Tuesday,
18th March, 1913

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. LI

April 1912 - March 1913

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ASSEMBLED FOR THE PURPOSE OF MAKING

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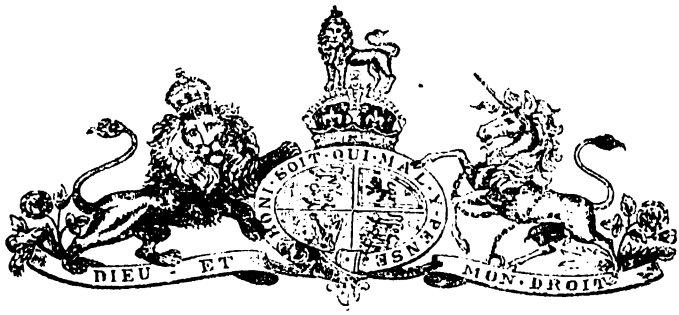

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

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 to 1909 (24 & 25 Vict., c. 67, 55 & 56 Vict., c. 14, AND 9 Edw. VII, c. 4).

The Council met at the Council Chamber, Imperial Secretariat, Delhi, on Tuesday, the 18th March, 1913.

PRESENT:

The Hon'ble SIR GUY FLEETWOOD WILSON, G.C.I.E., K.C.B., K.C.M.G., Vice-President, *presiding*, and 64 Members, of whom 58 were Additional Members.

QUESTIONS AND ANSWERS.

The Hon'ble Meherban Sardar Khan Bahadur Rustomji Jehangirji Vakil asked :—

"(*a*) Will the Government be pleased to state whether they are aware that the Government of Bombay have construed the Proclamation issued at the command of His Imperial Majesty at the time of the Delhi Coronation Durbar of 1911 remitting sundry debts due to Government by the non-jurisdictional estates in Kathiawar and Gujerat, so as to exclude from its benefits Gujerat Talukdars in British Districts ? (*Vide* Proceedings of the Legislative Council of His Excellency the Governor of Bombay dated 8th July, 1912.)

(*b*) Will the Government of India be pleased to state whether they have received petitions from any Talukdars of Gujerat praying that they are entitled to the benefits of the concessions in His Majesty's gracious Proclamation ?

(*c*) If so, will the Government of India be pleased to state what orders have been passed on petitions so received ?"

The Hon'ble Sir Robert Carlyle replied :—

"The answer to (*a*) is in the affirmative, and that to (*b*) is in the negative."

The Hon'ble Babu Surendra Nath Banerji asked :—

"Is it the case as stated in some of the newspapers that Sir C. P. Lukis visited the Andamans ? If so, will the Government be pleased to lay on the table any report or information submitted by him ?"

[*Sir Reginald Craddock; Babu Surendra Nath Banerji; Sir Harcourt Butler; Sri Rama Raya of Panagallu; Mr. Clark.*] [18TH MARCH, 1913.]

The Hon'ble Sir Reginald Craddock replied :—

"Surgeon-General Sir C. P. Lukis recently visited the Andamans in order to inquire into the health of the station with particular reference to cases of malaria, dysentery and tubercle. He also examined the question of increasing the barrack accommodation. His report is at present under the consideration of Government, but it is not intended to publish it."

The Hon'ble Babu Surendra Nath Banerji asked :—

"(*a*) Is it a fact that Mr. W. V. Duke was some time ago appointed a Professor in Ravenshaw College, Cuttack, on a salary of Rs. 500 a month and has now been promoted to the Indian Educational Service? If so was Mr. Duke previous to his appointment in Ravenshaw College a Professor of St. Columba's College, Hazaribagh, and what was his pay when employed there?

(*b*) If the answer to the first part of (*a*) is in the affirmative, will the Government be pleased to state what special qualification Mr. Duke possesses for the promotion, and whether before passing orders for Mr. Duke's promotion Government had considered the case of Dr. P. C. Roy?"

The Hon'ble Sir Harcourt Butler replied :—

"Mr. W. V. Duke was temporarily appointed a professor in the Ravenshaw College, Cuttack, on Rs. 500 a month for six months. The Secretary of State has also sanctioned his permanent appointment in the Indian Educational Service if he is found physically fit. The Government of India have no information regarding the result of his medical examination. Mr. Duke was previously a professor in St. Columba's College, Hazaribagh. This is a privately managed institution, and his pay while employed there is not known.

"Mr. Duke is a graduate of the Royal University of Dublin, where he obtained a first senior moderatorship in history and political science and other distinctions. The case of Dr. P. C. Roy has been considered. In view of the fact that the Royal Commission on the Public Services in India will consider the question it is not possible to promote officers from the Provincial Educational Service to the Indian Educational Service. A professor of economics was required and Mr. Duke, who was not in any service, but had had experience of teaching, was selected for the appointment."

The Hon'ble Sri Rama Raya of Panagallu asked :—

"Were any liquor shops closed during the last two years on the recommendation of Local Advisory Committees in different provinces? If so, what is the number of liquor shops so closed?"

The Hon'ble Mr. Clark replied :—

"The information required by the Hon'ble Member will be called for from Local Governments and will be laid upon the table."

The Hon'ble Sri Rama Raya of Panagallu asked :—

"Will the Government be pleased to state whether they propose to make arrangements for the employment, wherever possible, of deserving members of the depressed classes, as peons, dalayats, muchis, etc., in various departments of public service?"

The Hon'ble Sir Reginald Craddock replied :—

"Government has no information regarding the present distribution of posts of the description referred to between members of the different castes. It

is probable that men of the lower castes are already thus employed in considerable numbers, but any reservation of such work for them to the exclusion of others is scarcely practicable.

"In the interests of these classes, however, Government would welcome their appointment compatibly with the claims of others in posts for which they may be qualified."

The Hon'ble Raja Abu Jafar asked :—

"Will the Government be pleased to lay on the table of the Council a copy of opinions, private and official, received by the Government with regard to Dr. Ghose's Bill to give greater facilities to the public for calling for and inspecting accounts of public charities introduced into this Council on the 14th March, 1908."

The Hon'ble Sir Reginald Craddock replied :—

"The papers are laid upon the table."

The Hon'ble Maharaja Manindra Chandra Nandi asked :—

"With reference to the question put by the Hon'ble Sir Gangadhar Rao Chitnavis on March 13th, 1912, regarding memorials from individual clerks employed in the Postal Branch of the office of the Deputy Accountant General, Post Office and Telegraphs, praying for a revision of the existing scales of pay in view of the increased cost of living and the reply given by the Hon'ble the Finance Member, will the Government be pleased to state whether any action has been taken on those memorials, and also what orders, if any, have been issued on the report of Messrs. Datta and Chard's Committee."

The Hon'ble Mr. Gillan replied :—

"The Hon'ble Member is referred to the answer given on the 18th September last to the question by the Hon'ble Mr. Bhupendra Nath Basu on the same subject. Proposals regarding the Telegraph Audit staff have recently been received and are now under consideration."

The Hon'ble Mr. Vijiaraghavachariar asked :—

"Will Government be pleased to state whether they propose to lay on the table the correspondence between the Government of India and the Local Governments on the one hand, and between this Government and the Secretary of State on the other, on the subject of the separation of the judicial and executive functions?"

The Hon'ble Sir Reginald Craddock replied :—

"The Government do not propose at present to lay the papers upon the table."

The Hon'ble Mr. Vijiaraghavachariar asked :—

"Is it a fact that a Circular containing somewhat new rules for guidance in the matter of promotions of the officers in the Civil Service of the Punjab was issued by the Government of India in the year 1911 and, if so, will Government be pleased to state the circumstances under which it was found desirable to enunciate the principles of those rules? Is it a fact that the actual working of the new circular has created considerable discontent among the officers and the public?"

[*Sir Reginald Craddock Mr. Vijiaraghavachariar; Sir Harcourt Butler; Mr. Clark; Mr. Monteath.*] [18TH MARCH, 1913.]

The Hon'ble Sir Reginald Craddock replied :—

"The circular to which the Hon'ble Member refers is apparently one issued to all Local Governments, and not to the Punjab only, in October, 1911, on the subject of exercising the most scrupulous care in making selections for high appointments from the ranks of the Indian Civil Service. This principle is not in itself new, and the Government of India believe that its strict application is essential to good administration and that the instructions have been accepted in that spirit both by the service and by the public."

The Hon'ble Mr. Vijiaraghavachariar asked :—

"Will Government be pleased to state whether any and which members of the Civil Service in the Punjab recorded their opinions in favour, more or less, of the Education Bill of the Hon'ble Mr. G. K. Gokhale?"

The Hon'ble Sir Harcourt Butler replied :—

"Copies of the Punjab opinions on Mr. Gokhale's Bill were circulated to Hon'ble Members at the time. A copy will be supplied to the Hon'ble Member for his information."

THE INDIAN COMPANIES BILL.

The Hon'ble Mr. Clark moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to trading companies and other associations be taken into consideration.

The Hon'ble Mr. Monteath:—"Sir, I have had the honor of being on the Select Committee on the Companies Bill, and have therefore now but little to say in connection with it.

"Every clause of this big Bill has been gone through and patiently considered line by line, and I can bear testimony not only to the thoroughness with which it has been gone into, but also to the earnest desire of all the official members of the Select Committee to do the right thing.

"I do not suppose the Bill will prove a perfect Bill; for what Bill of this magnitude can be altogether perfect; nor can I expect the provisions of the Bill will be found to suit everybody; this would be against human nature; but I do think that the Bill, as a whole, will suit admirably the purpose for which it is intended, and I consider it to be a fair compromise as between Government and Commerce.

"The Report of the Select Committee shows that five clauses relating to Directors and Managing Agents referred to by the Hon'ble Member in Council on 27th January have not been included.

"These five clauses are probably the most important of the proposed amendments, and the Bill without them is therefore not complete, and because of their importance, I should like to say a few words in explanation of their exclusion.

"These clauses, as amended by the Select Committee, had, and still have, my approval, for as far as I can see at present, they constitute a fair settlement of the much vexed question of Managing Agents and their responsibilities.

"They are not in the Indian Act, nor do they find a place in the English Act, and they are therefore entirely new, and further since publication, they have been materially altered in Select Committee.

"In my opinion they constitute a fundamental alteration of the Bill as previously circulated, and because of this, it seemed to me to be necessary that the Bill, or at any rate the amended clauses, should be re-circulated.

"Re-circulation however did not commend itself to the Hon'ble Member in charge of the Bill, and he preferred to exclude the clauses and leave them for

further consideration and future amending legislation, and it was under these circumstances, I signed a non-dissent report and that these clauses have been excluded.

"As a result of the correspondence in this connection, a misapprehension has arisen as between Government and the interests I represent on this Council, and I ask your indulgence, Sir, to explain and clear this up.

"The Hon'ble Member, when presenting the Report of the Select Committee to you on 5th instant, stated that these five clauses had been violently attacked in Calcutta and drew attention to the significance of these attacks all emanating from Calcutta, and that other commercial centres remained unmoved; but I beg to point out as an explanation of this that the amended clauses were submitted to Calcutta alone, and it is therefore not surprising that Calcutta was the only quarter that made comment.

"It is true that there were some references on the Press to these amending clauses, but they were not brought before other commercial centres in the same way that they were submitted to Calcutta.

"Lastly, I come to what, to me at any rate, as the nominee of the Bengal Chamber of Commerce, on this Council, is the sorest part of the accusations, namely, that the Chamber has shown discourtesy by what is alleged to be tantamount to refusing to see the Hon'ble Member and discuss matters with him.

"The telegrams that passed between the Hon'ble Mr. Clark and myself, have, by permission of Mr. Clark, been published in the Press, and I leave it to the Council to decide whether anything of discourtesy is traceable in them.

"All these telegrams were intended to convey, and all I maintain they did convey, was that the Bengal Chamber of Commerce was of opinion that, until the public had been consulted as to the amendments, the Committee of the Chamber was not in a position to give an answer on the subject, and that the Committee was anxious not to give the Hon'ble Member the trouble and inconvenience of a futile journey to Calcutta.

"I have only to add that the Bengal Chamber of Commerce is not only willing but eager to give of its best to help Government, by discussion or otherwise, not only in the past, not only now but at all times, on any matters affecting Commerce."

The Hon'ble Mr. Clark:—"Sir, I am very much obliged to the Hon'ble Mr. Monteath for his support of the Bill. I need hardly say, Sir, that I entirely accept the Hon'ble Mr. Monteath's explanation of the attitude of the Bengal Chamber of Commerce. There are only two points to which I need refer in the very temperate and fair speech which he has made on the subject. I think he overlooks the fact that the new provisions were not exclusively the property of Calcutta. I gave our proposals as full publicity as I could when I moved for the setting-up of this Committee on the 27th January. The new clauses were published a few days later in the Press. There were two representatives of commercial opinion in Bombay on the Select Committee besides the Hon'ble Sir Charles Armstrong who unfortunately was not able to attend its deliberations. Besides, when I referred to the attacks made on the clauses, all emanating from one quarter of India, I had in mind opinions expressed in the Press as well as at Chambers of Commerce, and the Calcutta Press could not be better informed on the subject than that in other parts of the country.

"The only other point is this: I never complained of the telegrams from the Chamber of Commerce being discourteous. They were perfectly courteous in tone, but I think whoever reads them in conjunction with the Report of the subsequent proceedings at the annual meeting of the Bengal Chamber of Commerce will appreciate how I came to interpret their intention as I did, and to think that the Chamber were not dealing with us in the same spirit as that which, throughout the discussions on this Bill, we have endeavoured to show towards the views and wishes of the commercial community. I repeat, Sir, that I entirely accept the Hon'ble Member's statement, and I thank him for his assurance that Government may always count on the assistance and advice of

the Bengal Chamber in the many commercial questions with which we have to deal. I can only add on our side that we shall not be backward in taking advantage of the proffer."

The motion was put and agreed to.

The Hon'ble Meherban Sardar Khan Bahadur Rustomji Jehangirji Vakil moved that the passing of the Bill be postponed for three months, and that in the meantimes the Bill, as amended by the Select Committee, be republished—He said:—

"Sir, it cannot be denied that the object which prompted the Hon'ble Member in charge of the Bill to revise and consolidate the Indian law on the subject of Joint Stock Companies, on the lines of recent English legislation, is very laudable. The main object of the Bill and the salient principles underlying it, clearly indicate that the intention of the Government is to protect and safeguard the interests of the investing public, who are particularly, with respect to some of the colossal concerns, scattered over a wide area, and are consequently unable to watch the affairs of a company in which they may be interested. Certainly by the introduction of some very stringent clauses growth of bogus companies will also be checked to a certain extent. So far as the Bill aims at affording reasonable security to the share-holders, creditors and the public generally, by effective control over the companies, the country really gratefully acknowledges and appreciates the anxiety of the Government. But, at the same time, care must be taken to eliminate from the Bill such clauses as are unnecessarily hard and calculated to seriously hamper the formation and development of indigenous trading companies.

"I believe I have made myself sufficiently clear by admitting that, while a good case has been made out for introducing a measure, such as the one this Bill contemplates, some of its clauses are hard and vexatious, and others unworkable. With certain modifications the Bill will be, in my humble opinion, a most acceptable measure for protecting the public from falling into the clutches of unscrupulous and unprincipled adventurers.

"Some time therefore is absolutely necessary to effect the necessary modifications in the Bill as it now stands, and that is all that my amendment has in view.

"The Select Committee's Report on the Bill in question is dated the 3rd instant, and was placed before the Council subsequently. Some of the members residing at places about six hundred to a thousand miles away from the Capital probably received a copy thereof some days later still; so that virtually very little time has been available even to some of the members, who could with all the resources at their command, barely go through the Report which, together with the Bill as amended, comprises 127 printed pages. Sufficient time has not been given to enable members carefully to go through the various clauses of the Bill and the suggestions that have been made by the Select Committee.

"I understand the Bill is to be given effect to from the 1st of April 1914. In that case, I fail to see why the Bill should be rushed through this Session. The Hon'ble Member does not want to republish the Bill as amended by the Select Committee. That so far-reaching a change in the law of Joint Stock Companies should be effected in such a great hurry, and under circumstances which preclude the possibility of subjecting the modifications in the Bill made by the Select Committee to careful and informed criticisms, is a matter which could hardly meet with public approval. I can hardly see any justification for legislating in this hurried manner, because no harm can accrue by waiting till the next Sessions, especially in view of the fact that the Bill in question is to be put into operation, not until the expiration of over twelve months from to-day. Moreover, the nature of this Bill is not so urgent as that of the Conspiracy Bill. No immediate danger is to be apprehended from keeping it in abeyance for a period of three months only. There is another strong reason why the Bill in question should wait for some time. The Bill is in the first place incomplete. Some of the most important clauses relating to managing agents are dropped from the Bill for the time being, and

[18TH MARCH, 1913.] [*Meherban Sardar Khan Bahadur Rustomji Jehangirji Vakil.*]

are to be subsequently incorporated in it. I see from the Report of the Select Committee that, for the sake of very small changes in the phrascology of certain clauses, consequential alterations had to be made throughout the Bill.

"Is it then not likely that the insertion of so many highly important clauses relating to the internal management of companies which may finally take any shape, might require a number of consequential alterations throughout the Bill, thus entailing fresh trouble and probably necessitating changes in the Bill which we are asked to pass to-day? What useful purpose is served by passing the Bill piecemeal? I beg respectfully to differ from the view taken by the Hon'ble Member and the Select Committee, that the Bill in the shape in which it is to become law, does not require republication merely on the ground that it has not been much altered. To me it appears that the Bill has been sufficiently altered to stand in need of being republished. I beg respectfully to draw the attention of the Hon'ble Member to a few of the alterations made in the original Bill by the Select Committee, which I call *substantial* alterations—alterations which require time for very careful consideration.

"(1) Section 24, sub-clause 2, appears to me to be superfluous, for the simple reason that no useful purpose is gained by substituting for the term 'Legal practitioner' the words 'An Advocate, Attorney or Pleader entitled to appear before a High Court.' If it is intended to exclude District Pleaders it would be a real hardship in the smaller Moffusil towns.

"(2) In section 32, sub-clause 1, the word, 'fourteenth,' is omitted. I do not understand the significance of the alteration, from the 14th day to the 'day of the first or only ordinary general meeting,' etc., for submitting the annual list of members to the Registrar.

"(3) In section 36, clause 2, the Select Committee have increased the copying charges from annas two to annas six per 100 words or a fractional part thereof, throughout the Bill. In my humble opinion instead of extending additional facilities to shareholders or any persons interested in the Company the proposed enhancement in the copying charges would act as a deterrent. The proposed charges being exorbitant, compared with those obtaining in business firms and also in Courts of law, the very persons whom it is intended to benefit by the introduction of the Bill, will be practically prevented from taking copies as freely as they might otherwise do.

"(4) In section 138, clause 2, the words 'persons who are or have been officers of' are added which change the aspect of the Bill altogether, inasmuch as to call upon past officers of a company who may have severed their connection with it long ago, to furnish satisfactory information to the registrar, would be really a great hardship. What inducement would past officers have to come from perhaps distant places, and ransack the old registers and documents of a company whose service they may have left under peculiar circumstances unless it be either to injure its interests or to unduly favour it? Such a procedure will likewise open a door to unscrupulous persons to unnecessarily embarrass the company. Moreover their testimony could not be taken as absolutely reliable. Does not this change require consideration on the part of those vitally interested in the matter? From my personal experience as one interested in the management of Joint Stock Companies, I may be permitted to observe, that this certainly is a change of *great* importance, which requires reconsideration, and in which the public might with advantage be consulted

"(5) Section 145, clause 1, relating to the appointment and qualifications of auditors seems to have had the attention of the Select Committee. It is however difficult to understand why the Select Committee have not deemed it necessary to specify the qualifications of such auditors. In my humble opinion it is not expedient to leave the determination of the qualifications of auditors to the Local Governments, to be varied from time to time inasmuch as no local conditions are likely to affect the standard of efficiency

[*Meherban Sardar Khan Bahadur Rustomji Jehangirji Vakil.*] [18TH MARCH, 1913.]

required in an auditor, this being purely a matter of finance. The qualifications of directors of a company are defined in the Bill; so ought those of the auditors to be. I also beg to submit that accounts have invariably been kept in the different parts of India in the prevailing vernaculars for centuries past. The contemplated changes affecting the present class of officers may be so sweeping as to eliminate the present class of auditors from the functions which they have hitherto discharged to the satisfaction of those concerned and at very moderate cost. One does not know. I am not sure whether English law imposes any restrictions in regard to the qualifications of auditors. We, members, fully conscious of our responsibilities as men and representatives of various interests, would certainly expect before voting one way or other upon this measure to know the precise effect which each clause would produce.

