

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. S. P. O'Donnell : Sir, with reference to the message from the Council of State which has been communicated to-day, I beg to move the following motion :

'That this Assembly do agree to the recommendation of the Council of State that the Bill further to amend the Code of Criminal Procedure, 1893, and the Court Fees Act, 1870, be referred to a Joint Committee of the Council of State and of the Legislative Assembly and that the Joint Committee do consist of 12 Members.'

Sir, it does not seem necessary that I should detain the House for long in support of this motion. A Bill to amend the Criminal Procedure Code was introduced as far back as 1914 in the Indian Legislative Council. That Bill was referred to a Committee in view of certain opinions which had been received on it. The Committee was a strong one and contained a number of eminent lawyers. The Bill was later revised in the light of the criticisms of the Committee. For various reasons it was not found possible to proceed further with it, and in the interval a number of minor amendments were suggested which have been incorporated. The main amendments which the Bill introduced into the Criminal Procedure Code are explained in the report of the Committee. The amendments are intended to remove defects which have been found in the existing law and no important change of principle is contained in this Bill. At the same time, 22 years have elapsed since the revision of the Code and I think it will be agreed that the time has come when the Code should be overhauled. I hope also that it will be agreed that the most expeditious method of doing that is the proposal contained in the motion which I have just made. It is intended that the Committee, if appointed, should contain a majority of non-officials.

Mr. J. Chaudhuri : Sir, may I rise to a point of order. I would draw your attention to the ruling you have given before regarding the introduction of a motion and the reference to a Select Committee. Now with regard to this big measure of legislation, I think that we should be given enough time to consider it. As a matter of fact, I received a copy of the Bill a little before midnight last night, so I hardly had time to look at it. I draw your attention to Rule 68 regarding the reference of a motion to a Select Committee. The Proviso says :

'Provided that no such motion shall be made until after copies of the Bill have been made available for the use of Members, and that any Member may object to any such motion being made unless copies of the Bill have been so made available for three days.'

The Honourable the President : Order, order. This Bill did not originate in this Chamber. The Honourable Member is reading out a Standing Order regarding a motion which originates in this Assembly. The Bill has already passed through its first stages in the Council of State and the motion before us now is that the Bill which originated in the other Chamber be referred to a Joint Select Committee. Therefore, the motion made by the Honourable Mover is in order.

Mr. J. Chaudhuri : Then I move that the Bill be circulated under the provisions of Rule 69 because this Assembly is not the same as the Council in which the Bill originated, and Rule 69 (b) says :

'If the Member in charge moves that his Bill be referred to a Select Committee, any Member may move as an amendment that the Bill be circulated for the purpose of eliciting opinion thereon by a date to be specified in the motion.'

[Mr. J. Chaudhuri.]

The reason why I want this Bill circulated is that I want enough time to examine the Bill, it is a very big measure of legislation and it is desirable that the Bill should not be passed either in this session or during this year. My reason is, that this Assembly is a newly constituted one and it is necessary that all the Members of both Houses should have enough time to acquaint themselves with the provisions of the Bill. So instead of referring this Bill to a Select Committee, time should be given to the Members of this Assembly to consider and make themselves thoroughly acquainted with its provisions. Further, I find that there are Resolutions which many Members will move and which, if passed, will require important modifications in this Bill. A further reason is that the Viceroy-designate, who will shortly arrive, was one of the ablest criminal lawyers and has presided over the Criminal Appellate Court in England for many years; I think we should have the benefit of his experience and advice with regard to the Bill. My motion, therefore, is that this Bill be circulated now and that the appointment of a Select Committee be deferred until the end of the session.

The Honourable the President : Does the Honourable Member mean by his motion, circulated in the technical sense?

Mr. J. Chaudhuri : Yes, Sir.

Dr. H. S. Gour : Sir, I am in a somewhat worse predicament than my friend, Mr. Chaudhuri, because, though he got a copy of the Bill last night at midnight, I have not received a copy at all. I cannot consent to the passing of the motion that the Bill be referred to a Select Committee of which I know nothing. I beg therefore to move that a copy of the proposed Bill be circulated amongst Members of this Assembly and . . .

The Honourable the President : Does the Honourable Member wish to second the motion put before the Assembly that the Bill be circulated?

Dr. H. S. Gour : Yes, Sir.

The Honourable the President : I hope the Honourable Member understands the difference between circulation with a small 'c' and circulation with a big 'C.'

Mr. J. Chaudhuri : I shall be quite satisfied, Sir, if the Bill is circulated amongst the Members of this House.

The Honourable the President : That is not 'circulation' in the technical sense. I understand that the Bill has already been sent to Members. Is that so, Mr. O'Donnell?

Mr. S. P. O'Donnell : It was introduced in the Council of State and copies of it have already been sent out to the press.

The Honourable the President : The complaint made by the Honourable Member is not really reasonable. The measure has been before the other Chamber and now comes before this Chamber under a procedure laid down by the Standing Orders. The fact that it originated in the other

Chamber is a mere question of convenience. It was accepted in the other Chamber and I think it may reasonably be accepted in this one. This procedure in no way precludes the fullest consideration by this House when the Bill comes back.

AYES—21.

(The House thus divided.

Ayer, Sir Sivaswamy.
Bryant, Mr. J. F.
Burdon, Mr. E.
Fell, Sir Godfrey.
Habibullah, Mr. Mahomed.
Holland, The Honourable Sir Thomas.
Hullah, Mr. J.
Hutchinson, Mr. H. N.
Innes, Mr. C. A.
Kabiraji, Mr. J. K. N.
Maw, Mr. W. N.

