Friday,
4th March, 1904

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

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OF

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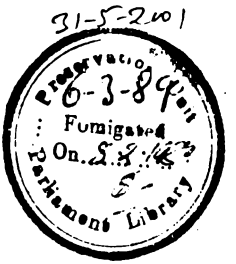

CALCUTTA
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1905

Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., Cap. 67, and 55 & 56 Vict., Cap. 14).

The Council met at Government House, Calcutta, on Friday, the 4th March, 1904.

PRESENT:

His Excellency Baron Curzon, P.C., G.M.S.I., G.M.I.E., Viceroy and Governor General of India, *presiding.*

His Honour Sir A. H. L. Fraser, K.C.S.I., Licutenant-Governor of Bengal.

His Excellency General Viscount Kitchener of Khartoum, G.C.B., O.M., G.C.M.G., Commander-in-Chief in India.

The Hon'ble Mr. T. Raleigh, C.S.I.

The Hon'ble Sir E. FG. Law, K.C.M.G., C.S.I.

The Hon'ble Major-General Sir E. R. Elles, K.C.B., K.C.I.E.

The Hon'ble Sir A. T. Arundel, K.C.S.I.

The Hon'ble Sir Denzil Ibbetson, K.C.S.I.

The Hon'ble Rai Sri Ram Bahadur.

The Hon'ble Mr. A. W. Cruickshank, C.S.I.

His Highness Raja Sir Surindar Bikram Prakash Bahadur, K.C.S.I., of Sirmur.

His Highness Agha Sir Sultan Muhammad Shah, Agha Khan, G.C.I.E.

The Hon'ble Mr. Gopal Krishna Gokhale, C.I.E.

The Hon'ble Mr. E. Cable.

The Hon'ble Nawab Saiyid Muhammad Sahib Bahadur.

The Hon'ble Mr. F. S. P. Lely, C.S.I.

The Hon'ble Mr. H. Adamson, C.S.I.

The Hon'ble Mr. A. Pedler, C.I.E., F.R.S.

The Hon'ble Mr. T. Morison.

The Hon'ble Dr. Ramkrishna Gopal Bhandarkar.

The Hon'ble Mr. J. B. Bilderbeck.

The Hon'ble Mr. D. M. Hamilton.

The Hon'ble Rai Bahadur B. K. Bose, C.I.E.

The Hon'ble Dr. Asutosh Mukhopadhyaya, D.L., F.R.A.S., F.R.S.E.

TRANSFER OF PROPERTY (AMENDMENT) BILL.

The Hon'ble SIR DENZIL IBBETSON presented the Report of the Select Committee on the Bill further to amend the Transfer of Property Act, 1882.

ANCIENT MONUMENTS PRESERVATION BILL.

The Hon'ble SIR DENZIL IBBETSON presented the Report of the Select Committee on the Bill to provide for the preservation of Ancient Monuments and of objects of archæological, historical or artistic interest.

CO-OPERATIVE CREDIT SOCIETIES BILL.

The Hon'ble SIR DENZIL IBBETSON said:—"My Lord, I present the Report of the Select Committee upon the Bill to provide for the constitution and control of Co-operative Credit Societies. The more usual course in this Council is, for the Member in charge to defer his remarks upon the Report till he moves that it be taken into consideration. But in this case the Bill has excited such general interest, and is so entirely non-contentious—in the sense that, however much difference of opinion there may be as to the wisest means, we all have the same end in view—that I think it will be well if I take this opportunity of explaining briefly our reasons for the principal changes which we propose in the Bill as introduced.

"We have received a very large number of opinions, not only from the authorities who have been officially consulted, but also from independent sources; while the discussions in the Press, both English and Indian, have in many cases been most helpful and suggestive. There is one fact, however, which I think our critics have often failed to bear in mind, but which it is, in my judgment, very important to remember; and that is, that the question of agricultural banks is quite a different question from that of co-operative credit societies, and that it is the latter only with which we are now dealing. The object of agricultural banks is to provide capital to finance the agriculture of the country; their operations are of the ordinary banking nature, and on a considerable scale; and whatever special privileges it might be found possible to extend to them, the ordinary companies law of India would still continue to apply to them. The object of the societies with which we are now dealing is far more special and more limited. It is, as Sir Frederick Nicholson puts it, to substitute for a number of individual credits, which are weak because they are isolated, a combined credit which is strong because it is united. Their operations are confined within the limits of the society, and they will be 'small and simple credit societies for small and simple folk with simple needs and requiring small sums only.'

"When introducing this Bill, I commented upon the great diversity of opinion that characterised the papers which were before Government when they

framed their proposals. A similar diversity has shown itself in the papers with which the Committee have had to deal. There is hardly a provision of any significance in the Bill which some of our advisers do not regard as of capital importance, and others condemn as a fatal defect; and in many cases, each side has been able to give very sound and excellent reasons in support of its views. In the presence of this conflict of opinion, a decision has not always been easy to arrive at. But, in the modifications which we propose in the Bill, we have been guided by the principle which I laid down when I introduced it, that elasticity and simplicity were the great desiderata, and that the fewer restrictions we impose by law upon these societies, the better. Our alterations, therefore, have been in the direction of simplification and of freedom.

"By far the most important of these alterations is that by which we have thrown open the constitution of the societies. The Council will remember that, under the Bill as introduced, rural societies were to be limited to agriculturists—a term which I explained was not meant to include the wealthy rent-receiver—while urban societies were to consist only of men of small means. To these provisions it was objected that they excluded the very men whose aid was most important to the new societies. The provisions had been framed upon the supposition that the men of light and leading, and still more important perhaps, the men of substance, the necessity for whose aid and sympathy was fully recognised, would assist the societies from outside, since they would have nothing to gain by membership, as they would not desire to borrow. And, so far as my own personal opinion goes, I am still inclined to think that that is the position in which they will be of most use. But the body of opinion in favour of a wider basis of membership, not only in order to extend the scope of these societies as widely as possible, but also to secure that diversity of needs and interests which is desirable if their funds are to be utilised to the best advantage, is very weighty; and we have removed all restrictions upon the class of persons who may be members, save in so far as is necessary to preserve the two distinct types of rural and urban societies, the former of which will consist in the main of agriculturists, and the latter in the main of non-agriculturists.

"The other condition which was imposed by the original Bill was, that members must be residents of the same town or neighbourhood. All those of our advisers who speak with any authority have insisted upon the cardinal importance of this condition, as ensuring that mutual knowledge and confidence which must be the basis of all successful co-operation; and we have retained

it in a slightly generalised form. But it has been pointed out to us that there are communities among whose members a common organisation or common interests supply the place of propinquity of residence, and ensure the conditions which we desire. A compact and closely organised tribe or caste, a community such as is formed by the Native Christians attached to a particular mission, or even the employés on a given line of railway, are instances in point. We have therefore empowered the Registrar to dispense with the residence test, where he is satisfied that this may be safely done, if the society is to be confined to the members of a single tribe or class or caste.

"As regards new members, we have made a small alteration upon which I would say a word of explanation lest it should be misunderstood. The original Bill provided that members admitted to a society should be 'elected by the members for the time being.' It was pointed out to us that it would often be sufficient if they were elected by the Committee; and we have accordingly provided that they shall be 'admitted by the society in accordance with the provisions of this Act and with the by-laws of the society.' But the selection must still be personal, and made by the society; no person can claim admission under any automatic rule; and the important principle that the new member must be accepted by the old ones or their representatives is still maintained.

"We have retained unlimited liability as the general rule most suitable to rural societies. But cases are conceivable in which it may be desirable to relax it; if, for instance, a local magnate whose sympathy and assistance it is important to secure, desires to become a member, but does not care to assume a liability which is wholly without limit. We have therefore given the Local Government power, by special order, to relax the rule.

"The Bill as introduced forbade a rural society to borrow save with the approval of the Registrar and the Collector. This provision was much criticised as having the appearance of discouraging borrowing, whereas the very essence of these societies is to utilise their combined credit for the purpose of borrowing. We recognise the justice of the criticism; but we still think, for reasons which I have already explained, that an unfettered power to borrow might prove dangerous to a society. We have therefore removed the prohibition, but have given the Local Government power to regulate borrowing in such manner as experience may show to be desirable.

"The provisions of the original Bill regarding loans on the security of agricultural produce have been very generally misunderstood; and I must admit

that they were not very happily worded. It was never intended for a moment to allow of advances against standing crops, than which I can imagine no form of security more unsuitable for these societies. But there are some of the existing societies, and there doubtless will be many more in the future, which never handle money, their whole transactions being conducted in grain. And the object of the provisions in question was to secure that agricultural produce should stand on precisely the same footing as money for all purposes of subscriptions, deposits, advances, payments and recoveries. Upon considering the question, we came to the conclusion that such transactions were within the ordinary powers of the societies, and that no special reference to the subject was needed.

"No provisions of the Bill have been more severely criticised by some, or more stoutly supported by others, than those which related to loans upon the security of jewellery and upon the mortgage of land. It had been proposed to prohibit rural societies from advancing money against jewels, on the ground that the basis upon which these societies should work was not material security, but the credit which arose from the individual character and substance of their members. It was pointed out in reply that, while personal credit was undoubtedly the basis of their transactions, such things as jewels might properly be received as collateral security, that the custom of the country is to regard jewellery as available for this purpose, and that if a member is debarred from utilising his material credit to the full in borrowing from his society, there will be a danger of his using it to borrow from the money-lender.

"The prohibition had not, however, been founded wholly upon objections of theory. Sir Edward Law's Committee had pointed out that there were practical difficulties which would arise, especially in the case of village societies; and we have come to the conclusion that these difficulties are real, and that it will be well to make distinctions. When a rural society is located in a town or large village, with silver-smiths available, a ready market at hand, and with members and officers of intelligence, it may safely be trusted to conduct transactions which might be dangerous in the case of a more strictly bucolic association. We have therefore given the Registrar power to allow any society which he thinks can safely be trusted, to advance money upon jewellery; and he will be able to feel his way in the matter.

"The question of mortgage was still more difficult. Almost all the considerations upon either side which I have just discussed apply here also, with

the addition of others of still greater importance. On the one hand, one of the methods in which an involved cultivator can most effectively be assisted is by enabling him to substitute a mortgage upon reasonable for one upon exorbitant terms; and a member who is refused the credit to which his property in land fairly entitles him, merely because he is not allowed to hypothecate it to the society, may be driven to the money-lender for a loan which, had it not been for the prohibition, he might have taken from the society with advantage to both parties. On the other hand, it is exceedingly inadvisable that these societies should be allowed to lock up their limited capital in a form in which it is not readily available; their most useful form of business will probably be small loans for short periods with prompt recoveries; and it is above all things desirable that they should keep out of the Law Courts. I confess that to my mind the arguments on either side are extraordinarily evenly balanced. Our final recommendation is, that loans upon mortgage should be allowed in the first instance; but that the Local Government should have power to prohibit or restrict them, either generally or in any particular case, if it is found that interference is necessary.

"Such, my Lord, are the principal alterations of substance which we propose in the Bill which I introduced at Simla. But in the course of our discussion we arrived at the conviction that it was impossible to frame any set of general provisions which should cover all conceivable forms in which the principle of co-operation might be usefully applied to the benefit of small folk in India. And we had a concrete instance before us. Paper No. 8 of the papers attached to the Bill is a letter from the Honorary Secretary to the Indian Industrial Association, which describes a wholly admirable institution called a *Dharmagola* that has been started in several villages of the Dinajpur District. The institution is one which is entirely deserving of encouragement, its objects are precisely the objects which we desire to promote, and yet it would be difficult or impossible to bring it under the provisions of the Bill. Another consideration presented itself to us. We have exercised our best judgment in coming to a decision upon the many disputed points upon which we had to decide. But we recognise that, even if our decision is in general sound, there may be special circumstances and conditions to which it is unsuited. We have therefore added a general clause to the Bill, which provides that notwithstanding anything contained in the Act, the Local Government may, by special order in each case, permit any association whatever to be registered as a society under the Act, and may exempt any society thus specially registered from any of the provisions of the Act, or may modify any of those provisions in their application to such society.

"The position therefore stands as follows. In the body of the Bill we have included those provisions which, in our judgment, will be suitable to the type of co-operative societies that is most likely to come into existence in India, and these provisions will constitute the normal law, which will apply of its own force to these societies in general. But a Local Government will have an absolutely free hand to depart from or vary them, on condition only that it does so by special order in each case, and after full consideration of the circumstances which justify the departure. Of course it is intended that this power should be exercised, only in behalf of societies the aims of which are consonant with the objects which this Bill is intended to promote. But subject to this restriction, that freedom of experiment, upon the importance of which I dwelt when I introduced the Bill, is secured in the fullest possible measure.

"I have only to add that we have considered the advisability of making some of the provisions of this Bill applicable to the Nidhis of the Madras Presidency; and have come to the conclusion that if any special legislation in their behalf is desirable, it will best be undertaken in the local Council, where the precise conditions and needs of these societies will be completely understood."

NORTH-WEST BORDER MILITARY POLICE BILL.

The Hon'ble MAJOR-GENERAL SIR EDMOND ELLES moved that the Bill to provide for the regulation of the Border Military Police Force in the North-West Frontier Province be taken into consideration. He said:—"No objections have been received from any source to the provisions of the Bill. It is, therefore, unnecessary for me to make any further remarks."

The motion was put and agreed to.

The Hon'ble MAJOR-GENERAL SIR EDMOND ELLES moved that the Bill be passed.

The motion was put and agreed to.

GOVERNMENT STORES BILL.

The Hon'ble MAJOR-GENERAL SIR EDMOND ELLES moved for leave to introduce a Bill to provide for the better protection of Government stores. He said:—"The object of this Bill is to provide more effectually for the prevention, detection and punishment of thefts of Government stores. The Bill reproduces,

with the necessary modifications, such of the provisions of the Public Stores Act, 1875 (38 & 39 Vict., c. 25), as are adaptable to India."

The motion was put and agreed to.

The Hon'ble MAJOR-GENERAL SIR EDMOND ELLES introduced the Bill.

The Hon'ble MAJOR-GENERAL SIR EDMOND ELLES moved that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The motion was put and agreed to.

INDIAN STAMP (AMENDMENT) BILL.

The Hon'ble SIR EDWARD LAW moved for leave to introduce a Bill further to amend the Indian Stamp Act, 1899. He said:—"The attention of the Government of India has been directed to the ruling of the Calcutta High Court in the case of the *Queen Empress* v. *Debendra Krishna Mitter* (1900), I. L. R. 27 Cal. 587, to the effect that, unless the whole advance given under an equitable mortgage be made at the time that the instrument of hypothecation is executed, the stamp must be that of an ordinary mortgage. The decision imposes a much heavier duty on equitable mortgages than appears to have been intended; for it follows from it that the higher duty chargeable on an ordinary mortgage is leviable whenever it is sought to secure by deposit of title-deeds future advances on an existing account. Such a duty is, in view of the temporary nature of transactions of the kind indicated, excessive, and the fact that it is leviable must tend to retard the development of the system of cash credits, which has hitherto proved of great assistance to trade. It is, therefore, proposed—see clause 6 of the Bill—to amend Article No. 6 of the first schedule to the Indian Stamp Act, 1899 (II of 1899), so as to relieve these instruments from the higher duty, and to place them all on the same footing, whether their execution is or is not simultaneous with the advances secured by them; and it is at the same time suggested—see clause 3—to follow section 23, read with section 86 (*2*), of the English Stamp Act of 1891 (54 & 55 Vict., c. 39), and to levy a fixed fee of eight annas only when the security deposited by way of equitable mortgage is marketable.

"In the same connection notice has been called to various defects, doubts and anomalies in the law. *First*, no provision is at present made for the case

where an equitable mortgage is executed to secure the repayment of a loan after more than one year, and the agreement in such a case is consequently liable to the duty of eight annas only under Article No. 5 of the schedule. It is proposed to amend Article No. 6 so as to impose the same stamp as that required on a document securing repayment within a year. *Secondly*, there is now no specific provision as to the duty leviable upon an instrument evidencing an equitable mortgage where the advance secured is repayable on demand, and such instruments are chargeable either with the same duty as agreements or with the duty leviable on ordinary mortgages, according as the securities are deposited before or at the time of execution. It is proposed to extend the amendment of the Article so as to treat such instruments in the same manner as instruments securing repayments after more than three months. *Thirdly*, there appears to be some doubt as to the applicability of the Article to pawns and pledges, and it is proposed to amplify it so as expressly to include such transactions, as well as hypothecations of securities. On the other hand, as misunderstanding is likely to be caused by the circumstance that the definition of 'mortgage-deed' in section 2, clause (*17*), of the Act covers all kinds of property, while a 'mortgage', as defined in section 58 of the Transfer of Property Act, 1882 (IV of 1882), is limited to immoveable property, it is proposed—see clause 2 of the Bill—to confine the definition here also to immoveable property, all 'mortgages' of moveable property, whether accompanied by possession or not, being, as already indicated, brought together under Article No. 6, unless otherwise specifically provided for in the schedule.

"Finally, the opportunity has been taken to amend the law in another direction. Under section 26 of the Act, where the value of the subject-matter or an instrument is unknown or indeterminate, the contracting parties may use their discretion as to the value of the stamp to be affixed to the instrument, but no sum can be recovered under it in excess of the amount covered by the duty actually paid. An exception is, however, made in the case of mining leases in which a royalty or share of the produce is reserved as rent. The value of the share or royalty is necessarily indeterminate in the majority of such cases, and it is therefore, provided that, if the lease be stamped on an assumed valuation of Rs. 20,000 a year, the sum actually due under the lease may be recovered whatever the amount may be. This provision is unsuitable in the case of mining leases granted by the Government; for the natural tendency of revenue-officers is to safeguard the interests of the Government by valuing the royalty at the figure just referred to in every case. The stamp-duty ordinarily payable on this valuation is Rs. 200; and this constitutes an unduly heavy burden in

the case of small and unproductive mines. It is proposed, therefore, by clause 4 of the Bill, to expand the section so as to provide that, where a mining lease is granted by the Government, the Collector may estimate the amount of royalty which he considers likely to be payable, and it will be sufficient if the lease is stamped in accordance with his estimate.

"The further amendments proposed by clause 5 and sub-clauses (*2*), (*3*) and (*4*) of clause 6 of the Bill are purely consequential and require no explanation."

The motion was put and agreed to.

The Hon'ble SIR EDWARD LAW introduced the Bill.

The Hon'ble SIR EDWARD LAW moved that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The motion was put and agreed to.

INDIAN OFFICIAL SECRETS (AMENDMENT) BILL.

The Hon'ble SIR ARUNDEL ARUNDEL moved that the Report of the Select Committee on the Bill to amend the Indian Official Secrets Act, 1889, be taken into consideration. He said:—"I have no observations to make at this stage."