"(6) Section 163 relates to the circumstances under which a company may be wound up by the Court. But to wind up a company for the default mentioned in clause (ii) or for the delay mentioned in clause (iii) would be a great hardship. I fully agree with the Hon'ble Mr. Sitanath Roy's remarks in his Minute of Dissent on this point.

"It would be a great pity if the winding up of a company should be the result of a single default on the part of its promoters who may not after all be to blame for such default owing to circumstances beyond their control. This section certainly requires modification.

"(7) In section 236, sub-clause (3), the Select Committee have added that 'the Indian Limitation Act, 1908, shall apply to an application under this section as if such application were a suit.' As far as I can see under the old Act no such limitation was in force. This is another radical change which in my humble opinion calls for the expression of public opinion before the effect is given to it.

"I also beg to submit that the severity of several of the penal clauses is out of all proportion to the magnitude of the offence, and while they will press very hard upon those who are already in the line, they are calculated to raise apprehensions in the minds of intending *bonâ fide* promoters of new concerns, and thus discourage enterprise. There are several other changes made by the Select Committee to which I do not wish to advert, for fear of being too long. I presume I have made out a sufficiently strong case to justify a short postponement of the Bill for the reconsideration which it does require. I earnestly request the Hon'ble Member for Commerce and Industry therefore to be so good as to heed my request for postponement, and thus give reasonable opportunity for the expression of the public opinion on the scope of the measure, when, as the Hon'ble Member has just remarked, almost all responsible bodies have already had an opportunity of expressing their views; by waiting three months more, probably just the few who have had no opportunity of doing so might get a chance of sending in their opinions, and the Government will in that case be better supported in this measure, and leave no room for any complaint.

"Thousands of people in Gujarat are interested in the Mill industry, and every change, large or small, of law concerning this interest is studied by them with the keenest attention. I may be permitted to say that some of the leading men of Ahmedabad, which next to Bombay is the largest centre of Cotton Mill industry in India, and which perhaps would not yield even to Bombay in the number of Joint Stock Companies liquidated or wound up, with whom I had the pleasure to confer on the subject, have unhesitatingly expressed their desire to see the Bill postponed for three months, at least, to allow of the Select Committee's Report being republished and reconsidered.

"After having put before the Council my reasons, I hope that the Hon'ble Member, as well as the Council will be good enough to take into favourable consideration my amendment, and see their way to postpone the Bill at least for three months."

[18TH MARCH, 1913.] [*Malik Umar Hayat Khan; Mr. Clark.*]

The Hon'ble Malik Umar Hayat Khan:—"I only wish to speak in connection with this amendment. In our part of the country our experience has been that there are some companies which are composed of very very ordinary men, and of course many of these companies were broken up and these men went to jail; but the Government of the Punjab has to spend such a lot of money and a lot of money of our countrymen also was lost. Now these are men that have no honour; they can easily go to jail. Suppose they have collared a lakh of rupees, they can go to jail for a year, and then they come back and get all this money, so if this Bill is postponed, I think there will be a lot of danger. Of course any member can bring in all the amendments by a new Bill altogether, and get all these defects put right. So I would ask the Council to pass this Bill at once."

The Hon'ble Mr. Clark:—"Sir, I think I ought to point out first of all that the Hon'ble Mr. Vakil's amendment as it stands is really impracticable. He suggests postponing this Bill for three months before passing it into law. As this Council will not be sitting this day three months, we cannot do it. It would mean postponing the Bill possibly for about a year. My objection to it however is based on a deeper principle, namely, that if we were to agree to postpone the Bill under these conditions, we should practically make legislation on important matters in this country impossible; an important Bill would continue to revolve like a gyroscope until it should cease to be important. This Bill has not been in any way hurried. The English Act, on which the Bill is based (and the Bill still very closely reproduces the English Act), was circulated in 1909, that is four years ago. The whole question has really been before the country for four years. Last year the Bill which we based on the English Act, modified in light of the suggestions received on the English Act, was circulated again through the country for opinion. These opinions have been duly received and examined, and were before the Select Committee when the Bill was considered. A good deal of the Hon'ble Member's complaint was, I think, that some of the provisions in the Bill would press hardly on indigenous companies; but these are not new provisions. These provisions were in the English Act which was circulated in 1909, and in the Bill circulated last year. If we circulated the Bill again now, we should get no new opinions on it. There is really nothing in the Hon'ble Member's contention from that point of view.

"I think the Hon'ble Member is not quite clear as to the true principle underlying re-circulation of a Bill under our rules. It is only to be done in cases where a Bill is so fundamentally altered that it has been really different to the Bill which was put before the country and which was considered by the different bodies to whom it was submitted. I submit, Sir, it is really impossible to say that about the present Bill. For a Bill of its size, I doubt if any Bill has been so little altered in Select Committee. The Hon'ble Member went through the list of new provisions which he considered were important, and I am sure he will forgive me for saying that he had to go pretty far afield to find them. He had for instance to cite an amendment by which the Committee altered the prescribed charge for copying. That is hardly the sort of matter which ought to cause a Bill to be re-circulated and submitted to the country again with all the delay involved. And it is very undesirable that the Bill should be delayed. I explained in Council the other day that there was a good deal of important machinery to set up in connection with this Bill, machinery which we cannot set up until the Bill has been passed into law. It is very important to improve registration in connection with it, and that means a good deal of work and correspondence with Local Governments. We have also to meet the case of the Auditors and all that takes time.

"As to the detailed points raised by the Hon'ble Member, most of them are, I think, points on which the Hon'ble Mr. Sitanath Roy has got amendments, and at any rate, it is hardly necessary for me to mention them now. The last really large commercial measure which was put through in this Council was the Factories Act of 1911. That Act was very nearly re-constructed in Committee, and nobody suggested it should be re-circulated. I am afraid Govern-

[*Mr. Clark; Sir Charles Armstrong; Rai Sita Nath Roy Bahadur; Maharaja Manindra Chandra Nandi.*] [18TH MARCH, 1913.]

ment could not possibly agree to re-circulate this Bill now. There has been a very strong demand that the Bill should be passed into law. It is required to place the framework of our commerce on a sounder footing, and in many ways it will help the commercial community. Only to-day I had a letter from an important body of Indian commercial men from Bengal urging me not to give way on this particular point. I will read a short paragraph from it.

'I am directed by the Committee to convey their heartiest thanks to the Government of India for having resisted the demand which was made with some amount of persistence . . . for further deferring the passage of the Bill to amend and consolidate the laws relating to trading companies and other associations . . . after having re-circulated the Bill . . . My Committee are glad that the urgency of the matter was fully appreciated and the request for re-circulation in deference to the wishes of some of the members of the Committee, who had sufficient opportunities already afforded to them for study and comment, involving an unnecessary delay in the passing of a measure of such vital importance having such immense potentialities for good and fraught with such far-reaching consequences to the trading and commercial community, was not countenanced.'

"I merely read that to show that there is a strong demand for the passage of this Bill. I am afraid the Government cannot agree to delay it further."

The amendment was put and negatived.

The Hon'ble Sir Charles Armstrong:—"Sir, I beg to move the following amendment:—

'That the short title in clause 1 of the Bill, as amended by the Select Committee, be altered to the 'Indian Companies (Consolidation) Act, 1913;'

and I do this so that the Bill may agree with the preamble, which says that it is expedient to consolidate and amend the law relating to trading companies. As a matter of fact this Bill consolidates the Companies Acts of 1882, 1887, 1891, 1895, 1900 and 1910. I would like to point out that the preamble to the Indian Companies Act of 1882 said, 'Whereas it is expedient to amend,' etc., whereas the preamble to this one says that it is expedient to 'consolidate and amend.' There is no doubt whatever that this Act is a consolidating Act, and I am advised that confusion will arise, unless the title of the Act is as I have moved in this amendment."

The Hon'ble Mr. Clark:—"The point, Sir, is really a technical one. An Act is not called a consolidating Act if it effects any amendment in the law. It is a very important matter of drafting that consolidation should be purely consolidation without any sort of alteration in the existing law, that is, should be simply the putting together of existing Acts. In this case of course we have introduced amendments into the existing Act, and therefore it is a Bill to consolidate and amend, and not a consolidating Bill pure and simple. I am afraid therefore that we cannot put in the words which the Hon'ble Member suggests."

The amendment was put and negatived.

The Hon'ble Rai Sita Nath Roy Bahadur:—"Sir, I beg to move that sub-clause 2 of clause 24 of the said Bill be omitted. My reason is, first that the promoters of the Company shall have to apply to the Registrar for the registration of the memorandum of association, and after the registration of the said memorandum, it shall be the duty of the Registrar to give a certificate that the Company is incorporated. After that I do not think the declaration required by this clause is necessary, for after this certificate of incorporation has been given by the Registrar, the Company becomes entitled to commence work and to exercise all the necessary functions, and as such there is no further necessity for the declaration as required here. I therefore beg to propose the omission of the sub-clause."

The Hon'ble Maharaja Manindra Chandra Nandi of Kasim Bazaar:—"Sir, I beg to support this amendment. In view of the provisions made in clauses 21 and 22, it seems to be unnecessary to demand a declaration by an advocate, attorney or pleader entitled to appear in a High

[18TH MARCH, 1913.] [*Maharaja Manindra Chandra Nandi; Mr. Clark; Rai Sita Nath Roy Bahadur; Sir Charles Armstrong; the President*]

Court who is engaged in the formation of the company or by a director, manager or secretary of the company. According to clause 21, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by each member. Thus the memorandum and articles shall have all the effect of a declaration. It is further provided in clause 22 that the memorandum and articles (if any) shall be filed with the Registrar, and he shall retain and register them. These provisions are sufficiently stringent, and the declaration demanded by clause 24, sub-clause 2, is superfluous."

The Hon'ble Mr. Clark:—"I think, Sir, there is a little misapprehension about this sub-clause 2. Sub-clause 1 lays down that the certificate of incorporation shall be conclusive evidence that all the requirements of the Act in respect of registration and of all the matters incidental thereto have been complied with, that is to say, it provides that the certificate shall have an evidential value. Consequently, the Registrar must be in a position to know whether the various conditions have been complied with. It would be a much greater nuisance to companies and company promoters if we were to leave out sub-section 2, in which case the Registrar would have to satisfy himself by personal inquiry and investigation. Sub-section 2 is really intended to make matters easier. We have added the provision permitting the declaration to be made by an advocate or attorney, etc., so as to meet cases where there is no director, manager or secretary of the company by permitting other people of a certain weight and standing to vouch that these formalities have been complied with. The provision follows closely the English Act. I cannot accept the amendment."

The amendment was put and negatived.

The Hon'ble Rai Sita Nath Roy Bahadur:—"My second amendment, Sir, is with reference to clause 32, sub-clause 3. I beg to move that the last three lines 'together with a certificate from such director, manager or secretary that the list and summary state the facts as they stood on the day aforesaid' be omitted. What I beg to say is this that, at every stage, at every turn, if promoters and directors are required to make a declaration or to file a certificate, then very few honest people will be permitted to take part in the management of Companies or to act as directors. I therefore think that all these things should not exist in the form represented. They have been borrowed from the English Act, and every clause of the English Act is not necessary in this country. The words seem to be superfluous, and I beg to ask for their omission."

The Hon'ble Mr. Clark:—"This is another case where our altruistic motives have been misunderstood. We are really trying to save all parties trouble. It was pointed out by one of the Registrars of Joint Stock Companies, both when the English Act was circulated and subsequently when the Bill which we based on it was circulated, that a great deal of trouble and correspondence was caused by their having to return these lists and summaries in order to find out whether they stated the facts as they were on the prescribed day. All that we ask is that these certificates should be supplied without the preliminary of the information having to be asked for. That is all it comes to. It really meets the convenience of all parties—the Registrar and the people responsible for the management of the company. I am afraid, therefore, Government cannot agree to the amendment."

The amendment was put and negatived.

The Hon'ble Sir Charles Armstrong:—"Sir, may I be allowed to move the alternative amendment which stands in my name—No. 7 on the agenda paper."

The President:—"You have dropped No. 6, namely, that in sub-clause (1) of clause 75 of the said Bill the word 'authorised' be omitted."

[*Sir Charles Armstrong; the President; Sir Ibrahim Rahimtoola*] [18TH MARCH, 1913.]

The Hon'ble Sir Charles Armstrong:—"I have dropped No. 6."

The President:—"Sir Charles Armstrong will move amendment No. 7."

The Hon'ble Sir Charles Armstrong:—"Sir, I beg to move the following amendment, that for sub-clause 1 of clause 75 of the said Bill, the following sub-clause be substituted, namely:—

Publication of authorised as well as subscribed and paid-up Capital.

'(1) Where any notice, advertisement or other official publication of a company contains any statement as to the capital of the company, such notice, advertisement or other official publication shall also contain a statement in an equally prominent position and in equally conspicuous characters of the amount of the capital which is authorised, also of the amount subscribed and the amount paid up.'

"My object in moving this amendment is so that we may have a really effective clause in the Bill which will absolutely prevent a misleading advertisement regarding the working capital of a company. The clause, as it stands, has this effect, that if a company advertises its authorised capital, it must also advertise its subscribed capital and the amount paid up. But I would put this before the Council: supposing a company is started with the object of getting as much money as it can from the general public, supposing the authorised capital of that company is one crore of rupees, the subscribed capital of the company is 50 lakhs, and the paid-up capital is 1 lakh. The company in its advertisement will probably simply put 'Capital 50 lakhs;' and I contend that that would be an extremely misleading advertisement. What we want to get at, is the working or paid-up capital of every company, and if a company merely advertises 50 lakhs and says nothing more, then I think that that is a very misleading advertisement which we ought to take precautions against. I may be told in reply to this that the clause is similar to one which now exists in the Indian Life Insurance Bill; but I do not think that is any reason why we should incorporate a clause which is really ineffective in a Bill of this character. I may be told also that, if the 50 lakhs of capital are subscribed, the depositors are safeguarded by the liability of those who have subscribed this capital to pay up in case the company goes into liquidation. But in the case of a company such as I have described, the shareholders would in all probability be men of straw, and would not be able to pay up in case the company goes into liquidation. The clause that I have proposed, I claim, is an infinitely better one than the clause in the Bill. My clause compels the company, if it makes any reference at all to capital, to state the authorised amount, the amount subscribed and also the amount paid up; and that is really what we want to get at. The clause, as it stands in the Bill, only meets the difficulty half-way. It simply says that if a company advertises its authorised capital, it must also state its subscribed capital and its paid-up capital. What we want to get at in any case is the paid-up capital, the working capital, and by making reference to subscribed capital, I contend that a company's advertisement can be of an extremely misleading character. I hope, therefore, that this amendment will be adopted by the Council."

The Hon'ble Sir Ibrahim Rahimtoola:—"Mr. President, I wish to support the amendment that has been moved by my friend, the Hon'ble Sir Charles Armstrong. I understood when we considered the question in Select Committee, that the intention of the clause was that the public should not be misled by advertisements in which the fullest information as regards the authorised capital, the subscribed capital and the paid-up capital was not clearly shown. I regard the amendment of my friend, Sir Charles Armstrong, as merely a drafting amendment with a view of bringing out more clearly the intention of the Select Committee. When for advertisement purposes any advantage was proposed to be taken by any Company in mentioning the figures of capital of any sort, then the public should be clearly told by such

company what was the amount of authorised capital, the amount of subscribed capital and the amount of paid-up capital, so that the fullest information may be available to all those people who wished to deal with it either in the matter of subscribing capital, purchasing shares, lending money or otherwise. In my opinion the question before the Council is whether the section of the Bill carries out the object with which it was introduced, or whether the alteration in the wording as suggested by my Hon'ble friend, Sir Charles Armstrong, really meets the question. I think that the Hon'ble Member in charge of the Bill should give a clear explanation in reply whether, under the clause as it stands, it will be necessary, in all cases where any mention of capital is made for advertisement purposes, that full information under the three heads must be given or not. If that is so under the section as it stands in the Bill, then the amendment need not be pressed, but if that object is not secured and if in the illustration which the Hon'ble Sir C. Armstrong gave it is possible for a company to merely advertise its subscribed capital without being required to mention the amount of the paid-up capital, then I think the amendment ought to be carried, making it imperative by Statute that all the information which the Hon'ble Sir C. Armstrong calls for shall be given."

The Hon'ble Mr. Clark:—"Sir, I admit at once that there is a certain plausibility about the proposal put forward by the Hon'ble Sir Charles Armstrong and supported by the Hon'ble Sir Ibrahim Rahimtoola, but it goes rather further than appears at first sight. The clause, as it stands in the Bill, refers only to cases where the notice or other official publication contains a statement of the amount of the authorised capital. That clause is framed on the analogy of the Life Assurance Companies Act of last year, and that Act in its turn was framed on the analogy of the English Life Assurance Companies Act of 1900. The idea in England was that Life Assurance Companies should be placed in a position of greater security than ordinary Companies, and that stricter provisions should be laid down in regard to them. That principle we adopted in the Life Assurance Act of last year. What the Hon'ble Member really asks, is that we should put ordinary Companies on a higher plane, so to speak, of restriction than Life Assurance Companies. This means introducing a rather serious anomaly into the law, and we should have to consider the question of amending the Life Assurance Companies Act; and that I think would be a little absurd at this stage when it has only been passed for about a year. I also venture to think the Hon'ble Member a little exaggerates the importance of the change that he proposes. What we want to get at, is the people who advertise an enormous sum of nominal capital which is of course a perfectly easy thing to do. There is nothing whatever to stop you, and it misleads the ignorant investor to a very serious extent. But subscribed capital at any rate implies that there are subscribers who are responsible for it. I quite agree that there may be an improperly large margin between the amount paid-up and the amount subscribed, and that the security would depend upon the financial strength of the subscribers, which may not amount to much, but it is at least something which stands on a different footing to nominal capital pure and simple.

"It has been our principle not to try too much all at once. It may seem a pusillanimous policy, but it is at least a cautious and moderate policy. I do think it is very important, especially perhaps in a country like India, not to try to do everything straight away. If we had been starting with an absolutely clean slate, perhaps there would have been something to say for adopting the proposal of the Hon'ble Member. But I think this is rather a late moment at which to put it forward. I should have liked to hear the opinions on this Bill of more of the commercial representatives in this Council. It is a matter which might very usefully have been discussed in Committee. If the other commercial representatives had generally agreed, Government might have been in a position to accept the amendment. But I do think that it is a change that we ought not to adopt at rather short notice, at the last moment, and at this stage of the Bill. I am afraid, therefore that Government must refuse to accept the amendment."

The Hon'ble Sir Charles Armstrong:—"May I ask if this section can be postponed along with the others that will be considered a year hence?"

The Hon'ble Mr. Clark:—"I am afraid not."

The Hon'ble Sir Charles Armstrong:—"My contention is that if we are going to do anything at all in this way let us do it properly. I contend that the clause, as it stands in the Bill, does not meet the point that we have been considering for so very long. What we wish to do is to protect depositors from misleading advertisements, and there can be very little doubt that the clause which I have suggested is infinitely better than the clause in the Bill. I think it will be a very great pity, while we have an opportunity of putting a proper clause into the Bill, that we should not do so."

"The question having been put the Council divided and the result was as follows:—

Ayes—21.

"The Hon'ble Mr. Ghuznavi; the Hon'ble Maharaja Manindra Chandra Nandi; the Hon'ble Raja of Mahmudabad; the Hon'ble Raja Kushalpal Singh; the Hon'ble Rai Sri Ram Bahadur; the Hon'ble Nawab Saiyid Muhammad; the Hon'ble Mr. Vijiaraghavachariar; the Hon'ble Sri Rama Raya of Panagallu; the Hon'ble Khan Bahadur Mir Asad Ali Khan; the Hon'ble Sir Charles Armstrong; the Hon'ble Sir Ibrahim Rahimtoola; the Hon'ble Khan Bahadur Rustomji Jehangirji Vakil; the Hon'ble Mr. Fuzulbhoy Currimbhoy Ebrahim; the Hon'ble Babu Surendra Nath Banerjee; the Hon'ble Maharaja Ranajit Sinha; the Hon'ble Raja Saiyid Abu Jafar; the Hon'ble Mr. Madhu Sudan Das; the Hon'ble Malik Umar Hayat Khan; the Hon'ble Raja Jai Chand; the Hon'ble Sardar Daljit Singh; the Hon'ble Sir G. M. Chitnavis.

Noes—43.

