that he is asked to furnish that such a thing should be done. I take it that if you say that where a person is under an obligation to notify, it is meant clearly that that obligation to notify does not arise as soon as the security is offered. If that is so, that would be something, but as the section stands it seems to be absolutely indefensible.

"Then, as has been pointed out, apart from this technical objection, to ask a person not to connect himself with any political subject, not to speak at all, would be going too far and is absolutely unnecessary.

"I hope, therefore, that, before a Bill of this description is placed upon the Statute-book, wider publicity, greater time and opportunity, will be given for the public to criticise and comprehend the provisions of this Bill, and that legislation should not be rushed through. In any event, I join those who say that it should be dropped for the present."

12-45 P.M. **The Hon'ble Sir George Lowndes:**—"My Lord, a great deal that has passed in this very interesting debate would, I venture to think, have been much better put in Select Committee.

"Take the clause with which so many Members have dealt, regarding the possession of incriminating documents. I can only say that, so far as my

responsibility for the drafting of this Bill is concerned, I have attempted to put it in as plain English as I have at my command, that the gist of the offence is possession *plus* intent to publish. Yet, I have heard more than one Hon'ble Member, learned lawyers like the Hon'ble Mr. Sarma, suggesting that the gist of the offence is mere possession . . . . . .

The Hon'ble Rao Bahadur B. N. Sarma:—"May I make an observation? I did not say that the mere possession would be construed as an offence, but possession would be considered presumptive evidence of intention to publish or to circulate."

The Hon'ble Sir George Lowndes:—"My Hon'ble friend used so many words that I may not have caught that, but I certainly picked out from them the statement that he was afraid it might be held that the gist of the offence was mere possession. If it is not so, I welcome it. Frankly, I have tried to make the language as plain English as is possible, and if my Hon'ble friend can mistake it, I can only say that the ingenuity of lawyers is unbounded. But at most this is a question for Select Committee. Then it is said that the possessor of the documents may not know that they are seditious. At present publication of seditious documents is an offence. The suggestion that the "poor people" who do these things may not know whether the documents are seditious or not equally applies to the present law. If a man publishes a thing of this sort, he does it at his own risk. One Hon'ble Member has referred to the Tilak case where Mr. Tilak published certain things which the Magistrate thought were objectionable and which the High Court thought were not. Well, people who publish things which are very much on the line. .....

The Hon'ble Mr. G. S. Khapardes:—"I had other cases in view; the case of Narayan Row Vaidya of Nagpur who made a speech; the Magistrate convicted him of being seditious and the Judicial Commissioner acquitted him."

The Hon'ble Sir George Lownde.:—"The only point of my remarks was that this same difficulty as to whether a document is seditious or not, in fact occurs just as much under the present law. If any one publishes a document which, as I said is on the line—so that one man may think it is seditious while another may not—he must take the risk of a prosecution. He may come out all right because the first Court before whom the case comes thinks it is not seditious or on appeal if the High Court thinks it is not seditious, but he has to take that risk, if he deals with doubtful matters like possibly seditious documents. All I say is that the same difficulty arises under the present law, and that therefore we are not creating any new difficulties under this clause of the Bill. The object of the section is this. Even, now, if a man publishes seditious documents, he can be prosecuted, but then the mischief is done and the seditious documents may have been scattered broadcast. I think my Hon'ble friend the Pandit would prefer that a few documents of this nature should get into the hands of a few people rather than that trouble should be caused to the many. But really the boot is on the other leg. It is the danger of a great many undesirable documents being scattered abroad, as against the possibility of trouble to a very small number of possibly innocent persons. What we want to try and prevent is this mischief. Once these documents get out and fall into the hands of a very impressionable and youthful public, the mischief is done. We want to try and prevent their getting out. The Hon'ble Pandit Madan Mohan Malaviya says he also wishes to do that. Indeed, the devising of means by which we can prevent this result is a matter which will commend itself to every Member of this Council. The Hon'ble Pandit says we have not adopted the best method of doing it. But we all want the same thing. Let us discuss in Committee how we can best effect it, how we can amend this section so as to get rid of the difficulties that Hon'ble Members have referred to. We all want to

prevent seditious documents being published, and when we are sitting round the table in Committee, a Committee on which, I believe, my Hon'ble lawyer friends will be strongly represented, we shall no doubt be able to redraft the section satisfactorily, but it is rather a matter for Committee than one to be dealt with by the Council now.