The Hon'ble MR. GOKHALE said:—"My Lord, I desire to say a few words on the Bill as amended by the Select Committee, before this motion is put to the vote. When the Bill was referred to the Committee in December last, my Hon'ble friend Nawab Saiyid Muhammad and myself deemed it our duty to enter an emphatic protest against the general character and the leading provisions of the proposed measure, because in the form in which it then stood, it was impossible to have any patience with the Bill. Since then, however, thanks to the assurances given by Your Lordship on your return to Calcutta, and the conciliatory attitude adopted by the Hon'ble Member in charge of the Bill in the Select Committee, the Bill has been largely altered, and I gladly recognize that several most objectionable features have either been wholly removed or have been greatly softened. Having made this acknowledgment, I deem it necessary, my Lord, to submit that unless the Bill is further amended, on the lines of the more important amendments of which notice has been given, the alterations made so

far will fail to allay the apprehensions that have been so justly aroused. My Hon'ble friends Mr. Bose and Nawab Saiyid Muhammad and myself have signed the Report of the Select Committee, subject to dissent only on two points, and we have expressed that dissent in the mildest terms that we could possibly find to convey our meaning. We did this both to mark our sense of the conciliatory manner in which the Hon'ble Member in charge of the Bill received many of our suggestions, and in the hope that by thus removing from our dissent all trace of the angry criticisms to which the Bill has been subjected, we might make it easier for Government to proceed further in the direction of meeting the objections urged by the public. My Lord, I earnestly trust that in this hope we shall not be altogether disappointed. I do not wish to anticipate anything I may have to say when the amendments of which I have given notice come up for consideration. But I cannot let this motion be put to the vote without saying that the Bill, even as amended, is open to serious objection, that no case has been made out for it, that the safeguards, to which the Hon'ble Member referred in presenting the Report of the Select Committee, are more or less illusory, and that, unless the Bill is further amended, it must tend unduly to curtail the liberty of the Press, not so much perhaps by what Government may actually do, as by the fear of what they may do. The striking unanimity with which the entire Press of the country, Anglo-Indian as well as Indian, has condemned the measure must convince the Government that the opposition to the Bill is not of a mere partisan character, but that it is based upon reasonable grounds, which it is the duty of Government to remove. If, however, Government are not prepared to do this, I would respectfully urge even at this last moment that the Bill should be abandoned altogether."

The motion was put and agreed to.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in clause 2 of the Bill as amended, in the proposed definition of "civil affairs", after the words "means affairs" in line 1, the words "of such a confidential nature that the public interest would suffer by their disclosure and" be inserted, and that in sub-clause (*b*) the words "where these affairs are of such a confidential nature that the public interest would suffer by their disclosure" be omitted. He said:—"Under the definition of 'civil affairs', as it now stands in the Bill, are included all affairs affecting the relations of His Majesty's Government or of the Governor General in Council with any Foreign State, no matter whether these affairs are or are not of such a confidential nature that the public interest would suffer by their disclosure

I have not been able to discover any good reason why such a wide scope should be given to the part of the definition contained in clause (*a*), while a much more restricted operation is given to the part contained in clause (*b*). I am unable to understand why it should be necessary to penalise the publication of information of the most innocent or harmless kind, simply because it may refer to the relations of His Majesty's Government with Foreign States. Without expressing any opinion at this stage upon the broader question, namely, whether civil affairs ought at all to be included within the scope of this Bill, I venture to think that, if they are to be included, the test in every case ought to be, whether or not their disclosure would be prejudicial to the public interest. I therefore suggest, that the qualifying words which stand at the end of clause (*b*) and consequently affect that clause alone, should be transferred to the beginning of the definition so as to be applicable to both the clauses (*a*) and (*b*)."

The Hon'ble SIR ARUNDEL ARUNDEL said:—"The Hon'ble Member said that he failed to discover any reason why there should be any distinction made between (*a*) and (*b*) in the definition of 'civil affairs'. As a matter of fact, this particular point had not escaped attention, and it was carefully considered. But there are two reasons against it; one is that it is not for this Council to put such a limitation upon the relations between His Majesty's Government and a Foreign State. Indeed, it is not desirable that they should in any way interfere with such relations, and if the matter is left with regard to His Majesty's Government with any Foreign State, it naturally follows that the Government of India would stand also in the same position. I think also it would be generally agreed that we ought not to contemplate bringing before the public or a Court of Justice the diplomatic relations of His Majesty's Government or of the Governor General in Council with a Foreign State. These matters are usually of a very confidential nature, and it would be opposed to international courtesy to publish them without the consent of both Governments. For these reasons I regret that I am unable to accept the amendment."

The motion was put and negatived.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in clause 2 of the Bill as amended, in the proposed definition of "civil affairs" in sub-clause (*a*), before the word "relations" the word "civil" be inserted. He

said :—"This amendment may properly be described as a drafting amendment; if we examine the definition which is proposed, we find that it is too wide, inasmuch as it includes affairs affecting not merely the civil but also the military relations of His Majesty's Government. I therefore venture to propose that, by the insertion of the word 'civil' before 'relations', the definition may be limited and made co-extensive with the term to be defined."

The Hon'ble SIR ARUNDEL ARUNDEL said :—"This amendment is open to the same objection as the first one just moved by the Hon'ble Member, namely, that it limits the relations of His Majesty's Government with a Foreign State. Moreover, it would exclude political affairs and the military affairs of such States, and would therefore render the Bill useless so far as such matters are concerned. These are the reasons which lead me to object to the amendment."

The motion was put and negatived.

The Hon'ble MR. MORISON moved that in clause 2 of the Bill as amended, in the proposed definition of "civil affairs," sub-clause (*b*) be omitted. He said :—"My Lord, all reasonable people, I think, admit that there are certain affairs in regard to which secrecy is of such paramount importance to the State as to justify a considerable restraint upon individual liberty; of this nature are naval and military affairs and the relations of the Government with Foreign States; there is no doubt that in these cases the interest of the Government in preserving secrecy is identical with the interest of the general public. But there are other matters, such as those mentioned in clause (*b*) of the definition of 'civil affairs,' with regard to which secrecy cannot be said to be *essential* to the State, although the premature disclosure of the plans of Government may cause considerable administrative inconvenience. In respect of these matters the interests of the Government and the public are not, I submit, so unmistakeably identical as to justify the infliction of legal penalties upon the publication of news. Among affairs connected with the public debt, for instance, would certainly be included proposals for converting Government securities into a new stock bearing a lower rate of interest; the Government has the clearest right to keep its intentions regarding such matters secret, but a certain section of the public has so undeniable an interest in being forewarned of the proposed conversion that it is not fair to penalize a premature disclosure of the intentions of Government. Similarly, in all matters relating to taxation, the interest of the public is to a certain extent in antagonism to that of Government, and it is not clear that the public interest, in its widest sense, would be served by inflicting penalties upon the editor who warned one of the parties of an approaching danger. This clause also includes affairs affecting the relations of the Government with

Native States; but it cannot, I submit, be maintained that these relations are any longer of that major importance which attaches to affairs upon which the stability of the State depends. Imperceptibly the Indian Princes have declined from the position they once held of independent sovereignty and have now become a part of the administration by which the Empire of India is governed; their right to exercise authority in provinces, divisions or districts, is derived, though with a different tenure, from the same authority which appoints Lieutenant-Governors, Commissioners, and Collectors; and though it is certainly not desirable that the public should be made aware of all differences of opinion between the Supreme and the Local Authorities, yet such revelations cannot, at the most, create more than administrative inconvenience. On the other hand, the Indian public has a natural and legitimate interest in knowing whether the Government of India proposes to curtail the area which is governed by purely Indian administrators, and if, for instance, a Viceroy of the future were to be converted to Lord Dalhousie's views regarding the right of adopted children to inherit, an editor who gave early information of that fact would, I think, be doing a public service. At whichever part of the definition we look, it appears to me that the matters referred to in clause (*b*) are of the class in which the interests of the Government and of the general public are not infrequently in conflict, and I therefore submit that there is no clear case for legislating in the interest of the administration.

"The Government have, in effect, recognised the reasonableness of this view, inasmuch as the Bill proposes to submit all disputed cases to the arbitration of the Law Courts; but I submit that the safeguard here proposed will be ineffectual. By the provisions of this Bill, the question which the Courts will be asked to decide is whether the publication of a certain affair of State at a certain time was prejudicial to the public interest. The Courts may adopt one or other of two views; either that the statement of an officer in the Department, deposing that the interest of the State had suffered, is sufficient evidence that the publication of the news complained of was prejudicial to the public interests; or the Courts may refuse to convict unless the Government prove (1) that the interest of the administration has suffered by the publication, and (2) that the interest of the administration is in this case identical with that of the public. If the Courts adopt the former view, this Bill will authorize the injustice of making the Government the judge of its own case; but if the Courts lean to the opposite view, it is doubtful whether the Government will ever secure a conviction. I do not imagine that the Government will be willing to undertake a prosecution if they have to explain, first, exactly in what manner the administration *has* been damaged by a certain publication, and, secondly, that

the prejudice to the administration was equally prejudicial to the interests of the general public and, thirdly, that the publisher was in a position to know that the publication at this particular time would be injurious to the administration. I contend therefore that if this provision of the Bill can protect the interest of the Government it will do so at the expense of the general public, and that, if it is consistent with fair dealing to the public, it will fail to protect the interest of the Government. It is therefore either harmful or useless and in my opinion should be dropped.

"After all is said and done the plain man will hold to the opinion that the Government ought to take better care of its own secrets and not punish other people because its subordinates are not under sufficient control. Every business man, indeed every body who has to control an office, has to overcome this same difficulty, and, if news leaks out of the office which the master wishes to keep secret, the world's unsympathetic comment is generally that he has only himself to blame. It has yet to be shown that Government work is of so peculiar a character that it cannot be controlled by ordinary business methods; and even if this could be shown, the public has still a right to ask that the Government should not legislate until it has made an honest and whole-hearted attempt at putting its offices in order. It cannot, I venture to think, be said that the Government does at present take all reasonable precautions to secure secrecy, because Government offices are open to every idler who cares to wander through them, and the multitude of chaprasis, who sit at the doorway of every Government office, do not apparently recognise that it is their duty to keep trespassers away. If chaprasis are incompetent to discharge this duty, it should be assigned to police constables, and, if police constables fail, to head-constables, and, if they fail, to Sub-Inspectors. Surely there is somewhere in the Government hierarchy a grade of public servants which can be trusted to carry out this duty with honesty and firmness, and I venture to think that the Government ought not to be satisfied until, by the employment of competent men, they have secured their offices against unauthorised intrusion; the area over which this vigilance is necessary is not, after all, very extensive, because it is only a few offices at head-quarters that have information which is at the same time confidential and of grave importance. When Government has taken every reasonable precaution to secure secrecy and those precautions have failed, then, and then only, I contend will cause have been shown for including such matters of lesser importance as are grouped under clause (*b*) within the operation of the Official Secrets Act.

"Briefly to recapitulate, I beg to say that (1) I welcome this measure in so

far as it provides greater security for official secrets in regard to military, naval and foreign affairs; but I contend that the affairs mentioned in clause (*b*) are not of such paramount importance to the security of the State that we should be justified in inflicting legal penalties upon the premature disclosure of the intentions of the administration with regard to these affairs. (2) I believe that the provision to refer to the arbitration of the Law Courts the question, whether or not an affair is of such a confidential nature that the public interest would suffer by its disclosure, would in practice prove to be either unjust or inoperative. (3) And in any case I contend that the necessity for secrecy in regard to the affairs mentioned in this clause is not so urgent as to justify legislation until the Government have exhausted every device of departmental administration to secure stricter control over their own offices. I therefore beg to move the amendment standing in my name."

The Hon'ble SIR ARUNDEL ARUNDEL said:—"I have been interested, but I have not been convinced, by the extremely ingenious speech of the Hon'ble Mr. Morison. He contends that secrecy is not essential to the Government administration, though considerable administrative inconvenience might result, and he even proceeded to discuss the question of Native States, into the rights of administration of which I should certainly hesitate to follow him and should as certainly dissent from his dicta. But of one thing I think we may be quite certain, that is to say, that if we declared there were no matters of secrecy to the Native States, they themselves would be the first to cry out that they were most unjustly treated. The interests of the public, the Hon'ble Mr. Morison tells us, are occasionally antagonistic to those of Government; but I venture to say that this is the wrong way of looking at it. It seems to me that the State is the representative of the public, and that we cannot say their interests are antagonistic to the public interest. The Government exists in order to look after the public. And then again with regard to appealing to the arbitration of the Law Courts, it seems to me that what we are aiming at now is to point out that certain things are offences, and that if people commit these offences they will be liable to penalty as provided in the Bill. That being the case, it is for the prosecution, whenever a case is brought before a Court, to prove the offence which has been committed. I may say with regard to this question of proof that it was suggested to us that the certificate of a qualified Government officer might be enough to show or to prove that the interests of Government had suffered by the disclosure of certain facts or information. But we did not think that this was a fair method of treating the case. It put the defendant in a most difficult position, and it

seemed to be far fairer that we should leave it to the Court to decide, after hearing the evidence, how the interests of the public might suffer, rather than to do it by the arbitrary method of simply filing a certificate. Then the Hon'ble Member says that the Government offices are open to every idler. I am afraid that in many cases there is a good deal of truth in this, and the public very often regard public offices in much the same sense as a public market. I think this is entirely wrong, and that it should be put a stop to. But when the Hon'ble Member says that Government ought to do it by executive order, his suggestion means the objectionable multiplication of chaprasis and constables in the Government offices, and he must remember that, if we wanted to make every clerk in India absolutely free from the possibility of temptation regarding the divulgation of information, we should have probably to double or treble the salaries all the way round, and I think one of the first persons to object to that would be my Hon'ble friend Sir Edward Law. There is one other point which I should like to mention, and that is what the actual intentions of Government were when Act XV of 1889 was passed, because there seems to be a good deal of doubt as to what the facts actually were, in the Press and perhaps in this Council. There are several amendments traversing the introduction of civil affairs, and at the risk of being tedious I should like to call attention to the clearly anounced intentions of Government when Act XV of 1889 was under discussion.

"The Hon'ble Mr. Scoble (10th October 1889), in introducing the Bill, said :—

'It is a mere enactment of an Act passed during the last session of Parliament to prevent the disclosure, by unauthorized persons, of official documents and information.'

"And he went on to say :—

'The offences which it is intended to reach are (1) the wrongful obtaining of information in regard to any matter of State importance, and (2) the wrongful communication of such information.'

"On the 17th October, 1889, on the motion that the Bill be taken into consideration, His Excellency the Viceroy, Lord Lansdowne, addressed the Council at some length in support of the Bill, and gave as an illustration of its necessity the garbled publication of a civil confidential document in an Indian newspaper. He concluded his speech by saying —

'I think it should be generally known that the new law is intended to be put in force in such cases, and that those who publish official documents without authority will come

within its scope whether the persons by whom those documents have been divulged are discovered or not, and whether documents themselves are published in their entirety or, as in the present instance, reproduced in a garbled and truncated form.'

"There is thus no possible doubt as to the intentions of Government in passing Act XV of 1889. But so long ago as 1895 the legal advisers of Government differed as to whether the Act did or did not cover civil official secrets, and now in amending the Act the opportunity is taken of proposing to remove the doubt.

"But the Hon'ble Mr. Morison proposes to exclude all civil affairs except the relations of Government with a Foreign State. In short, he wishes to defeat one special object for which the Act was passed, and on which Lord Lansdowne dwelt with special emphasis in his speech on the Bill. One object of the present Bill is to make it clear that civil affairs *are* included, and, if this be conceded, it must also, I conceive, be conceded that there are other civil affairs besides the relations of Government with Foreign States that need to be protected.

"For these reasons I must oppose the amendment."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I desire to support the amendment moved by the Hon'ble Mr. Morison and briefly for two reasons. In the first place, I submit that no foundation has been laid, no facts stated, why the character of secrecy should be imposed upon information relating to the matters mentioned in clause (*b*). In the second place, the test prescribed for determining whether a particular information does or does not come within the definition, is of such a vague character that if the case were carried into the Law Courts it would be extremely difficult to procure a conviction. Prosecution might be very easy, but conviction would be a remote chance indeed. With reference to what fell from the Hon'ble Sir Arundel Arundel as to what the intentions of Government were when the Act of 1889 was passed, I can only say that, whatever their intentions might have been, those intentions were not carried out by the language used in the Act. If it was the intention of the Government that civil affairs should be included within the scope of the Act of 1889, the language was inadequate; at any rate on that occasion there were no facts mentioned which would justify the Government in including civil affairs within the scope of the Act, and I am bound to point out that up to the present moment no facts have been mentioned which would justify the Government in including civil affairs within the scope of the present Bill."

The Hon'ble MR. GOKHALE said:—"I desire to say just one word in regard to what has fallen from the Hon'ble Member in charge of the Bill. The Hon'ble Member just now told us that the Act of 1889 was passed with the object of including civil affairs within its scope. We have Sir Andrew Scoble's statement that the Act was merely a repetition of the English law passed on the same subject a year before, and in connection with the English law it was definitely stated by the Lord Chancellor in the House of Lords that the Act was intended to apply to naval and military purposes only. The English law being thus intended and the Indian law being merely a repetition of the English law, I do not see how the Indian law could have been made to cover civil cases. Another point I would like to mention is that even under the law of 1889, supposing that civil affairs were included within its scope, the only thing that was made penal was the publication of information wrongfully obtained.

"By introducing the word 'civil', however, in section 3, sub-section (*a*) [now sub-section (*3*)], the Government secures an advance upon that; the proposed amendment penalizes the publication of all confidential information, not merely wrongfully obtained, but no matter how it was obtained. The present Bill, therefore, does not merely make clear the intention of the Act of 1889, but goes much further than that Act."

The Hon'ble RAI SRI RAM BAHADUR, said:—"I beg to support the amendment, moved by our Colleague the Hon'ble Mr. Morison, that in clause 2 of the Bill, as amended, in the proposed definition of 'civil affairs,' sub-clause (*b*) be omitted.

"My Lord, the Hon'ble Mover of the amendment has, in a well considered and eloquent speech, said all that could be said in favour of the motion. With Your Lordship's permission I beg to offer a few remarks in support of the amendment.

"A consideration of the circumstances which led to the genesis of the Indian Official Secrets Act of 1889 will show that the proposal to bring civil affairs within the scope of the law will involve a departure from the principles on which the English prototype of the Indian Act of 1889 is based.

"At the time of introducing the Official Secrets Bill in 1839, which afterwards became Act XV of the same year, the Hon'ble Mr. (now Sir) Andrew Scoble said as follows:—

'This Bill has not originated with the Government of India; it is a mere re-enactment of an Act which was passed during the last session of Parliament to prevent the disclosure, by unauthorised persons, of official documents and information. This Act applies to all parts of Her Majesty's dominions, and is therefore already in force in India, but it has been thought desirable to place it also on the Indian Statute Book, in order to give it publicity and to bring its provisions into complete harmony with our own system of jurisprudence and administration.'

"Continuing, the then Law Member further said that the two alterations made in the Indian Bill were the doing away of the distinction between felonies and misdemeanours—terms not used in the Indian legislative enactments—and the substitution of the consent of Government for prosecutions under the Act in place of that of the Attorney-General. In all other respects, it was observed by the Hon'ble Sir Andrew Scoble that the Bill followed the language of the English Statute.

"The principal object of the passing of the English Statute, as disclosed in the course of the debate in Parliament, was to prevent the disclosure of official documents and information relating to military and naval affairs. In moving the second reading of the Bill on the 28th of March, 1889, the Attorney-General said that the Bill had been prepared under the direction of the Secretary of State for War and the First Lord of Admiralty, in order to punish the offence of obtaining information and communicating it against the interest of the State.

"The real object of the English Act was made clear in the House of Lords by the Lord Chancellor (Baron Halsbury). He said that the measure was intended for those who facilitated the military operations of other countries, by giving copies of official documents.