"His Excellency the Commander-in-Chief; the Hon'ble Sir Guy Fleetwood Wilson; the Hon'ble Sir Robert Carlyle; the Hon'ble Sir Harcourt Butler; the Hon'ble Mr. Syed Ali Imam; the Hon'ble Mr. Clark; the Hon'ble Sir Reginald Craddock; the Hon'ble Mr. Hailey; the Hon'ble Sir T. R. Wynne; the Hon'ble Mr. Meugens; the Hon'ble Mr. Monteath; the Hon'ble Mr. Saunders; the Hon'ble Mr. Wheeler; the Hon'ble Mr. Enthoven; the Hon'ble Mr. Sharp; the Hon'ble Mr. Porter; the Hon'ble Sir E. D. Maclagan; the Hon'ble Mr. Gillan; the Hon'ble Major General Birdwood; the Hon'ble Mr. Michael; the Hon'ble Surgeon-General Sir C. P. Lukis; the Hon'ble Mr. Gordon; the Hon'ble Mr. Maxwell; the Hon'ble Major Robertson; the Hon'ble Mr. Kenrick; the Hon'ble Mr. Kesteven; the Hon'ble Mr. Kinney; the Hon'ble Sir W. H. Vincent; the Hon'ble Mr. Carr; the Hon'ble Mr. Macpherson; the Hon'ble Mr. Maude; the Hon'ble Maharaj-Kumar of Tikari; the Hon'ble Qumrul Huda; the Hon'ble Mr. Arthur; the Hon'ble Rai Sita Nath Roy Bahadur; the Hon'ble Major Brooke Blakeway; the Hon'ble Mr. Fenton; the Hon'ble Mr. Walker; the Hon'ble Rao Bahadur V. R. Pandit; the Hon'ble Mr. Arbuthnott; the Hon'ble Srijut Ghanasyam Barua; the Hon'ble Mr. Eales; the Hon'ble Maung Myé."

So the amendment was negatived.

The Hon'ble Mr. Monteath:—"Sir, I rise to move the amendment that clause 77 of the Bill be omitted. The clause in question is one that deals with restrictions in connection with quorums. Up to the present, neither in the English Act nor in the Indian Act, have there been any restrictions in connection with quorums, and the Select Committee were of opinion that some restrictions should be laid down defining the limits of quorums that the articles of association of a Company should prescribe, and with this in view clause 77

[18TH MARCH, 1913.] [*Mr. Monteath; Maharaja Manindra Chandra Nandi; Maharaja Ranajit Sinha of Nashipur; Sir Ibrahim Rahimtoola; Rai Sita Nath Roy Bahadur.*]

was drafted and included. The result of subsequent inquiries, however, is that these restrictions will bear hardly on many existing arrangements, and for this reason, I beg to propose that the clause be omitted."

The Hon'ble Maharaja Manindra Chandra Nandi of Kasim Bazar :—"Sir, this clause appears to me to be somewhat obscure, and should be omitted as proposed by the Hon'ble Mr. Monteath. No minimum quorum is fixed for a general meeting, and the matter is left entirely to the articles. The maximum quorum 'shall not exceed ten members present in person or (when proxies are allowed to count for a quorum) twenty members present in person or by proxy.' It is not clear whether in the latter case it will be necessary or obligatory for any specified or minimum number of members to be present in person, or whether the number of members present may be more or less than ten, the balance being represented by proxy. Either both the minimum and maximum for a quorum should be fixed by Statute, or both should be left to the articles of each individual company. The latter course is to be preferred, and I accordingly support the amendment."

The Hon'ble Maharaja Ranajit Sinha of Nashipur :—"Sir, I beg to support the amendment which has been just now moved by my Hon'ble friend, Mr. Monteath. We have borrowed the provisions of this Bill from the English Act, and when there is no such provision in the English law, I do not think that it should be inserted in the present Bill. The Government has removed many contentious matters from the Bill itself, and I think if this section be omitted, it will be acceptable to Trade and Commerce. With these few words, I beg to support the amendment."

The Hon'ble Sir Ibrahim Rahimtoola :—"Sir, I rise to oppose the amendment. The object of the clause is that it should be possible to hold general meetings where the affairs of the Company can be adequately discussed. Any restrictions of the kind, which have appeared in certain joint stock companies in which a very high percentage of the subscribed capital is required, to form a quorum at general meetings have proved detrimental to the public interest. It is, therefore, necessary that some provision of this kind should be made to remove the difficulties in the way of holding general meetings. Personally, as I stated in the Select Committee, I would have preferred if, instead of the provision in its present form, the section had left the companies free to provide for what quorum they like in the articles, with this reservation that, in the event of a general meeting not being held for want of a quorum, then say within a week afterwards an adjourned meeting shall be held where no quorum shall be necessary at all. I think it is very necessary that facilities should be provided for the shareholders to hold general meetings and discuss therein the interests of the company. Any regulations which make it practically impossible to hold general meetings in consequence of a high quorum cannot, I think, be acceptable in the public interest. Whether the provision is allowed to remain in the form in which it stands at present in the Bill, or whether some provision is introduced which ensures that general meetings shall not be practically precluded from being held in consequence of excessive quorum is immaterial; but there is a clear case for some provision of the kind and I, therefore cannot agree to the entire omission of the clause as required by the amendment. I will, therefore, vote against it."

The Hon'ble Rai Sita Nath Roy Bahadur :—"Sir, I also beg to support the motion. The clause is decidedly obscure. It does not prescribe that the quorum should be so and so. It only says that it should not exceed ten, but what is the minimum quorum it does not say. Also in the case of proxies, it does not say what number of persons should be present and what number of proxies are to be allowed. It is quite indefinite. It may be that nineteen gentlemen may be present by proxies and one person present personally. Would that satisfy the requirements of the section? I think it is obscure, and I think it should be omitted."

The Hon'ble Mr. Pandit :—"Sir, I also rise to oppose the motion which has been put forward by the Hon'ble Mr. Monteath. The amendment comes certainly as a great surprise to those of us who were on the Select Committee. We understood that it was the desire of the Hon'ble Mr. Monteath and others who were on the Select Committee to have such a clause as the one now under discussion inserted in the Companies Bill in order that by unreasonable articles of association it should not be rendered well-nigh impossible for a quorum to be got together and business gone through at a general meeting. The instance of the Bank of Burma was quoted in Select Committee in support of the proposal to insert some such clause, and it was urged that it was by reason of the articles of association of that Company providing a quorum which was impracticable and which proved impossible that there were no general meetings held for years together and that in consequence the affairs of the Bank went from bad to worse and came to the crisis of which we have all heard. Now this clause 77 merely provides that by the articles of association of any company the quorum shall not be fixed so high as to render it too difficult for general meetings to be held and for the affairs of the company to be discussed by the shareholders and no reasons for omitting it have been assigned. The Hon'ble Rai Bahadur Sita Nath Roy has taken exception to this clause on the ground that it is obscure, but I do not see that there is any obscurity in the clause. All that it lays down is, that if by the articles no proxies are allowed and members are required to be present, a quorum shall not be more than ten members present in person and if proxies are allowed, then the quorum shall not be more than twenty, inclusive of proxies. Now it is quite true, as the Hon'ble Rai Bahadur Sita Nath Roy has pointed out, that where proxies are allowed, it may admit of say two members being present in person with eighteen proxies, and that may constitute a quorum at a general meeting. But with regard to the former there is no difficulty whatever, and in the articles of association a provision can be made for a much smaller number than ten provided in clause 77. I submit, therefore, that by striking out this clause 77 we shall leave the affairs of the companies open to very much the same objection as was pointed out and raised in the Select Committee in connection with the Burma Bank affairs, and some such clause is necessary in the best interests of shareholders and of commercial and industrial enterprise. I therefore oppose the motion for omitting this clause of the Bill"

The Hon'ble Mr. Clark :—"Sir, the Hon'ble Mr. Pandit who has just spoken has expressed the meaning and intention of this clause quite clearly. I agree with him that the clause is not obscure, although it perhaps looks a little curious because you expect the law to prescribe a minimum quorum rather than a maximum. But the point which we wished to meet, the point we had in mind, was a possibility which has already cropped up in one or two cases, namely that the articles of association may fix a quorum so high that practically speaking a general meeting cannot be held. I believe they have a small quorum just for passing accounts and so on, but for other purposes they have this large quorum that practically prohibits a proper meeting being held, and the action consequently of the management of the company being properly criticised. Of course that is an undesirable thing, and it would be desirable to meet it. But it turns out to be just one of those cases where it proves very difficult to meet a specific case, a specific wrong if you like, in a general body of law like this, without cutting across something else. It is quite true, as Hon'ble Members have said, that the Committee agreed to accept this clause, and the Hon'ble Mr. Monteath, who is now moving it out, himself agreed to accept it, for he himself approved of its object. The only difficulty is the way it works in practice Apparently it is the custom in a good many cases to fix in the articles of association and in contracts that certain things can only be done by an extraordinary resolution at meetings where there is to be a specified quorum larger than that provided for in this clause. We should be seriously interfering with the existing commercial practice—at any rate on one side of India—that may not be quite convincing to people on the other side—but one of the difficulties of legislating in India is that you have to meet the requirements and interests of every side. I regret we are unable to deal with this evil. It is

not a common one. We have heard of only one case I believe; but it would have been an advantage if we could have dealt with it. In the circumstances, however, I must agree to the omission of the clause. The amendment is accepted."

The motion was put and agreed to.

The Hon'ble Rai Sita Nath Roy Bahadur :—"Sir, I beg to move for the omission of all the sub-clauses from 2 to 11 in clause 78. It may seem that I am asking for too much, but I beg to point out that all these sub-clauses are entirely new, and are not suited to this country. A joint-stock company which is started with a small capital and which has to maintain a small clerical establishment, may find it very hard to comply with the requirements of the section. It would entail a heavy burden, and would require a good deal of time and labour to prepare and submit such a report. In my opinion the burden would be too heavy for a small company to bear. In fact throughout the Bill such a heavy burden and responsibility has been thrown upon the directors and managing staff, coupled with the fact of their being required at every stage to file a certificate, or to make a declaration, that it would have the effect of preventing many honest people from attempting to promote a joint-stock company.

"The elaborate provisions made here and elsewhere which have no place in the existing Act will, in my opinion, tend to frighten away people from assuming any responsible position in the formation of joint-stock companies. The object of the legislature is undoubtedly good and is evidently intended to safeguard the interests of investors; but the provisions though well meant need not necessarily be all suitable. In a country where capital is so small and shy hard and fast conditions will surely go to discourage promoters from floating joint-stock companies. Under these circumstances, I beg to move for the omission of sub-clauses 2 to 11 from clause 78."

The Hon'ble Mr. Clark :—"Sir, in this amendment and in some subsequent amendments, I think the Hon'ble Member has one definite principle in view—or rather one definite end. I sympathise with his end, but I entirely, I am afraid, disagree with the means which he proposes to employ to secure it. The end is to encourage capital to come out from its lair and invest itself in companies. So far we are entirely at one. We differ as to the means. His idea is to place as few restrictions as possible on the formation of companies. That seems to me a dangerous policy. It may work very well for a short time; but as people are not all honest, somebody will sooner or later take advantage of it, and people will begin to lose their money. Now as people put their money into companies, not with a view to lose money but to make more, that is not the way to encourage the investment of capital. It seems to me that, as long as you avoid conditions which are unnecessarily burdensome, the duty of Government as regards the best way of encouraging the investment of capital in this country, is to make it as safe as possible. In this particular case, I do not think anybody really can maintain that the provisions are burdensome. The law, as it stands, already provides for statutory meetings, but the provision as to the statutory report is a new one. The statutory report which must be forwarded to every member before the meeting must contain certain necessary details regarding the share capital, the financial position of the company, the names, addresses, etc., of the principal officers of the company, and the particulars of any contract, the modification of which is submitted to the company for its approval. A copy of this report has also to be filed with the Registrar; a list of the members of the company giving certain details has to be produced and kept open to inspection at the meeting; and any matters arising out of the statutory report are to be open to discussion That is all. That is really all that these sub-clauses provide, and I do not think anybody can seriously contend that they can be any serious hindrance to the formation of companies, or that they will give alarm to people who are responsible for the formation of companies. On the other hand, they do provide most

useful information for the people who are investing in those companies. I am afraid, in these circumstances Government cannot accept the amendment."

The amendment was put and negatived.

The Hon'ble Rai Sita Nath Roy Bahadur :—"Sir, my next amendment is with reference to clause 85, sub-clause (1) (*i*), which requires that every director shall have to sign and file with the Registrar a consent in writing to act as such director. The amendment that I propose is, that he might signify his consent in writing to the promoters of the proposed company instead of being required to file it with the Registrar. That, I beg to suggest, will exactly meet the requirements of the case. The object of this sub-clause is evidently to protect people from being misled by high sounding names in a prospectus, such names being not unoften inserted in the prospectus without the knowledge or consent of the gentleman concerned. In such a case the object may be gained by the promoters being required to procure beforehand the consent of the would-be directors in writing to act as directors. People are generally apathetic: they, at least the big men, may not like the idea of filing their consent with the Registrar. They may signify their consent in writing to the promoters of the company. It does not make a world of difference. I would therefore substitute for (1) (*i*) the following :—

'Signified his consent in writing to the promoters of the proposed company to act as such director.'"

The Hon'ble Mr. Clark :—"I am afraid it does make a very considerable difference. The whole point is, not merely that he should signify his consent, but that it should be perfectly clear that he has done so. That is why we have proposed that the consent should be filed with the Registrar, so that there might be no question about it. I am afraid Government cannot accept the amendment."

The amendment was put and negatived.

The Hon'ble Rai Sita Nath Roy Bahadur :—"My next amendment is with reference to section 94, Sir. The first portion, that is, the first two lines, seem to me objectionable. The Hon'ble Member for Commerce is perhaps not aware of the great difficulty experienced in raising money in this country. This is no doubt prejudicial. It will be doubly prejudicial. On the one hand, the naming of the minimum subscription in the prospectus on which the directors may proceed to allotment will have a deterrent effect on would-be subscribers, and, on the other hand, it will go to tie up the hands of promroters. I therefore ask that the first two lines of sub-clause (*d*) be omitted, that is, 'the minimum subscription on which the directors may proceed to allotment.'

"And with respect, to my amendment for the omission of the other clauses, what I beg to say is, that the full particulars required to be inserted in the prospectus would be more than enough to discourage any promoter or promoters from floating a joint-stock company. The burden of my song is everywhere the same. In the case of a company with a small capital the expenses that would be incurred in newspaper advertisements alone would be enough to swallow up a large portion of the proposed capital. Joint-stock companies are still in their infancy in this country. Various efforts are now being made to float joint-stock companies for developing small industrial enterprises with small capitals; but if companies with large capitals—say from 10 to 20 lakhs, and companies with capitals ranging from fifty thousand to a lakh of rupees are to be placed on an equal footing and forced to comply with all the elaborate provisions of the law, then all hopes of industrial enterprises would be gone. That is my amendment."

The Hon'ble Mr. Clark :—"Sir, I find it very difficult to follow what the Hon'ble Member said, but I am quite clear as to what he wants to do. He wants to omit sub-clause (1) (*d*) to sub-clause (1) (*o*) of clause 94."

The Hon'ble Rai Sita Nath Roy Bahadur.—"Particularly the first portion of sub-clause (*d*)."

The Hon'ble Mr. Clark:—"That is to say all the provisions of importance in regard to the prospectus. Now, I think the same general remarks apply to this amendment as I made just now. The Hon'ble Member regards it as very embarrassing and difficult for company promoters in this country to afford this full information, and he thinks the requirement will deter people from going into company promotion. I cannot accept that point of view. This is really one of the most important clauses in the whole Act. It is also one which, I think I am right in saying, has not been modified at all as compared with the English Act. It has therefore been before the country for the last four years, and it is one in which most of the authorities we have consulted have agreed most cordially. I am afraid, therefore, that I must again refuse the Hon'ble Member."

The amendment was put and negatived.

The Hon'ble Rai Sita Nath Roy Bahadur:—"My next amendment, Sir, is with reference to clause 101. I beg to move that at the end of this clause the words 'loss or damage' referred to in sub-clause (1) shall not 'mean non-payment of dividends or payment of dividends at small rates' be added. This relates to what is said in sub-clause (1).

"My reasons for the proposed addition are that in case promoters of a joint-stock company are prevented for the time being by circumstances beyond their control from showing a large profit and consequently from giving any dividend or dividend at a high rate, it may not be in the power of the shareholders to turn round and say that 'we were led to take up the shares by reason of the tempting prospects that you he'd out in the prospectus, and as such you are bound to pay the loss which we have sustained by taking shares in your Company.' Promoters might have honestly believed that the enterprise would give a good return, but their expectations by reason of adverse circumstances may not be realised, but that would be no ground for rendering them liable for any fancied loss.

"It will be impossible to float a company, and in fact people would be discouraged from floating a joint stock concern if by reason of any statement in the prospectus, though not deliberately false or misleading, promoters are called upon to make good any loss or damage which the subscribers may fancy they have sustained."

The Hon'ble Maharaja Manindra Chandra Nandi of Kasim Bazar:—"Sir, in supporting this amendment, I desire to point out that a distinction should be made between small and large dividends mentioned in the prospectus of a company. We have to bear in mind that all new companies are floated in the hope of making profits, large or small, and the provision in this clause may have a deterrent effect upon the promotion and flotation of new companies of every description. The *bonâ fides* of a company which announces in its prospectus dividends at small rates should be presumed and an exemption made in the terms of the amendment proposed by my Hon'ble friend Rai Sitanath Roy Bahadur."

The Hon'ble Mr. Clark:—"Of course nobody wants in this clause to hit an honest company which has not been able to pay as big a dividend as it hoped it would; also, and equally of course, this clause as it now stands would not do it. The amendment is superfluous. It simply is not wanted. The position is as follows. I will give the Hon'ble Member the words of Lord Halsbury, a very eminent authority on the law, as to what the position really is. Lord Halsbury gave this ruling—

'The plaintiff must prove damage occasioned by the untrue statement. At the trial he need only show that he has suffered damage, the amount of which can afterwards be ascertained by inquiry; and the measure of damage is the difference between the price paid for the shares or debentures and their fair value at the date of allotment.'

[*Mr. Clark; Rai Sita Nath Roy Bahadur; the President.*] [18TH MARCH, 1913.]

"The question really is whether the applicant, by reason of an untrue or misleading statement in the prospectus, paid more for his shares or debentures than they were worth at the time of the allotment. The question whether dividends can subsequently be paid may or may not be germane to the inquiry as to the fair value of the shares at the time of the allotment, but the main point is whether the subscriber was misled into paying for the shares an amount which was not their fair value at the time. The amendment proposed is quite superfluous and I cannot accept it."

The amendment was put and negatived.

The Hon'ble Rai Sita Nath Roy Bahadur:—"Sir, we have been accustomed to these things in Bengal and Eastern Bengal for several years. We have been accustomed to such defeats. We well know that we are in a minority. We come here to lose our amendments. So I am not going to lose heart. I feel bound in duty to myself and my countrymen to put the remaining amendment.

"The next amendment is with reference to clause 102. The provisions here are entirely new, and seem in my opinion to be unsuited to our country. It provides that unless the minimum amount of the subscription named in the prospectus be raised or if no amount is so fixed or named, then the whole of the amount of the share capital be raised, and the promoters would not be entitled to proceed to the allotment that in my opinion is very hard indeed. If the whole of the amount of the money cannot be realised in the course of 120 days, that is in four months, then the promoters will have after the expiration of 30 days to return the whole amount. Considering how difficult it is to induce people to subscribe for shares in a joint stock company, and how reluctant as a rule the people of this country are to invest money in a new enterprise, I have no hesitation in saying that in several cases it would be well nigh impossible to raise the requisite amount of money in such a short time as four months. The period may appear too long to an enormously wealthy people as the English are, but it is not so in India where the people are conservative and capital has to be coaxed. A definite time is fixed in sub-clause 4, it is four months. This will go to discourage promoters. It is a very difficult matter. In this country money does not flow in so easily as it does in England, and therefore it will be particularly hard upon promoters to be bound to the requisite 4 months. The difficulty is that they will have to return the whole of the money, and not only the money but the interest. This will go to discourage many people who take the responsibility of floating a company. Under these circumstances, I beg to move that at least we might accept the whole amendment, or that a period of 8 months should be substituted for 4 months."

The Hon'ble Mr. Clark:—"Will the Hon'ble Member move the clause and then the amendment?"

The President:—"I was trying to ascertain exactly what the Hon'ble Member was moving. Will the Hon'ble Member adhere strictly to the amendment now before him and not go beyond it?"

The Hon'ble Rai Sita Nath Roy Bahadur:—"I beg to confine myself to this amendment. My next amendment is—

The President:—"Order, order! Does the Hon'ble Member propose to move the amendment which stands in his name, namely that clause 102 of the said Bill be omitted or does he not?"

The Hon'ble Rai Sita Nath Roy Bahadur:—"No, Sir. I beg to drop it."

The President:—"Then sit down."

The amendment was by leave withdrawn.

The Hon'ble Rai Sita Nath Roy Bahadur:—"My next amendment is that in sub-clause (4) of clause 102 of the Bill,—

for the words 'one hundred and twenty days' the words 'eight months' be substituted;

for the words 'one hundred and thirty days' the words 'nine months' be substituted; and

for the words 'seven per cent.' the words 'five per cent.' be substituted."

