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LEGISLATIVE ASSEMBLY.

Wednesday, 14th February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock. Mr. President was in the Chair.

MEMBER SWORN:

Mr. Lancelot Graham, M.L.A. (Legislative Department: Nominated Official).

UNSTARRED QUESTIONS AND ANSWERS.

Deaths in Delhi due to Commission of an Offence.

163. **Lala Girdharilal Agarwala:** 1. How many dead bodies of human beings were discovered in Delhi including an area within 5 miles of Viceregal Lodge during the last 5 years, in which cases death was reported to have been caused by violence or commission of an offence and in how many of those cases the offender remained unpunished?

2. How many cases of deaths by violence or commission of an offence were reported or discovered in Delhi including an area within 5 miles of the Viceregal Lodge and in how many of them no offender was punished?

The Honourable Sir Malcolm Hailey: The two parts of the question appear to cover the same ground. During the years 1918 to 1922 the number of deaths reported as due to the commission of an offence in the area specified was 60. Of these 9 were found to be due to natural causes. Of the remaining 51 cases 24 were untraced, and in the 27 cases committed for trial, the accused were acquitted in 8 and convicted in 19 cases.

Historical Buildings in Delhi Fort.

164. **Mr. Mohammad Faiyaz Khan:** Will the Government be pleased to state the number of Historical Buildings pulled down in the Delhi Fort since 1900?

The Honourable Mr. A. C. Chatterjee: No Historical Buildings have been pulled down in the Delhi Fort since 1900.

Historical Buildings in Agra Fort.

165. **Mr. Mohammad Faiyaz Khan:** Is there any truth in the statement that some of the Historical Buildings in the Fort, Agra, are going to be demolished for making barracks for soldiers?

The Honourable Mr. A. C. Chatterjee: There is no truth in the statement.

IMPORTS OF MOTOR CARS AND CYCLES.

166. **Mr. Mohammad Faiyaz Khan:** Will the Government be pleased to state the number of motor cars, and motor cycles imported into India each year from 1905 till the end of 1922 from England, United States of America, Canada, France, Germany and Italy?

The Honourable Mr. C. A. Innes: The Honourable Member is referred to the "Annual Statement of the Sea-borne Trade of British India" and "Monthly Accounts relating to the Sea-borne Trade and Navigation of British India" which contain all the statistical information available about the import of motor cars and motor cycles. A copy of these publications is in the Library.

THE INDIAN COTTON CESS BILL.

Mr. J. Hullah (Revenue and Agriculture Secretary): Sir, I present the report of the Joint Committee on the Bill to provide for the creation of a fund for the improvement and development of the growing, marketing and manufacture of cotton in India.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, I have to make a statement which I am sure that everybody in the House will receive with great regret. The Honourable Leader of the House is unavoidably prevented from being present to-day. He was taken ill in the night and cannot possibly take his seat this morning. I am sure I am expressing the hope of every one in this House when I say that we all hope that he will not be long prevented from discharging his duties in this House. (Hear, hear.)

THE REPEALING AND AMENDING BILL.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, I move for leave to introduce a Bill to amend certain enactments and to repeal certain other enactments.

I do not think, Sir, that I need enter into an elaborate explanation of the provisions of this Bill. It is a Bill which the Central Legislature has laid before it from time to time to remove certain formal defects that are occasionally discovered in our law and to remove certain anachronisms. If Honourable Members will refer to the Schedule of the Bill which is in their hands, they will see that there is a column of explanations. Those explanations, Sir, give the reason for every small amendment which this Bill proposes to make in the Statute Book.

Mr. President: The question is:

"That leave be given to introduce a Bill to amend certain enactments and to repeal certain other enactments."

The motion was adopted.

Sir Henry Moncrieff Smith: Sir, I introduce the Bill.

Mr. President: The Assembly will now proceed further to consider the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State.

The amendment to clause 11 standing in the name of Mr. Agnihotri was under consideration. Discussion will now proceed on clause 11. The amendment put from the Chair on the occasion when clause 11 was under consideration was:

"In clause 11 for the proposed sub-section (3) in sub-clause (2), substitute the following:

'(3) Every person arrested under this section shall forthwith be released on bail'."

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, this matter was before the House on a former occasion. It was then postponed because there was a general feeling in the House that this was not the proper place for this amendment and that we should consider it when we came to the Chapter of the Code which deals with bail. When, Sir, we did come to the Chapter which deals with bail, the Honourable Mover of this amendment had his attention invited to the point and he said he was not prepared to move amendments to section 496 or 497. I think the House will agree that the amendment that now stands before it is not a proper amendment to make in the Code. Mr. Agnihotri would enable or rather would require any person arrested without a warrant to be forthwith released on bail unless he was a proclaimed offender under clause *thirdly* or a deserter under clause *sixthly*. I would point out to the House that this would require all the persons under clause *first* to be released on bail as soon as they were arrested. Clause first is the clause under which nearly every serious criminal is arrested in the course of police investigations. In the course of an investigation of any serious crime the police arrest a man as soon as they have reasonable grounds for believing that he has committed the offence. They never wait, Sir, to get a warrant from a Court. Therefore, these persons are arrested without a warrant—persons who have been caught shortly after the committing of a murder, dacoits who were being pursued by the police after committing dacoity, and so on,—and these persons whom the police have been fortunate enough to arrest without delay would, under Mr. Agnihotri's amendment, be required to be released forthwith on bail. I think, Sir, the House will agree that this is going much too far and it is a most undesirable amendment to introduce into the Code. The House has had a very full discussion on sections 496 and 497 and it was pointed out to the House on Monday that the provisions of the Code as to bail were now far more lenient than they ever had been and the Government deprecated any further widening or loosening of the provisions. Sir, I oppose this amendment.

The amendment was negatived.

Clause 11, as amended, was added to the Bill.

Mr. President: Discussion will now proceed on clause 33.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, we postponed the consideration of this clause for two purposes. In the first place we wished to deal with the question which arises from the prevention by this clause of the use of the statements recorded by police officers for any purpose at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. The second reason

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why the consideration was postponed was to examine the effect of the amendment which has been accepted by the Assembly which compels the Court to allow inspection of the whole of these statements to the accused. As regards this question the position was indicated by the Honourable the Leader of the House in his statement on the 31st of January. He said then:

"Many of my friends here have, I think, a feeling that it is justifiable, in view of the previous decision of the House, to place in the Bill some proviso which would obviate the danger, to which many of us referred, of the whole of the statements referring to a large number of transactions being handed to the defence."

My Honourable friends, Sir Deva Prasad Sarvadhikary and Mr. Hussanally, were both clear on that point that some amendment of the provision was required. Well, Sir, we have considered this question at length and we have decided that no proviso which does not practically nullify the amendment made by the Assembly would be effective. The alternatives before us if the clause stands as it does now are that either detection will be practically impossible or else proper prosecution of cases in the Magistrates' Courts will be impossible. In these circumstances, Sir, we consider that either this clause must be set right in another place or else in the alternative the whole clause should be omitted and we should return to the existing law. It will be possible to consider that question later.

I now turn to the first point and I wish now to move the amendment of which I spoke on the 31st of January. The position as regards this amendment was indicated by the Honourable the Law Member in his statement on the 26th of January when he said after the amendment moved by Mr. Pantulu had been rejected:

"Sir, with your permission I should like to say a few words. My Honourable friend, Mr. Seshagiri Ayyar, and other Honourable gentlemen having agreed to the retention of the concluding words in this clause, we have, as must have become clear from the division which has just taken place, agreed to the retention of the words 'for any purpose' instead of 'as evidence'; and I understand the position now to be that Honourable Members are prepared to accept the clause as it originally stands in the Bill. But I must make it clear that this will not in any way affect the provision embodied in section 172."

Then, my Honourable friend, Mr. Seshagiri Ayyar, remarked "subject to any further amendments."

The amendment which I then referred to, Sir, is I think an amendment accepted by Honourable Members opposite in principle. We wish to be able to use these statements to just exactly the same extent as the Court is now able to use the diary, and no more.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): No, that was not agreed to.

Mr. H. Tonkinson: If the Court is not able to use these statements in exactly the same way as the Court is now able to use the diary, that is to assist it, to aid it in the inquiry or trial, then there is practically no use in recording these statements at all. I therefore, Sir, move:

"That in clause 33 of the proposed new sub-section (*ii*) of section 62, the following proviso be added, namely:

"Provided further that the court may in the course of the inquiry or trial, send for the record of any such statement and may use such statement not as evidence in the case, but to aid it in the inquiry or trial."

Those are exactly the words of section 172.

Dr. H. S. Gour: Sir, as I told the Honourable Mr. Tonkinson on the last occasion, statements made to a police officer cannot legitimately be used to the prejudice of the accused. They are statements which may be used for the purpose of benefitting the defence, but never to its prejudice. I have no doubt the Honourable Member is not unaware of the leading case known as Dhal Singh's case. That was a case, Sir, in which a certain learned judge convicted the accused upon statements recorded by a police officer in the case diary. That case went to the Privy Council and the Privy Council observed that it was irregular and improper for a judge to use statements recorded in a case diary, which had never been subjected to cross-examination by the accused, to his prejudice, that such statements were intended to be used for the purpose of checking the evidence adduced by the prosecution, but not for the purpose of supplementing that evidence. It is like a judge using statements not accessible to the accused upon which the accused has had no chance of cross-examining the witnesses, and which so far as the statements are concerned are wholly unknown to him. I submit, Sir, the proviso which my friend, the Honourable Mr. Tonkinson, wishes to introduce in the Code will do away with the principle enunciated by their Lordships of the Privy Council, and which has been worked in practice by the courts in this country. I have no doubt my Honourable and learned friend, Sir Henry Stanyon, who has had long forensic and judicial experience of the administration of criminal law, will bear me out when I say that it would be dangerous to allow statements recorded in the police diary to be used as an aid by the judge in the disposal of criminal cases, and I therefore, Sir, oppose the amendment. The Honourable Mover of this amendment, in the course of his speech, referred to the acceptance of his view by Members on this side of the House. I think, Sir, I am voicing the sentiments of the Members on this side of the House when I say that it was never understood by any one that such a statement should ever be admissible in evidence, or be used as an aid by the judge concerned in the trial of criminal cases to the prejudice of the accused.

Sir Henry Moncrieff Smith: Sir, I think, in spite of what my Honourable friend, Dr. Gour, has said, it is a fact that on the previous occasion when this matter was discussed, there was a feeling in this House that some amendment was necessary to get rid of the effect of the words " for any purpose." Dr. Gour's remarks on this amendment have lacked their usual relevancy; in fact I doubted, as I listened to Dr. Gour, whether he understood the amendment which my friend, Mr. Tonkinson, had put forward. Dr. Gour cited one case on which he based the whole of his arguments. He said it was a case in which police diaries had been improperly used by a Court as evidence to corroborate and substantiate the case for the prosecution. Sir, that undoubtedly was a most improper case, but it has nothing whatever to do with the amendment which Mr. Tonkinson is now putting before the House. Sir, in the first place, we are not dealing with police diaries, we are dealing with statements. In the second place, we are not proposing to use those statements as evidence, we are merely proposing to enable the court to use them in exactly the same manner as the court can use the police diaries under section 172 of the Code.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, with all respect, I am unable to understand the attitude taken up by Government in regard to this matter. This House has resolved, with regard

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to statements made by persons in the course of the police investigation,—persons who afterwards come up as witnesses at the trial,—that the accused shall have access to those statements and be furnished with copies of them. It has been said in general terms, but has not been sufficiently defined so as to make me capable of understanding it, that such a provision will make the prosecution of cases impossible. A witness comes up the day after a murder and says that he saw a person like the accused hurrying away from the place where the murder was committed. Later on he comes before the Magistrate and says . . . .

Sir Henry Moncrieff Smith: May I point out that these remarks are irrelevant. Mr. Tonkinson is not in the House for the moment, but Mr. Tonkinson's amendment relates to the words " for any purpose . . . . "

Dr. H. S. Gour: May I rise to a point of order? Who is presiding here to determine whether the remarks are in order or not?

Mr. President: Order, order. The Honourable Member may leave the Chair to decide for itself. Sir Henry Stanyon.

Colonel Sir Henry Stanyon: I was putting forward an illustration in connection with a remark made, in introducing the amendment, by Mr. Tonkinson who said that if the original amendment before the House became law, prosecutions would be impossible. As I was saying, this witness comes up at the trial and states that with his own eyes he saw the accused committing the murder. Now is it or is it not just that everybody concerned with the prosecution and the defence, including the judge and the witness, should know of these differences in statement and should have some explanation of them from the witness? How is the prosecution rendered impossible? Conviction may be rendered impossible—that is another thing—but how is the prosecution rendered impossible by the fact of these two different statements being made public. The amendment which is to-day proposed to be introduced adds another instance to a difficulty which already exists. It is suggested that, like the case diary, these statements may be sent for and used by the Court for the purpose of aiding it in its inquiry and trial. " Used by the Court "—in what way? To influence its judgment? To affect it with regard to the credibility of a witness? If so, then, in fact, but not in the name of law, that statement is being used as evidence. My friend, Dr. Gour, cited Dhal Singh's case, not quite accurately. An influential landlord was convicted of murder and sentenced to death. The case came before the High Court of the province, before a Bench of which I was a member. I was responsible for writing the judgment.

Mr. H. Tonkinson: Sir, I rise to a point of order. The remarks of my Honourable and learned friend have nothing to do with the amendment now before the House. They refer, I think, Sir, entirely to the question of the provision—which will come up for discussion immediately afterwards—which was introduced by the Assembly on the 31st January, namely, the right given to the defence to inspect the evidence.

Mr. President: Has the Honourable Member anything to say on that point?

Colonel Sir Henry Stanyon: My intention was to show that in that case an open reference was made to case diary statements and that was criticised by their Lordships of the Privy Council (to whose decision we

must all bow) instead of, as would have been the more correct procedure, for the Judges to allow themselves to be secretly influenced by those same statements. They were honest enough to say in their judgment: " this is what makes us disbelieve the evidence for the defence." That is all that happened in that case. The conviction was upheld by their Lordships of the Privy Council. However, the point is this, that what is now sought to be introduced is another attempt to allow the prosecution to whisper in the ear of the Court. That is a principle which I respectfully submit is opposed to the rules of justice as understood in Great Britain and in British India. I cannot see to what disadvantage anybody concerned is put by the accused knowing what a witness who is giving fatal evidence against him had previously said.

Sir Henry Moncrieff Smith: Again, Sir, that is entirely irrelevant to the amendment before the House.