"Then we come to section 3. My Hon'ble friend Mr. Chanda made a suggestion here that we had gone beyond or had misinterpreted paragraph 186 of the Report. I think that, if he will allow me to say so, that is only a confusion of language. What the Commission says is that the District Magistrate should be empowered to order an inquiry. They go on to say, in the words which he read out, 'that it has been suggested that this power (that is the power to order an inquiry), should also be given to Superintendents and Inspectors of Police', and the Report says 'we do not agree with this; we think the power ought not to be given to them'. But my Hon'ble friend reading that into clause 3 says 'you have given it to Superintendents and Inspectors of Police'. But, if I may say so, that is an absolute misinterpretation of the clause. The two things are quite separate in clause 3. It is the District Magistrate who is empowered to give orders, and the Inspector of Police is only to make inquiries under those orders. The Hon'ble Member will, I think, agree with me that there was a slight confusion in his mind between the language used in the clause and in the paragraph of the Report.

"Then my Hon'ble friend referred to a speech of Sir James FitzJames Stephen in this Council. I did not hear him very distinctly, but I think he was referring to the speech of Sir James FitzJames Stephen in this Council when the Penal Code was amended and the sedition sections were put into it and I understood my Hon'ble friend to say—I am sure he will correct me if I am wrong—that we had gone contrary to the policy which was announced by Sir James FitzJames Stephen in that speech, and that we had violated the principle which he announced as follows—I am not sure whether this is the paragraph, I have the speech before me and I hope my Hon'ble friend will tell me if I am wrong—he said:—

'Nothing could be further from the wish of the Government of India than to check in the least degree any criticism of their measures, however severe and hostile—nay, however disingenuous, unfair and ill-informed it might be. So long as the writer or speaker neither directly nor indirectly suggested or intended to produce the use of force, he did not fall within this section.'

Am I right in supposing that is the passage to which the Hon'ble Member referred?"

The Hon'ble Mr. Kamini Kumar Chanda:—"That is the passage I referred to."

The Hon'ble Sir George Lowndes:—"Well, if the Hon'ble Member will check this by the Bill, he will see that we have made the definition of a 'seditious document.'

'Any document containing any words, signs or visible representations which instigate or are likely to instigate, whether directly or indirectly, the use of criminal force, etc.?'"

The Hon'ble Mr. Kamini Kumar Chanda:—"May I point out, my Lord, that I was referring to what Mr. Chalmers said about that passage in 1898?"

The Hon'ble Sir George Lowndes:—"I frankly admit that I could not hear a great deal of what the Hon'ble Member said; but if that was the passage the Hon'ble Member referred to, I submit that he was not justified in his criticism. It does however seem to me almost extraordinary that the Hon'ble Member, with the speech of Sir James FitzJames Stephen before him, should have solemnly told the Council, without any explanation, that there was no provision for seditious offences in the original Penal Code of 1860. Only a

paragraph or two before the passage which I read just now, Sir James FitzJames Stephen says that the omission from the Penal Code in 1860 of a section dealing with sedition was purely by mistake.....

The Hon'ble Mr. Kamini Kumar Chanda:—"I beg pardon, I said so. I said it was in the draft but not in the Code as it was passed"

The Hon'ble Sir George Lowndes:—"The Hon'ble Member said nothing about the mistake. The papers show clearly that when the Penal Code was before the Council, there was a reference to a provision which had been redrafted dealing with sedition, which purely by oversight was omitted from the Bill when it was passed, and that is what Sir James FitzJames Stephen was referring to. I think it would have been better if the Hon'ble Mr. Chanda had told us that it was a mere omission, a mere slip, in 1860. He desired the Council to draw some inference from the fact that in 1860 the Government of India did not find it necessary to make any provision for this purpose.....