'It provides,' he went on to say, 'for the punishment of those persons who either give information to the enemies of the country, or make or communicate plans or sketches of fortresses or like places or disclose official secrets.'

"He then explained the meaning of official secrets in these words:—

'Another class of offences is the disclosure of official secrets: when a person who is holding or has held office under Her Majesty, or has in his possession or control any official document, should in like manner communicate with those who may become the Queen's enemies, severe penalties are enacted.'

"It is thus quite plain that two classes of offenders were intended to be brought under the operation of the Act; first, those who betray the interest of the State by helping the military operations of His Majesty's enemies, by supplying them with plans and sketches of fortresses and like places. The other class consists of officials only, and they are liable to severe punishment only when they disclose official documents to parties who may become the King's enemies. One can see at once that in order to bring home an offence under the English Act, it is essential that the offender should be proved to have communicated official secrets to the enemies of the Sovereign. My Lord, the above remarks will show that the scope of the English Statute, and consequently that of the Indian Act, is chiefly confined to the disclosure of official secrets relating to military and naval affairs, and the betrayal of such secrets is made penal. The definition of official secrets, proposed to be given in this Bill, if accepted by the Council, will go far to extend the scope of the original law on the subject. For these reasons I support the motion now before the Council."

The Hon'ble SIR EDWARD LAW said:—"The object of the amendment moved by my Hon'ble Colleague is to restrict the definition of 'civil affairs' to foreign affairs. He assumes apparently that whilst military, naval, and diplomatic affairs require the protection of a special law, no such protection is required in matters of civil administration. I hope to be able to convince him and any others whom a similar assumption may incline to opposition to the Bill before us, that the assumption is entirely erroneous, and all arguments based thereon must therefore necessarily fall to the ground. I am convinced that if any one of my Colleagues who are now disposed to object to the Bill were to take my place for a few months in my Department, he would quickly ask that the public should be protected from the possibility of wrongful disclosure of confidential information. I am quite unable to understand what my Hon'ble Colleague means by saying that there is a divergence between the interests of the public and the interests of the Government. Government is the representative of the public, and my Hon'ble Colleagues at this table are in the same position as Government in representing the public today. They are speaking in the interests of the public or in what they assume to be interests of the public whom they represent, and when we speak we speak in the same interests. My Hon'ble Colleague was not, I think, particularly happy in the selection of the incidents which he quoted of divergence of interests between the Government and the public. He alluded to the possibility of conversions, and he said that it would be in the interest of a certain section—these were his words—of the public that this information should be published or should get abroad. I should like to know what is the section to whose interests it would be: it could only be in the interests of that section of the public who desired to make money at the expense of the public, out of their information.

"There must always be numerous cases in which the disclosure of confidential documents indicating the grounds on which action is being considered or has been decided upon in the Finance Department, must necessarily prove seriously prejudicial to those public interests which it must be the desire of every Member of this Council to protect, and I will give some examples of the class of cases where the premature publication or disclosure to individuals of confidential documents would inevitably have a most harmful result.

"As is well known, there is constant and considerable speculation in Government Rupee Paper, and at a certain period of the year that speculation is based on what are assumed to be the intentions of Government as regards the amount of the loan which it is intended to issue at a future date, whilst, when the date of issue approaches, fresh speculation arises on the price which it is supposed that Government will accept for tenders. Such speculations lead to the manipulation of the market in a sense adverse to the interests of the general public, and it is therefore of great importance that the intentions of Government should not be disclosed.

"Again, we have, for some months past, as you are doubtless aware, been purchasing silver for coinage into rupees, and such purchases, as all business men will fully understand, must be conducted with great circumspection and as much secrecy as possible. The silver market is a very fluctuating one, the price varying in a few days by as much as 6 to 8 per cent., and it is a market so well controlled by a certain group of speculators that the knowledge that the Government of India requires to immediately purchase, say, £500,000 worth of silver, is quite sufficient to raise the price in the London market to an extent causing a loss of possibly £30,000 to £40,000 to the tax-payer, whose interests it is our duty to protect. It is impossible to take decisions on such a question without receiving and considering the reports and opinions of the officials directly concerned, and such reports and opinions must necessarily pass through the hands of a number of officials, any one of whom could profitably be offered what would be to him a small fortune for the disclosure of the intentions of Government.

"But silver is not the only thing purchased by the Finance Department; it has also to consider both the necessity of purchase and the terms on which it is prudent to buy lands, railways, and other property of considerable value; and in all such cases it is self-evident that if the sellers should be prematurely informed as to our intentions, the information acquired would be used to the detriment of the tax-payer. And what would the commercial world say

if, when we received tenders from rival firms competing for a contract, the terms of the offers received were disclosed to interested parties, and we could only fold our hands and say that, even were the offender discovered, we had neglected to provide ourselves with sufficient power to secure his adequate punishment?

"The Finance Department is in all such matters in the position of the business man contemplating a transaction and preparing for a deal, and the last thing that a business man would desire is the disclosure of his hand to the parties with whom he was negotiating or proposing to negotiate. There is, however, this difference between the situation of a Government Department and that of the business man undertaking a business. The commercial man keeps his counsel to himself, carefully avoids committing his ideas and decisions to paper, and trusts no one but his partner and perhaps a special confidential clerk, whilst the heads of a Government Department are obliged, by their special responsibility to the public, to carefully record every reason for intended action, and unfortunately to cover pages of foolscap with opinions and arguments for and against any contemplated transaction, before definitely deciding to move in the matter.

"Finally, there is the question of modifications of excise-dues and of duties on articles of importation. It must surely be recognised that when Government is contemplating any reduction or enhancement of such dues or duties, it is before all things essential that no intimation of their actual intentions should get abroad until the moment of decisive action. Had it been known a year ago that Government had decided to reduce the salt-tax by 8 annas, from a certain date, the result could not have failed to be that stocks of salt in the hands of every dealer in the country would have been allowed to run down to an extent which would have led to a temporary famine in the article, and caused great inconvenience by enhancing the price to consumers. Such an important decision could not be taken without voluminous correspondence and notes, not only in the Finance Department, but also with local authorities consulted on the question, and with the Secretary of State in England. Similarly, should it be contemplated to increase the duty on any important imported article of general consumption, it is manifest that the speculator who had succeeded in an unlawful manner in obtaining information as to the plans of Government, would make large profits out of his knowledge, to the prejudice of the public.

"I could multiply instances, but I am unwilling to take up the time of Council, and I will only mention one more of the numerous cases in which the

interests of the public as represented by the Finance Department may be seriously imperilled by the communication of information. It is well known that the question of the introduction of counterfeit rupees into circulation is one which has for some time past been engaging our very serious attention. We are taking every means in our power to discover where counterfeit rupees are manufactured and by what agencies they are distributed. Now, what would be the result were it to become known to the public through the agency of enterprising journalism that the result of our enquiries had led us to believe that we had discovered an important centre of manufacture or distribution? Evidently that the criminals, being warned in time, would take measures to avoid detection, and that our endeavours to check illegal coining would be frustrated.

"I do not say that, to my certain knowledge, Government has been betrayed by the wrongful action of employés in connection with any of the questions I have indicated, but there have been suspicious circumstances, and any one who calmly considers the situation must admit that existing laws and regulations do not give us the necessary power to cope with the danger. It is highly to the credit of the official staff that, having regard to the enormous and constant temptation to secure illegal gains, and, even leaving criminal intention out of the question, to satisfy personal vanity by indiscreet communications, we have escaped any serious scandal; but I must repeat the admission that there have been occasionally distinctly suspicious circumstances, and there are gentlemen in this room, who, assuming that such suspicious circumstances necessarily indicated guilt, have severely criticised what they assumed to be a culpable laxity of control in the matter. We ask today to be put in a position to insure effective control in the only manner in which it is possible, and that is by making it clear that neither the tempted employé nor his tempter can escape the penalties of the law if his guilt be established in the eyes of the judicial authorities of the land. A suspected official can of course be punished departmentally,—we prefer that he should be pronounced innocent or guilty by the established Courts of justice,—and whilst arbitrary action is rendered impossible by the ample safeguards in the provisions of the Bill, we hope that in serious cases we may be enabled to secure, through the Courts, the punishment of the tempter as well of the tempted. I cannot believe that anyone would seriously wish to confine punishment to the tempted Government official, whilst allowing the greater culprit, the tempter, to escape scot-free, and it should be understood that without the present Bill we must remain in the position of being able to punish only the less guilty of the two parties.

"It has been suggested that, if private banks and firms are able to control their employés, Government should be able to do the same without recourse to special legislative measures; but I have shown that the opportunities for acquiring confidential information are necessarily infinitely greater in a Government Department than in a private office, and moreover the value of such information to interested individuals is incomparably greater, whilst cases are not unknown in which even private establishments have suffered heavy loss through breach of trust in the matter of disclosing information. It has been specially suggested to us to day that the control might be established in a more efficient manner by certain measures that were specified and which, I am astonished to find, included amongst them the placing of police-constables in the corridors of public offices. I remember that on the first occasion when this Bill was brought before Council, one of my Hon'ble Colleagues made one of his most magnificent periods by declaiming against the danger of his being summarily arrested and charged as a criminal if he ventured to endeavour to see me in my office.

"The Department over which I have the honour to preside is always desirous to take the public into its confidence as far as possible, but I trust that I have sufficiently established that there is a real necessity for the protection of public interests in the matter of wrongful disclosure of confidential information, and that it is frequently imperative that secrecy should be strictly observed for a time, and I therefore strongly urge the adoption of the Bill.

"Some of our would-be candid friends and constant critics have, I presume under the influence of serious misapprehension, allowed their imagination to run riot in dreams of fanciful processions to ice-bound dungeons, and of a Government of India suddenly being transformed by the passing of this Bill into a band of raving lunatics; but now that certainly many, and I hope all, misapprehensions have been removed, I think that we may reasonably ask for a little calmness in the consideration of a very important business measure, and that, as the result of such calm consideration, the public spirit and patriotism of all Hon'ble Members of this Council will lead them to support a Bill which is proposed in the sole interest of the public whom they represent."

The Hon'ble MR. RALEIGH said:—"I should like to add a few words on the questions which have been raised as to the history and true construction of the Act of Parliament passed in 1889, and of the Act which we now propose to amend. My Hon'ble Colleagues Mr. Gokhale and Rai Sri Ram Bahadur have referred to certain statements made by the present Lord Chancellor, which would be authoritative, if they were complete; but I feel tolerably certain that the quota-

tions are made from an imperfect report. We have before us here the debates of the House of Lords, and it seems clear that Her Majesty's Government intended their Act to extend to political matters; it is equally clear from our Proceedings that Lord Lansdowne and his Council were of the same opinion. The Hon'ble Dr. Mukhopadhyaya says that, if it was intended to include civil affairs, the intention was not carried out; that our Act does not extend to them. I do not set my own opinion on the point of law against that of my Hon'ble Colleague, but when I tell him that Sir Griffith Evans advised against the view for which he has contended, Dr. Mukhopadhyaya will at least admit that the point is doubtful, and that we should be wise in taking this opportunity of clearing it up.

"I do not dwell on these preliminaries, because the question for Council is not what was done in 1889, but what ought to be done now. Is our proposal, to include civil affairs generally in the Bill, a fair and reasonable one as we contend, or is it unfair and oppressive, as the Hon'ble Mr. Morison has endeavoured to show? Mr. Morison wishes to exclude from the purview of this Bill all our correspondence with Native States, and all business connected with the civil administration. I differ from him on both points. In regard to Native States, it seems to me that my Hon'ble Colleague misconceives the situation with which we have to deal. It is incorrect to compare the Ruler of a Native State with a Lieutenant-Governor or the Commissioner of a division. He is not an officer under our orders; within his own limits, he exercises an independent authority, historical in its origin, and protected by conventions which the Government of India cannot alter at its mere will and pleasure. These conventions are not, strictly, international, but I have said enough to show that our correspondence with Native Princes possesses a diplomatic character, and that we are bound to treat them with special consideration and courtesy. If we exclude them from the purview of this Bill, we shall not be consulting their dignity or their convenience.

"I turn now to the sphere of civil administration. It is very easy to make points in debate by selecting any of the innumerable trifles which make up the routine business of a public office, and asking which of these are to be matters of State under this Bill. This argument might be in point if this Act were part of the ordinary law, which any officer of Government can set in motion. But it is in fact a special law, only to be set in motion by Government itself. I am far from supposing that Government is infallible, but I hold that Government may be trusted to decide, on its own responsibility, what matters are, and what are not, so important as to justify a prosecution under this Act. The final

decision, of course, is with the Judge or Magistrate who tries the case. After the speech of my Hon'ble friend Sir Edward Law, I need not adduce any further evidence to show that in each of the great departments the public interest requires that our confidential papers should receive a reasonable measure of protection. These, I think, are the main objections to the amendment, and they are sufficient to justify the Council in rejecting it."

His Excellency THE PRESIDENT said:—"Before putting the motion to the Council, I must add a word. The excellent speeches delivered by my Hon'ble Colleagues on the right and left have dispensed me from saying much from the point of view of Government; but I desire to make one observation from the point of view of the Bill itself and of its future. If the Hon'ble Mr. Morison's motion were carried, the motion would be fatal to the Bill. He has argued that the civil affairs under sub-clause (*b*), to which he refers, are not of major importance, and that their protection is not essential to the interests of the State. After some slight experience now of the Government of this country, I must beg respectfully but emphatically to disagree with him, and I submit that probably we, who are Members of the Government, are better qualified to express an opinion on a matter such as this than he. The Hon'ble Sir Edward Law has given us a most convincing illustration of the class of cases connected with the Department which he administers so well, that ought to receive—that are entitled to receive—protection in any civilised State. I need not add anything to what he said upon that point. Then comes the category of questions relating to Native States. Upon this matter I have perhaps a right to speak with some authority, and I say deliberately and with a full sense of responsibility that I can conceive of nothing more unfortunate than that the relations of the Government of India, which in reality means the Viceroy, with the Native Princes of India, relations prized by both of them, and in the vast majority of cases honourable to both of them, should be made the subject of disclosure and discussion in the Press with absolute impunity. Such a condition of affairs would not merely be distasteful to us, but would be repugnant to them, and would be injurious to the interests of the State. The Hon'ble Mr. Morison submits to us an alternative suggestion. He says, instead of providing the protection which you are so anxious to secure under the Bill, exhaust every device you can for improving your Departmental administration. Well, this is sound enough advice over the limited range to which it extends, but how, I would ask, could a superior staff of chaprasis or policemen protect the Government of India from the illicit disclosure of confidential information, we will say, about the succession to a Native State, about the administration of justice inside it, or about the condition of its finances? However, the point upon which I desire to lay stress before Hon'ble Members vote is this, that if the Hon'ble

Member's motion were carried, this Bill would be reduced to a nullity, because civil affairs would be left, it is true, but they would be confined to the relations only between the British Government or the Government of India and Foreign countries. In that case we might just as well drop the Bill altogether, because to lay down that the only civil affairs that require protection are those relating to the exceedingly exiguous class that I have described would be manifestly absurd. I therefore think that the Council may with confidence throw out the motion of the Hon'ble Member."

The motion was put and negatived.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in clause 2 of the Bill as amended, in the proposed definition of "civil affairs", in sub-clause (*b*), the following words be omitted, namely :—

"affecting the relations of the Governor General in Council with any Native State in India, or".

He said :—"When I drafted this amendment I carefully excluded all reference to financial questions expressly with a view to disarm all criticism from my Hon'ble friend Sir Edward Law. I was in hopes that, so limited, it might prove acceptable to the Council, but I find I was very much mistaken. I confess that it does require a certain amount of courage to put this amendment to the Council after what has fallen from Your Excellency, but I regret I am unable to fall in with the view that the publication of information regarding the civil relations between the Government of India and the Native States should be penalised in the manner proposed in the Bill. It is conceivable that such publications may sometimes prove to be a source of serious inconvenience to individual officials concerned in transactions which will not bear the light of day; but I venture to point out that it would be a distinct advantage, not only to a Native State, but also to the Government of India, that the civil relations between the two should be of such a character as would stand the closest scrutiny. Surely, if they are of the character I have described, honest criticism need not be feared. If, on the other hand, these relations are of a very different complexion, the fullest and the freest public discussion ought to be welcomed. So far as the materials have been placed before this Council, not the slightest foundation has been laid, in fact, for the position that the publication of information regarding Native States ought to be restricted. Till the necessity for the new provision is established with reasonable clearness, I am unable to accept a new provision of this sweeping character merely because it is asserted that such a provision is necessary or desirable."

[4TH MARCH, 1904.] [*Sir Arundel Arundel; Dr. Asutosh Mukhopadhyaya; Mr. Gokhale.*]

The Hon'ble SIR ARUNDEL ARUNDEL said:—"The Hon'ble Member would exclude from the definition of 'civil affairs' all matters affecting the relations of the Governor General in Council with any Native State in India, even when the limitation is laid down that the affairs are of such a confidential nature that the public interests would suffer by their disclosure. To my mind it would be a scandal if at a time when we are passing a Bill like this we did not ensure the safety of the confidential relations between Government and the Native States: but after the remarks of His Excellency and the Hon'ble Mr. Raleigh on the previous amendment I think it quite unnecessary for me to say anything more."

The motion was put and negatived.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in clause 2 of the Bill as amended, in the proposed definition of "civil affairs", in sub-clause (*b*), before the word "relations" the word "civil" be inserted. He said:—"If the definition is so amended it will read thus:—

'(7) "civil affairs" means affairs—

* * * * *

(*b*) affecting the civil relations of the Governor General in Council with any Native State in India, or relating to the public debt or the fiscal arrangements of the Government of India or any other matters of State, where these affairs are of such a confidential nature that the public interest would suffer by their disclosure.'

"The only reason that I need assign for this amendment is that civil affairs ought to mean 'civil relations' and ought not to include military relations. It seems to me that it is an improper use of language to include military matters under the term 'civil affairs'."

The Hon'ble SIR ARUNDEL ARUNDEL said:—"Unfortunately, if this word is included, the military matters would not be included among affairs relating to Native States, which would be protected by the Bill, because the military and naval matters which are protected are those relating to His Majesty's forces, and in addition to the military affairs which would be excluded, political affairs would also be put into the same category. This is the same amendment as the preceding one with a small portion of it whittled away. After what has been said on the two previous motions I think it is unnecessary for me to say more."

The motion was put and negatived.

