CHAPTER 6.
Two chambers so different in complexion are bound, on occasions, to differ in view and the Government of India Act seeks to provide methods of avoiding or composing such differences. The three means devised by the Act or by statutory rules under it are Joint Committees, Joint Conferences, and Joint Sittings. The first is a means of forestalling differences and expediting the passage of a particular bill. The adoption of this procedure requires a formal resolution in each chamber and each nominates an equal number of members. The second means to be used when a difference of opinion has arisen. At a Joint conference each chamber is represented by an equal number of members but no decision is taken. The results of a conference are to be looked for in the subsequent proceedings of either or both chambers. The case is different where the third means is adopted. Where the originating and the revising chambers have failed to reach agreement within six months of the passing of the Bill by the originating chamber it rests with the Governor-General in his discretion to convene a joint sitting of both chambers at which those present deliberate and vote upon the Bill in the shape given to it by the originating House and on the outstanding amendments. The decision there taken is deemed to be the decision of both chambers. This method of composing differences is more suited to general legislation than to Finance Bills for it may not be adopted till six months have elapsed since the passage of the Bill in the original chamber. In practice however it has never been employed for either purpose.
The scheme for the Council of State contained in the Montford Report differed materially from the plan ultimately adopted and embodied in the Government of India Act. The authors of the Joint Report intended the Council of State to be "the final legislative authority in matters which the Government regards as essential", and therefore aimed at creating "a separate constitutional body in which Government would be able to command majority." Mr. Montagu and Lord Chelmsford disclaimed the intention of instituting a complete bicameral system and regarded the Council of State rather as a chamber of appeal from the refusal of the lower House to pass necessary legislation. It would therefore have performed much the same function as the Grand Committees which they proposed for the provinces. If the Legislative Assembly passed such legislation and the Council of State agreed with it well and good: but if not, the Council of State could still be relied on to authorise what was needed. Thus, if the Executive Government found itself unable to secure from the Assembly its essential legislation and its supplies, the plan of the Joint Report was to provide, "means for use on special occasions, of placing on the Statute Book after full publicity and discussion on permanent measures to which the majority of members in the Legislative Assembly may be unwilling to assent." The method they proposed was that if the Legislative Assembly refused to authorise an indispensable measure, the Governor-General-in-Council might certify that the Bill was essential to the interests of peace, order or good government and thereupon after it had passed through all its stages in the Council of State the Bill would become a Law without further reference to the Assembly.

1 The Report on Indian Constitutional Reforms, para 276.
The Government of India Bill was introduced into Parliament with provisions for the Council of State which followed these lines. The Joint Select Committee to which the Bill was referred rejected the plan altogether. It reported that it did not "accept the device in the Bill as drafted of carrying government measures through the Council of State without reference to the Legislative Assembly in cases where the latter body cannot be got to assent to a law which the Governor-General considered essential. Under the scheme which the Committee proposed to substitute for this procedure, there was no necessity to retain the Council of State as an organ of government legislation. It should therefore be reconstituted from the commencement as a true Second Chamber." The alternative scheme to which the committee referred was the plan, now embodied in the Act, by which the Governor-General may certify that it is essential for the safety, tranquility or interests of British India that a Bill which either chamber of the Indian Legislature refused to pass should become law. The view of the Joint Committee was that, while the Governor-General-in-Council must in all circumstances be fully empowered to secure legislation required for the discharge of his responsibilities, "it is worthy that such responsibility should be concealed through the action of a Council of State specially devised in its composition to secure the necessary powers."

Departure from the Joint Report:

It is important to bear in mind that the recommendations of the Montagu-Report were not in all respects adopted and carried out by the sections of the Government of India Act 1919. The Bill
as introduced represented the result of discussions which had taken place between the Government of India, the Provincial Governments and the Imperial Government. In the course of its passage through Parliament it was amended in some material respects in accordance with the recommendations of the Joint Select Committee of both the Houses of Parliament to which it was referred of which committee Mr. Montagu was an influential member. For example, the Report devised a plan by which the Government of India could secure the passage of legislative measures which it regarded as essential, notwithstanding the opposition of the majority of the Legislative Assembly by carrying it Bill through an Upper House in which there was an official majority. The Viceroy's assent to a measure so carried through the upper House nullified the effect of its rejection by the lower House.