The Hon'ble Mr. Kamini Kumar Chanda:—"I did try to correct my Hon'ble friend Mr. Patel. I said it was in the draft, but not in the Code as it was passed."

The Hon'ble Sir George Lowndes:—"The Hon'ble Member did not allude to the fact that the omission from the Bill was purely an oversight.

"Then we come on to the clause dealing with association. That has been attacked by various Hon'ble Members here. It is clause 5 of the Bill, and my Hon'ble friend, Mr. Banerjea, began by pointing out the difficulties of the joint, family, that if one member of a joint-family were convicted it would not be fair to penalise other members of the family because they associated with him. My Hon'ble friend Mr. Sarma, on the other hand, had a most ingenious answer to that. He told us that members of a joint-family did not associate voluntarily, that they only associated involuntarily. I am afraid it is news to me that the members of a joint-family do not associate voluntarily, but perhaps it is so in the South of India. There must be, however, cases in other parts of the country in which members of a joint-family do associate voluntarily, brothers and sisters, fathers and mothers. So that is no answer to the Hon'ble Mr. Banerjea. The real answer to the Hon'ble Mr. Banerjea is one which, as he is not a lawyer, will possibly not appeal to him, but which appeals to me and which will also, I think, appeal to the Hon'ble Mr. Sarma. The Hon'ble Member was, I venture to think, confusing relevancy, that is admissibility, of evidence, with weight. That is a confusion which all of us who have practised in the Courts know is frequently made by ordinary people though not in the minds of Judges. There are many things which are admissible in evidence, but which have no weight whatever when proved; and that is the case with this suggestion as to joint-families. It would be admissible to prove where A had been convicted of sedition and B was charged with a seditious offence; that B lived with A, and it might be reasonable to ask the Court to draw a presumption against B on this account. But where A and B were brothers such a piece of evidence would have no weight whatsoever, and I do not think any of our Courts in India would draw any unfavourable inference from it. I venture to think that every lawyer will agree with me in this.

"I have only one other word to say, and that is in regard to the Hon'ble Mr. Khaparde's speech. My Hon'ble friend seemed to be very much in love with the metaphor of the rose and the thorn. We had it the other day and we have had it again to day. I am almost more pleased to meet my Hon'ble friend on the horticultural platform than on the legal platform, and I venture to remind him that there *is* no rose without a thorn; and, going a little further, that the thorn is a provision of nature in order that the beauty of the rose may not be despoiled".

The Hon'ble Mr. G. S. Khaparde:—"The thorn does not increase the beauty of the rose whatever else it might do."

12-55 P.M. **The Hon'ble Sir William Vincent:**—"My Lord, I am not quite sure whether it would be more convenient to the Council if I replied merely on the motion of the Hon'ble Mr. Patel, or if I replied on the main motion. I think that I had better, perhaps, take the Bill as a whole, and, if necessary, I can add any remarks later.

"The first point on which I was asked for an assurance by certain Members of this Council was as to the scope and intention of these two Bills which have been brought before this Council. There is still, I understand, in the minds of some an apprehension that these Bills are intended or are framed so that they can be used for the suppression of political movements, and that they are not confined to revolutionary and anarchical movements; and I have been specifically asked—I think it was by my Hon'ble friend Dr. Sapru—to make such modifications in the preamble and in other parts of the Bills as will make it perfectly clear that they are only intended to deal with anarchical or revolutionary crime. Well, my Lord, as regards the main Bill—the Emergency Powers Bill—which really contains the clauses to which most objection has been taken, I am quite prepared to give that assurance, and if any further alterations are necessary in the particular Bill which is under discussion to-day, we shall be prepared to consider them also. I hope that will relieve the mind of my Hon'ble friend.