The Hon'ble MR. GOKHALE moved that in clause 2 of the Bill as amended, in the proposed definition of "civil affairs", in sub-clause (*b*) the words "or any other matters of State" be omitted. He said:—

"Government are no doubt aware that these are the words to which the greatest exception has been taken both by the Press and by public associations in the country, and if this proposal to omit them is accepted, the greater part of the opposition to this measure will, I think, disappear. On the other hand, if the words are retained, they will render the attempted definition of 'civil affairs' practically valueless, by conferring on Government almost as wide and dangerous a power to interfere with the liberty of the Press as under the original Bill. My Lord, a definition is no definition unless it specifies, or at any rate indicates with some degree of definiteness, what it is that is intended to be included within its scope, so that a person of average intelligence may have no difficulty in understanding that scope. In the present case, this test fails altogether on account of the use of such vague and all-embracing words as 'any other matters of State' in this attempted definition. I see that the Hon'ble Sir Arundel Arundel has given notice of an amendment to insert the word 'important' before the words 'matters of State'. 'Any other important matters of State' is, however, as vague and may be made as all-embracing as the expression 'any other matters of State,' and I do not think the Hon'ble Member's amendment will improve matters in any way. It may be argued, as the Hon'ble Member did when presenting the Report of the Select Committee, that the definition of 'civil affairs', even as it stands, need cause no apprehension; because, before any conviction is obtained, Government would have to prove (*1*) that the information published was of such a confidential nature that the public interest had suffered by its disclosure; (*2*) that it had been wilfully disclosed; and (*3*) that the person disclosing it knew that in the interest of the State he ought not to have disclosed it at that time. Now, my Lord, these safeguards look very well on paper; but I fear in practice they will not be found very effective. When the Government come forward to prosecute a newspaper on the ground that it had disclosed confidential information relating to matters of State and that such disclosure had harmed public interests, I am afraid a great many Magistrates in India will require no other proof than the opinion of Government to hold that the information published was confidential and that it had prejudicially affected the interests of the State. As regards wilful communication, that too will be held to be established as a matter of course, unless the newspaper proves that the publication was due to inadvertence. The knowledge on the part of the editor that such publication should not have been made at that time in the interests of the State will, no doubt, strictly speaking, be more difficult to prove, but Magistrates of the average type in India, in the peculiar relation in which they stand to the Executive Government, will not be very reluctant to presume such knowledge from the fact that the information published was regarded by Government as confidential and from other attendant circumstances. Let me take, as an illustra-

tion, the publication last year by some of the Indian newspapers of a confidential circular addressed to railway authorities in this country by the Under-Secretary to the Government of India in the Public Works Department in the matter of the wider employment of Europeans and Eurasians. My Lord, in the statement made by Your Lordship in December last on the subject of the Official Secrets Bill, Your Lordship was pleased to state that I had directly attributed the introduction of this Bill to the annoyance caused to Government by the publication of this circular. May I respectfully ask leave to correct this misapprehension? I had mentioned this circular only to illustrate my meaning as to the distinction which I thought Government might make between civil matters of smaller and of greater importance. My exact words were 'It may be said that, while Government have no objection to the unauthorized publication of official news of minor importance, they certainly want to prevent the publication of papers such as the confidential circulars about the wider employment of Europeans and Eurasians in the public service, which were published by some of the Indian papers last year.' And later on, when I spoke of the annoyance caused to the officers of Government, I spoke of 'the annoyance caused by the publication of circulars such as were made public last year.' I had thus used the circular only for the purpose of an illustration, and I beg leave to use it for a similar purpose again today. It is probable that as this circular had been issued without Your Lordship's knowledge or the knowledge of the Member in charge of Public Works, as stated by Your Lordship on a previous occasion, Government would not sanction a prosecution in this case; but supposing for the sake of argument that they did, how would the matter stand? Government might urge that the publication of the circular had inflamed the minds of many Hindus, Muhammadans and Parsis against the Government and had thus led to increased disaffection in the country. And if the trying Magistrate came to accept this view, the task of the prosecution would be comparatively simple. The injury to public interests would be held to lie in the alleged increased disaffection, and the circular being confidential, the Magistrate would have no difficulty in holding that the publication was wilful; and the editor would be presumed to have known what the consequences of such a publication would be. It may be that on an appeal to the High Courts or similar authority, the conviction may be set aside. But the worry and expense caused to the editor by such a prosecution might, in themselves, prove a heavy punishment, especially when it is remembered that the prosecution would have behind it all the prestige, power and resources of the Government. Even if no prosecution were actually instituted by the Government under the proposed legislation, the mere fact that the Government was armed with the power to prosecute cannot fail to affect prejudicially the liberty of the Press in this country. My Lord, nowhere throughout the British Empire is the Government so powerful relatively to the governed as in India. Nowhere, on the other hand,

is the Press so weak in influence, as it is with us. The vigilance of the Press is the only check that operates from outside, feebly, it is true, but continuously, upon the conduct of the Government which is subject to no popular control. It is here therefore, if anywhere, that the Legislature should show special consideration to the Press, and yet here alone it is proposed to arm Government with a greater power to control the freedom of the Press than in any other part of the Empire. My Lord, we often hear Government complaining of the distrust shown by the people in this country and of the people complaining of the Government not trusting them enough. In such a situation, where again the question is further complicated by a tendency on the part of the Government to attach undue importance to race or class considerations, the wisest and safest and most statesman-like course for it is to conduct its civil administration as far as possible in the light of day. The Press is in one sense, like the Government, a custodian of public interests, and any attempt to hamper its freedom by repressive legislation is bound to affect these interests prejudicially and cannot fail in the end to react upon the position of the Government itself. My Lord, I fear, that the retention of the words 'or any other matters of State' in the definition of 'civil affairs' will unduly curtail the liberty of the Press in India, and I therefore move that these words be omitted from the definition."

The Hon'ble SIR ARUNDEL ARUNDEL said:—"I regret that I cannot accept this amendment. Besides the affairs of Native States and those relating to the public debt and other fiscal arrangements, there are many other matters of State, from personal questions to inquiries, say, into systematic counterfeiting of coin and movements of possible sedition or foreign conspiracy, which every Government may have to consider and which may have to be kept secret either permanently or for a season.

"The amendment would go beyond what is now permitted in Courts of law. By sections 123 and 124 of the Indian Evidence Act no one shall be permitted to give any evidence derived from unpublished official records relating to *any* affairs of State without qualification or limitation, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit. And no public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure. Thus under the Evidence Act individual officials are empowered to decide whether the public interests would suffer by publicity. Under the Bill now before Council the matter is one that must be decided by the Court on evidence put before it. Moreover, the expression 'matters of State' is strictly limited to affairs 'of such a confidential nature that the public interest would suffer by their disclosure.'

"If the disclosure had been made it would be for the prosecution to show how the public interests might suffer or had suffered; a suggestion was made that the certificate of a suitable public officer should be made evidence of the injury to the public interests; but this was rejected and the matter has been left to the decision of the Court. The Hon'ble Mr. Gokhale will remember how we attempted in Select Committee to frame a comprehensive definition of civil affairs without success, and we have had to fall back on the general definition embodied in the Bill. *Trifling* matters are not 'matters of State,' but as there seems to be some fear that Government might so regard them I am ready to move an amendment to introduce the word 'important' to qualify 'affairs of State'.

"With regard to the Public Works Circular of last year, all I can say is that if such a circular could have been issued by Government I am perfectly certain Government would never dream of prosecution in connection with it. The views expressed by the Hon'ble Mr. Gokhale and Dr. Asutosh Mukhopadhyaya are evidently different. The Hon'ble Mr. Gokhale is under great apprehensions that a prosecution would be followed by conviction, and that the only safeguard would be an appeal to the High Court. The Hon'ble Dr. Asutosh Mukhopadhyaya, on the other hand, let the cat out of the bag just now when he said that the chance of a conviction was very remote indeed."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I desire to support this amendment, which is identical with the next amendment which stands against my name. The reason for this amendment is obvious, as the words to which I take exception almost completely destroy the value and utility of the definition proposed. As soon as an endeavour is made to define the term 'civil affairs,' it must be upon the admission that the term is vague and does stand in need of a definition. The definition, however, becomes a delusion, if, in addition to the mention of two or three specific cases, it contains words of a general character which make the definition all embracing; such a definition, I venture to think, is rightly open to the charge of being a definition which defines nothing at all. One of the greatest legislators who ever sat in this Council laid it down, as the first principle of legislation, that we must have uniformity when we can have it, diversity when we must have it, but in all cases certainty. It would be difficult to conceive of another definition of civil affairs more uncertain than the one proposed in the Bill. It is impossible to say, with any approach to certainty, what is or is not included in the characteristically vague expression 'any other matters of State.' But whatever vagueness may be admissible in other departments of the law, the law of crimes is undoubtedly the last place where any such vagueness ought to be tolerated, specially when it is desired to create new offences. If we are not in a position to use language more precise, we ought to be content with the specific enumeration already contained in the definition."

The Hon'ble RAI BAHADUR BIPIN KRISHNA BOSE said:—"To have a clear conception of the change in the law, which would result from the retention of the words 'any other matters of State' in the definition of 'civil affairs,' it will be convenient to state very briefly, upon a consideration of the provisions of the Act alone and untrammelled by anything said in Parliament or in this Council, the existing law regarding disclosure of information other than that relating to naval or military affairs. It is an offence (*a*) for any person wilfully and without lawful authority to make public any document or information, which has been obtained by an act which is an offence under the Act, and (*b*) for any person wilfully and in breach of confidence reposed or contrary to his official duty to communicate any document or information to any person to whom it ought not to be communicated.

"In both cases the communication or publication must be contrary to the 'interest of the State,' which, I presume, is the same thing as the 'public interest.'

"The abetment of these acts is also an offence under the Indian Penal Code.

"The Bill proposes to penalise unauthorised publication of any document or information relating to civil affairs, *in whatever manner the same has been obtained*, and not, as now, when the same has been obtained by an act which the Statute declares to be an offence. This expansion of the sphere within which the law would operate would place the public Press under a disability it does not now labour under. It has, however, been stated that the provisions of the Act, read with the definition of 'civil affairs' as proposed, would give all the protection that the Press can legitimately claim in this respect. Now, the condition that the publication must be shown to have been wilful can scarcely be regarded as a real safeguard in the case of a newspaper, for anything appearing in its pages must be held to have been wilfully published, in the absence of evidence to the contrary. The other two safeguards, when analysed, resolve themselves into the same elementary question, namely, whether the publication has injuriously affected the public interest. It has been rightly stated that this is a matter which it will be the function of the Court to decide on the merits of each individual case. But the initiation of a prosecution and a conviction following a prosecution are two different things. For the former, the view which the Government will take will be the sole determining factor, even though that view may not ultimately find acceptance in the Court. Now, the qualifying words constituting the condition referred to above are so general and elastic that the opinion of the Government must always be an unknown quantity, and the newspapers will have to submit to the risk of that opinion differing from their own. Considering the disparity which exists between the facilities which the State

with its resources will command in prosecuting and those which the offending newspaper will ordinarily be in a position to secure for the defence, it can hardly be denied that this liability to be made an accused in a Crown prosecution will operate as a powerful deterrent. The question thus resolves itself into this, is it for the public good that the liberty the Press now enjoys should be thus curtailed in order that the Government might enjoy a larger measure of protection for their civil affairs generally than what the existing law gives? My view is embodied in the note we have submitted with the Report of the Select Committee and nothing has transpired since to induce me to alter my opinion.

"Regarding the provisions of the Evidence Act to which reference was made, I may be permitted to point out that they deal with cases where a private party calls an officer of Government as a witness with a view to put in evidence some official document. In such cases, the officer concerned is made the sole and final judge as to whether the document called for should or should not be produced. It must be so, for to give the Court the power to decide the question would necessitate the production of the document in dispute with a view to its inspection by the Court so that it might give its decision thereon. But to allow this to be done would be to defeat the very object which the Legislature had in view in enacting the sections referred to, namely, to protect from disclosure official papers which the Government considered should not be made public for the benefit of any private litigant. These considerations cannot apply to cases arising under the Official Secrets Act, where a document would already have been made public, and the sole question for decision would be whether such publication was or was not injurious to the public interest. The opinion of the officer of Government could not in such a case be conclusive."

The Hon'ble NAWAB SAIYID MUHAMMAD said:—"My Lord, I wish to say a word in support of this amendment. The expression 'any other matters of State' appears to me very vague and must have the effect of conferring a wide power on the Government at the initial stage of setting the law in motion. Whether the law will be moved effectively or otherwise is a question that will arise at a later stage, and it is only then that the saving provision of proof to the satisfaction of the Court will come in. The main question for us to consider is whether such a broad legislative provision with the potentialities it must necessarily carry, is consistent with the full and free public discussion of affairs essential to the well-being alike of the Government and the people. Sitting in this Council we cannot disregard the weighty words of reasoned protest that have been coming in from all sides and which have not been confined to any particular section of the community. Since the amendment of the Bill by the Select

Committee this note has not perceptibly abated in volume, and this is due to the feeling of insecurity inspired by the ambiguous and comprehensive definition of 'civil affairs.'"

The Hon'ble MR. RALEIGH said:—"If any of my Hon'ble and learned colleagues would like to try his hand at a definition of 'civil affairs', I shall have a certain artistic pleasure in perusing and criticising the result. When we came to frame the definition in the Bill, we found that the number and variety of subjects to be covered must preclude any attempt at an exhaustive enumeration. We therefore proceeded so far by way of enumeration, and then added the general words now under discussion. It has been contended that the general words have no meaning; and the Hon'ble Dr. Mukhopadhyaya says that our enumeration is not sufficient. I think my Hon'ble colleague forgets for the moment the rule called the *ejusdem generis* rule. When you have certain matters specifically mentioned, and then general words following, the general words are construed with reference to what goes before. Put in the word 'important', which the Hon'ble Member in charge of the Bill proposes to add, and then read the definition without prejudice; you will see that it gives sufficient guidance, to Government in the first place and then to the Courts, as to the class of affairs to which this Bill is intended to apply. The Hon'ble Mr. Bose argues that the opinion of Government as to what is a matter of State, and what is important, may not be the same as the opinion of the independent journalist. That is quite true, but the opinion which prevails in the long run is neither that of Government, nor that of the critic of Government, but the opinion of the Judge by whom the case is tried.

"The Hon'ble Mr. Gokhale indeed suggests that the wishes of Government will guide our Magistrates in their construction of the Act, or, in other words, that accused persons will not have a fair trial. I know something, by this time, of our subordinate judicial officers, and on their behalf I deeply resent the language which Mr. Gokhale has thought fit to use. Our Courts, both High Courts and local Courts, have always prized their independence; it is the desire and the duty of Government to respect that feeling. There is, so far as I am aware, no ground for this general charge, thrown out in unqualified terms against a large body of public servants.

"Mr. Gokhale further contends that, even if prosecutions under the Act are few, the mere fact that Government is empowered to prosecute will hamper the freedom of the Press. I will answer this, not with an abstract argument, but by referring to my own experience. Some time ago I was placed in charge of a Department in the Privy Council Office which had constant relations with the confidential Government Press. We never prosecuted under the Official Secrets Act, but we knew it was there, and I think the knowledge was useful in the

case of the lower rank of subordinates. They understood that tampering with official documents was not merely a departmental affair, but might turn out to be criminal. But as for the Press, no gentleman connected with it ever has occasion to consider the Official Secrets Act; if you suggested to a London journalist that he must be sadly hampered by its provisions, he would regard the suggestion as an insult. In like manner I should say with confidence that no honest journalist in India has anything to fear from the provisions of this Bill."

The Hon'ble MR. GOKHALE said:—"I beg leave to say just one word with regard to what has fallen from the Hon'ble Mr. Raleigh. He said that he resented the suggestion made by me that many of the Subordinate Magistrates in this country might construe the provisions of this Act in a manner unduly favourable to the prosecution and that accused persons might not have a fair trial when the prosecution was started by Government. All I can say is that if the Hon'ble Member will occasionally glance at the judgments of High Courts, as reported in the newspapers, and read the observations which the Judges from time to time feel themselves constrained to make on the conduct of subordinate Magistrates, he will find that there is more than justification for the fears that I have expressed."

The Council divided:—

Ayes—7.	*Noes—16.*
The Hon'ble Dr. Asutosh Mukhopadhyaya.	The Hon'ble Mr. D. M. Hamilton.
The Hon'ble Rai Bahadur Bipin Krishna Bose.	The Hon'ble Mr. J. B. Bilderbeck.
The Hon'ble Dr. Ramkrishna Gopal Bhandarkar.	The Hon'ble Mr. A. Pedler.
The Hon'ble Mr. T. Morison.	The Hon'ble Mr. H. Adamson.
The Hon'ble Nawab Saiyad Muhammad.	The Hon'ble Mr. F. S. P. Lely.
The Hon'ble Mr. Gopal Krishna Gokhale.	The Hon'ble Mr. E. Cable.
The Hon'ble Rai Sri Ram Bahadur.	His Highness the Agha Khan.
	His Highness the Raja of Sirmur.
	The Hon'ble Mr. A. W. Cruickshank.
	The Hon'ble Sir Denzil Ibbetson.
	The Hon'ble Sir A. T. Arundel.
	The Hon'ble Major-General Sir E. R. Elles.
	The Hon'ble Sir E. FG. Law.
	The Hon'ble Mr. T. Raleigh.
	His Excellency the Commander-in-Chief.
	His Honour the Lieutenant-Governor of Bengal.

So the motion was negatived.

The Hon'ble SIR ARUNDEL ARUNDEL said:—"I am in a somewhat unfortunate position as we were quite unable to accept the amendment which has just been rejected. I was under the impression in proposing the amendment that stands in my name I might meet the wishes and desires of some of the non-official Members of this Council, but from remarks that have already fallen I am not at all sure that they consider the concession worth accepting. However, it is in the direction of giving a further safeguard, and therefore I think it is a step which will strengthen the position of this Bill with regard to the matter under discussion. The motion that I have to make is that in clause 2 of the Bill as amended, in the proposed definition of 'civil affairs', in sub-clause (*b*) before the words 'matters of State' the word 'important' be inserted. If this amendment is accepted, there will be a further guarantee that the provisions of the Act cannot be needlessly put in force and there will be another point to prove to the satisfaction of the Court."

THE Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"My Lord, I appreciate and welcome the spirit in which this amendment has been moved by the Hon'ble Member in charge. It is intended obviously to soften the rigor of the law and to limit the scope of its operation. I wish I could persuade myself to believe that this object will be realized in practice; but I am afraid, however laudable the object may be, in spite of this amendment, matters will remain very much where they are. It may serve as an index of the good intentions of the Government, and may satisfy those who delight to indulge in vague generalities but can hardly appeal to persons who are accustomed to accurate habits of thought.'

The motion was put and agreed to.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in clause 3 of the Bill as amended, in sub-clause (*b*) for sub-head (*ii*) the following be substituted, namely:—

"(*ii*) after the word 'obtain' the words 'or any copy of any such document, sketch, plan or model' shall be inserted."

He said:—"The effect of this amendment, if it is accepted, will be to remove from section 3 (*1*) (*a*) (*ii*) the phrases 'attempts to obtain' and 'attempts to take' which are proposed to be inserted therein. Under the Act as it stands at present, mere attempt to obtain any document, sketch, plan, model or knowledge is not made punishable in the case of a person who is inside a fortress, etc., or in an office, but such attempt is made punishable when the person concerned is outside the fortress or camp. In this respect our Act follows precisely the English Official Secrets Act, 1889. I have not heard it suggested that the provisions of the English Act in this respect have been found to be defective, nor have I heard any reason assigned why we should, in this matter, depart from

the high authority of the English Statute. If the Bill be passed as it now stands we may be led to consequences which I am not sure are really intended, *e.g.*, a man may be inside an office lawfully; while there, if he makes any attempt, say, by putting a question to a clerk, to obtain any information, the language of the section is comprehensive enough to make him guilty of an offence against the Act. I do not think it is any answer to say, that there is no likelihood of a person being prosecuted under the circumstances I have mentioned. The real point of the objection is that it is a serious defect in a Criminal Statute to make the language so unnecessarily comprehensive as to impose a criminal character upon an act which is harmless in itself. Again, if we examine the provisions of the Indian Penal Code, we shall find that mere attempts are made punishable only in the case of some of the very gravest offences, against the State or against human life and property, but in other cases, attempt is made punishable only when in such attempt any act is done towards the commission of such offence. I venture to think that this well-established distinction is not recognised in the section now before us, and I very much prefer to adhere to the provisions of the English Statute, till, at any rate, they are proved by experience to be inadequate or ineffectual."