Colonel Sir Henry Stanyon: If the Honourable the President rules me out of order I shall bow to his decision. I say that this amendment would exaggerate and increase the evil of this whispering in the ear of the Court. I, therefore, strongly oppose the amendment.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, there are two points which ought to be kept distinct. The one is that this amendment does not go against the amendment carried in this House as regards the use of statements to the Police by the accused. This amendment does not affect it. As regards the propriety of the amendment, I respectfully agree with everything that was said by the Honourable Sir Henry Stanyon upon the matter. On the last occasion, when a similar matter came up, I pointed out that this would amount to what is known technically as " corrupting justice." A Magistrate should have access only to such papers upon which he is to base his judgment: he should have nothing else before him. If his mind is to be prejudiced by looking into certain records which are not open to the accused the result of it will be that the accused will be in a very difficult position, the Magistrate's mind having been secretly biased against him by his having looked into certain papers which he has no access to. And, moreover, as I said on the last occasion and I repeat it again, it is of the essence of criminal justice that the Magistrate's mind should be free from any taint of suspicion, that is favouring the accused or favouring the prosecution. If you put into his hand a statement which is not to be used as evidence, on which he is not to base his judgment, then you allow his judgment to be influenced by a document which is not public property. Sir, it is a dangerous thing to do and I do not think that anybody in this House agreed to an amendment of this nature being introduced. We never agreed to an amendment being introduced which would put into the hands of Magistrates a weapon which he can use against the accused without the accused having an opportunity of putting up any defence. Under these circumstances, I strongly oppose the amendment which has been proposed from the Government Benches.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): Sir, apart from the considerations which have been put forward in opposing the amendment, I think there is one great objection of principle to be raised against the form of the amendment proposed. It is practically a kind of giving with one hand and taking away with the other, or first laying down a principle and then qualifying it 100 per cent. Because the first part of

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the amendment proposes to exclude these statements from the category of evidence whereas the second part, although worded differently, actually keeps them as part of the evidence. I think it is wrong in principle to introduce legislation on these lines at all. Of course, it may be considered to be a strong word, but I think it is the proper word, to say that such a kind of legislation is " misleading." It misleads those who are responsible for the administration of justice, because a conscientious Magistrate or Judge, while looking at this section, will be puzzled as to what interpretation to put upon it. He would say to himself " if I am not to use it as evidence I am to use it as an aid to the administration of justice." How is it to be an aid to the administration of justice? Therefore, apart from the arguments on the merits which have been put forward by various speakers, I say it is a wrong principle to have any law of this kind on the Statute Book.

Mr. P. E. Percival (Bombay: Nominated Official): Sir, I wish to make one point clearer. As I understand the amendment, it is simply to the effect that these statements should be used in the same way as police diaries are used at the present moment. The question of showing the statements to the accused does not arise.

Dr. H. S. Gour: What is the meaning of " use it as an aid."

Mr. P. E. Percival: The amendment does not touch the question of showing the statements to the accused, or of keeping the statements away from the accused. The amendment only is to the effect that the statements of witnesses taken by the police may be used by the Court in exactly the same way as police diaries are at present used by the Court, and to which use no objection has been taken, nor has there been any opposition thereto in this Assembly up to now. Section 172 makes it quite clear that police diaries cannot be used as evidence, but can be used as an aid in such inquiry or trial. Now, under section 162, as it now stands, statements of witnesses to the police cannot be used for any purpose, unless we make the necessary amendment in section 162; and even if this amendment is made they can be used only for the same purpose as police diaries are used. It seems to me that if this amendment is not made, the only practical result will be that the police officers will include all depositions in their diaries instead of including them, as they should include them, in the statements of the witnesses. It is not a question—I wish to make this clear—one way or the other of showing the statements to the accused person. That is an entirely different question. The only question is whether the Courts should not be allowed to use these statements in exactly the same way as police diaries are used, and no objection has been taken by this Assembly to the use of such diaries up till now.

The amendment was negatived.

Mr. President: The question is that clause 33, as amended, stand part of the Bill.

Sir Henry Moncrieff Smith: Sir, clause 33, as it now stands, is to my mind quite an impossible clause. It has two defects. One defect has arisen from the fact that the House has just refused to pass the amendment moved by my Honourable friend, Mr. Tonkinson. We have it now that the statements recorded by the police cannot be used for any purpose whatever. What we had suggested was that those statements should

be used in exactly the same manner as the police diaries can be used and for exactly the same purposes for which the police diaries can be used under section 172. The second defect in clause 33 has been already referred to by Mr. Tonkinson this morning. We have now an absolute requirement, a mandate to the courts, when every witness steps into the witness box, to hand the defence a copy of the statement which that witness has made to the police. Sir, I do not want to re-open the discussion on this particular point. It was pointed out to the House the other day that it was very dangerous to hand over the whole statement. Mr. Hussanally pointed out that it was very dangerous to hand over the whole statement and Sir Deva Prasad Sarvadhikary entirely agreed. He said that we must have something that will make it possible for the Court to hand over at all events only such part as may be relevant or such part as may in the opinion of the Court be essential to hand over in the interests of justice. Sir, there section 162 stands. Statements made to the police cannot be used for any purpose, and they have nevertheless to be handed over in their entirety to the defence the moment the witness steps into the witness-box. I think, Sir, if the House would try to realise what the effect of that is, they would agree that the administration of justice will be most seriously hampered. What I want to suggest to the House is that rather than allow this clause to pass in this form—Government, Sir, will never, so far as they can help it, allow this clause to emerge from the Legislature in this form—the House should take the very simple expedient of deleting the clause entirely from the Bill and leaving section 162 of the Code as it stands unamended. Sir, we have a large number of rulings on section 162 of the Code as it stands. Those rulings are a guide to the Magistracy with reference to the use of statements made to the police. Those statements, Sir, can be handed to the defence for the purpose of contradicting witnesses and that is about all section 162 amounts to. I would therefore suggest to the House that on this motion that clause 33 as amended stand part of the Bill, it should give a negative vote which, as I say, will merely have the effect of maintaining section 162 in the law unamended. Government, as I said, Sir, will strenuously oppose to the very last moment clause 33 standing in the Billl in its present form. It will undoubtedly be necessary to take the matter before another House and try to persuade that other House to take a more reasonable view of the matter. I therefore, Sir, propose myself to vote against the standing of this clause in the Bill and I hope the House will support me in this matter.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): Sir, as my name has been mentioned by the Honourable Sir Moncrieff Smith, I think that I should point out to the House that if the amendment which I had then proposed and actually handed over to the Secretary of the Assembly had been accepted by the Government, all this difficulty would have been avoided. I proposed on the last occasion, that the Magistrate or the Court should have authority in special cases, for reasons to be recorded, to disallow copies of statements of witnesses being given to the accused. That amendment of mine was unfortunately not accepted by the Government and that has led to all this difficulty at this moment. As for the threat Sir Moncrieff Smith has held out to the House of the Government not agreeing to this clause being passed in this form and of their intention to move the other House to negative this clause and to amend it again, I do not think for a moment this House will be afraid of it and should not be. But to make matters more practical I would still propose

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the amendment which I then handed over to the Secretary of the Assembly, and if I am permitted to move it even at this stage by the Chair as well as by the Government, I think all difficulty will be avoided and the clause as then passed will have the effect of having everything that the Government wants.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, I stand aghast at the attitude adopted by the Honourable Sir Moncrieff Smith. What is it, Sir, that this Assembly has done to merit the covert rebuke which he has administered to it? He is going to appeal to a more reasonable Assembly! Sir, what is his complaint? His complaint is that this House adopted clause 162 as proposed by Government. Clause (1) of section 162, if Honourable Members will turn to page 12 they will find, has been adopted to its fullest extent by this House; I mean clause 33—section 162, clause (1). There was an attempt made by my Honourable friend, Mr. Pantulu Garu, to amend it. That attempt failed. So, the clause now accepted by the House is the very one proposed by Government. If he has any reason to be dissatisfied with anybody, he has reason to be dissatisfied with himself and his colleagues on the Treasury Bench. It is they that proposed this clause and this House had the good sense to accept the reasonable proposal made by the Government. Now, therefore, I do not see what the charge against this House is, that he should hold out this threat that he is going to another House, a more reasonable House,—a House in a more reasonable mood or more reasonable House, whatever it may be. Again turning to the proviso what is the crime, Sir, which this Assembly has committed? All that this Assembly has done is, it has modified the proviso as introduced by the Government. That is to say, we have provided that the accused should not be tried in the dark, that the accused should not be convicted on perjured evidence and that the prosecution should not hold up its sleeve former contradictory statements made by witnesses. The prosecution at a particular stage puts forward a witness as a witness to truth. The accused is given the right to inspect former statements made by that witness. Have we committed a very grave sin in giving that opportunity to the accused person who stands to lose his liberty and probably his life, because we give him an opportunity to inspect the previous statement made by a witness in the box? Certainly, I do not think any House, if it has any reason behind it, if it has any reason in its head, would object to such a clause, to such a power being given to the accused person when he is on his defence for his liberty and for his life. Sir, we are threatened with all sorts of horrors, all this arises out of the imaginary fear that the witness might have spoken not only to the particular case under investigation but to other cases—and this happens in very rare cases. That can be avoided by other methods. Why? Instructions can be given to police officers if really you are going to get a witness who will go about telling other stories than the story connected with the particular case then under investigation, to put those statements down not in the particular statement, but in their diaries, in which case it will be safe from inspection by the accused. Not only that. The Court has ample power always to instruct the pleader who appears—pleaders are officers of Courts—" you are not to use such and such portions because they do not relate to the accused." I suppose you can trust the pleader with a sense of responsibility. I suppose pleaders are amenable to the disciplinary jurisdiction of the Courts. I have known cases where the

most confidential papers are handed over to Counsel for accused because they are trusted and they ought to be trusted. In any administration, in any civilised administration pleaders should be trusted. Therefore, I do not think any real serious risk is taken. The risk that there might be statements relating to other matters may be avoided by the policeman not recording it in the particular record, but in his diary and Government can certainly give instructions to that effect to the police officers. Even otherwise, the Court, if the accused is defended by a pleader, can trust the pleader to use his discretion in the matter. It is not every matter which is introduced in a Court which is made public. Is there not power in the Court to say, if it is really such a serious case where the witness has disclosed facts which are going to affect the public interests or the interests of the State or the safety of the State—the Court is not powerless to hold the hearing *in camera* and not allow it to be published? Therefore, there are ways by which these imaginary fears can be safeguarded. Such being the case, this House has done but bare justice to the accused. This is a thing in which the people of this country have been agitating for a long time, namely, that this sort of secret trial, the policeman holding up in his sleeve certain statements given by a witness and not being at liberty to disclose them to the accused person who is on his trial, is a grave reflection upon the administration of criminal justice in this country. I am glad that this House has risen to the occasion and removed that reproach from that administration. Rather than being sorry for it, I hope the Government will be glad that they are, at any rate, at the last moment doing justice to the accused persons who are on their trial.

Mr. President: Do I understand the Honourable Member from Karachi to move his amendment?

Mr. W. M. Hussanally: If I am permitted to do so.

Mr. President: Amendment moved:

"In the proviso in clause 33 after the words 'Indian Evidence Act, 1872' add the words 'unless for special reasons to be recorded the Magistrate deems it inexpedient to grant a copy when he shall refuse to do so'."

Mr. T. V. Seshagiri Ayyar: May I ask for a ruling from you, Sir, whether this amendment should not be taken to have been vetoed when it was not moved on the last occasion? It was on the paper but it was not moved.

Dr. H. S. Gour: The amendment now proposed to be moved will be inconsistent with the amendment already carried by the House.

Mr. President: The amendment was handed at the table in manuscript, and as far as I know it was never on the amendment paper.

Mr. T. V. Seshagiri Ayyar: If I remember aright, the Honourable Member had handed it over to the Chair. He says he handed it to the Secretary of the Assembly who must have handed it over to the Chair, and I take it from the fact that he did not move it or press it that it was given up.

Mr. President: It was never moved. It was certainly not put from the Chair and the question could not come before the House until it was put from the Chair on a motion moved.

Mr. T. V. Seshagiri Ayyar: If I understand aright, the position was this. Mr. Hussanally had not sent in his amendment in proper time. He had brought it later on and objection was taken on the Government side that it was not in proper time and therefore it should not be allowed to be moved. That is what, if I am right, took place. In those circumstances it was not pressed. Therefore, not having been allowed to move it as it was not in proper time, is it now open to the Honourable Member to move it again? A number of amendments in that way were rejected.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): My own recollection of the case is this. In the course of a speech my Honourable friend, Mr. Hussanally, made a suggestion that if an amendment of this kind were embodied the amended clause might be acceptable to the Government, but no such amendment was moved by him, until at the end he said, " I am prepared to move," and then the Government I think said, " Well, it can be left to another occasion."

Mr. W. M. Hussanally: I think Mr. Jamnadas Dwarkadas has correctly pointed out what happened on the last occasion.

Mr. President: The Official Report gives no indication whatsoever that the Honourable Member from Karachi moved any motion at all. The words with which he brought his speech to a close were:

" I would, therefore, Sir, with your permission suggest a sort of compromise between the two parties."

That is a long way from moving an amendment. Again it says:

" A compromise of this kind would suit both sides, and ought to be accepted by the Government as well as by my friends on this side."

Presumably, he threw out the idea in order to see whether it would catch on, and apparently it did not catch on. The Honourable Member is perfectly entitled to move the amendment now.

Mr. T. V. Seshagiri Ayyar: We have had no notice of this amendment and I take objection to its being moved now. If you allow it, it is another matter.

Mr. President: As the Honourable Member has just been pointing out, though formal notice has not been given, he has known the substance of the amendment since the 31st of January. The amendment is now before the House for consideration.

Mr. W. M. Hussanally: So far as I am concerned, I have nothing more to add to what I have already said.

Sir Montagu Webb (Bombay: European): May I ask that the amendment may be read out again as we have not got copies of it?

Mr. President: " In the proviso in clause 33 insert after the words ' Indian Evidence Act, 1872 ' the words ' unless for special reasons to be recorded the Magistrate deems it inexpedient to grant a copy when he shall refuse to do so '."

The question is that that amendment be made.

The motion was negatived.

Mr. President: The question is that clause 33, as amended, stand part of the Bill.

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, I wish to refer to the speech just made on the general clause 33 by Mr. Rangachariar. I fear, Sir, that on this occasion in the opening part of his speech Mr. Rangachariar has departed from his usual fairness. He asked with indignation and scorn why the Government found fault with the Honourable Members sitting round Mr. Rangachariar, because they had opposed clause 33 which was drafted by Government. Sir, I think we may complain that that is a merely debating point. Clause 33, if Honourable Members will refer to page 21, includes the whole of section 162, that is printed in italics.

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Rao Bahadur T. Rangachariar: I said 162 (1) in clause 33. My wording was very exact.