"Turning to criticisms of individual clauses, I will begin, if I may, with clause 2. There seems to me to be considerable misapprehension as to the scope of this clause. It was suggested, for instance, that the possession alone of a seditious document was sufficient to make a man liable to punishment. That point has been fully explained by my Hon'ble colleague, the Law Member, and it is quite clear now, I think, to everyone in this Council that the possession of a seditious document is only an offence when it is coupled with an intention to publish or circulate, the onus in such a case being, as in all criminal cases, on the prosecution to prove this intent, and not on the accused, as was suggested by at least one Hon'ble Member. Surely, my Lord, in these circumstances, it cannot be said with any justice that under this clause thinking sedition is an offence, as was suggested by one Hon'ble Member. I am told, again, that the provisions of this clause are very dangerous, and that it will create the greatest apprehension, and, finally, that it proceeds further than rule 25A of the Defence of India Rules. Well, my Lord, I want to show first that the wording of the clause is based on rule 25A of the Defence of India Rules. Prohibited documents under that rule are 'documents containing words, signs or visible representations which instigate or are likely to instigate (*a*) the use of criminal force against His Majesty or the Government established by law in British India, or against public servants generally, or any class of public servants or any individual public servant; or (*b*) the commission or abetment of anything which is an offence against sections 121, 121A, 122, 131, 435 and 436 of the Indian Penal Code or of the offence of robbery and dacoity and certain other offences.' Although, therefore, the present clause is based on the Defence of India rule, it is less extensive, and there is no more difficulty in understanding the meaning of this clause than there is in understanding the meaning of the rule, because prohibited document is defined in the same way as a seditious document is defined in the Bill. Rule 25A, my Lord, has been in force for some time, and we have had no complaints, as far as I am aware, that the rule has operated harshly or worked to the prejudice of any law-abiding citizen . . . . .

The Hon'ble Pandit Madan Mohan Malaviya:—"Under that Act a document was proclaimed and then the public knew what it was. That was my point. That makes it easy for people to avoid the document."

The Hon'ble Sir William Vincent:—"Well, I have tried to explain, as far as I understand them, that the provisions of the present law are

not less definite than the provisions of rule 25A, but I am quite prepared to examine the matter further in Select Committee.

"As to clause 5 more has been made, I think, of the provisions relating to habitual and voluntary association with persons convicted of revolutionary crime than is reasonable. The principle on which the clause is based is much the same as that which underlies section 14 of the Evidence Act. Where a man associates voluntarily and habitually with persons convicted of offences against the State, his state of mind, his faith and good-will towards the Government may be inferred. *Noscitur a sociis*. But the weight to be attached to the evidence will, of course, vary in each particular case. This clause also is, however, one that will have to be examined in greater detail before the Select Committee. What we have attempted to do at present is to put forward all these recommendations of a very powerful Committee for the *primâ facie* consideration of the Council.

"There is only one other clause to which I should like to refer, and that is clause 6. It was suggested by the Hon'ble Mr. Patel that though the modern tendency is to deal with first offenders leniently, this Bill makes it obligatory on Courts to proceed more severely. The Hon'ble Member proceeded to quote section 562 of the Criminal Procedure Code in support of this view, and he says that that provides for first offenders being warned and discharged. My contention is that the exact contrary is the case, and that the Bill will enable Courts, where such a course is advisable, to deal lightly with these offenders whom my Hon'ble friend Mr. Malaviya with his usual charity describes as 'poor fellows.' Our intention is not to force the Courts to keep these men longer than is necessary in jail, but rather to impose shorter sentences of imprisonment and then subject them to lighter punishment when they come out of jail in order to reform them. We hope by these means to secure in many cases the reformation of some of these offenders.