The Hon'ble Mr. Clark:—"I am exceedingly sorry, Sir that we have not been able to accept any of the Hon'ble Member's amendments, but I have not the least desire to prevent his moving them. As I explained just now, it is not so much a question of detailed amendments, as a question of a fundamental difference of principle between us. I repeat it once more. He thinks that capital can best be got to invest in this country by making everything as easy as possible; we think that the best way is to make everything as safe as possible. That is really the whole difference between us. I come now to the present amendment. He proposes that the period of one hundred and twenty days after the issue of the prospectus before the money has to be paid back in case a company is not formed, should be increased to eight months.

"The period was forty days in the English Act, and it has been already trebled to meet the different conditions in India where we have larger distances and so on, and everything takes longer. The Hon'ble Member now proposes to raise the period to eight months. He thinks that this will facilitate promotion. But surely people will not be very keen about giving you money if you are going to keep it from them for eight months without paying interest. It is expecting people to part with their money for a far longer time than they could possibly think of doing. I cannot therefore agree to increase the hundred and twenty days.

"The other point is that the rate of interest which becomes payable after the period of one hundred and twenty days has elapsed, should be reduced from seven per cent. to five per cent. It is, I admit, five per cent. in the English Act, but the Committee unanimously agreed to put it up to seven per cent. as recommended by several Chambers of Commerce, as the rates of interest, of course, are higher out here than in England. If you do not keep it up to seven per cent., people who promote companies would never give you back your money, but would continue to pay you five per cent. and earn eight or nine per cent. on it, until you got it back by a civil suit. That is a very grave objection to the Hon'ble mover's amendment, and I am afraid I cannot recommend Council to go back on the decision of the Select Committee."

The amendment was put and negatived.

The Hon'ble Rai Sita Nath Roy Bahadur:—"Sir, I need not press my next amendment regarding the omission of clause 105."

The President:—"Does the Hon'ble Member withdraw the amendment?"

The Hon'ble Rai Sita Nath Roy Bahadur:—"Yes, Sir."

The amendment was, by leave, withdrawn.

The Hon'ble Rai Sita Nath Roy Bahadur:—"Sir, I beg to move that in sub-clause (1) (*i*) of clause 134 of the Bill, for the words 'by all the directors' the words 'by at least two of those directors' be substituted. The first part of the sub-clause prescribes that in the case of a banking company, whatever be the number of directors, whether five or six or ten, it would be enough if the balance sheet be signed by three directors; but immediately after it goes on to prescribe that where there are three directors the balance sheet

[*Rai Sita Nath Roy Bahadur; Mr. Pandit; Mr. Clark.*] [18TH MARCH, 1913.]

should be signed by all the directors. Suppose there is disagreement between the directors, and one of the three, simply with a view to spite the other two, whimsically refuses to sign the balance sheet. What is the remedy of the bank? In such a contingency, should the bank shut its doors, or pay hush money to the recusant director in order to induce him to sign the balance sheet?

"I raised this point also in the Select Committee, but I am sorry to say that, though it was supported by my Hon'ble friend, Sir I. Rahimtulla, the amendment was not accepted. I do not see any reason why it should be insisted that in the case of companies having three directors the balance sheet should be signed by all of them, and there is no provision that it may be signed by the majority of them. But in the case of any other Company, if there be 25 directors, it is provided that it will be sufficient if three directors signed the balance sheet. I therefore beg to move the amendment which stands in my name."

The Hon'ble Mr. Pandit:—"Sir, I rise to support the amendment proposed by the Hon'ble Member. The scope of the amendment has been explained by him, and it seems quite reasonable, as he has pointed out, that if in the case of Banking Companies on whose Board there are more directors than three, the signatures of only three of them suffice, the signatures of two out of three should on the same principle suffice in other cases, and there is no reason why, when there are only three directors, there must be a minimum number of three to sign the balance sheet. I certainly think that the difficulties to which the Hon'ble Member has referred are probably more often experienced, than what the Hon'ble Member in charge thinks is the case, and therefore, by accepting the amendment, the difficulty will be coped with, while a more practical clause will be inserted in the Bill. The Hon'ble Mr. Clark suggests that the fear of a fine up to Rs. 500 will be a sufficient check upon the spirit of recalcitrancy, if displayed, by a director, but it will be a poor consolation to the majority of the directors that along with themselves the recalcitrant director will also be liable for non-compliance with the law. I therefore support the amendment."

The Hon'ble Mr. Clark:—"Sir, I think the Hon'ble Member has overlooked the last sub-section of the clause. I gather his difficulty is that one of the three directors may refuse to sign the balance sheet. The last sub-section provides that 'if any copy of a balance sheet which has not been signed as required by this section is issued, circulated, or published, the company and every officer of the company who knowingly is a party to the default shall be punishable by fine which may extend to ₹500.' Well, if a director refused to sign, he would have to pay the fine of ₹500. He might also have the satisfaction of sticking his two colleagues for ₹500; but at any rate he would have to pay the fine himself, and it does not seem very likely that anybody would go out of his way to put himself in such a position; and I do not think that the case is likely to arise.

"The point raised by the Hon'ble Mr. Pandit was that there is no reason why you should require this particular provision in the case of banking companies when it is not required in the case of other companies."

The Hon'ble Mr. Pandit:—"I did not say that the distinction was as regards banking and other companies, but where there were more than three directors, and three directors sufficed. If that was the principle that was accepted, what harm was there in accepting the principle that two of them should sign when there were only three directors. I may also say with regard to the fine of ₹500 that the director who did not sign could say, 'I refuse to sign,' and he would thus escape liability, whereas the other two would be punished."

The Hon'ble Mr. Clark:—"The other two would be able to settle with the dissenting director somehow. The whole point is that this provision rests on the distinction between banking companies and other companies in the English law. The English law regards regulation of a banking company as more important than the regulation of other companies as the interests of

depositors as well as of investors are involved, and it consequently provides that where there are three directors they should all sign. It is not a very important provision, but still there is something in it, and I do not think we ought to alter it. Sub-section 2 meets the case of absent directors, and there is no danger of any hardship arising under that head.

"I am afraid I cannot accept the Hon'ble Member's amendment."

The question being put the Council divided, and the result was as follows:—

Ayes—16

The Hon'ble Mr Ghuznavi; the Hon'ble Maharaja Manindra Chandra Nandi; the Hon'ble Raja of Mahmudabad; the Hon'ble Raja Kushalpal Singh; the Hon'ble Rai Sri Ram Bahadur; the Hon'ble Mr. C. Vijiaraghavachariar; the Hon'ble Sri Rama Raya of Panagallu; the Hon'ble Sir Ibrahim Rahimtoola; the Hon'ble Khan Bahadur Rustomji Jehangirji Vakil; the Hon'ble Babu Surendra Nath Banerjee; the Hon'ble Maharaja Ranajit Sinha; the Hon'ble Mr Madhu Sudan Das; the Hon'ble Rai Sita Nath Roy Bahadur; the Hon'ble Malik Umar Hayat Khan; the Hon'ble Rao Bahadur V. R. Pandit; the Hon'ble Sir G. M. Chitnavis.

Noes—48.

The Hon'ble Sir Guy Fleetwood Wilson; the Hon'ble Sir Robert Carlyle; the Hon'ble Sir Harcourt Butler; the Hon'ble Mr. Syed Ali Imam; the Hon'ble Mr. Clark; the Hon'ble Sir Reginald Craddock; the Hon'ble Mr. Hailey; the Hon'ble Sir T. R Wynne; the Hon'ble Mr. Meugens; the Hon'ble Mr. Monteath; the Hon'ble Mr. Saunders; the Hon'ble Sir A H. McMahon; the Hon'ble Mr. Wheeler; the Hon'ble Mr. Enthoven; the Hon'ble Mr. Sharp; the Hon'ble Mr. Porter; the Hon'ble Sir E. D. Maclagan; the Hon'ble Mr. Gillan; the Hon'ble Major-General Birdwood; the Hon'ble Mr. Michael; the Hon'ble Surgeon-General Sir C. P. Lukis; the Hon'ble Mr. Gordon; the Hon'ble Mr. Maxwell; the Hon'ble Major Robertson; the Hon'ble Mr. Kenrick; the Hon'ble Mr. Kesteven; the Hon'ble Mr. Kinney; the Hon'ble Sir W. H. Vincent; the Hon'ble Mr. Carr; the Hon'ble Nawab Saiyid Muhammad; the Hon'ble Khan Bahadur Mir Asad Ali Khan; the Hon'ble Sir Charles Armstrong; the Hon'ble Mr. Fuzulbhoy Currimbhoy Ebrahim; the Hon'ble Mr. Macpherson; the Hon'ble Raja Saiyid Abu Jafar; the Hon'ble Mr. Maude; the Hon'ble Maharaj-Kumar of Tikari; the Hon'ble Mr. Qumrul Huda; the Hon'ble Mr. Arthur; the Hon'ble Major Brooke Blakeway; the Hon'ble Raja Jai Chand; the Hon'ble Sardar Daljit Singh; the Hon'ble Mr. Fenton; the Hon'ble Mr. Walker; the Hon'ble Mr. Arbuthnott; the Hon'ble Srijut Ghanasyam Barua; the Hon'ble Mr. Eales; the Hon'ble Maung Mye.

So the amendment was negatived.

The Hon'ble Rai Sita Nath Roy Bahadur:—"My next amendment is, Sir, that in sub-clause (2) of clause 139 of the said Bill for the word 'one-tenth' the word 'one-fifth' be substituted. My reasons are, Sir, that in every joint stock concern, there is always a discontented few in opposition to the directors and the managing staff of a company; it is not going too far to say that the discontented minority in several cases takes a perverse delight in opposing or thwarting the directors and the managing staff, and it is always the case that when a company passes through a period or cycle of bad or lean years, and consequently becomes incapacitated by reason of adverse circumstances to pay good dividend, then it is that the latent spirit of opposition breaks out into open mutiny. It is always easy and does not require extraordinary efforts for a discontented few to gather into its fold a few members holding one-tenth of the share capital. What I mean to say is, that powers should not be placed into the hands of such a small number to introduce an element of discord into the management of the company, and to move the Local Government for taking action as provided here, which may go not only to upset but to wreck a joint stock company. In the case of a banking company, it has been provided that the number should be fixed at one-fifth, but, in the case of other companies, the

[*Rai Sita Nath Roy Bahadur; Mr. Clark; Maharaja Manindra Chandra Nandi.*] [18TH MARCH, 1913.]

Bill provides that it should be in the power of one-tenth of the holders of the share capital to move the Local Government to take action as provided in the Bill. I beg to say that there should be no distinction between a bank and other companies, and to move that the word 'one-fifth' be substituted for the word 'one-tenth.' "

The Hon'ble Mr. Clark:—"The whole question is what proportion is reasonable. I think we are on perfectly safe ground if we follow the proportion laid down in the English Act—the proportion of one-tenth. That proportion was carefully considered in the Select Committee and was unanimously accepted by them. I think we can very safely keep it."

The amendment was put and negatived.

The Hon'ble Rai Sita Nath Roy Bahadur:—"My amendment is, Sir, that sub-clause (*2*) of clause 163 be omitted. In my opinion the penalty prescribed here is too severe. Default in filing the statutory report or in holding the statutory meeting should not be visited by the penalty of winding up the company. The penalty seems to be out of all proportion to the offence, and I therefore beg to press that this sub-clause (*2*) might be omitted."

The Hon'ble Mr. Clark:—"I think, Sir, the Hon'ble Member has overlooked two points. The first is that it is a very serious fault not to hold a statutory meeting; and secondly, that the provision is permissive. The Court need not take action unless they think it is necessary to do so. I think we are perfectly safe in leaving the Bill as it is."

The amendment was put and negatived.

The Hon'ble Rai Sita Nath Roy Bahadur:—"My next amendment, Sir, is that in sub-clause (1) (*a*) of clause 231 of the said Bill after the word 'revenue' the words 'rents payable to landlords' be inserted. The Tenancy Act of every province provides that the rents payable to the superior landlord should be a first charge upon the holding of the tenant. This elementary proposition of law is so well known everywhere, that it is hardly necessary to dilate upon it. I am really sorry that there should be any opposition to it. To take a concrete case, suppose a company takes a permanent lease or lease for 99 years of a piece of land measuring say, 100 bighas, for setting up jute or cotton mills thereupon, and stipulates to pay to the landlord Rs. 100 a month as fixed rent for the entire piece of land. In such a case if default be made in paying the stipulated rent to the landlord, the landlord would be legally entitled to get a decree for the arrear rent and costs, and to get the land with its buildings, godowns, and offices built thereupon sold in execution of his rent decree. I beg particularly to draw the attention of the Council to Chapter XIV of the Bengal Tenancy Act dealing with sale for arrears of rent under decree, and also to section 159 of the above Act, which authorises a purchaser under a rent decree, even to annul all encumbrances.

"Under these circumstances, the amendment that I move is so reasonable that it has only to be stated to be accepted; and I do not see any reason why it should not be accepted.

"My proposal is a very reasonable one. I wish that the words 'rents payable to landlords' should be added after the word 'revenue.' In fact there is no justification for inserting taxes, cesses and rates payable to the Crown or to the local authority, as they do not form a charge upon the property. They are recoverable like ordinary money decrees, and they cannot have priority over rent payable to superior landlords.

"I therefore beg to move the amendment."

The Hon'ble Maharaja Manindra Chandra Nandi of Kasim Bazar:—"Sir, the amendment before the Council is that in sub-clause (1) (*a*) of clause 231 of the said Bill after the word 'revenue' the words 'rents payable to landlords' be inserted. Among the preferential payments in the winding up of a company are included taxes, cesses and rates whether

payable to the Crown or to a local authority due from the company. I think rents payable to landlords should be placed on the same footing as revenue, and given precedence over all other liabilities of the company. Most companies have to take land on rent, and unless landlords have an assurance that their claims will have preferential consideration along with revenue, they will be naturally reluctant to give land on rent to companies. There should be a statutory guarantee that rents payable to landlords should have preferential consideration when the affairs of a company are being wound up. I beg to support this amendment."

The Hon'ble Raja Kushalpal Singh:—"I have great pleasure in supporting the amendment proposed by my colleague the Hon'ble Rai Sitanath Roy Bahadur. With the exception of revenue, rent due to a landholder should have priority over all other dues. It is a recognised principle of law that, so far as a tenant is concerned, his primary liability is to pay his rent. The Co-operative Credit Societies Act gives priority to the claims of Government and landlords in respect of revenue and rent respectively. The Madras Government is also in favour of this amendment. The position of a landholder as preferential creditor is accepted by the people and the Government, and I think that no departure from this well-established and recognised policy should be permitted."

The Hon'ble Maharaja Ranajit Sinha of Nashipur:—"I beg to support the amendment just now moved. Under the Bengal Tenancy Act, as my friend the Hon'ble Mr. Sita Nath Roy has observed, rents are the first charge upon the property, and I do not find that there is any justification in omitting from this section rents payable to landlords, when the dues payable to a local authority have been inserted in this clause. It will be a great hardship upon landlords if they have no priority of claims upon the company when it winds up its business. I therefore support the amendment just now moved by my Hon'ble friend."

The Hon'ble Mr. Syed Ali Imam:—"Sir, Hon'ble Members who have supported this amendment are themselves landed magnates, and there is no question that they fully understand the point that the law gives recognition to rent as a first charge. No one disputes this legal proposition that has been put forward by the Hon'ble Mr. Sita Nath Roy. He has quoted the provisions of the Bengal Tenancy Act. I do not for a moment question them, but what I should very much like to draw attention to, is the fact that a certain point in the debate has been completely lost sight of. What we have before us, is the position of rent, a landlord's rent, in a proceeding which is known in this Bill as winding up proceeding. And it is in relation to that proceeding that we have to consider whether any undue priority has been given to the Crown or to some of the persons mentioned in clause 231A. I submit that no undue preference has been given, and that no new law has been embodied in this section 231A. Hon'ble Members will remember that this clause which is now 231A is really an old friend. This is the law contained in the Indian Companies Act of 1882 as amended in 1887. It will be observed that at least for the last 26 years this has been the law, and landlords have not suffered from any deprivation of rent. But apart from that what we have to consider is whether any injustice has been done to landlords. If Hon'ble Members will turn to the earlier section—section 230 of the Bill—they will observe that the provisions of the Insolvency Act are applied effectively to the proceedings that are known in the Bill as winding up proceedings, and that, therefore, we have really to look at the question from the point of view as to what is the position regarding the rent that the landlord may claim in insolvency proceedings. We all know that under the Insolvency Law a landlord's claim to rent is a recognised claim. In fact the landlord is a secured creditor, and as such in a winding up proceeding, which is really an insolvency proceeding, he will have exactly the same place as he had before, namely, under the Insolvency Act. Therefore no new provision is needed; his position is

[*Mr. Syed Ali Imam; Rai Sri Ram Bahadur; Rai Sita Nath Roy Bahadur; Division.*] [18TH MARCH, 1913.]

secured under the Insolvency Act. That Act is applied to winding up proceedings under section 230 of the Bill, and, therefore, he stands absolutely safe. The preference given to the Crown by the clause under notice in no way affects the position of the landlord as a secured creditor; so no injustice has been done to him. It appears to me that Hon'ble Members who have supported this amendment and the Hon'ble Mr. Sita Nath Roy who has moved it have done so purely under a misapprehension. It is not the intention of Government for a moment to deprive landlords of their legitimate claims. We look upon landlords as a class that is the backbone of the administration. We should be the last to deprive them of any rights that they enjoy. I trust that the explanation that I have offered to the Council will be accepted, and that the amendment will be withdrawn."

The Hon'ble Rai Sri Ram Bahadur:— "Sir, I support the amendment moved by the Hon'ble Rai Sita Nath Roy. The explanation which the Hon'ble the Law Member has given does not appear to me to be satisfactory. There is a difference in the wording of clauses 230 and 231 of the Bill. Clause 230 refers to the case of winding up of insolvent companies. This class of companies will be governed by the rules of insolvency. But it appears that clause 231 is meant for voluntary winding up of a company, for any other cause than insolvency. That clause says that 'in a winding up there shall be paid in priority to all other debts' the liabilities detailed in sub-clauses (*a*) to (*c*). If in winding up of a company it was to be assumed that priority is given to the Government for revenue or to landlords for rent, then there was no need to insert the above provision in clause 231. If necessity has been found for inserting this provision in clause 231, I submit that on the same ground the charge which a landlord has for rent should also be inserted."

The Hon'ble Rai Sita Nath Roy Bahadur:—"Sir, I am extremely thankful for the clear way in which the Hon'ble the Law Member has been good enough to clear up the law and to show that the interests of landlords are quite safe. Nobody doubts it; at the same time I beg to point out this clear proposition of law which is well known that Government revenue, whether provision is made here or elsewhere, is as safe as it possibly can be. It is the first charge upon property. In the circumstances, while you have been good enough to insert the word 'revenue,' where is the harm in allowing the words 'rents payable to landlords' being added after the word 'revenue'? It is well known that revenue is a first charge upon property. Why not put in the words 'rent payable to landlords' after the word 'revenue'? That is my contention."

The Hon'ble Mr. Syed Ali Imam:—"Sir, I am afraid that the Hon'ble Mr. Sita Nath Roy has not quite appreciated my point. What I say is this, that in the winding up proceedings, which really amount to insolvency proceedings, the landlord will have no less a position than he has as a secured creditor, and if we were to change this, we would be interfering with the Insolvency Law, which is not before us. It is a technical point.

"If I have failed in carrying it quite to the comprehension of my Hon'ble Colleague, then all I can say to him is that it is my misfortune."

"The question having been put the Council divided, and the result was as follows:—

Ayes—20.

"The Hon'ble Mr. Ghuznavi; the Hon'ble Maharaja Manindra Chandra Nandi; the Hon'ble Raja of Mahmudabad; the Hon'ble Raja Kushalpal Singh; the Hon'ble Rai Sri Ram Bahadur; the Hon'ble Nawab Saiyid Muhammad; the Hon'ble Mr. C. Vijiaraghavachariar; the Hon'ble Sri Rama Raya of Panagallu; the Hon'ble Khan Bahadur Mir Asad Ali Khan; the Hon'ble Babu Surendra Nath Banerjee; the Hon'ble Maharaja Ranajit Sinha; the Hon'ble Raja Saiyid Abu Jafar; the Hon'ble Mr. Madhu Sudan Das;

the Hon'ble Maharaj-Kumar of Tikari; the Hon'ble Rai Sita Nath Roy Bahadur; the Hon'ble Malik Umar Hayat Khan; the Hon'ble Raja Jai Chand; the Hon'ble Sardar Daljit Singh; the Hon'ble Rao Bahadur V. R. Pandit; the Hon'ble Sir G. M. Chitnavis.

Noes—44.