The Governor-General could thus secure the enactment of a Bill whose passage in the form considered to be necessary is refused by the Indian legislature by certifying that the Bill is essential for the safety, tranquility or interests of British India or any part thereof. If the Bill in the form in which the Governor-General considers essential is rejected by one chamber before being laid before the other, the latter is given the opportunity of consenting to it, though it does not do so the signature of the Governor-General validates the Act.

This power of certification has in fact been used four times since the Reforms were put into force. The first occasion was in 1922 when Lord Reading over-rode the Assembly by certifying the Princes Protection Act. The Second and third occasions were in 1923 and 1924 when the annual Finance Bill had to be certified. The last occasion was in 1925 when a Bill became law by the Governor-General's certificate to supplement the Bengal Criminal Law Amendment Act of that year -- a provincial Act which had been certified by the Governor of Bengal. On all four occasions the Council of State approved the Bill. .... ............ When the Governor-General feels himself compelled to "certify" the Act has to be laid before both Houses of Parliament and has no effect until it has subsequently received His Majesty's assent. But provision is made that where in the opinion of the Governor-General, a state of Emergency exists which justifies such action the Governor-General may direct that the Act which he has certified shall come into operation forthwith. It thereupon does so, subject, however, to disallowance by H.M.'s Council.
Indian States (Protection against Disaffection) Bill.

The Government measure which excited the greatest opposition was a Bill to prevent the dissemination, by means of books, newspapers and other documents, of matter calculated to bring into hatred or contempt, or to excite disaffection against, Princes or Chiefs of States in India or the governments or administrations established in such states. This Bill was at first introduced in the Assembly on 23rd September, Sir William Vincent remarked that the Press Act committed had not negatived the idea that such legislation might be necessary in future, but had only stated that adequate material had not been brought before the members to justify their recommending such legislation at the then junction. The Government of India as a whole had not asserted that view particularly in the light of recent circumstances. After referring to the relevant portion of H.E. the Viceroy's inaugural address earlier in the session he observed that the Government had come to the conclusion that this legislation was necessary under the terms of the treaties and in accordance with royal pronouncements re the protection of the princes and chiefs. "The Government of India are pledged to accord to the princes and States in India the full protection of their honour, rank and dignity, and to maintain unimpaired their privileges and their rights". Another reason for this measure was that it had been found on examination to be necessary. There had been a number of cases in which protection of this character had been justly required and demanded. Then, there are States in which the preaching of disaffection against the Government in British India was penalized. "Can We," he enquired, "in justice withhold from those states that protection against the preaching
of disaffection against them in British India which they afford to us? Further in any case, was it possible to allow Indian States to be centers of disaffection against the Government of India? "If the answer is in the negative ought we not, in all fairness and in all justice, to prevent British India from being a centre for movements of disaffection against them?" In defence of the measure Sir William further urged that he did not expect that the bill would stifle legitimate criticism, and that all possible safeguards in this respect had been inserted in the measure, which followed closely the principles of English Law. Manshi Iswar Saran strongly opposed the proposal affirming that in his opinion no case had been made out for it. He based his opposition principally on the report of the press Act Committee and he contended that there was no reason why Indian princes should not avail themselves of the ordinary provisions of the law. "Introduce, if you like", he remarked, "a measure in this House which would give protection to the subjects as well as to the Indian princes: place such a measure before us, and we shall then be inclined to consider it, but a one-sided measure like this in which you try to do nothing for the subjects of the Indian princes is one, I submit, which cannot be acceptable to this House."

By 45 votes to 41, leave to introduce the bill was refused in the legislative assembly.