Mitter, Mr. D. K.
Muhammad Husain, Mr. T.
O'Donnell, Mr. S. P.
Percival, Mr. P. E.
Rao, Mr. C. Krishnaswamy.
Sapru, The Honourable Dr. T. B.
Sarfaraz Husain Khan, Mr.
Sharp, Mr. H.
Waghorn, Col. W. D.
Wajid Hussain, Mr.

NOES—66.

Abdulla, Mr. S. M.
Abdul Quadir, Maulvi.
Afsar-ul-Mulk Akram Hussain, Prince.
Agarwala, Lala G. L.
Ahmed, Mr. K.
Ahmed, Mr. Zahir-ud-din.
Ayyangar, Mr. M. G. Mukundarama.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Barua, Sriji Debi Charan.
Bhargava, Mr. J.
Carter, Sir Frank.
Chatterji, Mr. J. C.
Chaudhuri, Mr. J. C.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Das, Babu Braja Sundar.
Dwarkanadas, Mr. J.
Faiyaz Khan, Mr. Mahammad.
Gajjan Singh, Mr.
Garu-Jayanti, Mr. R. P.
Ghosh, Mr. S. C.
Ginwala, Mr. P. P.
Gour, Dr. H. S.
Habibullah, Nawab Khwaja.
Herbert, Lieutenant-Colonel D.
Ibrahim Ali Khan, Nawab Muhammad.
Ikramulla Khan, Mr. Mirza Md.
Iswar Saran, Mr.
Jafri, Mr. S. H. K.
Joshi, Mr. N. M.
Keith, Mr. W. J.
Lakshmi Narayan Lal, Mr.

Latthe, Mr. A. B.
Lindsay, Mr. Darcy.
Mahadeo Prasad, Mr.
Mahmood Schamnad, Mr.
Majid, Sheikh Abdul.
Majumdar, Mr. J. N.
McCarthy, Mr. Frank.
Mitter, Mr. N. C.
Mir Asad Ali, Khan Bahadur.
Misra, Mr. Pyari Lal.
Mudaliar, Mr. Sambanda.
Mukherjee, Babu J. N.
Nag, Mr. Girish Chandra.
Nayar, Mr. Kavalappa Muppil.
Neogy, Babu Khistish Chandra.
Pickford, Mr. A. D.
Price, Mr. E. L.
Ramji, Mr. M.
Rama Varma Valia Raja.
Ranga-Chariar, Mr. Tiruvankata.
Reddiyar, Mr. M. K.
Renouf, Mr. W. C.
Samarth, Mr. N. M.
Sen, Mr. Nishikanta.
Sen, Mr. Sarat Chandra.
Shahani, Mr. S. C.
Singh, Babu B. P.
Sircar, Mr. N. C.
Subrahmanyam, Mr. C. S.
Ujagar Singh, Baba Bedi.
Venkatapatiraju, Mr. B.
Wajihuddin, Haji.
Yamin Khan, Mr. Muhammad.

The Honourable the President: The 'Ayes' are 21, the 'Noes' 66.
'The 'Noes' have it.

The motion was negatived.

BILLS PASSED BY THE COUNCIL OF STATE.

In accordance with Rule 25 of the Indian Legislative Rules, the following Bills passed by the Council of State at its meeting of the 28th February were laid on the table :—

A Bill further to amend the Code of Civil Procedure, 1908, and

A Bill to facilitate the enforcement in British India of Maintenance Orders made in other parts of His Majesty's Dominions and Protectorates and *vice versa*.

THE INDIAN PENAL CODE (AMENDMENT) BILL.

Mr. S. P. O'Donnell: Sir, I rise to move that the Bill further to amend the Indian Penal Code, 1860, be taken into consideration. I explained the provisions of the Bill on a previous occasion. They are of a simple character, and it is not, I think, necessary for me to say anything more at this stage.

Rao Bahadur T. Rangachariar : As regards this Bill I welcome the measure. I am afraid that the Acts which require amendment in consequence of this amendment have been overlooked. I refer to the Forfeiture Act, XXV of 1857, which by section 2 thereof makes it obligatory upon a court to order forfeiture of property in the case of offenders who commit offences under sections 121 and 122 of the Penal Code where the offender is either killed or dies or is not found. Under the present law, as it stands, sections 121 and 122, the law declares on conviction, forfeiture of property without any order of the court, and one is not needed. Now in the case of offenders who have been convicted, the amendment now proposed leaves it to the discretion of the courts, which try the offender, to impose or not to impose this punishment of forfeiture. Why in the case of persons who have died, or in the case of persons who have been killed, such an obligatory procedure, as to make it compulsory on the court to order forfeiture of property should remain, I fail to see. I do not know if the matter was considered and left like that or whether the matter was ignored. That is the first point I wish to make in connection with this Bill. The second point which I wish to make is this. I do not know whether the intention of the amendments is to leave it to the discretion of the court to impose a fine or an order of forfeiture, that is to say, whether the court trying the offender can omit altogether to impose either sentence, that is punishment of forfeiture or a sentence of fine. The amendment as it stands leaves it to the discretion of the court to impose one of two things—forfeiture of property or fine. I rather think from the speech made by the Honourable Member the other day in introducing the Bill that he wanted to leave it to the discretion of the trying court, whether it should do anything in addition to imprisonment, or death, or transportation, as the case may be; whether the courts should have further powers to impose any other sentence in addition. I thought he wanted to leave it to the discretion of the court. As the amendment now runs, the court will have to do one of two things, namely, either impose a fine or order of forfeiture. I do not know if that was the real object. If it is the intention merely to leave it to the court to impose an additional sentence, or not, then