The Hon'ble SIR ARUNDEL ARUNDEL said:—"I found it quite impossible to understand from the amendment paper precisely what provision the Hon'ble Dr. Asutosh Mukhopadhyaya is about to propose, but I fully understand his position now, and with reference to it I would say that with regard to naval and military affairs it is not sufficient to penalize a person who obtains a document, or sketch, or plan, or model, or map, but it is necessary also to provide against attempts. The attempt may be made either by threats or otherwise, and with regard to taking sketches or plans it might be difficult to say when the taking of a sketch or plan was completed; but if we include here attempts to obtain or take them, then the object which is desired by the naval and military officials will be secured. That is the reason for which I am unable to accept the amendment."

The motion was put and negatived.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in clause 3 of the Bill as amended, in sub-clause (*b*), after sub-head (*ii*), the following new sub-head be inserted, namely:—

"(*iii*) for the word 'anything' the words 'any naval or military affair of His Majesty shall be substituted".

He said:—"The object of my amendment, in which I am encouraged by what fell from Sir Arundel Arundel with reference to my previous amendment, is to make absolutely clear what was the original meaning of the section—a meaning which I fear may become obscured under altered circumstances. The Act of 1898 was applicable only to naval and military matters and consequently the phrase 'knowledge of anything' would mean knowledge of any naval and military affairs. As, however, it is now proposed to make other portions of the Act applicable to civil affairs, it may be contended that the phrase 'knowledge of anything' has by implication acquired an extended significance. I therefore suggest that as reference is made to civil affairs expressly only in section (3) (1) (c) and 3 (3), we should make it clear that the knowledge, the acquisition of which is penalised by section 3 (1) (a) (ii), is restricted to naval and military affairs. I cannot conceive that it should be found necessary to penalise the knowledge of everything, as would inevitably be the consequence if the phraseology of the Act be adhered to, inasmuch as the phrase 'knowledge of anything' is far more comprehensive than even the knowledge of naval, military and civil affairs. If, however, my amendment in its restricted form is not acceptable, I would without hesitation suggest that the word 'anything' may be replaced by the words 'any naval, military or civil affair of His Majesty.'"

The Hon'ble SIR ARUNDEL ARUNDEL said:—"I sympathise with the Hon'ble Dr. Asutosh Mukhopadhyaya in his criticism on this passage. I think there is no doubt that as the word stands it is possible that a Court might, if bereft of its senses, regard a knowledge of *anything* as something outside the ken of the definition of 'civil affairs', and I think we ought to take the opportunity now of rectifying a flaw which has only recently come to our notice, but I cannot accept the Hon'ble Member's first suggestion, namely, to insert 'knowledge of any naval or military affair' because that would exclude civil affairs. I am therefore quite prepared to accept the second suggestion of the Hon'ble Member, and to read the passage as 'knowledge of any naval, military or civil affair'. Then it would be understood that the words 'civil affair' would come under the definition of civil affairs in the Bill and would be subject to all the qualifications provided for in that definition.

"Perhaps, if the Hon'ble Member accepts the suggestion, he would propose the second alternative. I do not know how it stands as a matter of business, but with Your Excellency's permission we can adjust the matter by putting in those words—'for the word "anything" the words "any naval, military or civil affair" shall be substituted.'"

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said that he was prepared to accept this suggestion.

[4TH MARCH, 1904.] [*The President; Mr. Gokhale; Sir Arundel Arundel; Dr. Asutosh Mokhopadhyaya.*]

His Excellency THE PRESIDENT said :—"The Hon'ble Member having accepted the suggestion, I will now move the amendment that stands in his name in the following words, namely, 'that in clause 3 of the Bill as amended, in sub-clause (*b*), after sub-head (*ii*), the following new sub-head be inserted, namely, "(*iii*) for the word "anything" the words "any naval, military or civil affair of His Majesty" shall be substituted.'"

The motion was put and agreed to.

The Hon'ble MR. GOKHALE moved that in clause 3 of the Bill as amended, in sub-clause (*c*) the words "and in sub-section (*2*)" be omitted. He said :—"The effect of this amendment would be to omit the word 'civil' from section 3, sub-section (*3*), of the Act as now proposed to be amended and confine the provisions of the sub-section to naval and military matters as in the old Act. I quite admit that this would practically render the present Bill useless, but the only course left open to me now after the rejection of my amendment with reference to the words 'any other matters of State' is to move that the word 'civil' be taken out of section 3, sub-section (*2*). I tried in Select Committee, as my Note of Dissent shows, to go as far with Government as it was possible for me to go. I agreed to extend the new law to the relations of Government with Foreign States, to the confidential relations of Government with Native States, and to confidential fiscal matters. But beyond that I was not prepared to go, and since Government want to define 'civil affairs' in the manner in which it has been proposed in the Bill, my only course is to propose that the word 'civil' be taken out of the sub-section."

The Hon'ble SIR ARUNDEL ARUNDEL said :—"The amendment of the Hon'ble Mr. Gokhale seems to me to be somewhat of an academic character, for he himself admits that if it were accepted it would render the Bill practically useless, and as I said in regard to the last amendment, which was not accepted without modification, as we have already by implication decided on several amendments to-day that civil affairs are to be included in this Bill, I am unable to accept this amendment."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said :—"I desire to support this amendment, which is identical with the next amendment that stands in my name. The effect of this amendment if accepted will be to leave section 3, sub-section (*2*), of the Act unaltered by the omission of all reference to civil affairs. It will be remembered that by the provisions of the Bill now before us, it is

proposed to extend the operation of three of the provisions of the Act to the publication of information relating to civil affairs. The *first* of the three provisions I have referred to above is to be found embodied in section 3 (*1*) (*a*) (*ii*), which we have just amended by substituting for 'anything' the words 'any naval, military or civil affair of His Majesty.' The *second* of the provisions is to be found embodied in section 3 (*1*) (*c*), which penalises the publication of information relating to civil affairs by a person who does so, in breach of the confidence reposed on him and to the injury of the State; to this provision I take no exception, and I yield to none in my unqualified condemnation of the conduct of the individual who, after being entrusted with an official secret, wilfully, and in breach of such confidence, communicates the same to the detriment of the public interest. But I am not prepared to go further, and I cannot lend my support to any provision of the law which makes the publication of information relating to civil affairs a criminal offence, no matter under what circumstances such information may have been obtained. It seems to me, that there are at least *two* reasons why such an extension of the law ought not to be allowed. In the *first* place, the State is sufficiently protected by the penalty which we have imposed upon the person, who, when entrusted by the Government with an official secret, has committed an act of breach of faith and communicated the information to the detriment of the public interest. In the *second* place, the extension of the law as proposed in the Bill would be effectually destructive of free public criticism of Government measures. I have heard it said that the provisions of the Bill have now been hedged in with so many limitations, that it would be next to impossible to secure a conviction under the new Act, and that consequently the contemplated changes in the law may be acquiesced in as perfectly harmless. I entirely dissent from this view of the situation. A conviction under the Act may or may not be easy to secure, but the prospect of prosecution will nevertheless be in the mind of every journalist. A journalist may obtain most innocently important information relating to civil affairs; before he can publish it, he must satisfy himself that it will not be treated as an official secret under this Act; in other words, that it will not be regarded as of such a confidential nature that the public interest would suffer by its disclosure. So far as I know, he has no means of ascertaining this with any degree of certainty, and he must either face the risk of a prosecution—be the prosecution ultimately successful or unsuccessful—or, what is more within the range of probabilities, he will think it safer to leave the subject alone. My Lord, I have not the slightest doubt in my mind what the ultimate effect of this legislation will be; it will place the right of free public discussion upon a narrower and more restricted basis; however laudable or

innocent the object of the promoters of this legislation may be, its results would be disastrous to the people and the Government alike."

The motion was put and negatived.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in clause 3 of the Bill as amended, for sub-clause (*c*) the following be substituted, namely :—

> "(*c*) in sub-head (*c*) of the same sub-section, for the words 'naval or military' the words 'naval, military or civil' shall be substituted; and in sub-section (*2*), after the word 'taken' the words 'or to the civil affairs of His Majesty, if such information has been, by him, wrongfully obtained or taken,' be inserted."

He said :—"The effect of this amendment, if accepted, will be to leave the publication of naval and military secrets punishable irrespective of the manner in which such secrets may have been obtained and to make the publication of civil secrets punishable only when such secrets have been obtained by unlawful means. I do not desire to repeat the arguments which I have already advanced in support of the previous motion, and I venture to think that, if the publication of civil affairs is at all to be included within the operation of this Bill, it ought to be done with the restriction I have suggested. This is the minimum concession which may rightly be asked in the interests of the Press and the right of free public discussion."

The Hon'ble SIR ARUNDEL ARUNDEL said :—"The object of this amendment is to provide that a person who wilfully communicates information which he knows he ought not in the interest of the State to communicate at that time shall not commit an offence unless he obtained the information wrongfully.

"I may say at once that this amendment cannot be accepted. It is the difficulty or rather the impossibility of proving wrongful intention or the wrongful acquisition of information that has made the English Act useless.

"What difference can it make to the public interests—in behalf of which this Bill is framed—whether confidential information has been rightly or wrongly obtained, if the person who possesses it wilfully and knowingly misuses it, and makes it public when he knows he ought not to do so? The amendment would exempt from penalty an official who wilfully misused knowledge which he had acquired in the course of his duties, and this would be altogether wrong. As this Bill now stands, all servants of Government from Members of Council to clerks in the offices fall under the terms of this clause, and I cannot accept an amendment which would exempt them."

The Hon'ble NAWAB SAIYID MUHAMMAD said:—"My Lord, in support of this amendment I have only to say that its reasonableness and moderation should commend it to the acceptance of the Council. In the case of all offences intention is justly regarded as the first thing necessary to constitute an offence. In the case of naval and military affairs there will be always a presumption of evil intention, but the same cannot be said of civil affairs. My Lord, men of affairs and publicists have always, under a Government which has ever invited and never feared criticism, commented on all the civil affairs of the Government without any reservation, and it appears unjust that, when information relating to such affairs has been legitimately obtained, it should be treated as an offence. A distinction should here be made between naval and military affairs on one hand and civil affairs on the other. The communication of information concerning the former, in whatever manner obtained, may be treated as an offence, but it is obviously inequitable to mete out the same treatment to the communication of information regarding civil affairs unless the same has been wrongfully obtained."

The motion was put and negatived.

The Hon'ble RAI SRI RAM BAHADUR said:—"My Lord, I move that in clause 3 of the Bill, sub-clause (*d*) be omitted. This sub-clause runs as follows:—

> '(*d*) after sub-section (*1*), the following shall be inserted as sub-section (*2*), and the present sub-sections (*2*) and (*3*) shall be renumbered sub-sections (*3*) and (*4*):—
>
> "(*2*) Where a person commits any act specified in clauses (*i*), (*ii*) and (*iii*) of sub-section (*1*), sub-head (*a*), without lawful authority or permission (the proof of which authority or permission shall be upon him), the Court may presume that he has committed such act for the purpose of wrongfully obtaining information."'

"Clause (*1*) (*a*) provides that when a person for the purpose of wrongfully obtaining information—

(*i*) enters or is found in any place, such as a fortress, factory, camp, etc.,

(*ii*) or being in any such place or a public office obtains or attempts to obtain any document or plan, etc., without any lawful authority,

(*iii*) or from outside takes or attempts to take any plan or sketch of any place of military importance without any lawful authority,

he shall render himself liable to punishment under the Act.

"The word 'attempts' in sub-clause (*ii*) and the expression 'in any office belonging to His Majesty' are for the first time being introduced in the Act of 1889 by this Bill. But the most important addition is sub-clause (*2*), which governs all the acts mentioned in sub-clauses (*i*), (*ii*) and (*iii*). This most important innovation runs as follows:—

'(*2*) Where a person commits any act specified in clauses (*i*), (*ii*) and (*iii*) of sub-section (*1*), sub-head (*a*), without lawful authority or permission (the proof of which authority or permission shall be upon him), the Court may presume that he has committed such act for the purpose of wrongfully obtaining information.'

"My Lord, one of the most important legal presumptions according to the English jurisprudence is that of the innocence of the accused. This presumption, which in legal phraseology 'gives the benefit of the doubt to the accused,' is considered so cogent by law that it cannot be rebutted by any evidence short of what is sufficient to establish the fact of criminality of the accused with moral certainty. It is an acknowledged principle of English law that to bring home a charge, the prosecution must establish the elements which constitute the offence.

"Now, according to the first portion of clause 3 (*1*) (*a*), it is not the mere entry which constitutes the offence, but the entry must be with the object of wrongfully obtaining information. In order to establish the guilt of the accused the duty of the prosecution should be to prove that the entry was for the purpose of wrongfully obtaining information. But sub-clause (*2*) is capable of being interpreted in such a way that it would relieve the prosecution of their duty to prove the most important element in the offence charged. If an accused person is found under certain circumstances in one of the places mentioned in sub-clauses (*i*) to (*iii*), all that the prosecution will be required to do is to ask the Court to presume that he has committed the offence charged against him.

"I admit that the new sub-clause does, on the first sight, appear to be an enabling clause only and does not lay down a rigid rule of conclusive presumption; but still its provisions may be misused against an accused person. In such cases the accused would be required to prove his innocence to rebut the presumption which the Court may form against him, without the prosecution first proving that the accused made the entry with the object of wrongfully obtaining information or has obtained such information. To prove innocence, however simple it may appear at the first blush, is not an easy matter.

"The retention of this sub-clause is open to the very serious objection that its real purpose will be misunderstood and its provisions will be considered as of

an advisory character by the Magistrates of the ordinary Indian Courts. Notwithstanding what has fallen from the Hon'ble Mr. Raleigh in the course of one of the remarks made by him just now with regard to the administration of criminal justice in the mufassal, the bitter experience of every body who has some experience of the mufassal Magistracy compels him to entertain a different notion of the administration of such justice.

"As remarked by the Hon'ble Mr. Gokhale, the comments occasionally made by the High Courts in their judgments, on the proceedings of the mufassal Magistracy, fully justify the apprehensions with regard to the misapplication of the provisions of this sub-clause to cases to be tried under this Act.

"My Lord, this sub-clause introduces new provisions with regard to the law of presumption, which are not to be found in the existing Act nor in the Law of Evidence in force in India, and therefore on this ground alone it should be eliminated from the Bill. In case it be said that it does not introduce any innovation but it simply reiterates the principles of the existing Law of Evidence, then also its insertion is open to the equally serious objection that it is a surplusage.

"On these grounds I beg to move that this sub-clause should be omitted and the Courts trying offences under this Act should be left to be guided by the rules of the ordinary Law of Evidence.

The Hon'ble SIR ARUNDEL ARUNDEL said:—"I regret that I cannot accept this amendment.

"In the first place, clause 3 (*1*) (*a*) (*i*) now relates solely to military and naval places, and no objection has hitherto been raised so far as I know to the protection which the Bill is intended to afford to such places.

"In the second place, it is, as every one knows, almost impossible to prove directly that the intention of any person is or was to do a wrongful act. The intention can only be *inferred* from the person's acts. The Bill now leaves it to the Court to draw the inference of wrongful intention, and this is what is meant when it is said that in certain circumstances the Court may *presume* that a person has committed an act for the purpose of wrongfully obtaining information. But in the case before us the Court cannot draw this inference or make this presumption unless the person has committed the act without lawful authority or permission. And as the person must either possess such authority or permission by virtue of his office or by the express or implied sanction of the officer entitled to give it, it is only reasonable to require the person to show that he

possessed such authority or permission. This merely follows section 106 of the Indian Evidence Act, which lays down that when any fact is specially within the knowledge of any person, the burden of proving that fact is upon him. In the absence of such proof the presumption is adverse. Various illustrations can be adduced. Under section 105 of the Evidence Act the burden of proving unsound mind or grave and sudden provocation in cases of murder and grievous hurt lies upon the accused.

"By section 114 a Court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can satisfactorily account for his possession.

"Under Act I of 1889, section 4, clause (3), if, in a trial for the offence of making copper or bronze pieces to be used as money, the question arises as to whether any piece of metal was *intended* to be used as money, the burden of proving that it was *not* intended to be so used shall lie on the accused person. Here the accused is called on to prove a negative.

"Turning to the English Statute Law I find in the Public Stores Act, 1875 (38 & 39 Vict., c. 25), several instances of the burden of proof of lawful authority being thrown on an accused person.

"Section 4 lays down that if any person without lawful authority (the burden of proving which authority shall lie upon him) applies any specified Government marks on any stores, he shall be liable to conviction.

"Under section 7 of the same Act a person charged with possessing or conveying Government stores reasonably suspected of having been stolen must satisfy the Court as to how he came by them.

"Under section 9 marine store dealers and pawnbrokers must satisfy the Court as to how they came into possession of stores which the Magistrate sees reasonable grounds for believing are or were His Majesty's property, and without reference to whether they were stolen or not. Under section 8 any person who without written permission from some authority (proof of which permission shall be on the person accused) gathers or searches for stores in certain places is liable to conviction.

"I think that Council will agree that these illustrations show that the hard words that have been levelled at the provision of the Bill now under discussion are out of place, and that there is nothing in it antagonistic to the spirit of our

laws. I may repeat here that the English Act has been found useless because of the defect we now desire to remove."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I desire to support this amendment, which is identical with the one which stands next on the paper against my name, but before I do so, I should like to clear up one or two matters on which there seems to be some misapprehension. In the first place the Hon'ble Member in charge, I venture to point out, is clearly in error when he says that the clause which we seek to omit applies only to naval and military affairs; it refers expressly to section 3 (*i*) (*ii*), which as now amended applies not only to naval and military matters, but also to civil affairs. Indeed, when I asked the Hon'ble Member in charge to accept a restricted interpretation of the word 'anything', I had in view the presumption clause we are now dealing with. In the second place, the real objection is, not to the burden of the proof of lawful authority being placed upon the supposed offender, but to the presumption which it is suggested the Court may draw from one particular fact, namely, if a man has not lawful authority, his intention is criminal.

"The object of the amendment is to secure the omission of the proposed new sub-clause, which lays down that if a person does certain acts without lawful authority or permission (the burden of proof of which authority or permission is placed upon him) the Court may presume that he has committed such act for the purpose of wrongfully obtaining information. I deeply regret to find that a provision so absolutely inconsistent with the first principles of criminal jurisprudence should find a place in this Bill. It will be remembered that in the Bill as originally drafted it was proposed that the qualifying words in the beginning of section 3 (*i*) (*a*), which made an intention to obtain information wrongfully the essence of a criminal act, should be omitted. The Select Committee have restored these words, but they have inserted a presumption clause which will practically nullify the effect of the words which are restored. This qualifying clause is taken from the English Statute and has a history of its own. Under the English Statute it must be established, before a person can be convicted under section 1, sub-section (*i*), that his purpose was to obtain information wrongfully, and these qualifying words were inserted in the House of Lords at the instance of Lord Herschel. We have apparently here grown wiser, for we first endeavour to get rid of these words, and next, when we find that the proposed omission is not defensible, we re-insert them clogged with a presumption clause. No one suggests for a moment that, when a Court has to determine the guilt or otherwise of an accused person, the Court is not entitled to draw an inference

from *all* the circumstances disclosed in the evidence; but I maintain that it is contrary to all principles of criminal jurisprudence to provide in the Statute Book that from a particular circumstance the Court may presume the guilt of the accused. It is the law of this country, as it is the law of England, that an accused person cannot be convicted on mere presumption, but must be proved to be guilty by legal evidence which is peculiarly strong and clear beyond a reasonable doubt. The burden of proof is upon the prosecutor; all the presumptions of law independent of evidence, are in favour of innocence, and every person is presumed to be innocent until he is proved guilty; if upon such proof there is reasonable doubt, the accused is entitled to the benefit of it by an acquittal. Presumptions, even though rebuttable, ought to be very cautiously introduced, and I cannot think of a more unfortunate instance in which the introduction of a new presumption has been attempted.