On the 25th September a message was read from His Excellency the Governor-General-in-Council of state announcing that he had, in exercise of the powers conferred by sub-section(1)
of Section 67 B of the Government of India Act, certified that
the Bill was essential for the interests of British India and
recommending that it be passed in the form in which it was
presented. The constitutional aspect of the case was explained
by Sir Alexander Muddiman, who pointed out that the certificate
having been given by the Governor-General the Bill could without
introduction, be taken into consideration and passed by the
Council. He pointed out that the Bill was not merely a certified
bill but also a recommended bill, and therefore, if the bill
was passed by the Council in a form not recommended by the
Governor-General it would still, on signature by the Governor-
General become an Act in the form in which it had been presented.
Sir Alexander added that if the bill was passed into law it
must be laid before the Houses of Parliament and any observations
the Council made must inevitably therefore, come under the
consideration of the Mother of parliaments. Mr. Thompson in
moving that the Bill be taken into consideration, stated that
the Government felt that various apprehensions might be created
in the minds of Indian rulers of Indian States if immediate
action was not taken. It was eventually agreed that the Bill
should be taken into consideration on 26th. In the Assembly the
question of the bill was again raised when Mr. Rangachariar sought
the adjournment of the House to consider the situation created
by the certification of the press Bill by the Viceroy, but his
motion was ruled out of order as the House could discuss only
those subjects which concerned the Governor-General-in-Council
and could not invade the province of the Governor-General. The Home member thought that the only way in which the bill could come again before the House was if the Viceroy removed his certification; and if the House wanted its removal it should give a guarantee of its attitude so that he might go and advise the Viceroy on the desire of the House. Mr. Rangachariar and Sir Deva Prasad Sarbadhikary promised to reconsider the bill if sufficient material was supplied to them to justify its enactment. On the morning of the 26th Sir William Vincent announced, with regret, that despite the utmost endeavours of Government members and some non-officials who had conferred with them they had failed, on account of circumstances beyond their control to come to any satisfactory solution regarding the impasse on the Press Bill.

The Press Bill came up before the Council of State on the 26th and, after nearly five hours discussion was passed with only one dissentient voice. Prof. Kale moved that the consideration of the Bill be postponed till early next year as they had neither had sufficient time to consider the bill not had sufficient material been supplied to them. The motion was supported by Sir Benode Mitra, Sirdar Jogendra Singh, Lalabhai Samaldas and Mr. G.S. Khaparde. It was opposed both by Government and a few non-official members and was rejected.

In view of recurring attacks on Indian Princes of which there
had been no less than 170 in the year ending May 1922, Mr. Thompson urged the Council to pass the bill and thereby avoid antagonising the rulers of 1/3 of this country, who had given their unfailing support during the great War.

The Bill was supported among others, by Sir Arthur Froom, Sir Edgar Holberton and the Raja of Kollengode. Several amendments were moved by Prof. Kale and Mr. Khaparde which were either lost or withdrawn. But the Home member promised that the Government would consider very carefully the suggestion of non-officials that no Court other than a Sessions Court should be competent to try cases under this Act and also to examine any defect that might be disclosed and then to bring forward amendments. The Bill was passed, without any amendments by the Council of State.

Certification of the Finance Bills:

In the budgets of 1921-22 and 1922-23 the assembly made cuts in expenditure and the Government accepted the same including reductions in Salt Duty and import duty on cotton, piece-goods in the latter. Naturally the Council of State concurred. But when the Budget for 1923-24 came up before the assembly the Government proposal for doubling the salt duty from Rs. 1-4-0 to Rs. 2-8-0 per maund to meet the deficit of Rs. 5.85 crores was negatived by 59 to 44 votes. The Governor-General used special powers and recommended the Finance Bill in the original form including the doubled Salt Duty. The
Council of State passed it by 28 votes against 10 indicating how the Government could rely on upper chamber in any crucial hour. Most of the elected members sent by the Provincial legislatures vehemently opposed the doubling of the Salt duty but the Finance Member Sir Basil Blackett remained adamant and it was passed.