Mr. P. B. Haigh: What difference does that make? Mr. Rangachariar spoke scornfully of Government because they complained that Honourable Members had passed clause 162 (1). 162 (1) contains a proviso. I ask the House to direct its attention to the exact wording. "No statement made by any person to a police officer, etc., shall be used for any purpose *save as hereinafter provided.*" Then follows the proviso: "Provided that it may be used in particular circumstances therein detailed." That proviso has been cut out entirely by the amendment.

Rao Bahadur T. Rangachariar: The proviso is there.

Mr. P. B. Haigh: That proviso has been entirely changed in character by the amendment passed the other day and the first part of section 162 (1) is therefore rendered entirely meaningless. That is why Government justly object to having the clause passed as it has now been amended.

I wish to pass on to Mr. Rangachariar's general review of the position that has now been created by the amendment that was passed the other day. I would ask the House to remember that if a police officer is making a careful investigation of a case, then, in order to aid his own memory, in order that he may know exactly what every witness has said, he must if he is to do his work thoroughly in a difficult case take down the statements of important witnesses, and these statements cannot at that stage of investigation be expected to contain only matters that are strictly relevant to the inquiry and to the case as it will appear against the accused who is perhaps at this moment unknown. If the clause is passed, those statements must now be placed *in toto* in the hands of an accused person as soon as a witness who made them goes into the box. They will fall into the hands of the accused and he will thereby be possessed of all the information that was given by that witness to the police officer in the course of the inquiry whether it refers to the particular accused present, who is now in the box, or to other persons who have perhaps no connection with the crime or to persons who may be supposed to have had connection with the crime and are not yet detected or apprehended. All these things are to go into the hands of the accused. But Mr. Rangachariar says this can be easily cured. Why do not the superior officers of police and executive officers give instructions to their investigating officers, inspectors and sub-inspectors, only to take down the statements in a proper manner? Now, Sir, I am surprised that a lawyer of experience like the Honourable Member should make such a suggestion. It seems to me that he is practically inviting the subordinate investigating officers of police to cook the statements that are going to appear as the statements of the accused. Those statements are not signed by witnesses making the depositions.

[Mr. P. B. Haigh.]

They are not recorded solemnly on oath or in an office with people standing about. They are taken down on bits of paper in village chavadis, under trees, anywhere; and any sort of paper could be produced in those circumstances by the police officer and he could say "This is what the witness said to me and it fits in perfectly with his deposition in Court." A suggestion that instructions of this kind should be issued amounts to inviting subordinate police officers to prepare false statements in order to assist their case. Then there was another suggestion. There is no need, says the Honourable Member, for Government to be alarmed. Surely, he says, the Courts have power to prevent any mischief being done. The court can advise the pleader for the accused that grave public interests are involved, that he must not refer in the course of his speech to certain portions of the statements which he has just been allowed to see, that the matter must be kept entirely concealed. The pleader for the accused is, we are told, an officer of the court. He is subject to discipline. But I ask, what about the *accused*? The *accused* is not an officer of the court. The *accused* is the person who is to see these statements There is nothing in section 162 about the statements being merely shown to the counsel or pleader for the accused or to an officer of the court. The *accused* is to see them. It is he who will find out exactly what witnesses have deposed against him or his associates. It is he who will be in a position to know what things have been suggested to the police about persons perhaps not connected with the case at all. Does the Honourable Member seriously suggest that no mischief can be done, that the court has full power, by merely instructing a pleader, to keep the matter confidential, to prevent any mischief being done. The Honourable Member knows perfectly well that if these statements are shown in their entirety to the accused person, there may on occasions be grave risk of injury to innocent persons and injury to the interests of the State. And yet he thinks that all this can be set aside by the mere suggestion that the court has full power to prevent any harm being done. I trust that the House containing as it does so many members of practical judicial experience will not accept an argument of this kind from the Honourable Member.

Finally the suggestion came from the Honourable Member that the court can always get over the matter by holding the case *in camera*. Sir, I am astounded that such a suggestion should come from the Honourable Member opposite. Even if the case is held *in camera* what difference does it make. The accused will see all these papers. The accused will be able to disclose the information. The accused will have every power to bring about injury to those who have spoken to the police against him and against his friends. Sir, this is really a serious matter which will gravely hamper the administration of justice and I submit that Government are perfectly justified in stating that as they have failed to persuade this House to reject that amendment, if they cannot persuade the House to reject the whole clause as it stands and restore the old clause, they will take the matter up in another House and safeguard the proper administration of public justice in the manner provided for by the constitution of this country. I trust that the House will reject this clause.

Dr. H. S. Gour: I am afraid the Honourable Sir Henry Moncrieff Smith has unnecessarily added a tone in the course of this discussion which I strongly deprecate and I do not think my Honourable friend, Mr. Haigh, was even entitled to refer to the powers of another House and to the veiled

threat that if this House is not amenable to reason, an appeal will be made to another House to correct its errors. As to this part of the constitution, it was quite unnecessary to remind this House about it. This House must decide this question fearlessly, and undismayed by any threat of correction by any other House or in any other place. I pass on, Sir, to reply to the more material objections raised by the Honourable Members. The Honourable Mr. Haigh saw daggers in the air, he told us that it will be a monstrous thing if statements recorded by the police officer in the course of an investigation were revealed to the accused, because those statements may contain other statements highly prejudicial to the interests of the State and which it would be therefore prejudicial to disclose to the accused. I am perfectly certain that the Honourable speaker was not unaware of the provisions of the Act of 1882; the old Criminal Procedure Code, which preceded the present enactment of 1898. What was the practice then? And how far was the safety of the State imperilled by the statements which were then available to the accused, and copies of which were delivered to him? Can my friends on the other side cite a single example that during these long years the statements taken by the police officer and made available to the accused ran the risk of which the Treasury Benches complain and of which their supporters, including the Honourable Member from Bombay, complain? That, I submit, is a short answer to the fears and apprehensions on the part of the Government Benches. I go further and say—you try the accused, the police officer has made an investigation into his case, the first statements of the witnesses have been taken down by him, these are the statements upon which the accused has been brought up on his trial. These statements have been subsequently improved upon or added to. The accused sees the statements made before the Court, and demands that contradictory statements made by the witnesses before the police should be made available to him so that his previous statements to the police be used to contradict him. Such a procedure is not only allowable by law but is directly contemplated in certain sections of the Indian Evidence Act which lays down that a witness may be contradicted with reference to his previous statements. His previous statements are there. The law allows that a witness may be contradicted with reference to his previous statements. What is the answer of the Government when they refuse the accused the permission to refer to statements which the law allows and which is a legitimate subject for cross-examination? It cannot be denied that witnesses in the course of the trial, as the case develops, keep on changing their statements. I do not say it is an invariable practice, but I do say that in many cases the true test and sometimes the sole test available to the accused is that the witness has gone back upon his previous statement which he made to the police and which he has since exaggerated for purposes best known to himself. If the Treasury Benches refuse to give copies of these statements, I ask them how is the accused to challenge the credibility of witnesses tendered by the prosecution? We are told that the Magistrate will look into it. I am sure, Sir, my friend, the Honourable Mr. Haigh, was present in the House when I pointed out, and it was also pointed out by the Honourable Sir Henry Stanyon, that the Magistrate cannot be, and is not, the proper person to act as the accused's cross-examining counsel. The Magistrate's duty is to hold the balance even and to leave the prosecution and accused to conduct their case in the best way they can. To say that the Magistrate or the Court is entitled to refer to these statements, as is embodied in the provision now before the House, but not bound to give a copy of these statements to the accused, is to say that the Court has to find out what is in the mind of the accused and to do

[Dr. H. S. Gour.]

work which is the legitimate work of the accused's counsel. How is the Court to know upon what points the counsel for the accused is going to cross-examine these witnesses? What is his defence, and for what purposes he wishes to use the statements of these witnesses made to the police in the course of the investigation? These are all matters of very serious importance, and those who have practised at the bar or presided on the Bench know too well that the provision, the existing provision, namely, that the Court shall refer to the statement, is wholly inadequate, and in many cases wholly illusory to protect the accused. I submit, therefore, that on the last occasion this House by a very large majority (*A Voice*: "Only by two")—then at any rate by a much larger majority on this occasion, should decide that it would be in the interests of justice as also in the interests of the accused, and it would be, as Mr. Rangachariar rightly pointed out, in consonance with consistency, that these statements should be made available to the accused. After all, we are making no innovation. We are after all treading upon the old beaten ground; we are going back to the old practice; the innovation introduced by the Amending Act of 1898 has been found to be inadequate and insufficient in practice. Consequently we are going back to the old law, and I do not think that there need be any apprehension on the part of the Members of the Government or anybody speaking on behalf of the Government that there is likely to be any danger to the State, or that the prosecution would fail in cases where they do not deserve to fail. I therefore submit, Sir, that the amendment which we accepted on the last occasion and which was endorsed by the vote of this House ought to be reaffirmed on this occasion.

Mr. H. Tonkinson: Sir, I desire to object to the statements which have been made by two Honourable Members of this House to the effect that my Honourable friend Sir Henry Moncrieff Smith used a threat. My Honourable friend merely said, what is a fact, that Government propose to use all their constitutional powers in putting this clause straight. That, Sir, is by no means a threat and I think it was quite a misnomer to say it was a threat. (*Dr. H. S. Gour*: "Was it intimidation?") My Honourable friend Dr. Gour refers once again to the Code of 1882. I stated on January 31st and I repeat now that we are not going back to the Code of 1882 by the proposal in the Bill. We are going to an entirely different position. The Code of 1882 did not, as my Honourable friend says, allow inspection of the whole of these statements to the accused person. I read out the provisions of section 162 on that occasion and there is not the least doubt about it that my Honourable friend's statement is in this respect incorrect. We are dealing, Sir, with a proposal to allow inspection of the whole of these statements to the accused. That, Sir, my Honourable friend Mr. Rangachariar thinks may be harmful in a few isolated cases. I say, Sir, that it will be harmful in almost all the cases which are under investigation in this country. There is practically no case, Sir, in which these statements do not include information as to the sources of police information, and it is quite impossible, Sir, for any Government without grave anxiety to allow such a clause as this to be enacted. I would now merely remind the House that they are proposing to do something which is not done in any country in the world.

Mr. W. M. Hussanally: Sir, may I ask the Honourable Member to read the provisions of section 162 in the Code of 1882: we have not got that Code before us

Mr. H. Tonkinson: Section 162 of the Code of 1882 runs as follows:

"No statement other than a dying declaration made by any person to a police officer in the course of an investigation under this chapter shall, if reduced to writing, be signed by the person making it or be used as evidence against the accused."

My Honourable friend Dr. Gour says we are going back to the law as embodied in that clause. He knows quite well that we are doing nothing of the sort.

Dr. H. S. Gour: If my Honourable friend is prepared to reproduce that section 162 we are prepared to accept it now.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, the point in dispute seems to me to be very simple and I am afraid a good many things have been said which do not pertain to the matter in dispute. We are all agreed that statements made by a witness to a police officer relating to an accused person who is under trial before the Court ought to be shown to that accused person. Up to this point there is not much dispute. (*A Voice*: "A lot of dispute.") We have reached that stage. The danger which is now pointed out is that in the statement recorded by a police officer there may be matters relating to other persons who are not before the court. That is to say, a witness may give information to the police about matters in connection with people other than those before the court, and the objection is taken that matters relating to such persons ought not to be shown to the accused. A simple remedy for that is that a police officer should take care not to jumble up together matters connected with different people in one statement. Mr. Haigh said how is it possible for him not to mix up things; when a man makes a statement he may refer to several people. He added that it might end in police officers dressing up their statements or something like that. What I say is that a police officer before he takes down a witness's statement in writing naturally finds out orally what that witness can testify to. A policeman does not begin to write at once as soon as a witness begins to speak. He finds out the whole story first and then decides whether it is worth recording. That, I suppose, is admitted. A policeman is not a writing machine or a recording machine. He first examines a witness, finds out from him all the matters that he can speak of and then begins to write out his statement. Well, then, accepting the clause as passed by the Assembly, what the police officer has to do is to write out under separate heads the information which he knows he is going to get from witnesses. It will not be difficult to separate the details relating to one accused from those relating to another or to a person who is not involved in his inquiry. As I have said on another occasion, this will only make the policeman more careful and systematic in taking down these statements. And after all, statements which deal with a number of people are not of frequent occurrence. The cases about which so much anxiety is displayed by the Government Benches are not of frequent occurrence. It is only in rare cases, as those relating to a dacoit gang or in which a large number of people have conspired to commit an offence, in which there may be a witness who has been acquainted with the secrets of the gang or of the conspiracy—it is only in such cases that statements of an involved and complex character will be made. And these are very rare cases. In order to give a sort of protection in these rare cases, I do not think that the law should be altered so as to put in the hands of Magistrates the power to refuse or to exercise their discretion and then

[Rao Bahadur C. S. Subrahmanayam.]

refuse inspection or a copy of statements of witnesses in ordinary cases. There is no use in the Government magnifying the dangers and difficulties. I am afraid for some reason or another, they have not taken a right perspective of this amendment. They have unnecessarily worked themselves up into a feeling that the whole administration of justice will crumple up and the State will be in grave danger if the accused are allowed inspection of these statements. What has been irregularly done, what has been done at great cost and what has been able to be done by wealthy people at the expenditure of a considerable sum of money, we ask now let it be the right of the poorest man as well to know what has been said by a witness. The importance of these previous statements has been referred to and I wish also to refer to it. A man says a certain rambling statement, almost amounting to hearsay, almost amounting to what he has heard, almost amounting to rumour, which is down in the record made by the policeman. But when he comes to Court to give evidence before a Magistrate some days afterwards, he gives a cut and dried, neat story, omitting all those things which would make it amount to hearsay or rumour and makes it straight and definite, in which case it is of great importance to the accused person to show up that witness and make the Court understand that this man has substantially improved his story and therefore he is not a reliable witness. And I am afraid any opposition to that course would simply make us believe that the Government is interested, as is the common repute, in getting persons accused of offences by hook or by crook, and, therefore, I deprecate very much the unnecessary anxiety and what has been styled to be a threat or the exposition of constitution under which we are working, that this section is the section on which the Government has pinned its faith and has staked its reputation.