"The only reason which may be suggested in defence of the presumption clause is that it will relieve the prosecution of the burden, which rightly lies upon it, of proving to the hilt the guilt of the accused; whether a consideration like this should have any weight, I leave it to others to judge."

The Hon'ble RAI BAHADUR BIPIN KRISHNA BOSE said:—"The second and third of the three acts referred to in the sub-clause which it is proposed to omit contemplate cases where a man may be said to have been caught red-handed. It can scarcely be argued with any show of reason that in such cases the Court may not draw the presumption of guilty intention. As regards the first act, I am unable to accept the view that the sub-clause engrafts any new rule or principle on the law of evidence. A man's intention is generally a matter of inference, which a reasonable mind naturally and logically draws from his acts and conduct. If the surrounding circumstances are such as to make it morally certain that an act was committed with a particular intention, the inference that it was so committed is as safe in the domain of criminal jurisprudence as in any other sphere of human conduct. Thus we find the Evidence Act authorising the Court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of human affairs. If, for example, a person attached to the military staff of a Foreign Government interested in obtaining military secrets of this Empire is found inside a fortress, to which access cannot be had without permission, and he is unable to show that he had such permission, and if further materials for making sketches are found in his possession, the Court would be acting in accordance with the law if it were to presume against him a guilty intention and, unless the presumption is dis-

placed, to convict him on the strength of it. In this matter I disagree with the view of the law which has been propounded by the Hon'ble Dr. Mukherjee. To take an opposite case: an ignorant rustic not interested in military matters and not possessed of necessary skill to be able to obtain information relating thereto, is found in a similar predicament. The Court would not be acting rightly if it were to presume against him guilty intention from the mere fact of his presence without authority inside the fortress. Such is the present law and I fail to see how by merely saying that the Court *may*—not *shall*—presume the existence of the necessary wrongful intention, the sub-clause does anything to add to or alter that law. It merely re-states it and in doing so draws the Court's attention to it, perhaps in the majority of cases, somewhat unnecessarily. Holding this view, the Hon'ble Mr. Gokhale, the Hon'ble Nawab Saiyad Muhammad Saheb and myself saw no reason to object to it in the Select Committee, especially as on its adoption depended the elimination of the original provision, which made mere entry or presence, unless shown to be with lawful authority, an offence under the Act. I am unable therefore to support the amendment."

The Hon'ble MAJOR-GENERAL SIR EDMOND ELLES said :—"I only wish to say a few words in regard to the effect of this amendment on military and naval affairs. If the amendment of the Hon'ble Member were carried, the effect would be that the Bill would be rendered practically useless for our purpose. It is a great satisfaction to find that the Hon'ble Mr. Bose has taken the view of the law that he has. He has referred to the case of an officer of a Foreign Power being found inside a fort. Such a case actually occurred in one of our largest fortresses not long ago. The officer was found under suspicious circumstances in the fort. Of course he said that he had come to obtain a view of the surrounding country and scenery, and had no other intentions. It is not only possible for an officer to take a sketch under such circumstances, but any trained Engineer or naval officer could carry away in his head information of the greatest value. I would therefore most strongly protest against the amendment which my Hon'ble Colleague has put forward as being entirely inimical to the objects of the Bill."

The Hon'ble MR. RALEIGH said :—"I meant to make a reply on the point of law, but my Hon'ble Colleague Mr. Bose has made that unnecessary. As soon as the question is stated in a concrete and common-sense way (as it was stated by Mr. Bose and by the Hon'ble Sir Edmond Elles) it becomes apparent that the argument developed in countless articles and speeches on this Bill has nothing in it. Nobody ever denied that the rule as to presumption of innocence is a cardinal principle of criminal justice. But the presumption may be, and frequently

is, displaced. When a man by his own act has brought himself under reasonable suspicion, the law turns against him, so to speak, and he is required to prove a negative. My Hon'ble Colleague Sir Arundel Arundel has mentioned the case of the person found in possession of stolen property, who is required to prove that he is neither thief nor receiver of stolen goods. Is there anything unfair or oppressive in applying a similar rule to the person found in possession of wrongfully obtained information?"

The motion was put and negatived.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in clause 3 of the Bill as amended, the word "and" between sub-clauses (*c*) and (*d*) be omitted, and the following be added as a new sub-clause, namely:—

"and

"(*e*) for the words 'in the interest of the State' wherever they occur, the words 'in the public interest' shall be substituted."

He said:—"This amendment is based on the ground that a uniform language ought to be used throughout the same enactment. I find that the Select Committee, in the definition which they have framed of the term 'civil affairs,' have used the expression 'public interest.' I accept that phraseology and I suggest that the same expression be used throughout the Act. I cannot conceive that what is contrary to the interests of the State can ever be beneficial to the public interest. The interest of the State and the interest of the public are, or at any rate ought to be, identical, and I venture to think that uniformity of language in this instance at least may prevent many a refined argument and ingenious distinction."

The Hon'ble SIR ARUNDEL ARUNDEL said:—"I have no objection to the amendment which has been proposed: in fact, I think that the only Member likely to object to it would be the Hon'ble Mr. Morison, who has urged that the interests of the State are by no means always the public interests. However, in our view the two are identical, and I am quite prepared to accept the amendment which has been put forward."

The motion was put and agreed to.

The Hon'ble MR. GOKHALE said:—"The next amendment which stands in my name is really made up of two amendments, and I had thought I had given separate notices of the two amendments. As, however, they have been

printed together, I move them together. I beg to move that after clause 3 of the Bill as amended, the following be added, namely :—

'and

(*e*) to sub-section (*3*) as so re-numbered, the following exceptions shall be added, namely :—

"*Exception I.*—Where the information relates to affairs affecting the relations of the Governor General in Council with any Native State in India and the communication has been made by a newspaper, the provisions of the sub-section shall not apply, unless the information has been wrongfully obtained.

"*Exception II.*—Where the information communicated has been obtained from a newspaper published outside British India, the provisions of this sub-section shall not apply."

"The first part of the amendment refers to confidential information, about Native States being published by newspapers, to which Government might take exception. I will only point out this in this connection that whereas in regard to matters affecting the British Government in its own territory, there are only two parties, namely, the Government and the newspaper which publishes the information, in regard to matters relating to Native States there are three parties;—there is the British Government, there is the Native State, and there is the newspaper concerned. In the case of affairs relating to the British Government alone, if a newspaper obtained its information from a recognised officer of the British Government in an authorized manner, there will obviously be no prosecution. In regard to Native States the information might be obtained authorizedly either from a recognised officer of the British Government or from a recognised officer belonging to the Native State: and I submit that it is only fair that where the information has been thus obtained, *i.e.*, not by wrongful means, there should be no prosecution. There are occasions on which a Native Prince finds himself entirely at the mercy of a Political Officer. This is rather a strong expression to use, but I come from a Native State, and I know how sometimes, when there is a strong and unsympathetic Political Officer, the Prince is virtually helpless in spite of whatever representations that he may make. On such occasions, if a powerful newspaper—especially an Anglo-Indian newspaper—takes up the case of the Native State and represents its side in its columns, the result often is that the attention of Government is attracted as it is not attracted by the representations of the Chief, and speedy redress is secured by the Chief, which otherwise there would be small chance of his securing. I think, therefore, that

where information regarding a Native State, such as is contemplated in the definition of 'civil affairs', has not been wrongfully obtained by a newspaper, the publication should not be an offence. I would further say this—it may be thought that the Native State had no business to communicate such information to the newspaper, that the matter being confidential and being between the Government of India and the Native State, the Native State divulged what it had no business or right to divulge. If so, the Government might deal with the Native State separately, but the newspaper, acting in the interests of the Native State or in the interests of justice, which is even higher, should not be punished simply because the Government of India does not like the disclosures made."

His Excellency THE PRESIDENT said that the first portion of this amendment (Exception I) should be disposed of before passing on to Exception II.

The Hon'ble SIR ARUNDEL ARUNDEL (speaking on Exception I) said:—"I cannot accept the amendment which is proposed, but with regard to what the Hon'ble Mr. Gokhale has said I would remark that I do not think his illustration a very fortunate one. As a matter of fact it is not the mere fact that the information has been rightfully obtained that makes the distinction, but the fact that it was to the benefit of the Native State, and therefore I should say to the public interest, that the matter should be revealed in the newspapers, and that being the case, it is perfectly certain that no prosecution could ever ensue. What I should like to say on the main point is that it would be impossible for the Government to ascertain how the editor of a newspaper obtained his information. All that Government knows is that information has been published, but whether it was rightfully or wrongfully obtained is known to the editor alone. Surely every honourable editor would accept the obligation that he must not wilfully communicate the information to any person to whom he knows he ought not in the interest of the State to communicate it at that time.

"I think it would be an unwise precedent to introduce class legislation in the way proposed and to make a distinction between the editor of a newspaper and anyone else. And why should a newspaper editor be exempt from the liability which besets all servants of Government? I cannot accept the amendment proposed."

The motion was put and negatived.

The Hon'ble MR. GOKHALE then said :—"My next amendment is to the following effect, that after clause 3 of the Bill as amended the following be added, namely :—

"and

(*e*) to sub-section (3) as so renumbered, the following exception shall be added, namely :—

"*Exception II.*—Where the information communicated has been obtained from a newspaper published outside British India, the provisions of this sub-section shall not apply."

He said :—"With the amendment that has been made in section 3, sub-section (2), of the Act, namely, the inclusion of civil affairs within its scope, it now becomes a matter of considerable importance that at any rate information which is wired from England to newspapers in this country is not held to lie within the province of that section. It may happen that upon an important matter something might appear in an English newspaper, the *Standard*, or the *Times*, or some such paper, and either a telegraphic summary of that might be sent out to India to some of the leading Anglo-Indian papers, or when the mail comes it might be copied by the newspapers in India. The leakage may have taken place, not in Calcutta, but in the Secretary of State's office in London. If such information has been published in England, and has been copied by any paper here, or a telegraphic summary has appeared in any paper here, under the law as it is now proposed to be amended this becomes an offence. Now, my Lord, the essence of an offence under this Act is *publication* and not publication *here in India*. If, therefore, the information has already been published anywhere else, then there really should be no objection to a newspaper in India re-publishing it ; and to penalize such re-publication is to restrict the freedom of the Press most unjustifiably, as there is no question of secrecy now involved. I therefore submit, my Lord, that this exception should be added to the proposed clause.

"One word of explanation is necessary. It may be said that under the words 'outside British India' some newspaper in a Native State or foreign territory in India, might publish something which the Government of India wants to keep from the public, and then some newspaper in British India might copy therefrom. Well, I am not keen about extending the benefit of this exception to newspapers in Native States, if Government object to that, and for the words 'British India' in my proposed amendment I am prepared to substitute the word 'India'.

[4TH MARCH, 1904.] [*Sir Arundel Arundel; Dr. Asutosh Mukhopadhyaya.*]

The Hon'ble SIR ARUNDEL ARUNDEL said:—"I am not prepared to accept this amendment even with the exception that the Hon'ble Mr. Gokhale has made. If he really thinks that any information which has been published in the *Standard* or any other paper in England would when reproduced in an Indian newspaper expose the editor to prosecution, he must have a very lively imagination.

"The amendment is open to the very obvious objection that the law might be defeated by publishing the official secret outside British India with the view of publishing it within British India immediately afterwards. Newspapers in Goa or in any Native State or in Pondicherry could be utilized for this purpose, and the editor might not even be aware that the publication of the information within British India would be an offence under the law, and that his newspaper was being utilized for improper ends."

The motion was put and negatived.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that after clause 3 of the Bill as amended the following new clause be inserted, namely:—

"4. In section 4, sub-section (*1*), of the said Act, the words 'in the interest of the State or otherwise' shall be omitted,"

and that the present clauses 4 and 5 be re-numbered clauses 5 and 6. He said:—"This amendment is based upon the same principle as No. 29, which has already been accepted by Council."

The Hon'ble SIR ARUNDEL ARUNDEL said:—"This is a consequential amendment and I accept it."

The motion was put and agreed to.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in clause 4 of the Bill as amended, in the proposed section 6, from sub-section (*2*) the words "to the nearest police-station or", and from sub-section (*3*) the words "to a police-station or" and "police-station or", be omitted.

He said:—"Sub-section (*1*) of section 6 provides that when a person has been arrested, he is to be taken either to the officer in command of the nearest military station or to a Magistrate of the first class. Sub-section (*2*) goes on

to provide, that if the first contingency happens, *viz.*, if the offender is taken to the proper military officer, such military officer may either discharge the offender or send him either to the nearest police-station or to the Magistrate of the first class. I confess I do not like the idea of the person arrested being taken to the police-station. It is enough to say that no advantage is likely to accrue to the accused, at any rate by his being taken to the police-authorities, who cannot release him on bail, a Magistrate of the first class being the only person who can release the accused on bail; it would thus seem that such Magistrate is the proper person to whom he should be taken."

The Hon'ble SIR ARUNDEL ARUNDEL said:—"I think, my Lord, that the Hon'ble Member misunderstands the position of affairs here. When a person is taken red-handed in a fort for some offence under the law, he is taken before the officer for the time being in command at the nearest military station, or before a Magistrate of the first class. If he is taken before the officer in command of the fort and that officer does not discharge him, the obvious thing for him to do is to send him to a police-station and then send him before a Magistrate. Otherwise it would be necessary for the officer commanding the fort to detail a military escort and send the arrested person perhaps for many miles to the nearest first class Magistrate, and therefore it is that this provision of the Bill has been framed. I may say that whatever criticisms have been directed against this Bill hitherto have related to civil affairs and the naval and military provisions have been accepted as necessary for public and imperial safety. I think therefore it is unfortunate that the Hon'ble Member has interfered with these questions. The Hon'ble Mr. Gokhale, who is not supposed to be needlessly reticent in the expression of his opinion on matters of public importance and the other non-official members on the Select Committee, have unanimously accepted the provisions for naval and military concerns, and I hope this Council will endorse our conclusions."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said that after the observations of the Hon'ble Member he would not press the amendment.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in clause 4 of the Bill as amended, in the proposed section 7, for sub-section (*1*) the following be substituted, namely:—

"(1) Every person charged with an offence against this Act shall be tried by a jury before a High Court or a Court of Session."

He said:—"The principal reason which leads me to advocate the trial of offences against this Act by a jury before a Court of Sessions or a High Court is to be found within the Bill itself as amended by the Select Committee. The Bill provides that civil affairs must be of such a confidential nature that the public interest would suffer by their disclosure, and the original Act itself, in more than one place, provides that the disclosure, in order that it may constitute a criminal act, must be a disclosure to a person to whom any disclosure is contrary to the interest of the State or of the public interest. The determination of questions like these is peculiarly within the province of the jury. Persons holding high offices under the Crown may be put into the witness box to testify on behalf of the prosecution that a particular disclosure has been contrary to the public interest. Whether such high officials in the hands of a skilful Counsel may not be made to disclose in the course of cross-examination many more official secrets, I will not pause to discuss; but I venture to point out that in State prosecutions, and specially in cases like the present, in which the test of criminality is whether or not the public interest has been affected, a trial by jury is more likely than any other mode of trial to secure justice to the accused."

The Hon'ble Sir ARUNDEL ARUNDEL said:—"The Hon'ble Member here proposes a startling advance on anything suggested by the non-official members of the Select Committee or even so far as I know by any of the newspapers in the country. He proposes an entirely new departure in the matter of trials by jury, for at present there is no offence which must be tried by a jury in every part of British India.

"Under the existing Act any Court has power to take cognizance of an offence under the ordinary rules, but in order to make sure that only a Magistrate of experience should deal with such cases, the Select Committee limited magisterial cognizance to Magistrates of the first class, that is to say, to Magistrates possessing full powers. Offences under sections 3 (*1*) and 4 (*2*) (*b*) of the Act are punishable with a maximum of only one year's imprisonment or with fine or with both, and it would be altogether unsuitable to send such cases for trial to a High Court or a Court of Session. There would also be inordinate delay owing to the fact that the sanction of Government to the trial must always be obtained, and that will involve initial delay, and an exaggerated importance would be attached to prosecutions under the Act."

The motion was put and negatived.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in clause 4 of the Bill as amended, in the proposed section 7, for sub-section (*2*) the following be substituted, namely :—

"(*2*) A prosecution for an offence against this Act shall not be instituted except by or with the consent of the Governor General in Council."

He said :—"The object of this amendment is twofold ; *first*, to secure the restoration of the provision of the law that a prosecution for an offence against the Act shall not be *instituted* except with the consent of the proper authority previously obtained ; *secondly*, that the consenting authority should be no other than the Government of India. So far as the first object is concerned, I have no hesitation in expressing my opinion that the change introduced by the Bill is peculiarly unfortunate. Under the law as it stands, before a prosecution can be instituted, the sanction of the Government must be obtained ; under the law as it is proposed to be altered, authority is given to Courts to take what is called preliminary action pending the orders of the Government as to whether the alleged offender is to be put on his trial. Under these provisions, it is quite conceivable that a supposed offender may be arrested and, if unable to find heavy bail demanded from him, may rot in jail till such time as the Government may find it convenient to determine whether he is to be put on his trial. If, my Lord, after this worry and ignominy, Government determines that there is no case for a prosecution and that the man is not to be put on his trial, I should like to know what reparation the Government proposes for the injury wantonly caused. If we look to the provisions of the Indian Penal Code and the Criminal Procedure Code, we shall find that before a prosecution can be instituted in respect of offences of the gravest character against the State, the previous sanction of the Government has to be obtained. If we turn to the English Official Secrets Act, we find that a prosecution under that Statute cannot be instituted except with the consent of the Attorney-General. It is clear, therefore, that the change which is sought to be introduced is opposed to the principle which underlies the English Statute and is also recognised in the Criminal Codes of this country. It will no doubt be convenient to the prosecution, but it cannot be maintained that any plausible case has been made out for the adoption of this wholly unjustifiable provision.

"So far as the second object of this amendment is concerned, I am anxious that the Government of India should be the only authority at whose instance a prosecution can be instituted. This restriction would undoubtedly diminish the chances of hasty and uncalled-for prosecutions under the Act. Moreover, if the

creterion in every case be whether or not the interest of the State has suffered by the disclosure of a particular information, the Government of India—which is the highest authority in the State—rather than any of the Local Governments would be best in a position to determine whether there is any justification for institution of proceedings under the Act."

The Hon'ble SIR ARUNDEL ARUNDEL said:—"With regard to the first point of the Hon'ble Member's amendment, I would say that he is again encroaching upon the question of naval and military affairs which we always endeavour to keep distinct from civil affairs. With regard to offences under civil affairs, the whole of the Hon'ble Member's criticisms fall to the ground because they are non-cognisable, and so no action can be taken without the formal application to a Magistrate for a summons.