On a further occasion the Council of State passed the Finance Bill rejected by the Assembly and certified by the Governor-General as necessary. In the Second Assembly elected at the end of 1923 the Swarajists under the leadership of Pandit Motilal Nehru appeared to be wreck the reforms from within the legislature. Naturally the cleavage between the Assembly and the Council of State became much wider. A resolution was moved in the Assembly recommending to the Governor-General-in-council that he be pleaded to take necessary steps for revising the Government of India Act "so as to secure for India full self-governing dominion States within the British Empire Provincial autonomy in the provinces." The Government opposed the swarajists amendment suggesting a representative Round Table Conference for considering the rights of the minorities, dissolution of the central legislature and consideration of the proposed scheme by a newly elected legislature. As the Government did not act according to the decision of the Assembly the latter took the unprecedented step of throwing out in their entirely items not less than four of the best revenue earning departments when the Budget came up before it in March 24. The demand under Income-Tax was thrown out by 61 votes against 60, that under salt duty by 62
against 53 and that under opium by 62 votes against 57. For other items the Swarajist leader did not press his opposition.

But when on March 17th the Finance-Member moved that the Indian Finance Bill be taken into consideration, Pandit Madan Mohan Malavya urged upon the House the immediate rejection of the Bill. After some discussion the consideration of the Bill was refused by 60 against 57. It also made two cuts in the demands, Rs. 100 lakhs under Forests and Rs. 25 lakhs under Railways. Naturally therefore the Governor-General had to use his special powers and recommend the original Finance Bill to the Council of State and the Bill was accordingly passed by a substantial majority.

**Bengal Criminal Law Amendment(Supplementary) Bill.**

The Assembly rejected an essential clause in the Bill which sought to give the Government special powers to deal with the increasing revolutionary crimes which had started in Bengal since 1924. The Governor-General certified the Bill as essential to the peace and tranquility of India and the Bill was passed by the Council of State as recommended. The Governor-General recommended it as he felt that the melancholy series of crimes and outrages rendered necessary the enactment of a special legislation in Bengal. This Bill was in fact a supplement to the one already rejected by the Bengal's representatives in their Provincial Council and thereafter certified, by Bengal's Governor Lord Lytton. It was also rejected by India's representatives in the Imperial legislative Assembly and, therefore,
certified by India's ruler, Lord Reading. The representatives of Bengal unhesitatingly and in no uncertain terms condemned this Black Bill. The leaders of public opinion in Bengal had argued their case very ably in the provincial council with all eloquence and talent which Bengal could command. The representatives of All India headed by eminent pleaders had argued their case for India with ability and patriotism and also a sense of responsibility which is rarely surpassed by any democratic assembly in the World. Nevertheless His Excellency after listening these arguments considered that it was essential for the good Government of India and for the tranquility of Bengal to certify this measure and had asked the House to pass it. Vigorous arguments were advanced against the Bill by some responsible members of the Council of State. A representative of Burma recorded his imperative protest:

"I am entirely opposed to the principles that underlie the Bill . . . . . . . The suspension of the Habeas Corpus is most extraordinary procedure, a procedure which deprives the citizen of his most cherished right . . . . . .

There is an impression in the country that the Council of State is the handmaid of the Government of India and that it exists in the constitution to register the decrease of the Government of India. And even that the Council to-day is offered an ultimatum in the shape of not only a recommended bill but a certified by the Viceroy and Governor-General. We are asked to pass the Bill at the point of the bayonet. It does not

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certainly mean a courtesy, an ordinary courtesy due to this council. I regard it as an insult to this House to be called upon to pass this Bill."

With such an emphatic protest the member withdrew from the Council.

The above incidents show how the Council of State really possessed greater powers than the lower chamber and how it acted as a reactionary body applying the brake to many progressive measures and how it acted as the handmaiden of the executive on all crucial occasions. It is true that the first three years of the working of the reforms much had been achieved by the two chambers acting in accord with each other. There was not a single occasion on which the Council of State agreed with the assembly as against the wishes of the Government. On the contrary, there were several occasions on which the Governor-General used his special powers of certifying or recommending bills after they had been rejected by the assembly and on each occasion the Council of State supported the Government by a comfortable majority.