Colonel Sir Henry Stanyon: Sir, we the non-official Members on this side of the House expect, and constantly receive—perhaps not as often as we should like, but still frequently—consideration from the Government of propositions which we submit for the opinion of this House, and I feel sure that I voice the sentiments on this side of the House when I say that we regard ourselves bound to give reasonable consideration and re-consideration to propositions put forward on behalf of Government against views which we may entertain. We have, on a former occasion, adopted an amendment of clause 33 which the Government claim to be unworkable. I have already said that though more than one speaker has denounced this Resolution as unworkable, we have not yet had any detailed description of how it would be unworkable. Nevertheless, speaking for myself, I accept the absolute good faith of the objection put forward to our Resolution by Government. It seems to me—and I think in this matter I voice the sentiments of those with whom I have agreed on this clause—that the object of both parties in this controversy is the same, namely, the securing of a fair trial. We do not want on this side to give undue favour and advantage over the prosecution to the accused; and I think—indeed it is my own conviction—that Government do not wish to give undue advantage over the accused to the prosecution. The object of both parties to the controversy being the same, it does seem to be anomalous that we should not be able to arrive at an agreement on this particular clause. We claim that the statements made to the Police by persons who afterwards come up as witnesses in support of a prosecution should be made known to the accused. It has been said, though not directly from the Treasury Benches, that one difficulty of the proposal which was accepted in this

House with regard to this proviso will be to give accused persons access to everything, relevant to the case or irrelevant, and matter which it may be of great interest in the administration of justice to keep unpublished. Some suggestions have been put forward as to how an accused can be prevented from obtaining information of anything except that which is relevant to the accusation against him. But these are matters of detail. They require very careful working out. I quite accept what the Honourable Mr. Haigh said, namely, that the record made by an investigating officer should be complete and not abridged, or I think he used the word "cooked". But it does seem possible, if the proviso so far accepted by the House goes too far and creates difficulties in the way, not of the prosecution but of the administration of justice generally,—the public interest,—for some modified form of that proviso, acceptable to both parties, to be devised. I am not prepared with any amendment. The subject is too difficult and I think beyond my capacity. But so long as we are given this principle (in accordance with, as Dr. Gour pointed out, the principles underlying our law of evidence) that whatever a witness states immediately after an offence is committed should be open to comparison with what he may say when he comes into Court, so long as that principle is ensured and the relevant part of his statement is made public for treatment and comparison, we on this side will be satisfied. This is urged not merely in the interests of the accused. In the present law we allow the court to aid itself with these statements. How many a prosecution has broken down because a witness is found by the Judge to have said at the investigation something different from what he said at the trial, and the Judge has not got before him any explanation from the witness, which, if he had been able to obtain it, might have entirely altered his view of the man's credibility. It is fair to the witness, it is fair to the prosecution, it is fair to the accused, it is fair to the Magistrate, that the true cause underlying the discrepancies in statements, *e.g.*, either the original falsehood of the witness due to his desire to screen the accused or avoid trouble, or the subsequent falsehood of the witness, due to his desire to aid the prosecution,—should be laid open to the light of day in order that truth and justice may prevail. The suggestion that I have to make is that if any amendment of this proviso can be made which will do away with the difficulties and dangers which the Government apprehend and still leave this one principle available, namely, that conflicting and contradictory statements shall be open to comparison and explanation, then it will be possible to reach an agreement on a matter that most certainly should be settled, if possible, in this House.

Mr. Harchandrai Vishindas: Sir, at the very outset, I must say that we accept the statement from the Government Benches that the remarks of Sir Henry Moncrieff Smith were not intended to be a threat. We may also accept the statement made by Mr. Tonkinson that the old Criminal Procedure Code of 1882 in its provisions in section 162 did not go to the length stated by Dr. Gour. But what we are concerned with is, not what the old law was, or what the law of 1898 was, but whether the law as it is now going to be proposed should be acceptable and is in the interests of justice or not. Therefore we should strip the controversy of all the verbiage with which it has been surrounded and confine our attention to the merits or demerits of the provision now under discussion. It will be sheer waste of time on my part to repeat the arguments that have been from time to time advanced in favour of accused having access to the statements made before the police, and also what has been said against it. But I would

[Mr. Harchandrai Vishindas.]

remind the House to be practical men and to confine themselves to the facts and truth of the case and not to be taken off their feet or dragged by their heels by somebody conjuring up visions of horror, or declaring that Government would become impossible, justice would be impossible and so on. They might as well state there might be a revolution or an earthquake. They must show that and not merely give their *ipse dixit*. Much stress has been laid by speaker after speaker on the Government side on the statement that there is a good deal in the police records which it would be entirely unnecessary for the accused to know and dangerous for the accused to know. Now I have been wondering in my own mind as to why this should be so, and speaking personally, after having 37 years' experience as a practitioner, I certainly have never come across a case in which the police statement contained anything which was irrelevant to the inquiry, nor have I heard from any other practitioners in my own part of the country, or in any other part of the country that police statements contain so many other things. And why should they? A policeman can be credited with at least as much sense as to know whether what the witness is saying is relevant to the inquiry and to the persons who are accused of the offence. If he is not sensible enough to know that, then he does not deserve to be appointed to his post. He must be chucked out at once. If he can be credited with doing his duty properly, he should confine the record only to what is relevant to the case. As Sir Henry Stanyon said, we have great faith in the *bonâ fides* of the Government but we want to point out to them that their fears and apprehensions are greatly exaggerated, and that in fact they will not exist. Mr. Haigh said, Oh, Mr. Rangachariar's proposal to give instructions to police officers who are recording statements would be impracticable and would lead to the cooking up of statements by the police officers. Why? I do not see the force of that argument at all. Policemen already have instructions from higher authority as to how they are to record their statements. Is it not now the practice that the police have certain *chalans* and other forms in which they receive instructions from their superior officers as to how to record evidence, statements and so on, and how to keep their diaries? Well, there is nothing wrong and improper in the policeman being instructed to confine the record entirely to statements that are relevant to the inquiry. Now, no speaker from the Government side has challenged the propriety of the argument that if the statements recorded by the police are confined to relevant matter, in justice the accused person is entitled to have a copy of those statements. The objection that has come from the side of the Government is to matters that go beyond the case coming to the notice of the accused to the prejudice of the State and to the prejudice of other persons. As I have said, that is a very small matter, and with due deference to the Honourable Mr. Tonkinson, who says these things happen very frequently, I would say that his fears are imaginary, and such contingencies will not occur frequently. They would occur perhaps in one in a thousand cases. And you are not going to take account of exceptions; you are going to see what would lead to doing justice to the accused person as well as to the prosecution. As Sir Henry Stanyon has pointed out, in some cases the production of these statements might be very beneficial to the prosecution itself because it may appear that the witness whose statement is impeached by the defence pleader in the court, has said the same thing before the police, and the prosecution would receive help from that. They would point out that this man said the same thing before the police as he is saying now. So it is not in the interests of the accused person only but of

the prosecution also to retain the clause. I said before that we should not conjure up visions of horror because of statements made by some speakers, but we should closely examine the merits and demerits and the facts of the situation. Therefore I submit, Sir, that there is not the slightest change of harm arising from the retention of this clause 33. I also said that the Government were perfectly justified in stating that they would adopt all the constitutional means in their power by going to the next Chamber. There was no threat in that; nothing improper in that, because they had to instruct their supporters that they should strongly vote on their side. But at the same time, I say that, whatever the Government may do constitutionally, so far as we Members of this Assembly are concerned, we find that the Government position in this particular matter is not sound but that our position is sound and that clause 33 should stand and should not be rejected.

Mr. B. C. Allen (Assam: Nominated Official): Sir, I am very reluctant to take up the time of the House even for two minutes in further discussing this much disputed clause. But Mr. Vishindas has asked a question to which I think an answer should be given. He has asked: Why do Government object to the clause as now amended? What objection is there to it? The answer is a very simple one. A police officer, when he goes into the interior to investigate a theft case, a dacoity case, a burglary case, records the evidence that is brought before him and frequently he finds that the statements of a witness give valuable evidence not only with regard to the case which he is investigating but also with regard to a number of cognate cases. For we all of us here know that in this country crime is frequently committed by gangs of criminals and that the detection of one crime leads to the detection of many. Now, if the clause as amended is passed into law, it would mean that the police officer, if he was compelled to prosecute the man he was originally pursuing before the detection of the other cases was completed, would be required, as soon as the accused was placed in the dock and as soon as he brought forward his witness, to make over to him a statement containing valuable information not only with regard to the case then under the consideration of the Magistrate but also the information calculated to completely wreck his prospects of success in the various other linked and cognate cases. I hope, Sir, that the House will agree that this is so grave an objection that Government is justified in protesting against its being passed into law.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, much as I should have liked that some amicable settlement should have been arrived at with regard to this clause, I find that it is not possible. I suggested in the course of the discussion at an earlier stage that the word "may" might be used for "shall" so that the matter might be left to the discretion of the Court. Sir, my experience of Judges differs from the experience of some of my friends on my right who have a different experience of mofussil Magistrates. They say that Magistrates would interpret "may" absolutely arbitrarily. But, I believe, Judges with a judicial turn of mind would interpret "may" as almost "shall." Judges who have a keen sense of justice and responsibility interpret the discretion given to them as a discretion to be exercised in the interests of justice. That is the proper judicial temperament. But, as my friends say that Magistrates in the mofussil do not exercise their discretion in that way, of course, I cannot persuade them to accept what I suggested at that time. I do not, however, share the apprehensions

[Mr. J. Chaudhuri.]

that the Government Members do in this respect. Of course, I do not practise now, but from whatever limited practice I had in the courts, of old, I found that the police papers always came up with instructions. The defence got it somehow. So, what is now provided for in the section will only deprive the police of their illicit gain. But, in other respects, I wish to point out to the Government Benches that there are two diaries kept—one a general diary; in this the police Inspector, *i.e.*, the Inspector in charge of the case, records the minutes of his visits to different places, his investigations and inquiries. Then there is another diary kept which is called the case diary or a special diary. In this he puts down the statements of persons he examines in that particular case. So I suggest that my Honourable friends in charge of the Bill need not go to the other Chamber to have this section amended and create any conflict with us—that would be very undesirable—when there is a more reasonable course open to them. What they need to do is that the executive should give instructions to the police officers to keep their diaries properly. That is, in the case diary they may enter the persons examined and in the general diary enter all miscellaneous matters with regard to their investigations, with regard to their suspicions, with regard to the persons suspected in this and other cognate cases. Thus if proper instructions are given, which it is the legitimate function of the Executive to give, to the police officers through the Inspectors General of Police in the provinces, they will avoid any failure of justice, or any prejudices so far as either the prosecution is concerned or the defence or third parties concerned. I, therefore, submit that there is no occasion for generating so much heat over this discussion, if the matter may be so easily settled by means of official and executive instructions to the police to keep their diaries properly.

The Honourable Mr. A. C. Chatterjee (Education Member): Sir, I am not a lawyer and I have not tried a case for the last ten years. I had nothing whatever to do with the framing of this Bill. And I confess that I had not taken much interest in the debates on this clause until this morning. But, Sir, I had a fairly large amount to do in the way of trying criminal cases during the first fifteen years of my service in districts which were considered fairly criminal and I have been very seriously impressed, after what I have listened to this morning, with the difficulties that Magistrates and the police in districts in the country will encounter if this clause as it has now been passed becomes law. My Honourable friend, Mr. Chaudhuri, has suggested that the difficulties will not be at all serious, that Government can give instructions to police officers to prepare their special diaries with special reference to this clause. I think, Sir, any such course would be fraught with the most serious dangers. My Honourable friend, Mr. Haigh, has already referred to these dangers. I do not know whether Honourable Members here have as much acquaintance with the ordinary sub-inspector of police as I have. As I have said, for fifteen years I was a Magistrate, either a District Magistrate or a subordinate Magistrate. For another five or six years I went about the villages in an entirely different capacity and I saw a good deal of the Magisterial and the police officers' work as an outsider. And I think, Sir, it would be most dangerous to give any instructions to the police to have these special diaries prepared in the way that the Honourable Mr. Chaudhuri and my friend, Mr. Harchandrai Vishindas, have suggested. I think it would be extremely unfair to the accused themselves if the police prepare their special diaries according to definite instructions given by the superior officers so as to

exclude all matters which are not connected in a direct manner with the case in question. I think, Sir, that the Magistrate then will be prevented from having a true perspective of the entire investigation. I think the Magistrate will be placed in an extremely difficult position. He will not be able to arrive at a correct conclusion as to whether the investigation was conducted in a proper and *bonâ fide* manner. The whole investigation, the whole proceedings as they will come before the Magistrate, will really be in a cooked form. In the interests of the accused themselves, Sir, I deprecate the amendment that has already been passed. I hope, Sir, that this appeal that I am making to the Members of this House will have some effect. I am not doing so as a member of Government. I am doing so as one who has always been interested in protecting the interests of the accused and in seeing that justice is done.

1 P.M.

Mr. Jamnadas Dwarkadas (and some Honourable Members at the same time): I move, Sir, that the question be now put.

The motion was adopted.

Mr. President: The question is that clause 33, as amended, stand part of the Bill.

The Assembly then divided as follows:

AYES—41.

Abdul Quadir, Maulvi.	Lakshmi Narayan Lal, Mr.
Abdul Rahman, Munshi.	Misra, Mr. B. N.
Abul Kasem, Maulvi.	Mukherjee, Mr. J. N.
Agnihotri, Mr. K. B. L.	Mukherjee, Mr. T. P.
Ahmed, Mr. K.	Nag, Mr. C. C.
Asad Ali, Mir.	Neogy, Mr. K. C.
Ayyar, Mr. T. V. Seshagiri.	Pyari Lal, Mr.
Bagde, Mr. K. G.	Ramji, Mr. Manmohandas.
Bajpai, Mr. S. P.	Rangachariar, Mr. T.
Basu, Mr. J. N.	Reddi, Mr. M. K.
Chaudhuri, Mr. J.	Sarfaraz Hussain Khan, Mr.
Das, Babu B. S.	Shahani, Mr. S. C.
Faiyaz Khan, Mr. M.	Singh, Babu B. P.
Gajjan Singh, Sardar Bahadur.	Sohan Lal, Mr. Rakshi.
Ginwala, Mr. P. P.	Srinivasa Rao, Mr. P. V.
Gour, Dr. H. S.	Stanyon, Col. Sir Henry.
Gulab Singh, Sardar.	Subrahmanayam, Mr. C. S.
Ikramullah Khan, Raja Mohd.	Ujagar Singh, Baba Bedi.
Jamnadas Dwarkadas, Mr.	Venkatapatiraju, Mr. B.
Joshi, Mr. N. M.	Vishindas, Mr. H.
Kamat, Mr. B. S.	

NOES—32.

Abdul Rahim Khan, Mr.	Graham, Mr. L.
Akram Hussain, Prince A. M. M.	Haigh, Mr. P. B.
Allen, Mr. B. C.	Hindley, Mr. C. D. M.
Barua, Mr. D. C.	Holme, Mr. H. E.
Bijlikhan, Sardar G.	Hullah, Mr. J.
Blackett, Sir Basil.	Hussanally, Mr. W. M.
Bradley-Birt, Mr. F. B.	Innes, the Honourable Mr. C. A.
Bray, Mr. Denys.	Ley, Mr. A. H.
Burdon, Mr. E.	Moir, Mr. T. E.
Cabell, Mr. W. H. L.	Moncrieff Smith, Sir Henry.
Chatterjee, Mr. A. C.	Percival, Mr. P. E.
Cotelingam, Mr. J. P.	Ramayya Pantulu, Mr. J.
Crookshank, Sir Sydney.	Rhodes, Sir Campbell.
Dalal, Sardar B. A.	Tonkinson, Mr. H.
Davies, Mr. E. W.	Tulshan, Mr. Sheopershad.
Faridoonji, Mr. R.	Webb, Sir Montagu.