"There is only one other point to which I wish to advert, and that is the question which is directly before the Council, of postponing the reference to this Bill to Select Committee. On this point I am afraid I am unable to meet the Hon'ble mover. The provisions of the Bill and of the report have been before the public for some time and have been criticised at great length in many of the papers, and no useful purpose would be served by republishing the Bill and delaying the reference to Select Committee. At the same time, I realise that this Bill stands on a different footing from the emergency measure with which we were dealing on Friday. The most convenient and advantageous course, as it seems to me, is to refer this Bill to Select Committee at once, and let the details be then examined. If there are considerable changes, then we can consider the necessity for further postponement. But let us see first what the Select Committee do in the way of modifying the details.

"My Lord, with these words, I oppose the motion for postponement."

The Hon'ble Mr. V. J. Patel:—"My Lord, I have nothing to say."

The Hon'ble Mr. Patel's amendment was put and negatived.

His Excellency the President:—"There is another* amendment which stands in the name of the Hon'ble Mr. Banerjea. Mr. Banerjea could not of course move his amendment while Mr. Patel's amendment was before the Council. He happens to be absent in connection with the Franchise Committee, and I said I would allow Mr. Banerjea's amendment to be put in his absence. I propose to take the speech he made on the first amendment as moving that amendment. Mr. Banerjea's amendment is now before the Council." 1-8 P.M.

* See page 557, *supra*.

[*Pandit Madan Mohan Malaviya; Sir George Lowndes; Mr. Kamini Kumar Chanda; The President; Sir William Vincent; Sir C. Sankaran Nair.*] [10TH FEBRUARY, 1919.]

1-9 P.M. **The Hon'ble Pandit Madan Mohan Malaviya:**—"My Lord, there is only one word I should like to say with reference to what has fallen from the Hon'ble the Home Member. I quite realise that this is a better procedure than it was apprehended would be followed But would it not be better still if this Bill is circulated for opinion before it goes to a Select Committee? The Government will then have the opinions of High Court Judges, Sessions Judges and of District Magistrates and other Judicial and public bodies all over the country. We shall then in Simla deal with the Bill with the help of the views of many experienced officers. I suggest this for the consideration of the Government."

The Hon'ble Sir George Lowndes:—"It is open to the Select Committee to recommend republication if they change the Bill to such an extent that it is in no sense the same Bill, but that is really a question for the Select Committee."

The Hon'ble Mr. Banerjea's amendment was put and negatived.

1-10 P.M. **The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, I will not make a speech. I simply move the amendment that stands in my name, namely, 'that the motion for referring the Bill to a Select Committee do stand over till the Simla Session of the Council.'"

His Excellency the President:—"Mr. Chanda has moved his amendment which is now before the Council."

The amendment was put and negatived.

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I beg to withdraw the next amendment which stands in my name, namely, 'that the Select Committee do report to the Council during the Simla Session.'"

His Excellency the President:—"Mr. Chanda's amendment is before the Council that the Select Committee do report to the Council during the Simla Session."

The Hon'ble Sir William Vincent:—"I understood that the Hon'ble Member withdrew his amendment."

The Hon'ble Mr. Kamini Kumar Chanda:—"I have already withdrawn my amendment."

The amendment was by leave withdrawn.

The motion that the Bill be referred to a Select Committee was put and agreed to.

[At this stage the Council adjourned for lunch.]

LOCAL AUTHORITIES PENSIONS AND GRATUITIES BILL.

2-30 P.M. **The Hon'ble Sir C. Sankaran Nair:**—"My Lord, I beg leave to introduce a Bill to extend the powers of local authorities in regard to the granting of pensions and gratuities. The intention of this measure is explained in the Statement of Objects and Reasons, and I have really nothing to add. A local authority will be permitted if it chooses to give a pension or a gratuity to a person or to his family if he has been incapacitated or has lost his life in the service of the State, having previously been in the employ of that authority. The measure will be of particular value in dealing with hard cases

arising from the Great War, where, let us say, a man has volunteered and been seriously wounded, injured or killed during active service. I am sure that this aspect of the case will appeal to all. But the measure is not intended merely as a war measure. It will be useful to place it permanently on the Statute-book. There is no compulsion about it. It is a permissive measure, and no local authority is required to give any such concession unless it desires and is satisfied that the case is a deserving one. Provision is also made against the abuse of the measure by any local authority by making it obligatory to obtain the sanction of the Local Government in each case. I accordingly move for leave to introduce the Bill."