"The Hon'ble Sir Guy Fleetwood Wilson; the Hon'ble Sir Robert Carlyle; the Hon'ble Sir Harcourt Butler; the Hon'ble Mr. Syed Ali Imam; the Hon'ble Mr. Clark; the Hon'ble Sir Reginald Craddock; the Hon'ble Mr. Hailey; the Hon'ble Sir T. R. Wynne; the Hon'ble Mr. Meugens; the Hon'ble Mr. Monteath; the Hon'ble Mr. Saunders; the Hon'ble Sir A. H. McMahon; the Hon'ble Mr. Wheeler; the Hon'ble Mr. Enthoven; the Hon'ble Mr. Sharp; the Hon'ble Mr. Porter; the Hon'ble Sir E. D. Maclagan; the Hon'ble Mr. Gillan; the Hon'ble Major-General Birdwood; the Hon'ble Mr. Michael; the Hon'ble Surgeon-General Sir C. P. Lukis; the Hon'ble Mr. Gordon; the Hon'ble Mr. Maxwell; the Hon'ble Major Robertson; the Hon'ble Mr. Kenrick; the Hon'ble Mr. Kesteven; the Hon'ble Mr. Kinney; the Hon'ble Sir W. H. Vincent; the Hon'ble Mr. Carr; the Hon'ble Sir Charles Armstrong; the Hon'ble Sir Ibrahim Rahimtoola; the Hon'ble Khan Bahadur Rustomji Jehangirji Vakil; the Hon'ble Mr. Fuzulbhoy Currimbhoy Ebrahim; the Hon'ble Mr. Macpherson; the Hon'ble Mr. Maude; the Hon'ble Mr. Qumrul Huda; the Hon'ble Mr. Arthur; the Hon'ble Major Brooke Blakeway; the Hon'ble Mr. Fenton; the Hon'ble Mr. Walker; the Hon'ble Mr. Arbuthnott; the Hon'ble Srijut Ghanasyam Barua; the Hon'ble Mr. Eales; the Hon'ble Maung Myé.

So the amendment was negatived.

The Hon'ble Sri Rama Raya of Panagallu:—"Sir, I beg to move the amendment which stands in my name. It runs:

'That in sub-clause 1 (*a*) of clause 231 of the Bill as amended by the Select Committee, the words 'or rents due to a Zamindar or landholder' be inserted between the words 'authority' and 'due.'

"This amendment does not require a lengthy speech from me. I will however try to point out to the Council in as few words as possible the reasonableness of the amendment. The rents due to the zamindars and landholders form a first charge upon lands. This has been so in different provinces under existing statutory laws. In my Presidency when the Estates Land Act was being legislated, the landholders raised their voice against the deprivation of their occupancy right. They were told that in return they would have the advantage of their rents forming a first charge on the lands allowed to be in occupancy of the ryots. Now the proposed legislative measure to consolidate and amend the law relating to the trading companies and other associations is very nearly depriving landholders of their first charge on lands in respect of rents due to them.

"Clause 231, sub-clause (*a*) of the Bill, lays down that in winding up of an insolvent company certain claims shall have priority, and the rent due to landholders is not classed as a claim having priority. Sir, it is quite possible that a company may be floated to undertake agricultural operation in a zamindary estate. The company may fall in arrear of rent due to the zamindar for one or more years. And that by an order of the Court this defaulting company is to be wound up. Is not the zamindar entitled to claim the rent due to him as a first charge on the lands let out to the company and the produce therefrom? A responsible body like the Government of Madras is of opinion that 'clause 231 (clause 261 of the original Bill) seems to ignore the statutory right of the landlords to priority of payment of the land held by the company.' On the other hand, it may be argued that clause 230 of the Bill leaves the claims of secured creditors *status quo* and the interest of the zamindars or landholders being secured would be protected by that clause. I am not sure whether an astute lawyer cannot distinguish the interests of zamindars or landholders from the secured debts. However, I am prepared to take the risk and agree that the interests of zamindars are so far protected. In fact until I was able to realise the full significance of clause 4 of section 231, I had been thinking

of even withdrawing my amendment, on the Law Member or the member in charge of the Bill assuring me in this Council, that the interests of the landholders are protected under clause 230. But I am sorry a study of sub-clause 4 of clause 231 of the Bill makes that position impossible. Sub-clause 4 provides that in event of a landlord distraining or having distrained on any goods or effects of the company (of course, including the produce from the zamindary lands) within three months next before winding up order, the claims of Government revenue and wages due to servants and workmen of the company shall be a first charge on the distrained goods or effects. We do not grudge the priority of Government claims. Our first charge even under statutory law is not as against the claim of Government for State revenue. But we do grudge the priority of claim given to the servants and workmen of the company. Sir, I understand that this has not been the law hitherto. My amendment is a safeguard against sub-clause (*4*) of clause 231. If the claims of landholders have the priority as provided in sub-clause (*1*) (*a*), they need not object to sub-clause 4. They would have their share in the sale-proceeds of the distrained goods or effects. If for any reasons it is found inexpedient to allow the amendment as it is, I submit as an alternative that clause 4 of clause 231 may be deleted, in which case I would have no objection to withdraw my amendment.

"Sir, in India the status of the landed proprietors is peculiar. They are in a way agents of Government. At any rate in many instances State lands were leased out to them on their agreeing to pay fixed revenue. These proprietors have to pay to Government the fixed revenue whether they collect or not the rents due from their tenants. Under these circumstances clause 4 will certainly be a great hardship on these landed proprietors.

"There is yet another aspect of the question. If the amendment be not allowed or sub-clause 4 be not deleted, landholders will be suspicious of companies and would be very reluctant to lease out their lands to companies. This cannot but be a clear disadvantage to commercial enterprise no less than to agricultural development in the country. Sir, I urge these points to the serious consideration of the Council."

The Hon'ble Mr. Syed Ali Imam :—"Sir, the Hon'ble Member, Sri Rama Raya, covered almost the same ground in his amendment as was covered in the discussion that arose on the last amendment put forward by the Hon'ble Mr. Sita Nath Roy. Under these circumstances, it would perhaps be a waste of time on my part to repeat the same arguments; but I might supplement the reasons I put forward on that occasion by inviting the consideration of my Hon'ble Colleague Sri Rama Raya to a leading English case on this very question. The case quoted is the one known amongst us as Richards *v.* the Overseer of Kidderminster, 1896. The point of law there has been very clearly brought out, and the decision really in that case comes to this, that the sub-clause which is now under discussion (of course it has not been referred to in the rule but that is the principle of it) does not affect persons not claiming as creditors in the winding up, but preferring to stand on their own security. It is a higher position that the landlord has as a secured creditor, and it is that position that we make our best efforts to maintain. Hon'ble Members are very doubtful about this proposition of law; at least one Hon'ble Member, who is himself a lawyer of considerable repute, has thrown grave doubts upon the legal position that I took in my address, but I think on reflection my Hon'ble colleague will find that I was not quite in error when I took that view, inasmuch as I am largely supported by no less an authority than a decision of considerable importance of an English Court.

"The next point that has been taken up by the Hon'ble Sri Rama Raya is really one that does not at all arise as an amendment within the terms of the motion that stands in his name on the paper to-day. He has very tactfully invited the Council to leave section 431 (*a*) alone inasmuch as he knows that the division list has gone against him, but he very quietly and gently invites

these charges or these rents due to a zamindar or landholder on the same footing as taxes, cesses or rates whether payable to the Crown or to a local authority; and therefore the Hon'ble Member has really modified his position and has consented as it were, to take a second place. The amendment I think ought to be accepted in view of these circumstances."

The Hon'ble Sir Ibrahim Rahimtoola:—"Mr. President, I think there is considerable misapprehension in regard to the proper appreciation of the question at issue. We are dealing not with ordinary tenants who may have taken land from zemindars under certain terms, but we are dealing with joint stock companies who have obtained leases of land for the erection of factories and other joint stock purposes. Now, Sir, in regard to all these cases, as far as my experience goes, there is an actual lease in writing under which the interests of the lessor and the lessee are clearly defined. There are a large number of cotton mill companies in Bombay who have taken leases of land on payment of certain ground rent per month, and there are written leases between the landlord and the company under which the interests of the landlord are amply safeguarded. The owner of the land when he leases his holding for purposes of joint stock enterprise obtains a lease—a deed in writing—stipulating all the terms and conditions upon which the land is leased and the safeguards for the payment of his rents. It is invariably the practice to provide that such rents are a first charge on the land and on the buildings that are put up for the purpose of carrying out the enterprise for which the land is leased, so that the charge for ground rent always takes precedence over every other claim. What does the liquidator do when the company is wound up? He realises the property of the company. Now the property of the company in this case would be the land and the buildings standing thereon so far as immoveable property is concerned. That property is sold and can only be sold subject to the payment of the ground rent, which may be already due and which may become due thereafter.

"It is therefore clear that a buyer when he offers to purchase that property realises that he has got to pay the amount of ground rent which may be due and which is a charge attached to the property, and be liable for subsequent payments thereafter. The question of ground rent payable to the landlord, under these conditions, does not arise at all. On the contrary, as I understand it, the position of landlords under the present law is considerably stronger and higher—even higher and stronger than land revenue and liabilities payable to the local authorities; because this section provides that in the event of the property of the company not being sufficient to meet all the liabilities under sub-clauses (*a*), (*b*) and (*c*) of sub-clause (1) of section 231 they have got to divide the amount available amongst themselves *pro rata*, thus involving a smaller payment in discharge of their claim. But a landlord has got to get his whole amount: he is not affected. I am surprised to find that the mover of the amendment and his supporters want to introduce the name of the landlord into this clause,—which will have the effect of reducing him to an inferior position, *i.e.*, it will make him accept a smaller percentage of his claim under this clause if the assets of the company in liquidation are not sufficient; while not inserting his name here he has a distinctly prior claim over all others on the assets of the company in liquidation. I cannot understand why so much stress is laid by the landowning interest in this Council in demanding that the landlord who occupies in this respect a higher standard of security for the payment of his ground rent should be put in an inferior position. It is clearly a case of misapprehension.

"I will for these reasons vote against the amendment."

The Hon'ble Rai Sri Ram Bahadur:—"Sir, I support the amendment moved by my Hon'ble friend Sri Rama Raya. The reasons given by the Hon'ble Member who spoke last will be found to be not cogent. In clause 231 of the Bill there is a distinct provision for safeguarding the interests of the Government. The words in clause (1), sub-clause (*a*), are—'all

us to the consideration of the question as to whether or not sub-clause 4 of that clause may be conveniently deleted. Now that is not before the Council, and it is not an amendment in regard to which we have received any notice. But apart from that I am fully prepared to make a good defence in favour of the view that the clause should be maintained; but inasmuch as no amendment of that clause has been moved before the Council, I consider I should be exercising a wise discretion if I were not to invite the Council, to a consideration of that clause or its deletion. Under the circumstances, Sir, on behalf of the Government, I say that I am unable to accept the amendment which has been moved."

The Hon'ble Mr. Pandit:—"Sir, may I say a few words on this amendment. The sole question which has been raised in this amendment and it was also raised in the former amendment which was lost is one as to the position of the landlord under clause 231 with regard to his rents when a company is being wound up. Now clause 230 of this Bill has just been referred to as safeguarding the landlord's interests and treating him on the footing of a secured creditor. And then the ruling in the English case just cited by the Hon'ble Law Member has been relied upon to show that if the landlord did not choose to come in under the provisions of the winding up clauses, he could stand on his own rights independently, and that therefore these clauses would not affect him I do not know whether clause 172 of the Bill has also been taken into consideration in this connection. By that clause it has been provided that when a winding-up order has been made no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court may impose. Sir, there can only be one object in inserting the provisions of clause 172 and that cannot be to encourage the Court which is seized of jurisdiction over the winding-up proceedings to allow suits to be filed or proceeded with in other Courts and the winding-up proceedings to be protracted *ad infinitum*. The whole object of that clause seems to be for the Court which orders the winding-up of a company to keep the control over those proceedings in its own hand as far as possible and to settle the claims and distribute the assets as soon as practicable."

"Now, if that is the object of clause 172 then no reliance can be placed upon the provision of that clause that the Court *may* grant permission for a suit to be carried on or to be instituted in other Courts, and the provisions of section 231 will therefore be the ones to which these landlords or other persons in a similar situation will be bound to have recourse; and it is therefore necessary to consider whether clauses 230 and 231 really safeguard their interests.

"Now with regard to clause 230, with due deference to the Hon'ble the Law Member, I beg to submit that there are classes of cases with regard to these rents due to landlords which would not fall within the category of secured debts. I do not feel myself on safe ground in dealing with the land laws of the provinces of Bengal and Madras, but I may cite an instance from the land laws of the Central Provinces where the rent of an absolute occupancy holding is by law declared the first charge upon that holding. With regard to that rent if a suit is brought without claiming specifically a decree charging the holding with the amount of the decree, then it becomes purely a money decree, and it would not be a charge on the property. A suit therefore has to be framed asking for a specific charge on the property with regard to the amount. Now, if no suit can be brought by reason of clause 172 and recourse to the provisions of section 231 is necessary, I submit that the Court in dealing with the winding-up will certainly say that, so far as the law stands, there is no provision for letting this inchoate claim to a charge on the property have preference or precedence over all the other items mentioned in clause 231, and therefore there would certainly not be that protection of their interests of which the Hon'ble the Law Member assured the landlords who have been most vigilant in safeguarding their own interests in this Council and I cannot say that their interests are adequately safeguarded. The amendment which Sri Rama Raya has proposed treats

revenues, taxes, cesses and rates, whether payable to the Crown or to a local authority, due from the Company at the date hereinafter mentioned and having become due within the twelve months next before that date,' shall be paid in priority to all other debts. I do not think that there can be any one higher in dignity than the Crown or the Government. If it has been found necessary to safeguard the interests of the Crown or of the Government, I do not see why a similar provision should not be made for safeguarding the interests of landlords and zamindars. If the dignity of the Crown or of the Government is not lowered by giving them a protection under clause 231, I don't see why the dignity of the landlord or zamindar would be lowered by obtaining a similar protection. I therefore support the amendment that has been moved by the Hon'ble mover."

The Hon'ble Sri Rama Raya of Panagallu:—"Sir neither my friend the Hon'ble the Law Member nor the Hon'ble Sir Rahimtoola has touched the real point of my contention. The point is that under the statutory laws zamindars and landlords can by a summary process distrain properties of their tenants for arrears of rent. But under sub-clause 4 of clause 231 when a landlord distrains property belonging to an insolvent company holding lands under him, the debts due to Government and the company's servants and workmen, will be a first charge upon the distrained property. I would therefore have this amendment as a safeguard against sub-clause (4) of clause 231. If the rent due to a zamindar or landholder is also made a first charge on the defaulting company's property, the zamindar or landholder can go in at least for a share in the distrained property. If clause 1 is not amended, or if clause 4 be not deleted, the landholders cannot recover their arrears of rent, in spite of the fact that they have taken all the steps they can under the law. As to the observation that the amendment will place zamindars in a worse position, I may at once tell my Hon'ble friends that that cannot be, because they have statutory laws to protect their interests, and this amendment cannot interfere with those laws."

The question having been put the Council divided, and the result was as follows :—

Ayes—16.

The Hon'ble Mr. Ghuznavi; the Hon'ble Maharaja Manindra Chandra Nandi; the Hon'ble Raja of Mahmudabad; the Hon'ble Raja Kushalpal Singh; the Hon'ble Rai Sri Ram Bahadur; the Hon'ble Mr. C. Vijiaraghavachariar; the Hon'ble Sir Rama Raya of Panagallu; the Hon'ble Babu Surendra Nath Banerjee; the Hon'ble Maharaja Ranajit Sinha; the Hon'ble Raja Saiyid Abu Jafar; the Hon'ble Rai Sita Nath Roy Bahadur; the Hon'ble Malik Umar Hayat Khan; the Hon'ble Raja Jai Chand; the Hon'ble Sardar Daljit Singh; the Hon'ble Rao Bahadur V. R. Pandit; the Hon'ble Sir G. M. Chitnavis.

Noes—44.

The Hon'ble Sir Guy Fleetwood Wilson; the Hon'ble Sir Robert Carlyle; the Hon'ble Sir Harcourt But'er; the Hon'ble Mr. Syed Ali Imam; the Hon'ble Mr. Clark; the Hon'ble Sir Reginald Craddock; the Hon'ble Mr Hailey; the Hon'ble Sir T. R Wynne; the Hon'ble Mr. Meugens; the Hon'ble Mr. Monteath; the Hon'ble Mr. Saunders; the Hon'ble Sir A. H. McMahon; the Hon'ble Mr. Wheeler; the Hon'ble Mr. Enthoven; the Hon'ble Mr Sharp; the Hon'ble Mr. Porter; the Hon'ble Sir E. D. Maclagan; the Hon'ble Mr. Gillan; the Hon'ble Major-General Birdwood; the Hon'ble Mr. Michael; the Hon'ble Surgeon-General Sir C. P. Lukis; the Hon'ble Mr. Gordon; the Hon'ble Mr. Maxwell; the Hon'ble Major Robertson; the Hon'ble Mr. Kenrick; the Hon'ble Mr. Kesteven; the Hon'ble Mr. Kinney; the Hon'ble Sir W. H. Vincent; the Hon'ble Mr. Carr; the Hon'ble Sir Charles

[*Division; Sir Charles Armstrong; Mr. Clark; Maharaja Manindra Chandra Nandi.*] [18TH MARCH, 1913.]

Armstrong; the Hon'ble Sir Ibrahim Rahimtoola; the Hon'ble Khan Bahadur Rustomji Jehangirji Vakil; the Hon'ble Mr. Fuzulbhoy Currimbhoy Ebrahim; the Hon'ble Mr. Macpherson; the Hon'ble Mr. Maude; the Hon'ble Maharaj-Kumar of Tikari; the Hon'ble Mr. Arthur; the Hon'ble Major Brooke Blakeway; the Hon'ble Mr. Fenton; the Hon'ble Mr. Walker; the Hon'ble Mr. Arbuthnott; the Hon'ble Srijut Ghanasyam Barua; the Hon'ble Mr. Eales; the Hon'ble Maung Myé.

So the amendment was negatived.

The Hon'ble Sir Charles Armstrong:—"Sir, I beg to move that under the heading quoted, 'Capital and Liabilities', in Form F in the Third Schedule to the Bill, the item 'Loans Unsecured' be inserted after the item 'Loans Otherwise Secured'. I also am not depressed at the rejection of my first two amendments, but I do hope that this one will be accepted, because it will tend to clearness in the balance sheet. I must congratulate the Select Committee on the very excellent balance sheet which they have put forward, but I think it will be very much improved if they will adopt my suggestion and add the item 'Loans Unsecured' after the item 'Loans Otherwise Secured.' I may explain that in Bombay and Ahmedabad, and generally in Western India, there are a great many loans taken from depositors on three, four, six and twelve months. These come to a very large sum, and it is very advisable, I think, that in a balance sheet there should be a separate heading for them, so that one may be able to see at a glance what the position of the company is. Of course, if this amendment is not adopted, they will be placed under the head of 'Liabilities for other finance', but that seems to me rather a clumsy way of treating the matter. I suggest, therefore, that there should be a special head put in for them."

The Hon'ble Mr. Clark:—"I quite agree with the Hon'ble Sir Charles Armstrong that this will be a great improvement in the balance sheet, and Government has much pleasure in accepting the amendment."

The amendment was put and agreed to.

The Hon'ble Mr. Clark:—"Sir, I beg to move that the Bill to consolidate and amend the law relating to trading companies and other associations, as amended, be passed. It only remains for me to express my acknowledgments to Council, and especially to the Hon'ble Members of the Select Committee, for the cordial assistance and support they have given to Government throughout the passage of this voluminous and important measure."

The Hon'ble Maharaja Manindra Chandra Nandi of Kasim Bazaar:—"Sir, the most important measure with which this Council has had to deal this session is the one we are called upon to consider to-day, and its importance will grow with the passing years and the development of Trading Companies in this country. Joint Stock Companies are a very young institution in India and any legislation likely to hamper its normal growth must be deprecated. At the same time, it is necessary that safeguards should be provided against the abuses of company promoting and reckless or unwise speculation with funds provided by an unsuspecting or confiding public. The Bill to amend the law relating to trading companies and other associations has been before the country for nearly a year and we in this Council have had the benefit of a mass of valuable opinion, both official and non-official, on the measure. I cannot say that the Bill has created much interest in the public press, and with the exception of a few leading papers interested in commercial questions the majority of newspapers have generally left this measure alone. But the opinions of responsible public bodies and the mercantile community elicited by the Bill go to show that there is a marked consensus of opinion in its favour and responsible public opinion is inclined to view this measure as a beneficent legislation. There is no general apprehension that this Bill will unduly hamper the growth of trading companies in this country. The Bill

as originally drafted has been carefully considered by the Select Committee which has proposed several important modifications and the Council is now called upon to consider the Bill as finally amended in committee.