The motion was adopted.

Sir Henry Moncrieff Smith: Sir, I move that the clauses and sub-clauses of the Bill be re-numbered in consecutive order.

Mr. President: The question is that the clauses of the Bill be re-numbered in consecutive order.

The motion was adopted.

The Title was added to the Bill.

The Preamble was added to the Bill.

THE INDIAN OFFICIAL SECRETS BILL.

Mr. L. Graham (Legislative Department: Nominated Official): Sir, I rise to move:

"That the Report of the Select Committee on the Bill to assimilate the law in British India relating to official secrets to the law in force in the United Kingdom, be taken into consideration."

Sir, I have many reasons for craving the indulgence of this House, but I shall not trouble the House with many of those reasons. My first reason, Sir, is that I claim to be a new Member—may I say a very new Member—for I think it is unusual for a new Member to be entrusted with work of this importance in his first attendance in this House. The reason for this is, as you all know, the most regrettable illness of my Honourable Leader, Sir Malcolm Hailey.

Now, Sir, the Bill was, as you know, introduced some time ago in this House, and went, I may say, to a very representative Select Committee. That Select Committee performed its labours most conscientiously. I am in the happy position of testifying to the labours of the Select Committee because I was not a member of that Select Committee. The Report has been before the House for the last fourteen days or so, and certain amendments have been received. I do not propose to refer to those amendments in detail now. The Report I think is a full Report and there is no reason why I should make any lengthy speech now in moving that the Bill be taken into consideration.

Members probably would like to be reminded of the state of our law in this country at present. It is at present contained most inconveniently in the Indian Official Secrets Act, 1889, as subsequently amended by the Act of 1904. It is also contained in the English Official Secrets Act of 1911, and there is a provision in that Act which I think it would not be altogether superfluous if I should read it to the Members. That section runs as follows. (This was enacted in 1911, I may mention):

"If by any law made before or after the passing of this Act by the legislature of any British possession provisions are made which appear to His Majesty to be of the like effect as those contained in this Act, His Majesty may, by Order in Council, suspend the operation within that British possession of this Act, or of any part thereof, so long as that law continues in force there, and no longer."

Now, Sir, possibly Members of this House may desire to have some reason why an English enactment should apply to India, an enactment relating to a matter in which we ourselves have legislated. The reason is

this. Our Act of 1889 followed very closely the English Act of the same year or a year before. That Act was found insufficient in England and it was replaced by the Official Secrets Act, 1911. The secrets with which we are concerned are not only secrets affecting India or part of India; they are imperial secrets to a very large extent, and that is the reason, Sir, why legislation on this subject should either be contained within the four corners of one Act applicable throughout the Empire, or that legislation very closely approximating to that legislation should be in force. The Act of 1911 gives the option, "You take this Act or you frame a similar Act." You may ask why we have not remained content with the English Act. With the substance of this Act of 1911 we are content, but certain practical difficulties have arisen in the interpretation—not of the substance of this Act but in applying it to the Courts of this country. Our Courts have different names, our police officers have different names, and it would be convenient if the whole of our law should be expressed in what I may call an Indian form. To be added to that is the fact that the Official Secrets Act, 1911, was amended by the Official Secrets Act of 1920 in England, but the amending Act of 1920 does not apply *proprio vigore* in this country. The need of applying those provisions has been examined very carefully. They were introduced into the law in England as the direct result of experience gained during the Great War. As I have said, the need for reproducing the provisions of that Act in this country was examined. It was found that some provisions were not necessary; on the other hand it was held that some other provisions were necessary. This Bill, then, represents a combination of the laws in force in this country and in England and it has been, as I have said, very carefully examined by the Select Committee and I now move that the Bill, as amended by the Select Committee, be taken into consideration.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): I have no doubt that the House will generally agree with me when I say that we all regret that the Honourable Sir Malcolm Hailey, the Leader of the House, is absent to-day and was therefore unable to move the motion which has fallen to the lot of the Honourable Mr. Graham to move before this House. As regards his motion, Sir, we all recognise the desirability of having an enactment of the kind contemplated in this country. But I think it was said by the Honourable Mr. Innes on another occasion with regard to one of his Bills that it was not a slavish imitation of the English statute. May I borrow those words in this connection and say, why is this enactment a slavish imitation of the English statute? I should have expected, Sir, that an enactment of this importance would be taken up by the Indian Legislature by dividing it into two parts, or indeed into two Acts. Honourable Members know that military secrets stand on a different footing from civil secrets and it would have been much more desirable if an Indian Act dealing purely with military secrets were enacted and another Act dealing with civil secrets were introduced. The admixture of military and civil offences in the same Act is apt to cause confusion. It has caused confusion in my mind and I have no doubt that that confusion will be shared by others.

Now, Sir, passing on to the specific provisions of this Act, Honourable Members will find that the real mischief which this enactment is intended to check is that no act should be done which might prove prejudicial to the safety or interests of the State. When this clause was debated in Parliament, Honourable Members there questioned Government as to what the meaning of the words 'interests of the State' is and how that

[Dr. H. S. Gour.]

question is to be decided in each case. It may be that an act is perfectly innocent and not prejudicial to the interests of the State but became afterwards so prejudicial to it and who is to be the judge, whether the act was prejudicial to the safety or interests of the State. Honourable Members will find that very loose expressions of the English statute have been reproduced in the Indian Act. It was a complaint judging from the debates in the two Houses of Parliament that these loose expressions were apt to be misunderstood. In England where all trials are held with the aid of the jury, the jurors as men of commonsense understand these sections as men in the street commonly do. They do not go into the technicalities of the question but decide from the broad standpoint of commonsense, but in this country where trials at present are held without the help of jurors, Magistrates and Judges are apt to examine too narrowly the provisions of the section and apply to them their legal mind, and say that if an offence comes within the purview of a section the accused cannot escape punishment. This is a point of view which I present to the House, especially in view of the fact that while all offences under the English statute are exclusively triable in a Court of Sessions, the offences not punishable with 14 years' imprisonment and mainly those punishable with two years' imprisonment are here made triable by a Magistrate of the first class. I understand, Sir, that in response to my amendment on the subject asking the Government that all offences under this Act should be triable by the Court of Sessions, at any rate in cases in which the accused so desires, members of the Treasury Benches are willing to accept the amendment and concede that offences under this Act might be tried by the Court of Sessions if the accused so desires. I congratulate the Government upon accepting this amendment which would effect a great improvement upon the Bill as presented to the House. There are two or three other matters upon which I invite the attention of the Honourable occupants of the Treasury Benches and ask them to examine the provisions of the Bill and see if improvements cannot be made. If Honourable Members will turn to section 3, they will find that while in clause 1 the offence of spying is generally defined, clause 2 of that section lays down a special rule of evidence at variance with the existing law. Those of my learned friends who have studied the Indian Evidence Act will bear me out that evidence about character is wholly inadmissible in a criminal case, and I therefore invite the attention of the House to the fact that section 3 provides that if on a prosecution for an offence under this section, it is proved from his known character that his purpose was prejudicial to the safety or interests of the State he will be deemed to have committed an offence under this section. I suggest, Sir, that the Government might re-classify these offences, sub-divide the Act into Part I—Military, and Part II—Civil, and re-define the offences in less vague and more popular terms so that the people may know what they are to avoid and for which they are liable to be made punishable. The very general and loose expressions of the Parliament statute which have been reproduced in this Bill are not likely to be understood by the public at large to whom this statute is addressed, and I suggest, Sir, that it would certainly be in keeping with the policy of the Indian Legislature if expressions commonly understood and popularly known are used in preference to the expressions common in Parliamentary statutes. The various improvements which Honourable Members of this House have suggested will no doubt come up for consideration *seriatim* and I therefore do not wish to anticipate the authors of the amendments. I rest content by saying that I am not

enamoured either with the draft or with the arrangement of the Bill and I can only regret that this Bill is a slavish copy of the Parliamentary Statute.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock. Mr. President was in the Chair.

MESSAGES FROM THE COUNCIL OF STATE.

Mr. President: Secretary will read two Messages from the Council of State.

Secretary of the Assembly: The first Message runs as follows:

"*I am directed to inform you that the Bill further to amend and to consolidate the law relating to the provision of house-accommodation for military officers in cantonments, which was passed by the Legislative Assembly at its meeting of the 30th January, 1923, was passed by the Council of State at its meeting of the 14th February, with the following amendment:*

'*In sub-clause (2) of clause 24 of the Bill, after the words 'District Magistrate', the words 'on requisition in writing signed by the Chairman of the Committee' were inserted.*'

'*The Council of State requests the concurrence of the Legislative Assembly in the amendment*'."

The second Message runs as follows:

"*I am directed to inform you that the Council of State has, at its meeting of the 14th February, 1923, agreed without any amendments to the Bill to provide for the restriction and control of the transport of cotton in certain circumstances, which was passed by the Legislative Assembly at its meeting held on the 30th January, 1923.*

THE INDIAN OFFICIAL SECRETS BILL.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I beg to move that the Bill be re-committed to the Select Committee.

Sir, there is no one in the House who is not at one with the Government in their desire to suppress spying in this country. Spying even in its minor form is objected to even in private conversations between private individuals, and it is much more necessary that, where the interests of the State are concerned, where national defence is concerned, where spying would cause a real danger and disaster to the country, spying should be suppressed with a very strong hand; and I would have given my full support to the Bill if proper safeguards had been provided to save the innocent from being brought into the clutches of the law as laid down in this Bill. The language of the Bill is very wide and capable of much abuse in its interpretation. The phraseology is very peculiar and complex, so much so that, just as Dr. Gour observed a few minutes ago, in the House of Lords Lord Birkenhead had to say that he was not enamoured of the phraseology of the Bill. I will just give certain instances in the Bill which will show how dangerous and how capable of wide interpretation certain clauses in

[Mr. K. B. L. Agnihotri.]

this Bill are. This Bill, as drafted, has a peculiar construction in this way, that it does not define at one place all the definitions that should have been defined at the beginning of the Code. Many definitions that are embodied in the Bill involve the definitions of the particular words used therein, and it would be very difficult for a lay man and a man of ordinary intelligence not versed in law, to interpret the terms properly. Sir, if I take you through the definition of spying, through the definition of a work of defence, you will find a word ' mine ' used therein. I realize that the word ' mine ' used in this connection is meant for the receptacle containing the explosives, etc., to protect the coasts from intrusion of foreign ships or men-of-war. But the word is also capable of interpretation in another way. Honourable Members who have read the papers of the last few days may have realized that even editors of papers have fallen into the common error of interpreting the word " mine " to mean excavations for digging out metals or minerals. I wish that the members of the Committee had cleared the meaning of the word as it was meant in this Bill. Going further ahead, Sir, Honourable Members will find ' spying ' defined in section 3 as an offence. It is:

" Any person for any purpose prejudicial to the safety or interests of the State approaches or enters—and so forth—any prohibited place;"

or

" Any person for any purpose prejudicial to the safety or interests of the State makes any sketch, plan, model or note. . . . ."

of what? It has been stated. This clause (*b*) is not governed by the words " prohibited place " which appear in clause (*a*). Clause (*b*) goes on further to say:

" makes any sketch, plan, model or note which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy."

Now what does this come to—" any person who makes any note which might be indirectly useful to an enemy "—this does not say at what time it is likely to be useful. It may be useful 20 years later, who knows.

Mr. President: The Honourable Member is arguing a question of detail which will necessarily arise when we come to discuss clause 3. He must offer more general and substantial reasons for a motion to re-commit. He will understand that clause 3 will be open for amendment in order to satisfy the criticisms which he is now bringing forward, but it is a violation of the spirit of the Standing Orders to use the motion for re-committal merely for matters of detail. If he brings forward arguments such as those adduced by Dr. Gour they will be valid.

Mr. K. B. L. Agnihotri: I simply wanted to point out that there are certain matters in the Bill which are not capable of any improvement on the floor of the House, and with that object I am giving illustrations to show that they could not be improved on the floor of the House. I was simply showing how various expressions are capable of several interpretations in the hands of lay persons. That was my object, Sir.

As I have said, a note made by any person which might be such as to be useful to an enemy some years after might be regarded as spying. Consider the difficulties that will arise. There are census reports of places, there are Government statistics, historical records and maps of many places like Asóka's pillar, the Diwan-i-Khas, the Diwan-i-Am in Delhi and the

Fort in Agra. Any person having these things in his possession or publishing these things might at some time or other when a foreign power was evilly-minded enough to make war against our Government be utilized by that foreign power for its own purposes. And if we allow such interpretations to be put on these phrases I think many innocent persons are likely to be hauled up under this Act. Similarly, Sir, what is meant by the safety or the interests of the State? It has not been defined anywhere as to what will be the interests of the State. If you take the dictionary meaning, that will come to anything that is beneficial to the State. Supposing a thing is done and it does not agree with the opinions, or say with the political opinions, of certain parties, that may be regarded as not being beneficial to the State. The question of taking away any political powers from the Government even though in a constitutional way may also be regarded at some time or other as not beneficial to the State. I do not mean to say that this would be the exact interpretation of this expression in the Bill, but I am simply pointing out the interpretation that might be put on this clause. This would lead to much difficulty and much abuse and harassment to innocent persons. I wish the authors of the Bill had given the definition of these clauses at the very beginning of the Bill in clause 2 just as they have done with respect to some expressions. Further they have introduced a novel procedure of presumptions. Any person if he is suspected, mind you suspected, of having a communication with a foreign agent, if he happens to give an impression of his dealing with a foreign agent even unknown, it will be considered as spying. How dangerous will that be, Sir? It is quite all right in theory and in the book. But if you were to take the interpretations that have been given to " communication with foreign agent," you will find that the provisions are very wide and dangerous. What is the communication to a foreign agent? Communication to a foreign agent as defined may be when any person has visited the place of a person suspected to be a foreign agent. Suspected by whom? Not by the man who visits him. His knowledge is made quite immaterial but suspected by the Court; so far it is quite all right; but how is a man to know that the address that he is visiting, is that of a foreign agent? Not only that, Sir. If this man happens to possess any paper or any address of an agent or of any person who is suspected to be a foreign agent, this man is done for. If he has got any historical records or historical statistics or any other railway map that might be of some use at some future time, that man is liable to be hauled up. He will be deemed to have communicated with that man. Now, Sir, even if a foreign agent or a suspected foreign agent has a place of business in British India and if any other man whose known character as proved may cause a suspicion, in the minds of the judges, even innocently happens to go to the place of business of the former to deal in business only such a man will also be presumed to have communicated with a foreign agent. Such are the provisions in this Bill. Further, there is also a provision in this Bill as it has come from the Select Committee that if any person were to publish any information relating to anything used or relating to anything in a place, which is declared to be a prohibited place, that man will be deemed to have committed an offence under this Act; and forts at Agra, Delhi and other places may be deemed to have been prohibited places and the Frontier Province may also be deemed to be a prohibited place. If I were to draw the attention of the Government, speaking in this Chamber, that it is not desirable to maintain an army . . . .