"With regard to naval and military affairs, it would never do to have this alteration if the legal criticisms are correct.

"The existing Act (section 5) runs: 'a *prosecution* under this Act shall not be *instituted* except,' etc.

The Bill runs '*no Magistrate or Court shall proceed to the trial* of any person,' etc. This was in order to prevent any difficulty arising in connection with the jurisdiction of the Magistrate, before whom an accused person is brought, to deal with the case, *i.e*, to remand the man to jail or as now to admit him to bail.

"Lawyers are not quite certain at what point a *prosecution commences*. It might be contended that it began with the arrest of the accused. If this be the case, the amendment now proposed would nullify the Bill as regards immediate action in cases of military and naval offences. For these reasons I must oppose the amendment in regard to both items."

The Hon'ble RAI SRI RAM BAHADUR said:—"My Lord, as the amendment to be moved by me and standing next in the Agenda paper is substantially the same as the one proposed by the Hon'ble Dr. Asutosh, with Your Excellency's permission, I beg to say a few words on this motion. The term 'Local Government' as defined in the General Clauses Act (Act X of 1897) has a very wide meaning and in certain cases includes Political Officers also. It is not advisable to leave the starting of prosecutions under the very elastic terms of this Bill to such officers. Disclosure of official secrets relating to matters of local significance—though the matters may not be of a character the

disclosure of which would be detrimental to the interests of the State—may be regarded by such officers as fit cases for prosecutions under the Act. There is the possibility of the officers of this class taking a biassed view in such cases. In order to guard against possibilities like these, it is advisable that the granting of sanction to initiate prosecutions under this law should rest in the supreme authority in the State and not in any local authority."

The motion was put and negatived.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in clause 4 of the Bill as amended, in the proposed section 7, sub-section (*a*), the words "Magistrate or" be omitted.

He said:—"The reason for this amendment is obvious; the word 'Court' includes a Magistrate, and, consequently, the words 'Magistrate or' are wholly superfluous."

The Hon'ble SIR ARUNDEL ARUNDEL and the Hon'ble MR. RALEIGH advised the acceptance of this amendment.

The motion was put and agreed to.

The Hon'ble SIR ARUNDEL ARUNDEL moved that the Bill, as amended, be passed. He said:—"In moving that this Bill as amended be now passed I would briefly summarize the changes that have been made in it since its first introduction with a view to removing valid objections that have been urged against it.

"A definition of 'civil affairs' has been added limiting them to—

(*a*) affairs affecting the relation of His Majesty's Government or of the Governor General in Council with any Foreign State, or

(*b*) affecting the relation of the Governor General in Council with any Native State in India or relating to the public debt or the fiscal arrangements of the Government of India, or any other important matters of State, where these affairs are of such a confidential nature that the public interests would suffer by their disclosure.

"The word 'office' has been removed from section 3 (*1*) (*a*) (*i*) of the Act and relegated to clause (*ii*), so that the entering of an office cannot be construed as an offence.

"The words 'for the purpose of wrongfully obtaining information' have been restored in the same section, but to meet the difficulty—if not impossibility—of proving wrongful intention, the Bill now provides that where a person committed an act specified in sub-head (*a*) of sub-section (*1*) without lawful authority or permission—the proof of which authority or permission shall be upon him—the Court may presume that he has committed such act for the purpose of wrongfully obtaining information.

"All offences with regard to civil affairs have now been made non-cognizable and bailable.

"With regard to military and naval offences the right of arrest has been limited to public servants, and the offences have been made bailable. Jurisdiction under the Act has been limited to Courts of Session and Magistrates of the first class, who also possess authority to discharge an accused person if there is no *primâ facie* case against him. This power of discharge is also possessed by a commanding, naval or military officer with respect to a person brought before him. The final safeguard is that no Magistrate or Court can proceed to the trial of any person for an offence under the Act, whether naval, military or civil, except with the consent of the Local Government or the Governor General in Council.

"With regard to newspapers in particular I think all reasonable protection is given by providing that a person must not wilfully communicate information relating to the naval, military or civil affairs of Government to any person to whom he knows it ought not in the interest of the State to be communicated *at that time.* Editors of newspapers claim to fulfil a public duty and function in disseminating information, and therefore should not be reluctant to bear the limited responsibility as to public affairs which is thus placed upon them, and which can be a burden to no right-minded person. Public officials are equally responsible under the Bill before us and rightly so. I cannot but think that much of the newspaper opposition to this Bill as amended by the Select Committee—and outside this Council there has not been much else—is, I will not say, factitious, but based on misconception, and I can only regret that our critics cannot regard the need for secrecy, permanent or temporary, in many civil affairs from the same point of view as Government. The Bill as now amended gives the fullest protection to every innocent person, and it would only be after careful consideration and with much reluctance that Government would consent to the prosecution of a person who appeared *primâ facie* guilty of some serious breach of the provisions of the law."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"My Lord, though there has been a somewhat prolonged debate over the provisions of this Bill, I find myself unable to give a silent vote upon the motion now before us. The circumstances connected with the passage of this Bill through the Council have been of an exceptional character, equalled only by the exceptional character of the provisions which are embodied in the Bill. The Bill was introduced into the Council on the 28th August, 1903, and immediately after the Statement of Objects and Reasons for the new legislation was made public. My Lord, I feel it my duty to say that, though some of the objects of the Bill were made tolerably plain, the reasons were singularly few and obscure. Indeed, a superficial reader, either of the Statement of Objects and Reasons or of the speech of the Hon'ble Member in charge, might easily be left under the impression that the proposed legislation was of the most harmless and inoffensive character. This, my Lord, is fair neither to the public nor to the Government. As Your Excellency was pleased to explain in Council on the 18th December, there has been no hurry about this legislation and the matter has been under consideration for very nearly ten years. It is natural to assume that the Government must have, at its disposal, materials which, in the opinion of the Government, justify new legislation of such exceptional character. In fairness to the public, the Government ought to have placed these materials before them, specially when their interest is to be so seriously affected. My Lord, I confess that I labour under a weakness in that I prefer facts to assertions even when these assertions come from the highest official authorities. To my mind, it would have been more satisfactory if, instead of vague allusions to defects alleged to have been disclosed by experience, concrete illustrations had been given of the instances in which the existing law had failed or had been found to be defective or inoperative. I maintain, therefore, that no foundation has been laid on the solid basis of facts for this new piece of legislation, and I am almost tempted to draw the inference that if the facts and all the facts had been published, they would not have justified such of the provisions of the Bill as are open to the gravest objection.

"But if, my Lord, an extraordinary reticence was observed in the initial stage as to the reasons for this legislation, the circumstances under which the Bill was referred to the Select Committee were still more singular. The second reading of the Bill is the recognised occasion on which the principles of the measure have to be discussed. Two of our Hon'ble Colleagues—the Hon'ble Nawab Saiyid Muhammad Saheb Bahadur and the Hon'ble Mr. Gokhale—vigorously challenged the whole policy of the Bill, and their challenge was met practically by a refusal on the part of the Government to enter into any discussion of the principles of

the measure. I will not pause to discuss the wisdom of such a course, but I will add this much, that reticence like this is not calculated to inspire public confidence or to induce the public to believe that the Government was still prepared to listen to its reasonable representations. Meanwhile, the proposed measure had been examined and criticised by the public, and it would be idle to deny that it had met with the unqualified and unanimous disapproval of the entire non-official community. But the public feeling which had been aroused in connection with the Bill, and to which emphatic expressions had been given in many quarters, was considerably appeased by the assurance given by Your Excellency that the Government was prepared, if convinced of the unsuitability of the language, to alter it, if proved to be guilty of obscurity, to correct it, and if shown to have gone too far, to modify their plans. My Lord, it is useless to conceal the fact that the disappointment of the public has been as keen as the expectations which Your Excellency's assurance had raised. We have it, my Lord, on the authority of the Select Committee, that substantial alterations have not been made in the Bill, for they do not hesitate to state that the Bill has not been so altered as to require re-publication. But I frankly concede that although many substantial improvements have been introduced by the Select Committee, yet the portion of the Bill relating to civil affairs is still open, in spite of the proposed definition, to very grave objections. I venture to think that it is an entirely false issue to raise, to assert that with all the qualifications introduced into the Bill, conviction will be well nigh impossible except in cases of the most flagrant description. The real question is, is the language of the proposed enactment, in spite of an apparently elaborate definition, so uncertain, is its scope so unnecessarily wide, that it may catch in the net of criminal legislation persons who ought not to be prosecuted and thus effectively hamper the right of free public discussion? I have no hesitation in stating, that whatever the intentions of the Government may be, the provisions of the Bill will operate as a serious menace to journalism in this country. I cannot help thinking that this endeavour to invest with a secret character, information relating to civil affairs, indicates a sense of weakness in the governing body and also perhaps an unconcious tendency to avoid legitimate unfriendly criticisms. If there is any country in which the right of free public discussion is essential to good government, it is India, and there cannot be any reasonable room for doubt that the alarm which has been raised by eminent journalists of unquestionable repute, both European and Indian, is thoroughly well-founded.

"My Lord, I will only add that this measure has not merely met with the disapproval of the non-official public, but has been regarded as objectionable even

in the highest official quarters. I will only read out the opinion of His Majesty's Judges of the Calcutta High Court which is significant in its brevity:—

'The Judges find it difficult to criticise the machinery by which it is proposed to attain the objects of the Bill without dealing with the questions of policy with which the Bill is concerned; and upon those questions they do not feel it to be within their province to touch. They, therefore, do not desire to offer any observations in detail upon the provisions of the Bill. They, however, at the same time, consider that certain of the provisions of the Bill are open to very grave objection.'

"One would have thought, my Lord, that expression of opinion like this would make the Government pause and reconsider the situation. We live, however, apparently in strange times when Government seems determined to push on this piece of repressive legislation which will be a standing menace to the liberty of the Press and to the fearless and honest criticism of State policy and which, however welcome it might have been in the middle ages in some semi-civilized country, would be a serious blot upon the Statute Book in any part of the Empire of Britain in the beginning of the twentieth century, and our regret, my Lord, is all the keener, that this has happened during the administration of Your Excellency who has ever followed the best traditions of English statesmanship in inviting public criticism even when such criticism was known to be unfriendly to the policy of the Government. I therefore deem it my duty to record my most emphatic protest against this Bill, though I might have supported it if it had been limited in its operation only to naval and military matters."

The Hon'ble NAWAB SAIYID MUHAMMAD said:—"My Lord, I have to make only a few observations before the motion is put to the vote. It is necessary to recollect that, so far as naval and military affairs are concerned, there has been no disposition on the part of any of my Hon'ble Colleagues of the Select Committee to take exception to any provision that Government may consider necessary for the protection of State secrets connected with those affairs. There has also been a unanimity of opinion as regards 'civil affairs' in so far as they affect the relations of His Majesty's Government or of the Governor General in Council with any Foreign State. The only difference of opinion—and I must say it is an important one—is in regard to an indefinite and comprehensive provision in sub-clause (*b*) of the definition of 'civil affairs', and the publication by newspapers, under certain conditions, of information connected with Native States in India. And I regret that this difference still remains.

"After carefully listening to all the arguments in favour of the words 'or any other important matters of State' I am unable to persuade myself that a

case has been made out for their retention in the definition of 'civil affairs.' The opposition to this measure is not due to any apprehension that newspaper editors and others who happen to write or speak about public questions will have to reckon with the law directly the Bill is passed, but the fact remains that, at any time and more especially at a time of panic or irritation, the provisions of this measure may be enforced with the rigour which the letter of the law would permit. I submit that the Government should be well satisfied if State secrets connected with naval and military and even international or political affairs are safeguarded leaving their own civil affairs free for discussion and criticism, which have always, in the long run, benefited the Government as well as the public. Instead of thus curtailing the liberty and limiting the usefulness of the Press, the Government should, in my humble opinion, apply their remedies directly to the root of the evil by exercising greater control over their subordinates and by strict departmental discipline. As none of the important amendments has been accepted by the Council and as the Government have not been pleased to reconsider the position taken up, I regret I shall have to vote against the motion now before the Council."

The Hon'ble MR. GOKHALE said:—"My Lord, the motion now before the Council is only a formal one. But as it marks the conclusion of our discussion of this important measure, I would like to say a few words. My Lord, I greatly regret that Government should not have seen their way to accepting even a single one of the more important amendments of which notice had been given. This is the first time within my experience that a legislative measure has been opposed by all classes and all sections of the public in this country with such absolute unanimity Of course with our Legislative Councils as they are constituted at present, the Government has the power to pass any law it pleases. But never before, I think, did the Government dissociate itself so completely from all public opinion—including Anglo-Indian public opinion—as it has done on the present occasion. I recognize that the responsibility for the good administration of the country rests primarily on the shoulders of the Government. But it is difficult to allow that this responsibility can be satisfactorily discharged, unless the Government was supported in its legislative and executive measures by some sort of public opinion. My Lord, Your Lordship has often declared that it was your constant aspiration to carry the public with you as far as possible in all important acts of your administration. I do not think it can be said that that aspiration has been in the smallest degree realized in the present case. The whole position is really most extraordinary and very painfully significant. Here we had a law, already in force, identical in character and identical in wording with the law obtaining in the other parts of the British Empire. The British Government in England, with its

vast naval and military concerns and its foreign relations extending over the surface of the whole globe, has not found its law insufficient for its purpose. How then has the Government of India, with its more limited concerns, found it necessary to make the law more drastic in India? The explanation, I think, is simple. It is that while in England the Government dare not touch the liberty of the Press, no matter how annoying its disclosures may be, and has to reconcile itself to them as only so much journalistic enterprise, in India the unlimited power which the Government possesses inclines it constantly to repressive legislation. This single measure suffices to illustrate the enormous difference between the spirit in which the administration is carried on in India and that in which it is carried on in England. My Lord, as the Bill is still open to serious objection, I must vote against this motion to pass it."

His Highness THE AGHA KHAN said:—"When I entered this room I had not intended to do more than give a silent vote, but having been one of the members who had the honour of serving on the Select Committee I feel after the speeches we have heard that I ought to make a few remarks explaining why I approve of this measure, and why I gladly support it. The Bill as it now stands in my humble opinion does not threaten any one but a conscious offender. It only gives the Government the power to bring before the proper judicial authorities such persons as deliberately publish important information the publication of which is opposed to public interests and likely to injure the civil and military interests of the State.

"My Lord, I don't see how any one can feel any sympathy for such an offender. Of course, if the publisher is innocent and wrongfully prosecuted, the Law Courts will not punish him. The statement that Magistrates are not independent is to attack the very foundations of our judicial system. If such assertions are correct, the whole system of justice is radically wrong and requires immediate reform.

"My Lord, if the judicial authorities are competent to try the various criminal cases which come before them, surely they are competent to try cases arising from this Bill.

"For these reasons and after careful study of the measure, I am convinced that no innocent person will ever suffer by the passage of this Bill, while when the Bill is passed it may help to bring before justice some conscious offender, and I, therefore, support it.

"I have tried very hard to find some radical defect in the Bill, but don't find it defective, and the speeches of the Members opposed to the Bill leave me unconvinced as to the reasonableness of the opposition to this useful measure.

"Nothing in the Bill is more necessary in my humble opinion than the clause that guards important transactions between the Imperial Government and Feudatory States from being made public, and thus injuring the best interest of the Imperial as well as of Feudatory Governments.

"For these reasons I gladly support the Bill."

The Hon'ble RAI SRI RAM BAHADUR said:—"My Lord, I regret that the Bill as it stands now is not free from serious objections, and hence I am unable to give my vote in support of the motion to pass it. All the important amendments moved by the non-official Members have been rejected by this Council.

"My Lord, since the Vernacular Press Act of 1878, which was passed by the Government of Lord Lytton, and repealed under the regimé of his successor in 1882, no public measure affecting the liberty of the Press has created such a feeling of unrest throughout the length and breadth of the country and evoked so much hostile criticism from the public, as this Bill has done. The scope of the Act of 1878 was confined to the Vernacular Press only, but this Bill, if passed, will apply not only to newspapers conducted in the Oriental languages but also to those published in English. Thus both the Indian and Anglo-Indian Press will come within the scope of this legislation.

"My Lord, it is the existence of some grave emergency alone which can justify the introduction, and much less the passing, of a legislative measure like this. But no case of such necessity has been made out either by the speech of the Hon'ble Member in charge of the Bill, delivered at Simla, or any other official utterance made since then. The Statement of Objects and Reasons also does not throw much light on the subject. No concrete instances have been cited in which the existing law has failed to secure the desired object.

"The Bill, if passed, would unnecessarily interfere with the liberty of the subject and the freedom of the Press. The public expected that before such a measure is passed it ought to have been justified by the production of evidence that privileges hitherto enjoyed by the public Press have been abused and that it has been guilty of publishing official secrets relating to civil affairs which have prejudiced the Government or the public interest.

"The Indian Official Secrets Act, as already stated by me this forenoon, is only a reproduction of the Parliamentary Statute of 1889. The British Parlia-

ment has not found it necessary to even consider the desirability of making any such changes as now proposed by the Indian Legislature. The English Act is in force in the whole of the British Empire. Had that Act not proved effective in any respect, and had any real necessity been found to exist, Parliament would have felt itself bound to modify it.

"My Lord, the new provisions which are proposed now to be embodied and the alterations to be made in the Act of 1889 will materially affect the liberty of the Press in this country, both English and Indian, and will thus introduce a change on a very important subject which it is submitted was not contemplated at the passing of the English Statute, the prototype of the Indian Act.

"A reference to the Parliamentary debate and the proceedings of the Standing Committee on Law, when the English Act was passed, shows that it was the intention of the British Legislature that newspapers should not come within the operation of the Act. When the Bill came before that Committee, Lord Thring suggested that some punishment ought to attach to newspapers publishing such information. The remarks made by the Chairman of the Committee and Viscount Cross show that it was not intended that newspapers publishing such information should come under the Act.

"Another serious objection against the amended Bill is that it ignores altogether the way in which the information may have been obtained. It would make persons publishing any information, the publication of which may appear to Government undesirable, liable to prosecution, whether they had obtained that information innocently or not. The newspapers published in British India will be placed in a specially precarious condition in publishing information relating to Native States. The editor of a newspaper might receive the information from the Native Chief himself that the Government intends to pass certain orders or take some measures regarding him or his State. The editor, believing that the orders, if carried out, or the measures, if taken, would cause grave injustice, and with the view of preventing such injustice, may criticise them in his newespaper. But under the provisions of the Bill no amount of good intention would be of any avail to him if the Government considered that the publication of the matter affected its relation with the Native State.

"The expression 'public interest' is capable of being interpreted with the greatest elasticity. To one set of persons public interest may appear identical with the interest of the people, whilst according to the official view generally, public interest would mean interest of the Government for the time being.

"Further it is impossible to lay down any criterion as to what should or should not be considered 'affairs of such a confidential nature' that 'the public interest' would suffer by their disclosure. Even the insertion of the word 'important' before the expression 'matters of State' in the definition of 'civil affairs' in sub-clause (*b*), just now made on the motion of the Hon'ble Member in charge of the Bill, would not remove this difficulty. The word 'important' is capable of being interpreted with as much elasticity as the expressions noticed above. The evidence of an officer of the department of Government who may start the prosecution, coupled with the fact that such prosecution was undertaken with the sanction of Government, will be sufficient to influence the judgment of the presiding officer of an average Indian Court in the mufassal.