"The generally accepted theory that capital in India is shy and has to be coaxed is only relatively true for in recent years we have witnessed a remarkable spirit of enterprise and the launching of numerous joint stock companies in different parts of India. It cannot be denied, however, that joint stock companies are on their trial in this country and we are passing through a stage of experiment. If for some unforeseen reasons or on account of a spirit of reckless adventure the success of important companies is jeopardised or heavy losses are incurred a reaction will be inevitable and the country will have to face a serious and probably a prolonged set-back to future enterprise and industrial and commercial development. Bearing this fact in mind and also that joint stock concerns are comparatively new to this country the Legislature is acting wisely and well in providing proper and legitimate safeguards against undue risks and improper management and in organising a system of supervision calculated to minimise the dangers of inexperienced or rash speculation.

"We are all aware, Sir, that no legislation, however thorough or however comprehensive, can prevent the failure of even the largest and apparently most prosperous concerns. Crises come which cannot always be tided over and concerns managed with the most scrupulous honesty must sometimes come to grief. As the Honourable Member in charge of the Bill pointed out in his speech in introducing the Bill shareholders and depositors are everywhere more or less careless and they are certainly more careless in India than in England. Apart from inevitable or unavoidable difficulties there is a palpable necessity for protecting, so far as is compatible with the minimum of interference, the interests of shareholders and investors and this is the main object of the Bill before us. The outstanding features of the Bill are the provisions regarding auditors, the larger powers vested in the Registrar of Companies and the ultimate power of the Local Government to take action. As the law now stands the Government is powerless until the crash actually comes when an inquiry discloses whether there has been any fraudulent malpractice or mere negligence. If there has been fraud the offending director or manager is brought to justice, but this is very doubtful satisfaction to the investor or shareholder who is either heavily hit or entirely ruined.

"Under the existing law any one may be selected or appointed to audit the accounts of trading and other companies and there is no qualifying test or standard of merit by which auditors are selected. This unsatisfactory state of things will be terminated by the new law. According to Section 145 of the Bill before the Council "No person shall be appointed to act as an auditor of any Company other than a private company unless he holds a certificate from the Local Government entitling him to act as an auditor of companies. The Local Government shall, by notification in the Local Official Gazette, make rules providing for the grant of certificates entitling the holders thereof to act as auditors of companies and may by such rules provide the conditions and restrictions on and subject to which such certificate shall be granted." The possession of such a certificate will entitle the holder to act as an auditor of companies throughout British India unless the exercise of the right is limited by the certificate. "The Governor General in Council may, by notification in the "Gazette of India," declare that the members of any institution or association specified in such notification shall be entitled to be appointed and to act as auditors of companies throughout British India." Thus there will be a guarantee that auditors of companies in future will be qualified men who will have to satisfy the Local Government of their ability to discharge their duties before they are granted certificates. In a manner, therefore, they will be public servants responsible not only to the directors and shareholders but also to the Local Government. Their responsibility will be brought home to them by another provision in the Bill. At present the balance sheet alone has to be forwarded to the Registrar of Companies, but the auditor's report is not submitted to him nor is it available to the shareholders. Under the amended

law the auditor's report will have to be forwarded to the Registrar of Companies and shareholders will be entitled to copies of it on payment of a specified fee. Consequently the audit report as distinguished from the balance sheet, will be a public report and the auditor will fully realise the grave nature of his responsibility. As he discharges it so will he retain or lose his certificate. It cannot for a moment be denied that in the interest of the Companies themselves, and in that of the shareholders and investors this is a necessary and wise precaution and the audit of trading companies will be done by qualified and responsible men.

"The next salient feature of the measure is the power of investigation by the Registrar of Companies. After persual of the balance sheet and the auditor's report he will have power, under Section 138 of the Bill, to call for any information or explanation in connection with those documents and it will be obligatory on all officers of a company to furnish such information or explanation. If the explanation is not considered satisfactory the Registrar shall make a report in writing to the Local Government. He will have no power to set the law in motion himself against any company or officers of a company. That power will vest solely in the Local Government. But the law will empower the Registrar to make enquiries and, may be, to sound a note of warning in time, leaving the ultimate decision as regards the course of action to the Local Government. This is a precaution to which no exception can be taken nor can it be urged that the Registrar will be vested with plenary or summary powers.

"Now, Sir, let us consider for a moment how this provision of the amended law is likely to work. It is an admitted fact that shareholders and investors are not very keen about their own interests and experience has shown that concerted action by shareholders is extremely rare. The affairs of trading and other companies are managed by boards of directors, the majority of whom are neither very competent nor men of leisure. They are generally guided and dominated by one man who is either the managing agent or the managing director as the case may be. Experience has also shown that he is practically uncontrolled by his colleagues and the success or failure of a trading company or concern is mainly dependent on him. Of course his colleagues are equally responsible in law but they are in actual practice led entirely by him. When the affairs of a company take an unfavourable turn there is no pressure or influence from inside or outside to exercise any check and so matters proceed from bad to worse until the crash comes and all are involved in a common ruin. Under the safeguards provided by the measure now before the Council there will be a periodic and authoritative, but friendly, scrutiny into the affairs of joint stock companies and it may be possible, to some extent, to prevent heavy disasters by some timely preventive measure such as the exclusion of a reckless director or manager or the prevention of unwise or unsafe speculation or investments. Looking at the measure in this light I am sure it will be frankly and warmly welcomed by all interested in the ultimate success of joint stock companies in India.

"As regards the clauses relating to managing agents, the decision of the Select Committee that they should be circulated before consideration by the Council has my entire approval and support."

The Hon'ble Meherban Sardar Khan Bahadur Rustomji Jehangirji Vakil:—"Sir, I wish to make a few observations at this stage of the Bill which is before the Council. I do not wish that my position should be in any way misunderstood. I heartily support the measure. It is a measure which is absolutely necessary, and it is entirely in the interests of the creditors, shareholders, depositors and the investing public of the country. But at the same time I have to oppose it simply on the ground of the insufficiency of the time that has been at our disposal after the Select Committee's Report was out.

[18TH MARCH, 1913.] [*Meherbán Sardar Khan Bahadur Rustomji Jehangirji Vakil.*]

"There is hardly any measure which has attracted the attention of the general public and in particular of the commercial community more than the Indian Company's Bill, which has been so very ably drafted by the Hon'ble Member in charge of the Bill. From the voluminous opinions submitted on the Bill, not only by the various Government officials, but also by public bodies, commercial associations and individuals, it is evident that the Bill in question has given rise to several controversial points. But one thing is indisputable, and that is that, on the main principles of the Bill, there is not much difference of opinion.

"The Select Committee's Report, together with the Bill comprising 127 foolscap pages is dated the 3rd instant, to-day it is the 18th. But in order to be able carefully to compare them with the various opinions received, the original Bill, as drafted in the first instance, and other analogous Acts necessary time ought to be given Although I had not had sufficient time to study the Bill, on a hurried perusal thereof it struck me that although it is sought to bring the Bill in conformity with the English Company's Consolidation Act of 1908, some of the important provisions of the said Act have not found place in the Bill now under consideration.

"It is not my intention to take up the valuable time of the Council by recapitulating at length the objections I raised in my speech this morning. But I would summarize them in a few words:—

"Section 36 (2) the copying charges of Rs. 6 from the Shareholdes' point of view is exorbitant and they should be reduced to Rs. 2.

"Then I referred to the question of auditors' qualifications. It is absolutely necessary that we must know what are to be the qualifications of the auditors whom we are going to engage in future to audit the accounts of our firms in which very large sums of money are involved.

"Then there is the question of past officers being asked to come and give evidence, or at least make statements with regard to the affairs of the company and that is also, as I pointed out in the morning, very objectionable.

"There are many other points to which I will not refer now.

"Where large assets of a complicated and difficult nature have to be realised, both the safety and interest of creditors demand that the realization should not be absolutely at the discretion of a liquidator. A liquidator, the most honest and thoroughly disinterested, is liable to err. He may realise a security or other assets very hastily in a time of depression or panic, when by a reasonable exercise of patience and better information, he might be able to sell them at a greater advantage. Experience of many a liquidation in Bombay for years past inform the Committee that there have not been wanting instance of disastrous liquidations where some of the reasons stated above have operated. A judicious nursing of really valuable assets but depressed for a time by certain reasons, becomes absolutely necessary for a liquidator. A well-informed liquidator may wait, but another may not and an ill-informed or careless or impatient liquidator may realise valuable securities in a depressed market which may be exceedingly prejudicial. Thus it may happen that the discretion of a liquidator may either spell prosperity to the creditors or shareholders or its reverse, specially in cases where the assets to be realised have to be reckoned not by thousands but by lacs. The practical remedy to avoid such a contingency, so far as it is possible, is to enact that there should be an advisory committee of 3 to 5 persons of confidence and highest respectability to be named by creditors and shareholders who may be consulted, and that the liquidator should be enjoined by law always to consult such a committee, and that every sale which has to be eventually sanctioned by the Court may, in the first instance, be accompanied by the affidavit of the official liquidator to the effect that the consent of the advisory committee had been obtained. A liquidator may be also directed to place full materials before such advisory committee prior to launching the companies into either unnecessary litigation

[*Meherban Sardar Khan Bahadur Rustomji Jehangirji Vakil; Mr. Clark; the President*] [18TH MARCH, 1913.]

or prosecutions which may not profit a company in liquidation. Thus laxity, carelessness, or even dishonesty on the part of a liquidator would be greatly curbed and controlled, and the stringent provision which the Legislature may be pleased to enact in this behalf would have a most salutary effect, while inspiring the investing public with greater confidence than at present. At any rate greater justice would be rendered and any tendency towards dishonesty considerably discouraged in future under the proposed new legislation.

"The Committee would also venture to observe that similar stringent provisions may be enacted where compromise of large debts is involved. The Committee respectfully beg to suggest that the constitution of such an advisory committee may be made on the same lines as those of the English Companies Consolidation Act or the present Presidency Towns Insolvency Act which provides for the committees of inspection.

"I further beg to add that the Committee of Inspection should be empowered to investigate and examine accounts, vouchers, documents, etc., of a Company under liquidation. The public opinion is strongly in favour of introducing some such prophylactic clause in the present Bill. This request of the creditors, depositors and shareholders of the said Bank appears to me, to be a legitimate one and I hope the Member in charge of the Bill will be pleased to give it a favourable consideration. The insertion of a clause like the one I recommend, will, I am sure, meet with the unanimous approbation of the investing public, and will be highly appreciated by them especially at the present juncture when the trend of popular feeling is in a hectic state, owing to the recent failure of the Bank of Burma, and when the unfortunate victims, some of whom have lost a major portion of their hard-earned money—widows and old men, look up to Government with mournful faces, for such drastic legislation that may even operate in the present case and now that the Legislature intends remodelling the existing law, it is highly desirable that the long-standing defect in law be remedied. It will be none too soon. Moreover, while there have been sufficient safeguards provided, rather I should say stringent provisions made in the Bill regarding Directors and Managing Agents, the powers of liquidators appear to have been left unchecked. Now I will conclude Sir, by making just a short reference to Private Companies. I beg to submit that no distinction ought to be made between ordinary joint stock companies and Private Companies."

The Hon'ble Mr. Clark:—"Sir, I rise to a point of order. Is the Hon'ble Member proposing an amendment to the Bill, because he is not entitled to amend the Bill at this stage? The question put is purely one of general principle—whether the Bill should be passed or not."

The President:—"I was myself about to ask the Hon'ble Member whether he proposed to oppose the final stage of this Bill, or whether he was moving amendments. I cannot quite make out what he wishes to do."

The Hon'ble Meherban Sardar Khan Bahadur Rustomji Jehangirji Vakil:—"No, Sir: I am not moving any amendments. I am simply opposing the Bill, and I am placing before the Council certain features of the Bill with a view to let Hon'ble Members form an opinion as to whether they should pass the Bill or oppose it."

The President:—"I clearly understand that the Hon'ble Member is not suggesting amendments at this stage."

The Hon'ble Meherban Sardar Khan Bahadur Rustomji Jehangirji Vakil:—"No, Sir, I beg to submit that no distinction ought to be made between ordinary joint stock companies and private companies. It is true that shares in private companies are distributed, but nevertheless this circumstance does not place any check upon their borrowing capacity, and when the ordinary companies

are required to publish their annual balance sheets and file copies thereof with the Registrar of joint stock companies, the exemption of private companies appears to me to be a privilege which the public would not relish. The public is not yet sufficiently educated to understand the subtle distinction between the two companies. Now, Sir, there is no Member here who does not see the necessity of introducing a measure of the kind which is before us; but at the same time, I beg emphatically to say that the time that has been at the disposal of the Members themselves since the appearance of the Report of the Select Committee has been very very short, and I still urge that if this Bill is postponed for some time no harm will accrue. With these few remarks I beg to oppose the present passing of the Bill."

The Hon'ble Mr. Pandit :—"Sir, after the speech in opposition to the passing of the Bill made by the Hon'ble Mr. Vakil, as a member of the Select Committee, I should like to say a few words in order to defend and support the motion before the Council, namely, that the Bill as amended be passed.

"Sir, the Hon'ble Member has considered the time that was allowed after the publication of the Report of the Select Committee too short for him and those who share the same view to suggest what amendments they thought necessary for a modification of what they considered to be objectionable features of this Bill. Well, Sir, this Bill was introduced, as the Hon'ble Member in charge has mentioned, some four years ago With regard to this Bill, there was before the Select Committee such a huge mass of literature on the subject, opinions from all quarters, which had to be and was duly considered that it was scarcely worth while for anybody to ask for further time to consider the Bill. I am sure the Hon'ble Member is under some misapprehension in thinking that any such radical change has been introduced in the Bill as it is now before the Council as to require a reconsideration at the hands of the public. I can say that the Hon'ble Member may rest assured that the members of the Select Committee gave it their best attention, and that everyone of us strove to make the Bill as useful and as little harmful as possible. Personally I have myself to thank the Hon'ble Member in charge of the Bill and the Hon'ble the Law Member for accepting certain amendments which modify what appeared to be objectionable provisions in the Bill as it was introduced in this Council. The Hon'ble Member has referred to what appears now as clause 197, and he considers that clause objectionable. But I may assure him that at my instance the objectionable features of the clause as it first stood were removed, and the present clause can certainly not be taken exception to on any grounds that are easily intelligible. Similarly, the rigour of the penal provisions has been greatly modified, and all transgressions have been made non-cognizable. Again, with regard to Auditors, the Hon'ble Member has raised certain objections. I can quite understand that when provision is made for the Government to specify the qualifications of the Auditors or to issue certificates, small companies may be apprehensive that the qualifications fixed may be so high and the cost of audit become so burdensome that it might prove a handicap. I can only express the hope that in the preparation of the rules that will be framed under this Bill these considerations will have due weight, and that the qualifications of Auditors and the scale of their remuneration, if any, will be so fixed as not to make their employment burdensome to small companies. The Hon'ble Member might easily have notified and moved the amendments he desired if he really thought any provisions in this Bill objectionable, but during the earlier part of the day we found he had no amendments to propose and nothing to say on those which were discussed. Of course, he might have said that it would not have been of any use moving any amendments, considering the fate that the Hon'ble Rai Bahadur Sita Nath Roy's amendments shared, and he might have envied the lot of the Hon'ble Mr. Monteath in connection with his amendment which was so easily accepted. But, after all, the Council having spent so long a time over this piece of legislation and the Select Committee having devoted so

much deliberation to the subject, it is really not reasonable to ask this Council to put by this measure for further consideration and to bring it up again and to spend afresh a large portion of the time of the Council. With these remarks, I support this measure, and I can only express the hope that framed as this Bill is with the best of intentions—namely to satisfy investors in joint stock companies that their interests will be carefully looked after and that they will have no reason to rue the day on which they took any shares in them—it will prove beneficial to joint stock concerns and will help to promote the trade, commerce and industries of this country."

The motion was put and agreed to.

THE INDIAN CRIMINAL LAW AMENDMENT BILL.

The Hon'ble Sir Reginald Craddock:—"Sir, in moving that the Report of the Select Committee on the Bill further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, be taken into consideration, I desire to remind the Council that at their meeting of the 5th March the principle of this Bill was accepted without a division, while the urgency of it was affirmed by a majority of 57 to 2."

The Hon'ble Mr. Vijiaraghavachariar:—"Sir, I believe a motion is being made. I have to rise to a point of order. I do not know whether the formal motion has been made, or whether it is reserved for the end of the speech. I have not been able to quite catch it."

The President:—"It will be open to the Hon'ble Member to move it either at the end or at the beginning."

The Hon'ble Mr. Vijiaraghavachariar:—"Sir, I fear I have not been quite clear. The ruling I seek is not about any motion of mine, and I desire to move no motion now. I want to raise a point of order in this sense, that the motion of the Hon'ble the Home Member is unconstitutional. Am I to understand that you have ruled that I do it at the end, or I can do it now at the beginning. I entirely place myself in the hands of the Chair."

The President:—"I do not understand what point of order you raise."

The Hon'ble Mr. Vijiaraghavachariar:—"It is a question whether the motion is in order, and whether it ought to be accepted. I may be told that I am too late at the end of the Home Member's speech and I bring it to the notice of the Chair."

The President:—"I understand that the only motion which is before the Council is that the Report of the Select Committee on the Bill further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, be taken into consideration. Surely there can be no question that this is a perfectly constitutional action on the part of the Member in charge of the Bill."

The Hon'ble Mr. Vijiaraghavachariar:—"As to the motion, it is not on the merits that I wish to say what I have got to say. It relates entirely to the question whether the motion is before us in accordance with law and rules. May I call your attention to rule 7 of the Rules of Business."

The President:—"I do not think that any question of order arises. The Hon'ble Member is in charge of a Bill, and that Bill has been referred to a Select Committee, and he now moves that the Report of the Select Committee on the Bill to amend the Indian Penal Code and the Code of Criminal Procedure be taken into consideration. It will be open to the Hon'ble Member to make any remarks on the subject as the Bill goes on.

"I am quite willing to allow the Hon'ble Member to explain himself. I may have misunderstood him, but I do not think any point of order arises."

[18TH MARCH, 1913.] [*Mr. Vijiaraghavachariar; the President; Sir Reginald Craddock.*]

The Hon'ble Mr. Vijiaraghavachariar :—"Sir, I submit that the question whether the motion now made before the Council is in order or not is not a question for the Council, but exclusively for the Chair. Supposing I make out to the satisfaction of the Chair that the Report of the Select Committee is an unconstitutional and invalid document having regard to our Rules and to the practice and Standing Orders of the House of Commons; and whether the motion should be accepted by you, Sir, is not a question as to the merits of the motion itself, but it is upon principles as to points of order that are embodied in rule 7. I shall presently give my reasons and quote my authority to show that I am entitled to treat the motion not on its merits, but on a question of a point of order exclusively. I shall give my reasons later on. I venture to submit that whether any particular motion is or is not within the law and the regulations is exclusively a point for the decision of the Chair."

The President :—"I decide most certainly that there is no reason whatever why we should depart from the usual practice of allowing the Member in charge of the Bill to proceed in the ordinary manner."

The Hon'ble Sir Reginald Craddock :—"Sir, as I remarked before the Hon'ble Member rose to a point of order, the principle of this Bill was accepted without a division at our meeting of the 5th of March, and the urgency of it was affirmed by a majority of 57 to 2, but as I myself pointed out at the time, and as the speeches of those Hon'ble Members who spoke indicated, the principle of the Bill was accepted on the usual understanding that the details of the measure would be examined in Select Committee with a view to ensure that the Bill would fulfil its objects, that there were no flaws in it, and that any safeguards necessary to prevent the measure being used vexatiously or inconsiderately would be duly considered. That examination was carried out by the Select Committee, and the additional amendments of the law necessary to provide the safeguards are before the Council, together with the Select Committee's Report.

"My task now is, therefore, merely to explain what these safeguards are. Clause 4 of the Bill makes a small amendment in sub-section (3) of section 195 of the Criminal Procedure Code. By this amendment it is provided that when cognisance of any offence by a Court requires the sanction or the complaint of a Court or a public servant, criminal conspiracies to commit these offences shall require the same authority before a Court can take cognisance of them. In respect, therefore, of the offences specified in section 195, which deal generally with offences against public justice or in contempt of the authority of public servants, criminal conspiracy to commit those offences is put on all fours with abetment.

"Then there is clause 5 of the Bill, which will add a new section, 196 A., to the Criminal Procedure Code, and the Council will observe that a particular differentiation is made between the various kinds of conspiracies. Under the law as amended, conspiracies to commit offences against the State, which are specified under section 196 of the Criminal Procedure Code, are placed upon the same footing as the offences themselves, namely, the authorisation of the State is required before cognisance can be taken of them. The principle followed in fact, so far as these amendments to which I have drawn attention are concerned, is that in cases where Courts can only take cognisance of certain offences, after some antecedent authorization, similar antecedent authorisation is made necessary before a Court can take cognisance of criminal conspiracy to commit those same offences. This is a principle which will, I feel sure, commend itself to the Council, and meet with their universal acceptance.