Mr. President: The Honourable Member's arguments would be perfectly in order in considering each clause.

[Mr. President.]

I must point out to the Assembly, however, that supposing this motion were passed, there would be no indication whatever to the Select Committee what this Assembly expected them to do. The words in Standing Order 43 are " that the Bill as reported by the Select Committee be re-committed either:

(*i*) without limitation, or

(*ii*) with respect to particular clauses," and so on.

The words " without limitation " must be held to presume that this House is dissatisfied with the manner in which the Select Committee has treated the measure which was referred to it. A proposal to re-commit without limitation must necessarily refer either to the work of the Select Committee as a whole, or to some matter of principle on which the Assembly desires an opinion from the Select Committee and on which the Committee did not pronounce. If the Honourable Member is dissatisfied with the proposals made by the Select Committee on particular points—provided they are points of real importance in the sense of raising a principle—then he ought to move a motion under Standing Order 44 (*b*) (*ii*) or (*iii*), and not move, as he has done, to re-commit without limitation. If we were to pass this motion, the Select Committee would meet again and say: " We are satisfied that we did give reasonable consideration to the proposals of the Bill and we are of opinion that no further consideration on our part would lead us to alter the report before the Assembly." We should then be no further on.

Mr. K. B. L. Agnihotri: Sir, it is exactly with this object that I am pointing out these things because I want the Select Committee to know what is the point we want them to clear up. We want them to know that the wording used in this Bill is not proper . . . .

Mr. President: That is not what the Honourable Member has done. The Honourable Member simply moves that the Bill be re-committed, and invites the Select Committee to re-examine the whole Bill without reference to any particular clause or any particular amendment. The Select Committee, with a mere general instruction before them, will sit down and they will say: " We are satisfied that we carried out the original intention of the Assembly; we examined the Bill in detail; the report we have submitted is a satisfactory report and represents our opinion."

Mr. K. B. L. Agnihotri: All right, Sir, I bow to your ruling. I will simply say the wording used is very general and will cover even innocent dealings of innocent persons, and the substantive law and law of evidence have been jumbled up in the clauses and therefore it is necessary that the wordings be changed. It may be said, Sir, that the wording in this Act has been taken from the English Acts of 1911 and 1920, and been considerably improved by the Select Committee. My submission to that would be, Sir, that as they found that an improvement in certain directions on the wording of the English Acts was necessary, it may further be regarded as necessary further to improve the wording of this Bill to include certain definitions. It might be said, just as it was said in the English Houses of Parliament, that the Act will not be used in ordinary cases; that it will be used only in extraordinary circumstances of spying and when a gross breach of the law is committed. But one cannot be sure if it will be like that in this country. Act III of 1818 was enacted for a different purpose and continued up to this date, or rather to last year; it remained as a

dead Act in the Statute Book but some of its provisions were used in 1906 or 1909. We do not want, therefore, that an Act should remain on the Statute Book and hang like a sword of Damocles over our heads to be utilised at any future time, and it is necessary that the Select Committee should change the wording, clear up the expressions and bring it to a line where it may be acceptable to all of us. The language should be simple and easily understood even by " the man in the street." With these words, Sir, I commend my motion to the House for the re-committal of this Bill to the Select Committee.

3 P.M.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I oppose this motion. I shall for the present only answer very briefly the objection taken by my Honourable friend, Dr. Gour, and Mr. Agnihotri. Dr. Gour takes the objection that we have slavishly followed the English Act. We have done nothing of the kind. We have reduced the maximum sentence, which in the English Act ranges from minimum 3 to 14 years. For non-military offences we have fixed the maximum at 3, in some cases 2 years and fixed no limit to minimum and given the option of fine. We have classified offences into two classes—minor and major offences, what are called civil offences and offences of a military character. And we have introduced the nomenclature of the Criminal Procedure Code and described them as cognizable and non-cognizable and bailable and non-bailable offences. We have also introduced the nomenclature of our Evidence Act, such as relevant facts, presumption and provided for their rubuttal by evidence. So, as far as these go, I hope Dr. Gour will be satisfied that we have not slavishly followed the Parliamentary Statute but have recast that Statute on the lines of our law of Criminal Procedure and the Law of Evidence.

Now, something has been said about our using the words " safety and interest of the State." I do not wish to go into the details. We shall have every opportunity, when we discuss the clause, to go into the details, but I shall generally point out that we have classified offences into two classes—offences in the nature of spying military secrets and with regard to these we have used the words " safety or interest of the State." I suppose my friend would not contend that we should wait till the spy has done the mischief. It is when he is trying to pry into military secrets, is it not to the interests of the State to arrest him and put him on his trial before a Magistrate or a Judge? But here I shall just draw attention to where we use the word " safety " alone. We may refer to clause 5 (*b*) which reads: " Use the information in his possession for the benefit of any foreign power or any other manner prejudicial to the *safety* of the State." This in clause 5 relates to officers communicating information to foreign powers. If they so communicate it and if such communication endangers the safety of the State, then we proceed against him. The persons who are interested are the officers of the State who are in charge of these secrets. If they communicate to others and that endangers the safety of the State, no body will contend that they should not be found guilty of a breach of duty. Here the criterion we put down is rather high and that is that if this communication of the secrets is such as is likely to endanger the *safety* of the State, then they will be prosecuted and punished. But, with regard to military secrets and secrets palpably of a much more serious nature, we have used the words " safety or interest of the State." Supposing our military defences, mine-fields or mines are being noted or made sketches of by a spy. Before he has noted, obtained a sketch or communicated, ought not we to provide for his detection, for his arrest and for

[Mr. J. Chaudhuri.]

safeguarding the " interests of the State "? If he has taken these away, then he has completed the mischief. But it would, surely, be to the " interest of the State " that we should make provision for safeguarding its interests before it is too late. Even my friend Mr. Agnihotri used the word " interest " in his speech. He said that spies should be put down. He said that he is not in sympathy with them and that spies should be put down " in the interests of the State." So, when he was putting his own case before this House, he himself used the same expression and thus gave away his own case. I do not wish to detain the House any longer, but when we examine the amendments clause by clause, the House will be satisfied that we have made this Bill absolutely innocuous with regard to persons who may act *bonâ fide*. As regards the serious offences of persons who try to abstract military secrets or secrets relating to defence which are prejudicial to the " safety or interest of the State," nobody in this House will have the hardihood to say that they deserve any sympathy. For these reasons, Sir, I say that my friend Mr. Agnihotri has made out no case for re-commitment of this Bill to the Committee. We have done our best and as you have very rightly observed, Sir, if the Bill is re-committed to us without any definite directions, we shall not know what to do with it. We would prefer to wait and see if there is any substance in the amendments proposed. I therefore suggest that the discussion of the Bill be proceeded with.

Mr. L. Graham: Sir, I apologise for making what may seem a perfectly superfluous speech, but I think there are one or two points to be made yet. The first is that the Select Committee did examine all the material which was put before it. It may be in the recollection of Members that this Bill was circulated. We examined all the opinions we received. We also took the proceedings in this House. I say, Sir, that we examined very carefully all the material which was put before us. If Mr. Agnihotri wants to take a particular attitude towards the Bill, I fail to understand why he did not express himself at an earlier stage of the proceedings. It is therefore not necessary to take up the points of detail which Mr. Agnihotri has mentioned. One more point, Sir, as to what Dr. Gour has said. He has accused us of slavishly following British drafting. Well, my Honourable friend, Mr. Rangachariar, was in the Chair, and I do not think it is likely that he would slavishly follow anybody.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): I am not ashamed of slavishly following the English of Englishmen.

Mr. L. Graham: That again is a point which I should like to take. The drafting of this Bill is important. Dr. Gour—whether he intended it or not—I trust he did intend it—paid a compliment to the work of the Legislative Department in saying that he would prefer this Bill drafted on the lines generally followed by the Legislative Department. He said it would have been clearer and more intelligible. Well, Sir, we acknowledge the compliment. But there is this difficulty. We intentionally followed the English form because of the provisions of section 11 of the Act of 1911. We felt that if we broke away from the form of the English Act and put up an Act which looked entirely different—and after all, the Act which Dr. Gour sketched for us would look entirely different—we should not be at all sure that His Majesty in Council would be prepared to suspend the English Act in favour of ours. Other points mentioned by

Mr. Agnihotri, as you said, Sir, will be appropriately dealt with when he moves his amendments.

Mr. President: The original question was:

"That the Report of the Select Committee on the Bill to assimilate the law in British India relating to official secrets to the law in force in the United Kingdom be taken into consideration."

Since which an amendment has been moved:

"That the Bill as reported by the Select Committee be re-committed to the Select Committee."

The question is that the Bill be so re-committed.

The motion was negatived.

Mr. President: The question is:

"That the Report of the Select Committee on the Bill to assimilate the law in British India relating to official secrets to the law in force in the United Kingdom be taken into consideration."

The motion was adopted.

Mr. President: It is suggested that it may be advisable to leave clause 1 for later consideration.

Mr. President: Clause 2.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): Sir, the amendment which I move is this:

"In clause 2 (7) after the word 'plate' insert the following:

'Provided these undeveloped plates on being developed are found to be the negatives of plates of prohibited places as defined under this Act'."

Here photograph includes an undeveloped film or plate, and in (9) we have:

"'sketch' includes any photograph or other mode of representing any place or thing."

Under clause 3 the making of a sketch useful to an enemy is punishable. So, a man who has got photographs which include an undeveloped film can also be held up. Undeveloped films are plates in which the impression of the thing photographed is not visible. I am not a photographer, but I can say this much that unless an undeveloped plate is put in a solution the impression of that plate is not visible. For instance, take a man who stands in front of a place and takes a photograph and goes away. Then he is arrested, and found in possession of that undeveloped film. Unless that film corresponds with the negative, I do not think he should be held up at all. So, in order to make it clear I provide this safeguard. It would be very unsafe to catch hold of the man or make him responsible when he is in possession of undeveloped films. In these circumstances, I beg to move my amendment.

The motion was negatived.

Mr. K. B. L. Agnihotri: I move:

"In sub-clause (8) (*a*) of clause 2, the word 'mine' be omitted."

I would not have moved this amendment if the meaning of the word "mine" had been made clear in sub-clause (*a*). I am afraid that it is

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liable to misinterpretation and may be applied to the excavations wherefrom metals or minerals are taken out, though I think that " mine " means explosives used in time of war for defending the coast. If Honourable Members will see the last sentence of the sub-clause they will find the words " for the purpose of getting any metals or minerals ". (*A Voice:* " In time of war ".) I do not know whether the words " in time of war " govern all these sentences above. If they do, then the law would be perfect on that point. But if they do not, then it is liable to misinterpretation; and even taking for granted that it is to be prohibited in times of war, what will happen to the records, to the statistics and to the other papers and documents in the public libraries and other places in the bookstalls, and book-seller's places relating to a mine which be declared a prohibited place some years after the publication. If we go deep into the clauses we find that any person publishing any information relating to anything used in a prohibited place is liable to be brought under the clutches of this law and that would create difficulties and therefore I propose that the word " mine " should be deleted.

Mr. L. Graham: When this Act of 1920 was in the Bill stage before the House of Commons, a certain keen Parliamentarian, Commander Kenworthy, moved that the word " mine " be omitted. His reason for doing so was that he was afraid that it might be misinterpreted. The Chairman of the Committee said " I really do not believe that anybody-else besides the Honourable and Gallant Member would have understood that ". Commander Kenworthy has his imitators. The Learned Attorney General was sympathetic and I should also like to be sympathetic to Mr. Agnihotri. What happened was this. The Attorney General said " there was no possibility of misunderstanding but, to meet your case, after the word ' mine ' I propose to insert the word " minefield "; with these words so associated there is no possibility of misunderstanding." The House accepted the Attorney General's view and inserted the word " minefield." In our Bill, we have the word " minefield " after the word " mine ". I submit it is impossible that there should be any misunderstanding at all. I would object to the removal of the word " mine " because it might be argued in court that one mine does not make a minefield. I therefore oppose the amendment.

Mr. President: The question is:

" That in sub-clause (8) (*a*) of clause 2, the word ' mine ' be omitted."

The motion was negatived.

Mr. K. C. Neogy (Dacca Division: Non-Muhammadan Rural): I beg to move:

" That for the words ' an enemy ' wherever they occur in clauses 2, 3 and 4, the words ' a foreign power ' be substituted."

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Is every power an enemy?

Mr. K. C. Neogy: Every power is a potential enemy, and my Honourable friend, Mr. Bray, will bear me out when I say that. If Honourable Members will look into the provisions of clause 2, sub-clauses 8 (*c*) and (*d*), they will find that by the use of this expression it is intended to indicate the importance of the information which Government are anxious to safeguard. It will be seen that in sub-clause (*c*) of sub-clause (8) the information must be useful to an enemy, and a place may be declared to be a

prohibited place when Government think that information with respect thereto will be useful to an enemy. So also in sub-clause (*d*). When we come to clause 3, we find that in sub-clause (*b*) likewise, any sketch, plan, model, etc., must be useful to an enemy. So also in sub-clause (*c*) any document, information, etc., must be useful to an enemy. The House ought to be quite clear on this point. We are not going to penalise the enemy, when we use this term in these clauses. We are merely setting a standard of importance of the secrets which Government must safeguard. That is the position. Now, it is well known that the expression ' enemy ' in international law bears a particular significance; there is no room for any doubt as to what the word ' enemy ' in international law would mean,—a State actually at war with the Crown. And we find that while the Act of 1911 was being considered in the House of Lords, a noble Lord raised the question as to whether when there was no war, that is to say, in times of peace, if a prosecution was sought to be launched under this Act, anybody could raise a defence saying that as there was no war, the State could have no enemy. Later on, we find that a case actually came up in 1913 in which this very point was taken. Honourable Members will find a reference to this case in Roscoe's Criminal Evidence, and there it was held that the term ' an enemy ' as used in the Official Secrets Act was not confined to a State actually at war with the Crown. It does not say to what extent this term might be stretched for the purposes of this Act. So this leaves things rather in an uncertain state. Now, Sir, we find that the term ' enemy ' has been variously used in certain special enactments where it has been given various meanings; for instance, take the Trading with the Enemy Act and other war enactments. Then again take the Army Act. In the Army Act this term is defined as including all armed mutineers, armed rebels, armed rioters and pirates. This matter is further complicated by reason of the use of this term ' enemy ' in certain Treaties of the British Government with some Native States. I may remind the House that a reference to this particular question, namely, the terms of the treaties, was made not long ago in the Council of State in connection with the Princes' Protection Bill. I find that in at least 20 treaties which the British Government have entered into with the Native States . . . . .