The motion was put and agreed to.

The Hon'ble Sir C. Sankaran Nair:—"My Lord, I beg to introduce the Bill, and to move that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in the Gazette of India in English."

The motion was put and agreed to.

PROVINCIAL INSOLVENCY (AMENDMENT) BILL.

The Hon'ble Sir George Lowndes:—"My Lord, the Bill to amend the Provincial Insolvency Act was introduced in this Council on the 4th September last. Since then it has been published in the ordinary way for opinion. A number of comments have been received and there are still more, I believe, to come. The opinions expressed are unanimously in favour of the Bill, which, it is thought, will affect a great improvement in the law. Various criticisms of details have been received which will be tabled for consideration in the Select Committee. There were two points of special difficulty which were referred. The first was as to whether the Insolvency Court ought to have the power of deciding questions of law and fact. When I was introducing the Bill, I pointed out the difficulties with regard to this question, and suggested that the best solution was that which we have inserted in the Bill, namely, that the Court should have power to do this, but should not be bound to do it. That is, it may, if thought desirable, refer the parties to a separate suit. On the whole the opinions received seem to favour this course, but it has been suggested, and, I think, with considerable force, that if the Insolvency Court is to have power to decide these facts, they should not be open to contest over again in the ordinary Courts. That is to say the effect of a decision of the Insolvency Court on any question of this sort should be *res judicata*. It has also been suggested that if this power is to be given to the Insolvency Court, inasmuch as the appeal from the Insolvency Court may be to the district Court, it may be desirable to provide for the possibility of a second appeal to the High Court in important cases, as there may, of course, be some cases of far-reaching importance, cases which may come up before the Insolvency Court. That again is a question which will have to be considered in Select Committee. The second point of difficulty, as Hon'ble Members may remember, was as to the limit of summary jurisdiction. Under the Act as it now stands the limit of summary jurisdiction is where the estate is expected to realise Rs. 500. We have suggested that, if we are going to make the procedure more summary still, it may be desirable to confine its operation to smaller estates still, and we have suggested in the Bill the limit of Rs. 200 instead of Rs. 500. On the other hand, in introducing the Bill, I pointed out to the Council that the view might be taken that instead of lowering the limit, it might be desirable to raise it and include larger estates with regard to which I suggested a possible limit of Rs. 2,000. Therefore the two opposite possibilities were put before the Council and were dealt with in our letter referring the Bill to Local Governments. Opinion is curiously divided on this point. Many people say reduction to Rs. 200 would be advantageous; other people say that we had better stick to Rs. 500 as it is now;" 2-31 P.M.

others again say, raise it to Rs. 1,000, and some say raise it to Rs. 2,000. We have not therefore any clear counsel at present and the matter will be again one for the Select Committee to consider.

"I dealt with the Bill in some detail in introducing it, and I do not think anything would be gained by going over the points again. I therefore move that the Bill be referred to a Select Committee consisting of the Hon'ble Sir William Vincent, the Hon'ble Mr. Kesteven, the Hon'ble Mr. Monerieff Smith, the Hon'ble Sardar Sunder Singh Majithia, the Hon'ble Mr. Chanda, the Hon'ble Mr. B. N. Sarma, the Hon'ble Mr. Krishna Sahay, the Hon'ble Mr. B. D. Shukul, the Hon'ble Mr. Kincaid, the Hon'ble Mr. Rice and myself."

The motion was put and agreed to.

The Council adjourned to Wednesday, the 19th February 1919, at 11 A.M.

DELHI;
The 18th February 1919.

A. P. MUDDIMAN,
Secretary to the Government of India,
Legislative Department.

SGPI, Delhi—169 L. D.—21-2-19—90.