"There remain those conspiracies which relate to offences of which Courts can take cognisance without prior authorisation, and those conspiracies which aim at objects which are illegal, though not offences, or which are legal but are to be attained by illegal means.

"To take these two classes in order. As far as conspiracies relating to offences are concerned it was discussed in the Select Committee what prior

authority, if any, was advisable before prosecution for such conspiracies should be instituted in the Court. After very careful consideration it was decided to make the following distinction, namely, of offences which are not serious offences, as well as offences which are serious but not cognisable by the police, and to distinguish them from offences which are both serious and cognisable by the police. In the cases of offences that fall into the former category we have considered it prudent to accept the recommendation of the Select Committee to provide a check on rash, vexatious and ill-considered complaints, by requiring the prior consent, in writing, of the Local Government, or a Presidency Magistrate, or a District Magistrate specially empowered by the Local Government in that behalf, before a Court can take cognisance of conspiracies in relation to those offences. It is only, therefore, when the offence which is the object of the conspiracy is both cognisable by the police and is punishable with two years' rigorous imprisonment and upwards that the new offence of criminal conspiracy can be investigated by the police on their own initiative. In respect of these offences only, namely these serious offences which I have described, the police will have the same power as they already possess if any of these offences are abetted by way of instigation.

"Lastly, there is the conspiracy to do an illegal act, or to do a legal act by illegal means, when the object of the conspiracy does not constitute a criminal offence. In my speech introducing the Bill I emphasised the point that wrong inflicted on a private individual by another private individual might be left to the civil law for remedy, but that when such wrongs are inflicted on another by a combination of persons then the injury contemplated may constitute danger to society, or to the State, of such a nature as to require that the combination to inflict these wrongs should be made punishable by law. Now it may be contended that many actions taken in combination by two or more persons may not be dangerous or can properly be left to the civil Court to deal with, or may really relate to such trivial or petty classes of illegality, that in bringing conspiracies of this kind within the terms of the criminal law we are widening that law so as to include all sorts of comparatively harmless or innocent doings, and opening the door to vexatious charges against persons who might be innocent of wrong intention. The Government have certainly no desire that by means of this Bill any such undesirable consequences should be allowed to ensue; but at the same time criticism of this kind may sometimes be carried much too far. There are persecutors and there are victims of persecution, and to carry our solicitude for the possible troubles of the persecutors under our proposed law to such an extreme as to ignore the certain troubles of the victims of persecution under the present law would be to 'strain at a gnat and swallow a camel.' The real point of discrimination to be observed is whether the conspiracies falling within this last category are a source of present or potential danger to the public, or to society at large, or to the State. It is not possible to leave to the interpretation of the Courts the discrimination of conspiracies which are dangerous and conspiracies which are comparatively harmless. The Court can take into account nothing more than the circumstances of a particular case, whereas the danger to the community of a particular conspiracy may depend on many extraneous circumstances which do not come within the cognisance of the Court. Whether a conspiracy is of a kind that is dangerous or not can be determined only by the State itself, and we have, therefore, decided that before anyone can be subjected to a prosecution for a conspiracy of which the object is not an offence the consent in writing of the Governor General in Council, or a Local Government shall be a necessary preliminary. This type of conspiracy is therefore put into the same category as those offences against the State which are specified in section 196 of the Criminal Procedure Code. No stronger guarantee than this can possibly be given that the new law will not be set in motion unless the public interests render it necessary. Now that the Bill is provided with these safeguards, in order that it may reach only those offenders whose prosecution the public interests require, I trust that, just as the Council accepted the principle of this Bill, so now they will accept also its details; and I move accordingly that the Report of the Select Committee be taken into consideration."

[18TH MARCH, 1913.] [*Mr. Vijiaraghavachariar ; the President.*]

The Hon'ble Mr. Vijiaraghavachariar :—"Sir, I rise to oppose this motion, and I crave your indulgence for a few minutes so as to enable me to make my ground clear. My contention is that the entire proceedings of the Select Committee and the Report of the Select Committee are wholly invalid, and they would vitiate our proceedings to-day unless the motion is ruled out of order. I believe, if my contention is accepted, it will make the Report, which is now the subject-matter of the motion before us, an entirely void document, and liable to be cancelled by order of the Chair without the motion being put to the vote. I should like to make a few remarks in view to enable me to make out my case, and I shall do so by calling the attention of the Chair to the rules under which the legislative business of this Council is conducted, and next, if there is any doubt about the construction of these rules, by a reference to the Standing Orders and to the practice of the House of Commons, of which, Sir, you know far better than I can pretend to; especially in Delhi where there is a dearth of a suitable public library. So, as to a great deal of what I am going to say, I depend upon my memory, and I believe the statements I shall make will be accurate, unless, at all events, there is authority on the other side to contradict me. The position I take is this, Sir, as I said, as regards my view, I believe I am entitled to have a decision from the Chair, and I am entitled to address the Chair and the Chair alone. Eventually it may be open to the Chair to decide whether it ought to be treated as a matter to be decided by the whole Council, or whether it is a matter exclusively to be decided by the Chair. Therefore, in addressing you, Sir, I shall perhaps do well to direct my observations to the Hon'ble Members of the Council also. This Bill, as we all know, was referred to the Select Committee on the 5th March. On the 6th March the Members of the Select Committee met. On that day, I understand, the non-official members almost in a body were for confining the scope of the Bill to some serious offences, such as State offences, and offences against the Army and Navy, and to exclusively confine them to these, and then they were prepared to support the measure. There was a discussion and a debate, but no finality was reached on the 6th. They again met on the 8th.

"But on the 8th they were authoritatively told that the Council having accepted the principle of the Bill the Select Committee had no power to contract the scope thereof. I respectfully submit that this view is wholly unconstitutional, and it misled several Hon'ble Members of the Select Committee into erroneous judgment and into erroneous conduct as regards their rights and duties as members of the Select Committee, and henceforth they thought it to be their duty to examine the Bill or to do what they could with the Bill, to prick it or coquet with it otherwise than to deal with the principles of the Bill, which they were told were sacred, and that they could not interfere with them. If that is so, I say the whole proceedings of the Select Committee are illegal, and the Report made in consequence is an invalid document, and I shall presently endeavour to show that this view of mine is maintainable and entitled to your consideration.

"I need hardly say, Sir, that these rules are framed under section 18 of the Indian Councils Act, 1861. We have no such expression as 'Select Committees' in the law itself. It is under the rules that Select Committees are made. The functions of the Select Committees are not expressly stated anywhere in the rules. We had Select Committees before the Indian Councils Act, 1861, and it has always been taken for granted that the functions of the Select Committees are exactly the same as the functions of the Select Committees of the House of Commons. Therefore, I am entitled to call your attention, Sir, to the practice and to the Standing Orders in the House of Commons. I shall also refer you to a few rules of this Council on the subject as I understand them. Before I do so, however, I shall beg leave to call your attention to the Select Committees in the House of Commons. There are, as you know, two kinds of Select Committees."

The President :—"I am afraid the only rules I can take any cognisance of are the rules which govern the procedure in this Council. I quite recognise that it is open to the Hon'ble Member to illustrate his argument

by pointing to rules elsewhere, but these are the only rules I can take cognisance of."

The Hon'ble Mr. Vijiaraghavachariar:—"My point is that our Select Committees have full power to deal with the Bill exactly as this Council can deal with it as to the principles. First of all, in obedience to your orders, I shall invite your attention to the construction of the rules made under the Indian Councils Act on the subject.

"But in order to illustrate it, I may be allowed to refer to the two sets of Select Committees in the House of Commons, because it will make my meaning clearer. In the House of Commons there are two sets of Select Committees, or rather Select Committees for two sets of business. One is to examine and report on proposed legislation, namely, a Bill; the other is—and this kind we have not got—a Select Committee to which business other than Bills is referred; for instance, for taking evidence and for making report thereon. In the latter kind of Select Committees their powers are derived from the Order of Reference and are controlled and governed by the Order of Reference, whereas in the case of the former kind of Select Committees, namely, those to which Bills are referred, there is no Order of Reference, no instructions, the Bill is referred intact. My contention is we have borrowed this latter practically here. Then I call your attention, Sir, to our Rules.

"Rule 19 says:—'When a Bill is introduced, or on some subsequent occasion, the Member in charge of it shall make one or more of the following motions:—

(*a*) that it be referred to a Select Committee.'

"I need not read the rest of this rule.

"Then Chapter IV deals with Select Committees: rules 24, 25, 26 and 27.

"Rule 24 merely says:—'The Law Member shall be a member of every Select Committee.

'The other members of every Committee shall be named by the Council when the Bill is referred, or at any subsequent meeting.

'The Law Member, or, in his absence, the Member in charge of the Bill, shall be Chairman of the Committee, and, in the case of an equality of votes, the Chairman shall have a second or casting vote.'

"Rule 25 says:—'After publication of a Bill in the Gazette of India, the Select Committee to which the Bill may have been referred, shall make a report thereon.

'Such report shall be made not sooner than three months from the date of the first publication in the Gazette of India, unless the Council orders the report to be made sooner.

'Reports may be either preliminary or final.

'The Select Committee shall in their Report state whether or not, in their judgment, the Bill has been so altered as to require re-publication, whether the publication ordered by these Rules or by the Council has taken place, and the date on which the publication has taken place, and so forth.'

"Now these are all the rules which deal with functions of Select Committees.

"Then there is the final motion under section 32, where there is another reference to Select Committees. I call attention, Sir, to the fact that there is no provision in the rules for any Order of Reference to Select Committees; and indeed in our rules there is no such thing as an 'Order of Reference.' The Bill is merely referred, and I say it is in accordance with the practice obtaining in the House of Commons that the Bill is so referred. Therefore, when a Bill is referred, unless we have got authority to show that the Select Committee to which it is referred has only a contracted province, that its province is confined to an examination of the details of the Bill, unless we have got authority to show that their scope, their functions, and their duties and privileges are all defined and limited in any particular way, the members of the Committee have authority for dealing with the Bill as they like. Now that that is so is clear, Sir. If you will look at Rule 25, you will see that it says:—

'The Select Committee shall in their Report state whether or not in their judgment the Bill has been so altered as to require re-publication.'

[18TH MARCH, 1913.] [*Mr. Vijiaragharacharlar.*]

"Now this power of alteration, by necessary implication, shows what are the powers of the Select Committee. It cannot possibly mean, applying the ordinary rules of grammar, alteration only in a minor degree, without interfering with the principles of the Bill. If so, the rules would have said so. Therefore that expression 'so altered as to require re-publication' clearly shows that they could alter the Bill in any way they liked.

"I would call attention, Sir, to the other rule, No. 32, which relates to the final stage. It says:—

'Any member may move that a Bill which has been amended by the Council or by a Select Committee be re-published or re-committed.'

"The word 'amended' there is used both in reference to the Council and in reference to the Select Committee. I cannot bring myself to believe that amended by the Council has one meaning, and amended by the Select Committee has another and an inferior meaning.

"I cannot possibly believe that the makers of the rules intended that it should have such a meaning. Therefore, having reference to these rules, I am entitled to say that the Select Committee had full power to deal with the Bill referred to them in any way they liked. Now, as regards this, you are entitled to ask me what is the next procedure. I think that when an unconstitutional document is placed as the basis of a motion, it is for the Chair and for the Chair alone—and not for the Members of Council—to decide whether the motion is a proper one and ought to be accepted for further progress of the Bill. In the House of Commons such a thing has occurred more than once. In one case—I am speaking without book, but I think it was during the sixties or seventies—a Select Committee of the House of Commons altered a Bill, and the amendments put forward by Members were so successfully carried out, that nothing remained of it—even the preamble disappeared—except the word 'That'. Whatever was the cause, that was the only remnant left after the treatment accorded to it by the Select Committee. The Report had of course to be made and the speaker had to accept it and declare that if the originators of the Bill liked they might bring in another Bill. I say this to show that the Select Committee had full power to deal with the Bill in any way they liked, and they might even so deal with the Bill that it is left with sentences without predicates, without nominatives, and without objects! Another instance I now remember is this. The Report of a Select Committee was dated after Parliament was prorogued, and when the motion was made that the Report be accepted, the attention of the speaker was called to the fact that it was dated after Parliament was prorogued. It was declared to be unconstitutional, and the speaker said that he would not accept the motion. It was a matter for the speaker alone to say whether the motion before him was legal and constitutional, and whether he should put it to the vote. Now I respectfully submit that the present is an exactly similar case. This alone is sufficient for my purpose, if the Chair accepts my interpretation of the Rules. There is another matter also in connection with the proceedings of the Select Committee. Just now the Hon'ble the Home Member alluded to the sanction as regards certain offences. Now, as regards offences declared as cognisable—I believe all of us know what cognisable offences mean—that is offences which the police can investigate without an order from the Magistrate, and in regard to which they can arrest people and search their houses. Conspiracies to commit these cognizable offences are, for the purposes of the new law, divided into two classes. I will call them the upper and lower classes. Now, sanction is provided for initiating prosecution for the lower class, but it is withheld from the upper class. Several of my Hon'ble friends who were in Select Committee got into the other belief that sanction was provided for the prosecution of the upper class of offences, and the lower class was excluded from all necessity for sanction. In that belief they accepted and signed the Report. How that belief arose I am unable to say. However, there was exuberant talk about safeguards being provided and what not; but the fact was, all the same, there and my Hon'ble friends, several of them I mean, thought that the

principle of granting immunity for prosecutions for serious offences was accepted by the Select Committee. I am prepared to confess my dulness, but I thought so too until I examined the Bill and the Select Committee's Report when I began to write my own notes for preparing my amendments. I was under the belief that the sanction was provided for the higher sort of cognizable offences and not for the lower sort. This is the second error which several Hon'ble Members seem to have fallen into, and they evidently signed the Report under that belief. This is not a mere technicality. You, Sir, are entitled to ask the question, supposing they did commit this error, how many would have signed the Report if this error had not happened and—

The Hon'ble Mr. Syed Ali Imam:—"I rise, Sir, to a point of order. My submission to the Chair is that the Hon'ble Mr. Vijiaraghavachariar in raising questions before the Council as to what happened in the Select Committee is completely out of order. The proceedings of Select Committee, as is well known, are not recorded. They are generally such in which free discussion among members takes place with the sole object of threshing out the difficult points of the Bill committed to the care of that Committee. In this particular Committee—

The President:—"I think I must ask the Hon'ble Member to limit himself to the exact point of order."

The Hon'ble Mr. Syed Ali Imam:—"I am coming to the point of order. I am not making any speech at all. My point of order unfortunately has to be explained more or less in the same proportion of length in which the point of order raised by the Hon'ble Member on the other side has been put."

The President:—"I think the Hon'ble Member is not raising it as a point of order."

The Hon'ble Mr. Vijiaraghavachariar:—"No, Sir; I was opposing the motion."

The Hon'ble Mr. Syed Ali Imam:—"The Hon'ble Member, Sir, in proposing the motion has placed before the Council a number of considerations that I submit do not arise in the sense that the Hon'ble Member himself was not in the Select Committee, and therefore the Hon'ble Member cannot before this Council make averments and statements with the responsibility of one who could say that he personally bore witness to what took place in that Committee. I object to the Hon'ble Member making any statements here in his Council that have not the authority of his personal observation and knowledge."

The President:—"The present point of order which has been raised is a perfectly sound point of order, and if the Hon'ble Member had risen to a point of order I should have stopped him myself, but I gathered that he was speaking on the general question, and I think that perhaps the most convenient way of carrying on the discussion would be for the Hon'ble Member to deal with the speech as a whole, and then show that it is based on what the Hon'ble Member considers to be untrustworthy information, inasmuch as it was not based upon personal knowledge. At the same time I must appeal to the Hon'ble Member not to discuss problematical conditions."

The Hon'ble Mr. Vijiaraghavachariar:—"Thank you, Sir. The fact, I think, was beyond dispute. Several Hon'ble Members came and asked me for my opinion. Of course I am open to correction in what I say. But several Hon'ble Members asked me after the thing was over about the principle raised, namely, the Council having accepted the principles of the Bill, whether they had power or not to deal with them. They asked me for my opinion, but it was too late. I am entitled, however, to use the information which was given to me by Members present who took part in it, unless and until I am told by the Hon'ble the Member in charge of the Bill or the Hon'ble the Law Member

[18TH MARCH, 1913.] [*Mr. Vijiaragharacharíar; the President; Sir Reginald Craddock; Mr. Madhu Sudan Das.*]

that it is inaccurate. I therefore respectfully submit that it was open to me to act upon information given to me by Hon'ble Members who were present, and the accuracy of which I have no reason to doubt. My information derives corroboration from the speech just made by the Hon'ble the Home Member that the principles were accepted by the Council and the details were most carefully considered by the Select Committee. I shall submit any authority if that is necessary. At present I go on the supposition that the information I received is accurate and nothing but accurate. I do not depend on one Member."

The President :—"I must ask the Hon'ble Member to speak to the motion which is to be taken into consideration."

The Hon'ble Mr. Vijiaraghava chariar :—"I oppose the motion on these two grounds at present, not on its merits; on the merits I shall have an opportunity finally when the motion is put that the Bill be passed into law. Having regard to all that took place during the Committee stage I leave it to the Chair to say if the Report is not made and the proceedings are not wholly in accordance with the laws and regulations, what is to be the effect ?"

The President :—"Was the Hon'ble Member on the Committee ?"

The Hon'ble Sir Reginald Craddock :—"No."

The President :—"As the Hon'ble Member was not a member of the Committee, he is not entitled to take up the time of the Council in discussing what took place and what did not take place at its meetings. I must again ask him to deal with the subject-matter that is before us."

The Hon'ble Mr. Vijiaraghavacharíar.—"I only wish to understand my position correctly. May I not act upon information, unless it is incorrect, for the purpose of showing whether proceedings and report are illegal ? That is the question. If the Chair rules that I am entitled to act upon information furnished to me which I believe to be accurate I have something more to say. If the Chair rules that I have no power to act upon information so furnished to me by several Hon'ble Members present I shall sit down."

The President.—"The Hon'ble Member is entitled to speak generally. He cannot speak on the point as to how the Committee's Report presented to the house was dealt with in Committee. He is not entitled to raise a question on the conduct of Members of that Committee of which he did not form a part."

The Hon'ble Mr. Vijiaraghavacharíar.—"Sir, I have nothing more to say. I oppose the motion."

The Hon'ble Mr. Madhu Sudan Das :—"Sir, I do not think that at any time it is a matter of congratulation to any community or to any individual of that community to associate themselves or himself in the importation, if I may use the expression, or the expansion, of a criminal law that did not exist in the country and did not apply to it. It is not a matter of greater congratulation either to be a member of a Select Committee to which a Bill incorporating such a law is referred ; because whether it be importation or expansion the necessity of the additional criminal law implies an increase of criminality, and therefore it is not a matter of congratulation to the community. Being one of the members who were in the Select Committee I did not feel myself flattered when I was listening to the remarks made by the Hon'ble Member who preceded me. I am sorry that on account of some defect (it may be in the accoustics of this Chamber or some other defect but certainly not a defect in my auricular appendages), I did not hear him as distinctly as I should have wished to do, but this much I understood him to say that the Select Committee had in it men who signed the Report without knowing what

they were signing. I should think it was long, long ago when I grew beyond that stage. I saw in the Rules notified by Government for the election of Members of this Council a provision to the effect that any Member who cannot read, write or sign his name may ask another person to do it. That is actually one of the rules of the election. I did not find my way here under that rule at any rate. It has been very properly observed by the Law Member thatt he proceedings of the Select Committee have always been considered as confidential; they are never published. At least I know, by experience in the Bengal Council that when I referred to a remark that had been made, or rather to the opposition which had been offered to an amendment that I had suggested, it was ruled from the Chair that the proceedings of the Select Committee were confidential. If there is anybody who in a particular occasion like this does not like these proceedings to be characterized as confidential, it is I. I do not see that my name should be associated, humble though I am, in any proceedings of that nature, where the charge is that by some mesmeric influence over me my name got into a paper to which I was not an intelligent signatory. Sir, what was referred to the Select Committee was a Bill which was introduced before Council; that is always the case. It does not throw any light on the subject now for the discussion before this Council to refer us to a certain Bill which was so shorn by the Select Committee of the House of Commons that nothing remained but, like the Kilkenny cats, two tails, we don't know what the Bill was. We don't know what the Select Committee did; and it would be a very poor analogy, certainly not justice to the Members of the Select Committee or their doings, to refer to a Bill of a nature which is not before the Council now. When a Bill is referred to a Select Committee the Select Committee has to do with that Bill. Take this particular Bill now before us. This particular Bill refers to the word 'illegal.' 'Illegal,' as defined in the Penal Code, covers cases which give cause of action in a civil Court. Would it have been within the jurisdiction or within the competence of the Select Committee to go and revise the Contract Act in order to see whether hypothetical cases which were brought before the Select Committee by certain members ought or ought not to be covered by the particular Bill that was before them? All that possibly could be discussed was discussed before the Select Committee; and certainly it is not doing justice to us, we poor members of the Select Committee—I am applying the word 'poor' to non-official members—to say that we did not do justice to the work before us, we did not try our best to safe guard the interests of the country, or that we did not do our duty to the State which had been called upon to adopt certain measures on account of certain recent and hitherto unknown developments in the country."