Mr. Denys Bray (Foreign Secretary): I rise to a point of order. Is the Honourable Member referring to *Indian* States?

Mr. K. C. Neogy: Yes, Sir, my intention was to refer to the possible difficulties that might arise. If the Honourable Members will turn to those Treaties, they will find that it is laid down, in at least twenty of them, that " the friends and enemies of one shall be the friends and enemies of both." Now, Sir, as is well known, the Indian States have no international relations at all. Therefore, it cannot be said that this expression in the Treaties can be given the same meaning as it bears in international law. Men like myself, who are uninitiated in the mysteries of diplomacy and diplomatic language, used to think that this clause of the Treaties constitute an offensive and defensive alliance between the British Government and the Native States for military purposes. But, Sir, in connection with the Princes' Protection Bill it was made clear that it was not so; and the Honourable Mr. Thompson read into this clause of the Treaties an obligation on the part of the Government of India to provide a measure for the purpose of protecting the Princes from hostile criticisms in the Press. And that interpretation has been accepted by the high legal authority of

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the present Governor General. Now, Sir, that being the case, I am apprehensive as to what interpretation this term may be given in the future. Will this term " enemy " include the enemies of the Native States, because it is said the enemies of the Native States will be considered the enemies of the British Government? But in that case enemies would include private individuals, and it would not be interpreted in the sense in which it is used in international law and in the sense in which it is used in the English law from which we have taken this term. Therefore, Sir, in order to be on the safe side I have proposed the substitution of the words " a foreign power " for the words " an enemy " in this clause. The reason why I have chosen the expression " foreign power " is that, though the expression used in the Act of 1911 was " enemy," in the Act of 1920 the expression used is " a foreign power." Honourable Members will find that in two places in clause 5 of the Bill the expression used is " any foreign power " and not " enemy." Therefore, Sir, I think that in every sense the Bill will be improved if we accept this amendment. That would give us a uniform phraseology, and the term will not be liable to misinterpretation in the way I have pointed out. I beg to move my amendment.

Mr. President: Amendment moved is:

" For the words ' an enemy ' wherever they occur in clause 2 the words ' a foreign power ' be substituted."

Mr. L. Graham: Sir, while admiring the erudition and labour which my Honourable friend, Mr. Neogy, has expended on this subject, I regret very much that I am unable to accept his amendment. I too have searched the Law Reports and have found a ruling as to the meaning of the word " enemy " as used in the Official Secrets Act of 1911. The word, Sir, means a potential enemy. Now, Sir, I think that, that on the whole helps to clear the ground. There can be no misunderstanding. An enemy of the State, when you come to examine the matter. . . . I take it, Sir, that we are dealing with clauses 3 and 4 as well as clause 2?

Mr. President: The Honourable Member actually moved his amendment to clauses 2, 3 and 4, but I have only been able to put the amendment to clause 2, because clauses 3 and 4 have not yet been reached. I do not object to the Honourable Member arguing his case with reference to all three clauses.

Mr. K. C. Neogy: Sir, I formally moved this amendment in regard to clause 2.

Mr. President: Yes. I put it in regard to clause 2 assuming that when we reach clauses 3 and 4, the Honourable Member's amendments will be treated as formal motions.

Mr. L. Graham: The reason why I asked that question, Sir, is because it is really impossible to separate the arguments and I had no wish to be pulled up in the middle of my stride.

With regard to clause 2 (8), sub-clauses (*c*) and (*d*), the position is that actually these notifications will not issue except in time of war. Works which are to be prohibited places at all times are those which are specified in sub-clause (*a*). Now war, Sir, is war whether it is civil war or war with a foreign power. In time of war it is equally necessary to protect buildings from being spied upon, whether by a foreigner or by the enemy

within our gates. If you accept the amendment proposed by Mr. Neogy its effect will be that an enemy of our own nationality will be able to enter into these prohibited places because to him they will not be prohibited. The only person who will be barred will be the foreigner. The consequence, I take it, will be that the foreigner will employ a traitor—I am afraid I must say a traitor—to enter the prohibited place because he will be able to do it with immunity. Now, Sir, as I say, it is really part of my argument, and I therefore gratefully accept your offer to allow me to speak and to show how the change in the words would affect clause 3. There are, as my friend, Mr. Neogy, said, foreign powers and foreign powers. There are foreign powers which are great and there are foreign powers which are small. May I mention one very small power, namely, the Principality of Monaco and another, the republic of San Marino. Again, there are various little States in South America. Would it not be placing an impossible burden on a Court of Justice to have to come to a conclusion whether certain information, certain sketches, are calculated to be directly or indirectly or might be or are intended to be useful to a foreign power when there is no common standard of foreign power? It might be said: "This will be of no real advantage to Monaco; you have got only half a dozen soldiers there." The position, therefore, is that the Courts would be placed in an impossible position and the operation of the Act would be paralysed. The same remark, Sir, applies to clause 4. I, therefore, in this connection, ask that the amendment to clause 2 be rejected.

Mr. President: Amendment moved:

"For the words 'an enemy' wherever they occur in clause 2, the words 'a foreign power' be substituted."

The question is that that amendment be made.

The motion was negatived.

Clause 2 was added to the Bill.

Mr. President: Amendment moved:

"For the words 'an enemy' wherever they occur in clause 3, the words 'a foreign power' be substituted."

The question is that that amendment be made.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I move:

"In sub-clause (1) of clause 3 omit the words 'or interests'."

Sir, I admit it to be my misfortune that I could not be satisfied by the very illuminating arguments adduced by my friend from Bengal relating to the definition of the words "or interests". Sir, in this country the interests of the public cannot always be identical with the interests of the State in all matters. They may be identical in certain matters but they may not be identical in many matters. It may also happen, Sir, that even the interests of the public and the interests of the State may clash. There may be certain matters that may be prejudicial to the interests of the State, while they may be beneficial to the public. The meaning of the words 'the interests of the State' are vague. Take, for instance, the last Gaya Congress. It passed a Resolution, a very undesirable Resolution and I may call it a senseless Resolution to do away with their liabilities for international debts, or public debts that the Government of India might incur in future.

[Mr. K. B. L. Agnihotri.]

Now, this Resolution on the part of those people will certainly not be for the benefit of the State or in the interests of the State. If any person were to make a report of that proceedings and publish it, he might be liable under sub-clause (c) of clause 1. He may be liable for this, because other nations that may be inimically inclined towards our Government *might infer* that the Indian subjects are not satisfied with their Government, and have repudiated the public debts, that there is a dissension between the subjects themselves and probably the Government may be a weak one; and if they enter into a war on that inference it will certainly come within the definition of the interests of the State. I do not mean to say that the interests of the State really includes such a case as I have just given and it may not have been meant to include such cases, but there is nothing to prevent interpretation in that way. Then, for instance, social disorders, religious dissensions between different parties, they are surely always prejudicial to the interests of the State. If anybody were to publish this information, and if that information might be useful to some foreign powers at some unknown time, the person who gives or publishes such information would be covered by this definition in clause 3 (1); I do not think that the Select Committee meant that this clause should cover such cases. Therefore, Sir, I think, that it would be better that " the interests " should be defined, but as that is not possible now it is better that the words should be omitted. On going further into the Bill we find that in certain clauses the words " or interests " before " the State " have been deleted. I do not know what led the Honourable Members of the Select Committee to include those words " or interests " in these clauses while at the same time they deleted them in other clauses that referred to civil affairs. If the meaning of the words " or interests " was clear in the case of civil affairs, it should equally be clear in military matters. If you drop it in one place, there does not seem to be any necessity to keep it in another. It only creates ambiguity and vagueness. Therefore I submit that these words " or interests " be omitted.

Mr. President: The amendment moved is:

" That in sub clause (1) of clause 3, omit the words ' or interests '."

Mr. L. Graham: Sir, my learned friend, Mr. Chaudhuri, has referred to this question already. The point is this. These words were not included, as Mr. Agnihotri suggested, by the Select Committee in this clause. They were excluded in another clause, clause 6, for reasons which I will deal with later. Clause 3 deals with all the most important offences under the Act and it is not a new idea. It has been the law of this land since 1911, and you may possibly like to be told what occurred in Parliament when my Honourable friend's exemplar Commander Kenworthy moved a precisely similar amendment to omit the words " or interests." On that occasion Sir G. Hewart said:

" As to the objection raised to the words ' or interests ', the answer is that they are taken from the Act of 1911, which says, ' purpose prejudicial to the safety or interests of the State '. It is obvious that certain matters cannot be said without exaggeration to imperil the safety of the State, but they go sufficiently far in that direction to be prejudicial to the interests of the State. Therefore those who were responsible for the Act of 1911 put in ' safety or interests '. We did not invent that phrase. We are simply carrying on the vocabulary of the 1911 Act, and if we were to leave out the words ' or interests ' in the amending Bill, it would make it possible to found a legal argument upon the fact that the phrase was in the principal Act but not in the amending Bill, and it might be said that while the mischief that was aimed at by the principal Act included purposes prejudical to the safety or interests of the State, yet, in order to come within the amending Bill, you would have to find something prejudicial to the actual safety of the State."

Well, Sir, as I said, we are dealing with the very gravest offences in this clause. In the other clause, clause 6, with which I will deal later, we deal with comparatively minor offences many of which are already covered by the existing penal law. The position is this. If you restrict the words and only use the word " safety " it is a very difficult thing to say about any particular act that it imperils the safety of the State but, if you let pass a number of such acts, the aggregate of these acts, not each one of which imperils the safety of the State, will imperil the safety of the State, and I ask you, Sir, is it right that the Empire should crash before we can get a conviction under this Act?

Rao Bahadur T. Rangachariar: Sir, I may perhaps explain to my Honourable friend, Mr. Agnihotri, why we retained the words " interest of the State " here and omitted them in clause 6 and elsewhere. If Congress volunteers wore uniform and went about, it might be argued that they were doing a thing against the interest of the State. That is the thing which I had in mind when I advocated the dropping of the words " interest of the State " there. Nobody can argue it is against the safety of the State that Congress volunteers should go about dressed like ordinary volunteers. It is to avoid such a case that we dropped the words " interest of the State " in this and other sections. But here, in section 3, we are concerned with spies. In the case of spies it will be very difficult to draw the line between safety of the State and interest of the State. And " interest of the State " is not such an unknown term that my Honourable friends should have any apprehension about the use of that term. Why, we are familiar with that term in the Indian Evidence Act. If you turn to section 125 and other sections, you find " public interest ". A man may claim that he cannot disclose a secret, it is in the public interest that he should not disclose it. Has anybody ever felt any doubt as to what is meant by " public interest "? It is no doubt easy to conjure up doubts when you are here but you must credit the Court with some common sense and having regard to the facts of the case, there really will be no difficulty in coming to a conclusion as to what will be in the interest of the State and what will not be in the interest of the State. Therefore, in cases like these, where you have to deal with the real enemies of the country, I don't see any distinction between the enemies of the country and the enemies of the State, because if he is an enemy of the State, he is also an enemy of the people. (*An Honourable Member*: " Not necessarily.") Well, that is a point of view. I did not say enemy of the Bureaucracy, I said enemy of the Government. No people can exist without a Government. Government and the people make the State. So that, in such cases, where you have to deal with spies, I don't think we should show any leniency at all, for, if we are to get on at all in this country, we must safeguard our safety in the first place against foreign aggression or internal aggression which might overthrow the Government. I think we are all anxious to preserve a Government so that we may develop in it. I think, Sir, the words are necessary there.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, I do not know that I altogether followed the argument of the Honourable Mover of this amendment. He drew an illustration, or what I thought to be an illustration; then he passed a sponge over it and said it was not an illustration. So far, at all events, I am sure, that he contemplated some sort of difference between the interests of the State and the interests of the people who form that State, which he called the public

[Colonel Sir Henry Stanyon.]

interest. Apparently he read the word " State " as if it is synonymous with the word " Government ". I do not think that in an enactment of this kind that would be a correct interpretation of the word " State ". I think the word " State " here must be read to cover widely all the community—its Government, its institutions, its public and everybody concerned who go to make up what we call the State. It will be impossible for us to legislate upon any supposed antagonism between the State and the people constituting that State; and upon that ground alone I think that this amendment does not deserve the support of the House.

The amendment was negatived.

Khan Bahadur Sarfaraz Hussain Khan: Sir, the amendment which I move is as follows:

" In clause 3 (1) before the words 'imprisonment for' insert the word 'simple' and make consequential amendments in other clauses."

Sir, it is not that I wish to make a provision making rigorous imprisonment simple. My point is simply this. The real object of sending people to jail in these cases is to keep them out of the way and not to let them have any communication with the enemy, and in these cases simple imprisonment will be quite sufficient. There seems to be no reason why simple imprisonment should not be sufficient. The words used in the clause are " he shall be punishable with imprisonment ". It does not say whether it is simple or rigorous imprisonment. My object is to make it simple imprisonment. This object is served by putting the man in jail and thereby not letting him have any communication with the outside world. With these words, Sir, I move my amendment.

The amendment was negatived.

Khan Bahadur Sarfaraz Hussain Khan: There is another amendment. Sir, I put my view of the case. My amendment runs:

" In clause 3 (1) omit all words after the words 'to any secret official code, to' in the last but one line and in their place substitute the following:

'a maximum period of 14 years according to the gravity of the offence proved in the Court'."

The clause simply says " and in other cases to three years ". I wish to simplify the whole matter and put it in black and white that the matter should be left to the discretion of the Magistrate trying the case and that the punishment should be according to the gravity of the offence.

The amendment was negatived.

Dr. H. S. Gour: Sir, the amendment I desire to move deals with clause (3). Honourable Members will find that this clause lays down a special rule of evidence taken from the English Statute. When this clause was under discussion in the Lords, Lord Alverstone, the late Lord Chief Justice of England, animadverted upon it in the following terms. He said:

" I would call his attention first to the words 'known character as proved' in sub-section (2) of clause (1). It is opening the door of criminal law for which some justification will be required. It is quite true that when people are found in certain circumstances, their previous record as actually proved can, under the Prevention of Crimes Act, be given in evidence; but I have never known any Act to go so far as to say that a man's known character may be proved, and I am afraid that in the working of the Bill this will create difficulties. I think the words will be found too wide unless some indication is given."