"The Indian editors of newspapers will be placed in a more disadvantageous position than their Anglo-Indian *confreres*, as the trial of the latter will be by jury, a privilege which will not be enjoyed by the former.

"My Lord, the Bill, as amended, if passed into law, will tend to curtail to an unnecessary extent the freedom of the Press and will be harmful to the interests of the public. Instead of placing a piece of legislation of such objectionable character on the Indian Statute Book and thus adopting the policy of penalizing the publication of information relating to matters of public interest, the more proper and efficacious course to be followed by Government would be to exercise a greater and more effective control over its subordinates, as has been observed by some of the speakers who have preceded me.

"My Lord, had the scope of the Bill been confined to matters relating to military and naval affairs only, it would not have been open to the serious objections urged against it. The speakers who have just addressed the Council against this motion have very eloquently and cogently given the reasons why this Bill should not be passed into law. I fully endorse the views expressed by them and vote against the passing of the Bill."

His Honour THE LIEUTENANT-GOVERNOR said:—"I just wish to make one or two remarks on the Bill, because I do not think that it would be quite right for me to give a silent vote in support of it. In the first place, I should like to say very clearly and definitely that I have a strong conception of the existence of the evil which this Bill is intended to meet. I have sympathy with the Hon'ble Mr. Morison, who comes from the United Provinces, in not realising as clearly the necessity for the Bill as men who are accustomed to work here. I suppose that the work in the United Provinces is very much akin

to what I had to do in the Central Provinces, where the Press is not very numerous, not very strong perhaps, and not very inquisitive. But since I have come to Bengal I have felt that there has been a great evil in respect of the relations between Government offices and the Press. I do not wish to enter into any detail, but I desire to state this, that I have found papers given perfectly freely to the Press which were marked confidential; I have found notes relating solely to the conduct of cases in the offices commented on in the newspapers; I have found demi-official letters which I have myself written finding their way to the Press; so that I have actually adopted the rule when I write a demi-official letter of keeping the copy in my own office box, instead of placing it in the office file. That of course makes me do precisely what a business man would do, as we have heard, in respect of correspondence affecting his business; but I need not say what an immense, what an intolerable, increase of work and responsibility and burden it means when I am unable to use my office for this legitimate purpose. Now I think, my Lord, in the first place, that this is due, or largely due, to the fact that there is no conscience whatsoever with regard to communication of confidential information; and I think that this is due partly to the fact that, whatever may have been intended, it was believed that it was no offence to communicate civil secrets. And, if there is one thing which this Bill will achieve which will be of advantage, it will be that it will enable people to understand that it is an offence to communicate important confidential affairs without the authority of the officer who is competent to give such authority.

"Then I wish to say distinctly that I entirely agree, to a certain extent, within certain limits, with the view that many officers do not exercise sufficient control over their offices. I propose certainly to endeavour to introduce some reform in this way; but the idea that we should meet this by turning our public offices into private offices, and by putting constables and policemen to turn off every-one who was not able to disprove himself an idler, indicates, I am afraid, a very great want of appreciation both of the manner in which such work would be done by the police, and also of the view which would be entertained by the public generally of any such proposal. And I would also say that we cannot under the circumstances of public offices, and the necessity there is for putting everything on record, as has already been pointed out—we cannot meet the difficulty merely by controlling our offices: we must emphasise our right to prevent the theft of official secrets; and we must be able to interfere when gross and flagrant offences occur. I wish to say that this is the point on which I take my stand. It has been admitted on all sides by this Council that the Government have a right to keep their own secrets. That is a thing which we all admit, but it is not a thing which we enforce. But

it is theft to take them away, and this is done habitually. It is done by inducements being offered to men to give information: it is done by the readiness with which illicit information is received; and it is sometimes done altogether against the public interest. And here I think that we have a fallacy which has come more than once into the discussion. The public interest is one thing, and the interest of a section of the community is another; and I feel very strongly upon this point, that these revelations which have been made of our official acts and of our discussions of great public questions, while they were still going forward, have sometimes been contrary to the public interest although they may have been in the interest of a section of the community which was prepared to pay for them.

"The last thing which I should like to say is this, that I am astonished to find my Hon'ble friend Dr. Mukhopadhyaya speaking of this Bill as a serious menace to journalism in India. The menace, as he himself defines it, is this, that the editor must decide whether the information which he is about to publish is of such a confidential nature that the public interest will suffer by its publication. That is to say, what is going to take place is this, that an editor will be called upon to think before he publishes something whether it will injure the public interests to publish it. I think that that will be a very great advance in journalism in certain parts of India, and I think that it is an advance that ought to be secured, and the Bill secures it without running any risk whatsoever.

"I took exception some time ago to certain provisions of the Bill. These have been amended, and I am surprised to think that Hon'ble Members should come up and say that the Bill is exactly as it stood before, and that nothing has been yielded to criticism, when we have, in respect of civil affairs, the great change which has been already effected in the Bill. Still, while the Bill is being read we hear Hon'ble Members speaking of the Bill as providing for the suppression of publication in regard to 'other matters of State.' They do not go on to point out that there is a safeguard in that very clause, where these affairs are defined to be 'of such a confidential nature that the public interest would suffer by their disclosure.' I believe it is of the essence of the case that this proviso should have been introduced: it is also of the essence of the case to notice that under section 5 offences in regard to civil matters are not cognisable: it is also of the essence of the case to notice that under section 7 the consent of the Local Government is required for a prosecution. What I especially desire to say, my Lord, is this, that we cannot meet this evil which exists without creating certain conscience in regard to these matters; and it is most

desirable to make it an offence to publish information which it is contrary to the public interest to publish. On the other hand, this Bill, while publishing this declaration, and making this an offence, is so carefully safeguarded that there can be no honest or legitimate interest that can in any way suffer loss."

His Excellency THE PRESIDENT said:—" I should like to make certain observations in summing up this debate. I have observed a marked and agreeable contrast between the tone of the speeches that have been delivered today and that have been characterised by very general moderation, and the criticisms of this Bill that were popularly made when it was first introduced, and that have even survived in some quarters up to the eleventh hour. I attribute this contrast to two reasons. In the first place, the modifications that we have introduced into he Bill have, I believe, removed the greater part at any rate of the objections that were entertained to it; and nowhere, I am sure, is the difference between the Bill as it was originally framed, and the Bill as it is now, better appreciated than by the acute intelligence of the Hon'ble Dr. Asutosh, though in his concluding speech he affected to shut his eyes to the fact. Secondly, it is my experience that it is much more difficult to make exaggerated statements at this table than it is to write them in the Press. For here an answer is possible, and both sides of the case are heard. This is the first occasion upon which the Government have had an opportunity of stating their case upon the details as well as the principles of this Bill, and I think that as a result of this discussion it stands out in a different and clearer perspective.

"Nevertheless, we have had in the debate that has just closed an echo of some at any rate of the apprehensions and alarms that found such wide expression in the earlier phases of the case. To these I desire, before we take the final vote upon the Bill, to offer some reply. Though I think, and have already argued, that the Bill is a necessary, and is certain to be a useful, measure in practice, I am not one of those who regard it as an extremely important or a heroic piece of legislation. It most certainly does not mark, on the part of the Government of India, any sudden change of policy, or desire to enter upon a course either of official secrecy or of anxiety to punish or proscribe those who may not agree with them. As I remarked when I spoke on an earlier stage of the Bill, it is a measure that has long been on the stocks, with a view to remove the anomaly of the present situation under which, as I shall presently show, the existing Act was intended to do something which most authorities are agreed that it does not do: and it was an accident that the actual amending Act was proposed this year rather than at any time during the past six or seven years. Ever since the Act of 1889 was passed, it has been inoperative, both here

and in England, owing to the extreme ambiguity and carelessness of the language that was employed. It was long ago decided to revise the Act in India, whenever the occasion presented itself, and I think it would be found that the same question has been discussed in England, though the conditions of Parliamentary life render it difficult to carry through the House of Commons any measure that is not imperatively called for by the political exigencies of the hour. The Government of India desired to amend the Act for two reasons; firstly, because in practice they had found it to be absolutely useless in the naval and military cases which it was supposed to cover, and, secondly, because they had been informed by their legal advisers that it could not be put into operation in any civil cases, should this require to be done, owing to the extremely imperfect way in which it had been framed. Now it does not appear to me to be good statesmanship to leave a measure which, owing to such causes as these, has become a dead letter, on the Statute Book, any more than it is good horticulture to leave a dead bough on a tree. The Act required amendment some time or other, and the opportunity was taken to amend it. I readily admit that we did not at first proceed very skilfully about it. When a Bill is badly drawn in the first place, it is very difficult to amend it by a well-drawn Bill; and I think that our first attempt was open to well-merited criticism. I am far from claiming that this is a perfect Bill now. But, at at any rate, it expresses what the original Act meant very much better than the original Act expressed it, while by virtue of its greater precision of language it should be less and not more obnoxious to those who resent any interference by the State at all.

"It will be obvious from what I have said that the Government mainly rest their case on the proposition that the Act of 1889 was intended to cover civil secrets, though it failed to do so; and that we are merely, therefore, carrying out the original intention, though we are doing it in a manner that affords, as I have said, greater protection to the individual than was ever contemplated in 1889. That this view of the original object is the correct one, is, I think, incontestable. I was in the House of Commons in 1889 when the Bill was passed in England. In so far as it was explained at all, stress was laid, as the Hon'ble Sri Ram Bahadur has pointed out, upon the naval and military origin of the Bill. But nobody paid much attention to it; and it passed through almost without comment. In the House of Lords, however, the Lord Chancellor clearly stated that the objects of the measure were two-fold, namely, first, to punish the disclosure of naval and military secrets, and, secondly, the disclosure in certain circumstances of official secrets. The Lord Chancellor only described one set of circumstances, but it is quite clear from his remarks that he did not regard the Bill, as claimed by the Hon'ble Mr. Gokhale, as

exclusively confined to naval and military affairs. When the Bill was enacted in India in the same year, the Indian authorities were much more explicit: though I observe that the critics of the Bill today have observed a judicious silence as to what was said on that occasion. Sir Andrew Scoble, who has been quoted, spoke in the most clear and unmistakable way. He said that the offences which the Bill was intended to reach were the wrongful obtaining of information in regard to any matter of State importance, and the wrongful communication of such information. How in the face of this is it possible for any one to argue that the Indian Act of 1889 was not expressly intended to protect civil secrets? Lord Lansdowne was scarcely less explicit, for he based his defence of the measure exclusively upon the publication in a native newspaper of a garbled version of a confidential note by a high officer of Government, not about naval or military matters, but about the policy of the Government of India towards Kashmir, and he said that this was an illustration of the kind of malpractices against which the Bill was directed, and that it should be generally known that the new law was intended to be put in force in such cases in future. If this were not clear enough by itself, I might refer to the title of the Act, which was not Naval and Military Secrets Act, but Official Secrets Act, and to the preamble, which recited the expediency of preventing the disclosure, not of naval and military secrets, but of official documents and information. The same inference is to be deduced from the language of the Act about offices and official places. Indeed, it is really inconceivable that anyone should hold an opposite opinion.

"Now, having, as I think, conclusively established that the Act of 1889 was directed quite as much against the disclosure of civil secrets as of naval or military secrets, I want to put the question:—Is there a single Hon'ble Member at this table, or a single fair-minded person in this country, who would take up the position that the State is entitled to protection for its naval and military secrets, but not for its civil secrets, and that any of its citizens is to be at liberty to disclose these with absolute impunity, except in so far as they may fall incidentally under the ordinary criminal law? With all respect I say that I cannot conceive of such a position being taken up by any sensible man. It would mean that any secret treaty or negotiation might be divulged, any change in taxation let out in advance, any steps to check or defeat some insidious conspiracy revealed—for fear of invading the so-called independence of the individual, which very often means no more than the impunity to do wrong without being punished for it. We hear a good deal now-a-days about the rights of the individual, and everybody is naturally interested in defending them. But there is such a thing also as the rights of the State, and it seems to me to be part of

the elementary conception of a State, *i.e.*, an organised body appointed to administer the affairs of a community, that it should be at liberty to protect its own confidential secrets. Well, then, I ask next, is there anything in the circumstances of India that should render this country exempt from the application of this simple and elementary rule? Is it not notorious that this is a country where it is very difficult to keep matters confidential, and where there are frequent and sometimes most reprehensible disclosures? Till the Bill was introduced I never heard of anybody who doubted this, and only the other day I read this passage in a Bombay newspaper, the *Bombay Gazette*, which is by no means a friendly critic of the Government of India or of the present Bill, but which speaks with an experience of the country much greater than any temporary resident here, like myself, can possibly claim :—

'To say that the measure now on the legislative anvil is likely to be the terrible instrument that some critics pretend to fear, is ridiculous. That there is urgent necessity for some such measure—not essentially the same in detail as the present one—is undeniable. Information which it is in the interest of everyone of us should be temporarily kept strictly secret, leaks out, and infinite mischief is done thereby. Instances occur with great frequency. The utmost care is taken to prevent information of this class becoming known to the undue advantage of unprincipled persons, but in vain. The contents of documents are known in the bazar before they reach the person to whom they are addressed. Even "coded" telegrams are unsafe, and we doubt if there is a single journal in India which cannot quote instances in which complaints of such occurrences have reached it. As a case in point, we may mention that of the annual Financial Statement, which is again almost due. Year after year a certain number of copies are printed in the Government Press, placed under cover and sealed, forwarded to the Accountant-General in Bombay with instructions that they must not be delivered until twelve noon on the day the Statement is presented to the Council. These instructions are most religiously followed; yet the whole contents of those documents can be ascertained in the bazar the previous day, and the information to be found under the heading "Ways and Means" is publicly discussed and operated upon. Opium figures find their way into the bazar with even greater celerity, and it is a matter of common notoriety that items of greatest importance outstrip the recognised sources of communication. We are unwilling to believe that subordinate officials in Bombay are responsible. We imagine that, if the Official Secrets Bill, with all its present imperfections, were in force, it would not injure the subordinate nearly so much as we are asked to believe. The man to get at is he who, having official secrets in his possession, fills his pockets by speculation on the strength of them.'

"The argument contained in the above extract has further received the most emphatic and authoritative corroboration at the hands of my Hon'ble Colleague Sir Edward Law and also from the Lieutenant-Governor, speaking from his own experience. I hope, therefore, now to have established three

propositions: firstly, that in amending the Act of 1889, we are merely putting back into it what was always intended to be there; secondly, that the protection of civil secrets is among the primary rights of a civilised State; and, thirdly, that in India there is not less but admittedly greater need for the exercise of this right than in many other countries.

"There only remains for me to examine whether under the terms of our Bill the re-assertion of this right has been made in a manner that is likely to be fraught with any real danger to the individual. We heard a good deal in the debate this morning about the presumption of the English law that a man is innocent until he is proved to be guilty. Is there anything in this Bill that will put the innocent man in peril?

"I have said nothing so far about the concessions that we have made to public criticism in the modifications that we have introduced in this Bill: nor have I time to allude to them now. In the opinion of many of the foremost of our original critics they have taken the whole sting out of the measure. But there is one concession that I must point to with reference to the question that I have just asked. Our endeavour to define civil affairs, which were not defined at all in 1889, has been undertaken exclusively with the object of removing popular apprehension, and of restricting our own rights. But you may then reply that we have not been particularly successful. Well, from the point of view from which this remark is made, nothing I am afraid that we could do would be successful. We might go on specifying and specifying the sort of thing that is a civil affair. But however far we went, there would always be an unspecified residuum; and if this were exempted from the operation of the Act, then we should probably find the most flagrant and culpable offence of all perpetrated in the very unnamed category which we had been foolish enough to omit. That is the reason why we have left in those words 'or other matters of State,' though we have still further limited our power of intervention by requiring that they shall in all cases be important matters of State. If the words had been left out altogether, the chances are that the Bill would have once more proved to be a dead letter; for when we wanted, if we ever did want, to apply it, we should probably have found that we had just failed to provide for the one case in which protection was essential. I have seen it asked, if so wide a definition is to be left in the Bill, of what use it is to specify the relations of Government with Foreign States or Native States, or fiscal arrangements, in particular? The answer is that the more you specify, the more you restrict, that the cases named are illustrative as well as specific, and that they afford a clue to the Courts and to the public of the nature of offences which it is intended to

penalise under the Bill. When these cases are specifically mentioned in the first place, and when all other matters of State which they do not cover are further restricted to important cases, and when in the case of all them it has to be established to the satisfaction of the Court that they are of such a confidential nature that the public interest would suffer by their disclosure, so far from thinking that these provisions are ever likely to be used for harassment, I should be inclined to say that the Government has so tied itself up as to render action well nigh impossible, except in circumstances of such extreme heinousness that we hope that they will never occur, while, if they did occur, no two opinions could be held about them.

"It seems to me that in matters of this description there is a very common tendency to assume the most far-fetched hypotheses, and to argue as if everybody were likely simultaneously to act in a manner in which as a matter of fact people do not act. For instance, from some of the criticisms that have been made upon the Bill in the public Press it might be inferred that the people of India exist under a Government which allows no freedom of thought or utterance, and which is a scarcely disguised engine of oppression. Similarly, one might assume that the Press and the public are every day already, or are capable of being, guilty of acts qualified to keep them perpetually under the ban of the law. And yet we all of us know that both of these hypotheses are purely fanciful; that we have the freest Government in the world, and that though bad cases sometimes occur, and in India, as I have said, much more frequently than in England, yet the sense of public honour and civic duty is more highly developed under British institutions than in any other country. British Governments do not readily assume the role of prosecutor, much less of persecutor, and even if they did, they would very speedily repent of the enterprise. May we not assume in looking at the future operation of this Bill that the factors we are dealing with are Governments possessing some sense of responsibility, Courts retaining some share of independence, and I would add a public which, whatever it may say when excited, has a very considerable confidence in both? If this sasumption be a fair one, I think it impossible that any real injustice should be perpetrated under this Bill, and if it were, then I would add that from that moment the Act would be doomed.

"My own view, therefore, of the Bill is a relatively very modest one. I regard it as a measure of justifiable precaution, investing the State with a power for the protection of important interests which every State ought to possess, and which but for an ambiguity in the existing law we should possess already. Further, I think that the real value of the Bill will be negative rather than

positive, that is, it will act as a deterrent rather than as a penal weapon. People will be more careful than they have hitherto been about disclosures, which every man at the bottom of his heart knows to be dishonourable and injurious to the public interests. Lord Lansdowne's Bill has been in operation for nearly fifteen years, and there has never been a prosecution under it. This has been because, even if the prosecution had been attempted, it would have been inoperative owing to the imperfect nature of the Act. If the present Bill be passed under scrutiny fifteen years hence, so far from the intervening record being one of arrests and trials, I should not be surprised if it were equally blank. But this would be for the much more creditable and satisfactory reason that infringement of the law had been prevented by the power to punish it, and that important official secrets had not been divulged, because divulgation had been made unpleasant and even perilous. If my anticipations are in the least correct, then I think that the Council may pass this measure into law with a perfectly clear conscience, and with the conviction that they are adding not an instrument of terror, but only a weapon of the most elementary self-protection, to the armoury of the State."

The motion was put and agreed to.

The Council adjourned to Friday, the 11th March, 1904.

CALCUTTA;
The 11th March, 1904.

J. M. MACPHERSON,
Secretary to the Government of India,
Legislative Department.

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