The Hon'ble Sir G. M. Chitnavis:—"Sir, I would be unjust to myself if I allowed the charge brought by my Hon'ble friend to go unchallenged. It is not correct to say that we non-official Members of the Select Committee subscribed to the Report without a proper realisation of its import. I beg to assure my friend that I was fully conscious of what I was doing. I supported the Bill, as amended, with full knowledge of the details. It is true I proposed in Select Committee some modifications, one of them being the limitation of the operation of the Bill to certain classes of offences, that is, the major offences, but the proposals had ultimately to be dropped. But that does not show that I did not understand the purport of the Report when I signed it."

The Hon'ble Malik Umar Hayat Khan:—"Sir, perhaps owing to my weakness the things that I wanted to say the other day I dropped. What I really wanted to say was that when Government is resolute in doing a thing they ought to do it straight off. I have seen such things in Calcutta. There was no discussion; there was no trouble. When the country wants a law, and Government thinks and the people think that the time is ripe for it, then it ought to do it in one day, and there is no trouble about it. I simply have got up to say only on this occasion that the thing which ought to have been done long ago, ought now to be taken into consideration."

[18TH MARCH, 1913.] [*Maharaj-Kumar of Tikari; Mr. Vijiaraghavachariar; Maharaja Ranajit Sinha; Sri Rama Raya of Panagallu; Babu Surendra Nath Banerjee; the President.*]

The Hon'ble Maharaj-Kumar Gopal Saran Narain Singh of Tikari:—"Sir, as a Member of the Select Committee I would not have said much regarding this Bill, but owing to remarks which have just fallen from the Hon'ble Mr. Achariar, in which he stated that we non-official members of the Select Committee—he mentions the whole of us—signed the Report absolutely without knowledge of what we were doing. Well if any members have authorised him to do so I wish he would mention names, because I for one understood what I was doing, and I never authorised him to say what he has said."

The Hon'ble Mr. Vijiaraghavachariar:—"May I rise to make a personal explanation only? I never said that any member of the Select Committee signed the Report without knowing what he was doing. I distinctly said that two grave errors led to erroneous judgments and erroneous conduct with regard to their rights and duties. I wish they would understand what I said."

The Hon'ble Maharaja Ranajit Sinha of Nashipur:—"Sir, as a member of the Select Committee I should like to say a few words. Unfortunately, I was not present on the first day, that was the 6th March, but practically the Report was settled on the 7th, and I was present at that meeting. I do not remember that any suggestion was thrown out that the members of the Select Committee were bound to accept the Bill as it was referred to them. The only thing perhaps said was that the principle of the Bill had been settled, and that a Bill of conspiracy should be passed. There was no talk in the Committee that we had no power to alter the Bill, or to safeguard it according to our own lights, and I also, therefore, repudiate the charge that the members of the Select Committee signed the Bill without knowing its contents or fully understanding what they were going to do. And, I think, that the charge laid against the members of the Select Committee is without any foundation."

The Hon'ble Sri Rama Raya of Panagallu:—"Sir, I endorse every word that the Hon'ble Sir Gangadhar Chitnavis has said; and I can assure this Council that as a member of the Select Committee I did my duty to the best of my ability."

The Hon'ble Babu Surendra Nath Banerjee:—"Sir, every member of the Select Committee seems to think that he is an accused person undergoing his trial, and that we are here sitting as judges upon the members of the Select Committee. I do not think that there is the smallest inclination on the part of Hon'ble Members here, or on the part of the Hon'ble Mr. Achariar to lay any complaint or any charge against any member of the Select Committee. My Hon'ble friend has already disclaimed any intention to impute to them having signed this document, the Report of the Select Committee, without understanding its contents. I think all of us here have outgrown the period of childhood, and we are supposed to understand what we are about, and to sign documents after fully understanding their meaning. But, Sir, the crux of the complaint which my Hon'ble friend has brought forward is this, whether or not the Select Committee as a Select Committee was restrained from considering the Bill in all its aspects, and I think in a matter of that kind, the Hon'ble the Home Member would be the best person to give us an explanation whether or not it is the fact that the members were restrained, by reference to the acceptance of the principle, from considering the Bill in all its aspects."

The President:—"Order, order: I gave the Hon'ble Member considerable latitude, because I was under the impression that he must have formed part of the Committee as he dealt with it very fully. I understand that the Hon'ble Babu Surendra Nath Banerjee was not on the Committee. I think the time has come when Members should address themselves to the subject which is immediately before them, and not to discuss, when they have not served on the Committee themselves, what took place in the Committee. If any member of the Committee has any exception to take to the conduct of the

business in that Committee it is for him to rise and make any remarks which he may have to offer, and not for persons who have not attended that Committee."

The Hon'ble Mr. Syed Ali Imam:—"Sir, I support the motion that is before the Council, and that is that the Report of the Select Committee be taken into consideration. As you, Sir, have already ruled that anything as to what took place in that Committee does not arise, and that it should not be any more discussed, I shall absolutely refrain from referring to the remarks in regard to this part of the discussion that fell from the lips of the Hon'ble Mr. Vijiaraghavachariar.

"The Report of the Select Committee has been before this Council for 7 days—it was presented on the 11th—and that Report, on the face of it, is a Report in reference to which the motion before the Council has been made. I submit therefore that, at this stage of the discussion, it is not at all necessary for me to urge beyond this, that as that Report has come before this Council in due and proper course, the motion should be agreed to."

The motion was put and agreed to.

The Hon'ble Mr. Vijiaraghavachariar:—"Sir, I beg to move the amendment which stands in my name, namely, the addition of a few words to thenew section 120 A proposed to be added to the Indian Penal Code by clause 3 of the Bill:—'When two or more persons agree to do, or cause to be done firstly, an illegal act, secondly, an act which is not illegal, but by illegal means.' My first amendment is of a verbal nature. I have asked that the following words be added. Between the words 'persons' and 'agree' the words 'combine, engage and' should be inserted. When the words I wish to insert are this is how added the sentence will read:—'When two or more persons combine, engage and agree.' The reason why I ask that these words may be added is simple, to safeguard against any possible misconception. There is no Statute law as to this branch of the Criminal Law in England, and these words which I ask to be inserted generally appear in text-books and decisions. And I would also call your attention to the speech made by the Hon'ble and learned Advocate General the other day, where he uses words to the same effect—'combination, plotting, federation' and so forth. Such words occur in both decisions and text-books, the object of which would seem to be this, that it would call the attention of the persons who are charged with the investigation of this crime, and with the trial of persons who are charged with this crime, it would the better call their attention to what is intended and required by law. If you simply say 'agree' it is calculated to mislead one; let us take an instance. One man talks and another man holds his tongue, and this fact might be taken to be an agreement and a crime. I only say there would be a possibility of miscarriage of justice if you confine the law simply to the one word 'agreement.' Therefore, in order that there may be no possibility of misconception, we might introduce a number of words which are generally, what they call, 'collocated' or 'placed together' by English text-writers and decisions. If you put these words 'combine, engage and agree,' it would show that it is a federation, it is a combination, that the persons concerned resolve or take a vow to do certain things, and so forth, that is required by law. Therefore, as I understand, my amendment does not interfere with the principle adopted in that sentence, namely, that an agreement should be arrived at after some consultation, and that the parties to the agreement should be found to have actually co-operated and arrived at an agreement, and that there might be no mistake that the persons who were present were necessarily party to it. I need hardly call Hon'ble Members' attention to the fact that there might often be a group of persons engaged in conversation; one or two persons might agree on a subject; one or two persons might not agree but they might not say so, or some persons might even say something which might be misunderstood as an approval while it was the very reverse.

"What I wish to press, according to my view of the English law, is that the agreement must amount to a resolution; it must amount to a combination,

discussion, preparation, and a final adoption by the persons who agree in order to arrive at an exact view of the question; especially as this is a new law and, as the Hon'ble Home Member has himself said, there are a lot of offences which are to be investigated by the police without any previous sanction, it is just as well that the law itself should give some definite idea of what this new law here is in England, so that the investigators, for instance the police, in the case of the offences that need no sanction, and in the case of other offences Subordinate Magistrates who might be ordered to investigate before sanction is accorded by the Government, or persons other than the Police and Magistrates who might be asked to investigate with a view to submitting reports to Government or to the officers charged with the power of according sanction may all have their attention directed to what it is that they should investigate, and on what points it is that they should obtain evidence. In order to do all that, I beg to move this amendment. As I have already said it is more or less of a verbal nature."

The Hon'ble Mr. Madhu Sudan Das:—"Sir, when the Bill went before the Select Committee we had the word 'combine' and it was I who suggested that that word should be removed. The reasons which have been set forth by the mover of the amendment are that there should be certain other acts done before the stage which is called 'mental agreement' is arrived at. The law deals solely with that mental condition in which two men agree in their intention to do a certain thing. They might do a thousand other acts before they come to that point, which for convenience sake, I may call 'mental unison.' He says they might discuss, or do anything, they might discuss, they might correspond, they might travel by rail, they might whisper into each other's ears. Those are things with which the law has nothing to do. In fact we are losing sight of the real element of criminality in this. Man's intentions, Sir, are never triable.

"One of the best Judges, Sir Frederick Pollock, said 'the mind of man is not triable for (I shan't use the word though the Judge used it in Court) the angel even does not know man's mind.' As long as he entertains or cherishes an intention the law cannot reach him. If I were to entertain an intention to murder a man and even go and declare to the Judge that I harbour such an intention the law cannot reach me, because the only forum before which a man's intention is triable is his conscience. I suppose many Hon'ble Members here know that the great actor Garrick said that whenever he played Richard the Third he felt as though he was a murderer, yet no Judge would have thought of hanging him so many times because he must have played Richard the Third several times. The real thing is when that man's intention is communicated to another person then he at once comes within the clutches of the law. As soon as that intention is communicated, the law calls him an abettor. When the person to whom his intention is communicated agrees with him to do the same act they are called conspirators and that becomes a conspiracy. An abettor may not agree to do the thing, and yet the abetment is punishable; but when the man abetted agrees then only it is a conspiracy. It is that which it is sought to make punishable under the law. Consequently under those circumstances really to take notice of anything that precedes that state of mind is not within the intention or the object and purview of the law before us. The Hon'ble mover has made some reference about the investigating police-officer. Which would be an easier thing for a police-officer to prove? Would it not be easier for him to say that these two persons were travelling in a carriage? That is combination. Whereas the fact of mental agreement would be a more difficult thing for the police to prove. So the Hon'ble mover is actually losing sight of the object he has in view by proposing the amendment, which is just the one that would defeat the object he has in view. On those grounds I oppose the amendment."

The Hon'ble Babu Surendra Nath Banerjee:—"Sir, I must express my astonishment at the speech of my Hon'ble friend behind. The whole drift of that speech seems to me to support the amendment of my Hon'ble friend Mr. Achariar. My Hon'ble friend behind says that intention is not an offence, and certainly it is not according to the law of England;

but if intention is not an offence something more is needed. What that something more is is supplied by the terms of my Hon'ble friend's amendment. There must be combination, there must be confederation, there must be an act of agreement; and my friend puts in words which suggest that these must be constituent elements of the offence. Let me, Sir, in this connection, read an authority whose weight, I think, everybody—the lawyers round this table—will recognise. The book I am reading from is the Outlines of Criminal Law by Dr. Kenny. Now let us hear what he says with regard to intention. He says 'there must be an act of agreement to constitute criminal conspiracy.' He goes on to add 'it must not be supposed that conspiracy is a purely mental crime, consisting in the mere concurrence of the intention of the parties.' Here, as everywhere in our law, bare intention is no crime. 'Agreement,' says Lord Chelmsford, 'is an act in advance of intention, which each person has conceived in his mind. It is not mere intention but the announcement and acceptance of intention by bodily movement, by word or gesture is indispensable.' Now if my Hon'ble friend's wording was accepted, it would put the matter beyond all doubt—that there must be an act of agreement, an act of agreement of such a form that there can be no doubt as to the intention. He puts in words which I think make the matter as clear as it can possibly be. I hope and trust that the Hon'ble Member in charge of the Bill will accept the wording of my Hon'ble friend."

The Hon'ble Mr. Kenrick:—"Sir, the proposed amendment is to introduce the words 'combine and engage' before the word 'agree.' To adopt this amendment would be to introduce a surplusage into the Bill; a surplusage possibly appropriate in an indictment, but certainly inappropriate in legislation. Not only are the words pleonastic, but they might also introduce an element of ambiguity. If the words 'combine and engage' were introduced it might be supposed that there was some additional element of combination, or engagement or confederation, essential to the offence of conspiracy. Whereas the law is this: that the *corpus delicti* in cases of conspiracy is mere agreement with intent to do an illegal act. The Hon'ble Mr. Surendra Nath Banerjee, a few moments ago, quoted a statement in a judgment of Lord Chelmsford, which fully corroborates what I have just said. If authority were necessary for the drafting of this present legislation, authority there is of the highest, in abundance, and unanimous authority. I will only refer to O'Connel's case, in 1844, in which the opinion of all the Judges of England was given before the House of Lords in a conspiracy trial. There it was laid down in terms by the then Chief Justice of the Common Pleas, that 'the crime of conspiracy is complete if two or more than two should agree to do an illegal thing.' Then, in another case some twenty years later, the case of the Queen against Mulchay, the prosecution of the Fenians for conspiracy, the Judges were again called in to give their opinion in the House of Lords. It was again definitely pronounced that 'a conspiracy consists in the agreement of two or more to do an unlawful act or a lawful act by unlawful means.' Again, in the case of the Queen against Parnell and others, in 1881, where the whole doctrine of the Common Law of Conspiracy was considered at very great length, the definition which had been given by the House of Lords in the two cases that I have already cited was cited, discussed and approved. And, finally, the greatest draftsman of recent years—Sir James FitzJames Stephen—in his Digest of Criminal Law adopted the same phraseology which was used in the judgments of the House of Lords, and which is used in the present Bill, defining conspiracy as 'an agreement between two or more persons.' So that, as I have said, the use of the word 'agree' in this clause of the Bill, is supported by the strongest possible authority, which is unanimous, and a better precedent could not be found than the one we have followed. I, therefore, submit that we should be wrong in introducing words which only tend to possible complication of argument, and constitute mere surplusage."

The Hon'ble Mr. Syed Ali Imam:—"Sir, the amendment proposed by the Hon'ble Member is either intended to narrow down the scope

of the proposed section 120 A, or to add to it words that are merely superfluities. If it is the latter it is an attempt at artistic embroidery, and I will advise the Council in matters of drafting not to take such an ambitious course as this. If on the other hand the Hon'ble Member desires that the clause should be narrowed down to mean something other than what the word 'agree' there indicates I say that it cannot be agreed to, because it is against accepted principles. Therefore, in either case this surplusage has to be abandoned. If it is an attempt to modify the meaning of the clause I shall show that it is, if not an equal, perhaps a more dangerous, course. Various authorities have been just now quoted by the Hon'ble the Advocate General to show that lawyers of great eminence have used the word 'agree,' and that word alone whenever they have attempted to express the sense of association and continuation in defining 'conspiracy.' But to add to the word would be to take away from the simplicity of it. It is an accepted canon of drafting that the language of the law ought to be clear, and that there should be no confusion arising if an interpretation is to be given to it. What is therefore the object of this amendment that has been moved? Is it to give a meaning to the word 'agreement' somewhat clearer than has been given by all those eminent lawyers in England, or is it to narrow it down? A clearer meaning could not be given. It is a simple word, it is well understood; the meaning of it has been properly explained in the various expressions of opinion given by eminent Judges in England. Under these circumstances is it safe for the Council to accept this amendment, either on the ground that it is a decoration or on the ground that it narrows down the meaning that has been given to it by eminent Judges in England? On either of these two grounds I submit the amendment could not be accepted. There is a further objection to our adopting any such course as has been suggested by the Hon'ble Member and that is this. We have the word 'conspire' in the Indian Penal Code in section 121 A. We have the word 'conspiracy' used in section 107 of the Indian Penal Code. Those words have themselves been the subject of criticism in cases decided in our own Courts here in India, and it seems to me that when we are defining the word 'conspiracy' in this clause of the Bill we would be embarking upon a dangerous course if we were to add any such embroidery or restriction as the amendment proposed by the Hon'ble Member implies."

The Hon'ble Mr. Vijiaraghavachariar:—"I thought the nature of my amendment was such that it could have been met by an extremely judicial temper. I did not expect so much eloquence in matters of mere grammar, matters which involve no principle but which are directed to the better understanding of the principle of the Bill. The point here is about the word agreement. An agreement, if we have regard to the nature of a contract, implies a proposal from one person and acceptance by another person and correspondence before the acceptance, what we call the negotiation stage and so forth. The anxiety on the part of the Hon'ble the Law Member seems to be to give to the policeman at once too much and too little. Perhaps it is better to leave the people who are likely to fill up the evidence to prove this new offence as absolutely ignorant as possible. If you leave this clause alone with the only word 'agree,' I am pretty certain that under a little cross-examination the dunderhead of the head constable will break down and the men accused will be acquitted. All that I say is that words such as 'complete federation' and so forth which the Hon'ble the Advocate General has introduced in his own speech would do immense good in this sense. The Hon'ble the Advocate General has virtually supported me He said that the words I suggest would be very appropriate in an indictment. Now Hon'ble Members know what an indictment means. It is called here a charge. It is the instrument which the Magistrate after hearing the evidence, frames against the accused party. Now will the Hon'ble the Advocate General say that, in framing a charge or an indictment, if the law itself is silent and does not contain the words I propose or any other words to explain and define what the agreement contemplated is, these or similar words will be introduced

in India? This is a new law in India. Our Judiciary have not got the traditions of the English Judges. They cannot closely study and follow their numerous and even apparently conflicting decisions. Will a Subordinate Magistrate, in an out-of-the-way place, or even a 1st class Magistrate in a town look to the decisions or text-writers in England in framing an indictment and put more and different language into the indictment than is found in the law? I am astonished, or to use the Hon'ble the Advocate General's own language against me, I am amazed when he says, leave the Statute alone, but go to the Magistrate's indictment for what you want. This is an extraordinary way of meeting the amendment. I think by doing so it is clear he is virtually giving up the case which he meant to espouse on behalf of Government. The Hon'ble Mr. Das seemed to think that if you tell a policeman more it would be dangerous. I quite agree with him and would fain leave the fellow as ignorant as possible. I have known policemen concocting evidence to the effect that after a man's neck was cut, he said 'So and So cut me.' The meanest medical man would prove that if the man's neck was cut in the way it was he could not speak. These fellows who concoct evidence without knowing a bit of medical jurisprudence or law help, in a sense, the cause of justice. Is [illegible] the object? Mr. Das virtually says, 'don't tell the policeman more' and let him somehow or other find out how and whether the men concerned agree. But how is the policeman to find out the agreement? That is the point. What is to be done that will enable the policeman to find out the agreement? If one man speaks and another is silent, is that an agreement? I find no answer in the learned speeches made in opposition to me.

"In all these circumstances I do appeal to the Council to say whether or not the word 'agreement' as it stands would not include silent men as criminal conspirators. No answer has been forthcoming to my simple question; the simple question is, how is any one to find out whether an agreement has been reached. What is it that will tell one that all the persons present approved of any matter talked about? What is there that will tell anybody, a Court or a Magistrate, or an officer, or the Government in giving sanction, to show that the number of persons grouped together were all of one mind, were all parties to a criminal intention. I said that we should have some tangible thing to catch hold of, and I am opposed and told to leave the words as intangible as possible. It is this, Sir, which will increase the dangerous nature of this Bill, and I shall, therefore, be obliged to press the amendment. The Hon'ble the Law Member has *advised* the Council not to adopt my amendment: he is able to advise the Council. I am not in a position to advise the Council, but I may and do beg and pray that they will pay attention to all my observations in common fairness and vote for my amendment."

The amendment was put and negatived.

The Council adjourned to Tuesday, the 19th March, 1913.

W. H. VINCENT,

Secretary to the Government of India,
Legislative Department.

DELHI;
The 31st March, 1913.