Honourable Members will observe these are weighty words, coming as they do from the occupant of the highest judicial bench in England barring only one. Now, if you read clause 3 as it is drafted and is proposed to be enacted—I leave out the unnecessary words—I shall only coin an illustration to show how it leads to a *reductio ad absurdum*. If Honourable Members will follow the words which I have underlined, they will at once come to the illustration which I am about to give them. The section says in clause (2) " any information relating to any prohibited place communicated by any person shall be presumed to have been made or communicated for a purpose prejudicial to the safety or interests of the State. Any information relating to a prohibited place, communicated, shall be presumed to have been communicated for a purpose prejudicial to the safety or interests of the State." Let me translate this into a concrete illustration. A says to B, " Look at this. Avoid going to this place. It is a prohibited place." That is an information relating to a prohibited place. It shall be presumed under this Act to have been communicated " for a purpose prejudicial to the safety or interests of the State ". (*A Voice*: " No, no.") My illustration arouses the hilarity of the learned occupants of the Treasury Benches. That is my best vindication for the argument that I am addressing to this House. The whole thing, the whole language of section 3 is so diffuse, loose and verbose that it might include any act, however innocent, within the purview of that section. Now, Sir, I do not wish to weary this House by dealing with the general aspect of this question. I shall rest content if the House will support my short amendment which I am perfectly certain he who runs can understand. It is this. I wish to delete from the provisions of this section these most obnoxious words " or his known character as proved."

The Honourable Mr. A. C. Chatterjee (Education Member): May I rise to a point of order? Is Dr. Gour moving the first part of his amendment or the second part?

Mr. President: I understand the Honourable Member is not moving the first part.

Dr. H. S. Gour: I think you understood me rightly and my Honourable friend, Mr. Chatterjee, understood me wrongly. What is the meaning of the words, " his known character as proved "? I pointed out that in England the words " his known character as proved " were pronounced by the late Chief Justice of England to be a loose expression and too wide. This special rule of evidence provided in England has the least justification in this country. Honourable Members will observe that in England they have no codified law of evidence. Such rules of evidence as exist are culled out of decided cases, but in this country we have a codified law of evidence and it contains the definition of such a phrase—' when a fact may be deemed to have been proved '—and it lays down that a fact may be deemed to be proved when taking all circumstances into consideration the court regards it as proved and the ensuing sections of the Evidence Act lay down certain rules of relevancy and admission and other rules for the exclusion of evidence, and one of these is that in criminal cases the character of a man is not relevant. Now, this special provision made in a highly technical but nevertheless heinous offence of including a man's character as a piece of evidence upon which he might be convicted is, I submit, opposed to the law of evidence and is otherwise opposed to the ordinary principles of natural justice. What is a man's character? After all, if Honourable Members will pause for a moment and reflect, they will find that character means nothing more

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and nothing less than the opinion which one man has about another. Is a man to be convicted upon the opinions of people? And as this character is to be proved by the prosecutor I presume the evidence will be the evidence of the police and of a few witnesses whom they call for the purpose of establishing a man's character. Do Honourable Members in this House sanction such a procedure? I am perfectly certain they will do nothing of the kind. Prove your case by all means. The Evidence Act provides the mode and the manner of such proof. I am prepared also to allow the proof to be completed by the special rule of evidence which you propose to enact in this clause, but I certainly think that these words 'known character as proved' must be deleted from this clause. It is likely, I submit, to lead to miscarriage of justice. If there is evidence of a man's bad character, we have also to give evidence of a man's good character. There will be a conflict of opinions. A few witnesses come up and say "This man is a *budmash*". A few men come up on the other side and say "We have never known a man of a more saintly character". Apart from the proof which this section requires and for which, I submit, the provisions of the Indian Evidence Act are amply sufficient, if they are not sufficient you have enlarged those provisions in this clause to the extent which I am prepared to accept, but I submit the House will not accept if coupled with the phrase "known character as proved" and if they are not sufficient, you may enlarge those provisions in this clause to an extent which I am prepared to accept, but I submit the House should not accept if they are coupled with this phrase 'his known character as proved'. Sir, I move that these words be deleted from the clause.

4 P.M.

Mr. President: Amendment moved:

"In sub-clause (2) of clause 3, the words 'or his known character as proved' wherever they occur be omitted."

Mr. L. Graham: Sir, my learned friend, Dr. Gour, took for his text in the first instance certain remarks of Lord Alverstone. Now before dealing with those remarks in particular, I would like to put it to the House that we have in the Select Committee very much reduced the scope of this clause. Previously that clause could have been used in the trial of any person for any offence under clause 3. We have, as has been noted before, re-drafted clause 3 so as to give a maximum penalty of 14 years for certain offences and a maximum penalty of 3 years for other offences. We only propose to rely on this special provision in the case of those very serious offences which are punishable with imprisonment for 14 years, that is to say, Sir, we shall be dealing with spies, an elusive and slippery race about whom the police have information, know a great deal. but that information would be summed up as information about pursuits and character generally. Now, Sir, what happens is this. I do not propose to be an expert in the ways of spying, and therefore I may be allowed, I trust, to quote the words of no less a jurist than Lord Haldane. Before I do so, however, I should like to remind the House that these words first appeared in the Act of 1911, that is to say, they were passed by a Liberal Government. Lord Haldane in introducing the Bill in the House of Lords, or rather in moving the second reading, stated as follows:

"The main change which the Bill makes is a change of procedure. In order to convict any one under the Official Secrets Act, 1899, it is necessary to prove the purpose of wrongfully obtaining information. If the man is found in the middle of

fortifications, he may have strayed there by accident by night. You have to prove that he was there for the purpose of wrongfully obtaining information, and that has to be proved. This Bill adopts a method for which there is a precedent and which is much more effective."

That is, in certain cases persons are liable to conviction under that Act unless they can give a satisfactory account of themselves when they are found in certain places. Now to illustrate the difficulties with which we have to cope, let me again quote Lord Haldane:

"I will give one or two instances showing what the difficulties have been. Not many months ago we found in the middle of the fortifications of Dover an intelligent stranger who explained his presence by saying that he was there to hear the singing of birds. He gave the explanation rather hastily as it was midwinter. Then there was another case in which somebody was looking at the emplacement of guns in a battery at Lough Foyle and he declared that he was there for the purpose of calling on somebody."

There was another case in which a man was found sketching a fortification. The details are not worth reporting, but they could not get a conviction. Now, Sir, as I have said, we are dealing with people who are committing most serious offences, and in order to prove their purpose it is essential that we should be able to give evidence of their character. It has got to be a sort of badness that would make the man likely to do something which was prejudicial to the safety or interest of the State. It would not be enough to prove that he was a very unpleasant fellow or that he beat his wife or anything of that sort, but it must be proved that he is the sort of person likely to do something dangerous, something prejudicial to the safety or interests of the State. He is not going to be tried or convicted unless he is found in extremely suspicious circumstances doing something which he ought not to be doing; and this Act provides that certain inferences may be drawn from the circumstances in which he was found and anything known about him before. I submit, Sir, that in these particular cases, where the necessity for the protection of the interests of the State arises and in which its safety is concerned, this is a justifiable provision. As I have said before, it was inserted by a Liberal Government and it was continued and applied to another set of offences by the Act of 1920 in England. I have quoted already no less an authority than Lord Haldane and I should like to conclude by quoting no less an authority than a late Attorney General, then Sir Rufus Isaacs, who said that it was a very difficult thing to administer the old Act and it is essential to have this provision, the whole provision.

Mr. K. C. Neogy: Sir, I will be very brief in referring to this amendment because Dr. Gour has said almost all that could possibly be said on this question. I would draw the attention of the House to the seriousness of the offence that clause 3 seeks to create. It will be seen that this offence is made punishable with imprisonment up to 14 years. What are the elements of this offence? A man does something. That is the first element, as enumerated in clauses (*a*), (*b*) and (*c*); and then his purpose in doing that particular thing must be prejudicial to the safety or interests of the State. Now, Sir, let us look at sub-clause (*a*). What is the act that he commits? He approaches, inspects, passes over or is in the vicinity of or enters any prohibited place. And what is a prohibited place? A prohibited place includes not only works of defence but any dockyard, factory or ship belonging to His Majesty. So, it is quite obvious that it is possible for a man quite innocently to either approach or to be found in the vicinity of any such factory or dockyard belonging to the State. Therefore, the essence

[Mr. K. C. Neogy.]

of the offence is his purpose, which must be found to be prejudicial to the safety or interests of the State. This being the most important element of the offence, let us see what procedure is going to be adopted to prove it. It will be enough if you adduce evidence of his known character for the purpose of establishing this important element in the offence. That is a serious danger to which I draw the attention of the House. This danger was as a matter of fact admitted by the Select Committee in so far as it made a distinction between a military and a non-military offence. I must admit that that distinction has improved the Bill; but Sir, so long as Government is unable to justify this distinction in principle I am unable to be a party to the passing of sub-clause (2). It will be said that sub-clause (2) finds a place in the Act of 1911 which already applies to India.

That does not affect my opinion in the least. We are here to pass legislation which we consider to be in the best interests of the country. If Parliament has passed an obnoxious measure of legislation which we consider to be unsuited to the conditions in India, we must, while we are considering a measure seeking to re-enact that provision, establish by our vote here that we do not approve of such a provision. Now, Sir, my principal objection is that the chances of misinterpretation of this clause are much greater in India than in England. My Honourable friend, Mr. Graham, has said " Oh, there are circumstances in which people may be found in very suspicious surroundings and then you cannot really establish with reference to specific acts on his part that his purpose was really prejudicial to the safety or interests of the State." That is exactly the danger which I am very much afraid of. Who knows that this provision may not give temptation to the authorities at one time or other to run in political suspects, or those who are in the opinion of Government political suspects, or non-co-operators for the matter of that, who may be found in the vicinity of a prohibited place? (*A Voice* ' No.') . . . Who says no? Is my Honourable friend, Mr. Chaudhuri in a position to assure me that it will not be so? Is the Honourable gentleman in a position to give me that assurance on behalf of Government? Now, Sir, unless there is a specific guarantee that Government are not going to abuse this provision for the purpose of harassing their political opponents, I cannot be a party to this measure at all.

Mr. President: Amendment moved:

" Clause 3. In sub-clause (2) omit the words ' or his known character as proved '."

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—26.

Abdulla, Mr. S. M.	Latthe, Mr. A. B.
Agnihotri, Mr. K. B. L.	Misra, Mr. B. N.
Ahmed, Mr. K.	Nag, Mr. G. C.
Ayyar, Mr. T. V. Seshagiri.	Neogy, Mr. K. C.
Bagde, Mr. K. G.	Ramji, Mr. Manmohandas.
Bajpai, Mr. S. P.	Reddi, Mr. M. K.
Barua, Mr. D. C.	Shahani, Mr. S. C.
Basu, Mr. J. N.	Singh, Babu B. P.
Das, Babu B. S.	Sohan Lal, Mr. Bakshi.
Ginwala, Mr. P. P.	Srinivasa Rao, Mr. P. V.
Gour, Dr. H. S.	Tulshan, Mr. Sheopershad.
Gulab Singh, Sardar.	Venkatapatiraju, Mr. B.
Lakshmi Narayan Lal, Mr.	Vishindas, Mr. H.

NOES—38.

Abul Kasem, Maulvi.	Hullah, Mr. J.
Akram Hussain, Prince A. M. M.	Hussanally, Mr. W. M.
Allen, Mr. B. C.	Ikramullah Khan, Raja Mohd.
Asad Ali, Mir.	Innes, the Honourable Mr. C. A.
Bijlikhan, Sardar G.	Joshi, Mr. N M.
Blackett, Sir Basil.	Ley, Mr. A. H.
Bradley-Birt, Mr. F. B.	Moir, Mr. T. E.
Bray, Mr. Denys.	Moncrieff Smith, Sir Henry.
Burdon, Mr. E	Mukherjee, Mr. J. N.
Cabell, Mr. W. H. L.	Mukherjee, Mr. T. P.
Chatterjee, Mr. A. C.	Percival, Mr. P. E.
Cotelingam, Mr. J. P.	Pyari Lal, Mr
Crookshank, Sir Sydney.	Ramayya Pantulu, Mr. J.
Davies, Mr. R. W.	Rhodes, Sir Campbell.
Faridoonji, Mr. R.	Sarfaraz Hussain Khan, Mr.
Graham, Mr. L.	Singh, Mr. S. N.
Haigh, Mr. P. B.	Stanyon, Col. Sir Henry.
Hindley, Mr. C. D. M.	Tonkinson, Mr. H.
Holme, Mr. H. E.	Webb, Sir Montagu.

The motion was negatived.

Clause 3 was added to the Bill.

Mr. President: Clause 4. Amendment moved:

"For the words 'an enemy' wherever they occur, the words 'a foreign power' be substituted."

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That clause 4 be omitted."

Sir, my reason for the omission is this: We have just provided in clause 3, by throwing out the amendment of Dr. Gour that a man may be convicted notwithstanding that he may not have committed any act, if from his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State. Now, under this clause 4, you are providing that the fact of any person communicating or attempting to communicate with a foreign agent shall be a relevant evidence for conviction under clause 3. If we retain this clause, the result will be that this evidence, in addition to the evidence of a bad character as proved, will make a man liable to be convicted under the Act. Now, communication with a foreign agent certainly is a very serious thing. Communication with a foreign agent has been defined in this clause. What is it? "A person shall be deemed to have communicated with a foreign agent if he visited the address of the foreign agent or consorted or associated with the foreign agent." That is, if he visits a foreign agent, it shall be deemed that he had a communication with a foreign agent. Further, if he has been found in possession of any address of a foreign agent, whether it is in this country or outside this country, he shall be deemed to have communicated with a foreign agent. Now, it may just happen that the man visiting a place may not know that the place was the address of a foreign agent. If a man visits the address of a foreign agent he is deemed to have communicated with a foreign agent. Now, what is the meaning of address? "Address" in this clause has been defined to be "a place where he carries on business." A suspected foreign agent, if he carries on business at a particular place and any person who is a political internee or a non-co-operator, whose characters these days are believed to be prejudicial to the interests of the State, were to go to the place of business of a person suspected of being a

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foreign agent, then this non-co-operator or political internee shall be liable to be convicted under clause 3, and this will be very dangerous, because that political internee or non-co-operator may himself be innocent. Unless we have any proof of any overt act on his part, it will be rather dangerous and unjustifiable to convict that man simply because he happened to be a non-co-operator or a political convict or internee, and visited a place which happens to be a place of business of any person who is suspected to be a foreign agent. He may be an innocent person and, as such, he will be put to unnecessary hardship. Therefore, Sir, I propose that the whole clause 4 which makes the evidence relevant for conviction, where it is coupled with the proof of bad character, of a man, should be deleted.

Mr. L. Graham: Sir, I am somewhat surprised at the attitude of Mr. Agnihotri. He agreed that to communicate with a foreign agent is a thoroughly bad thing to do, the sort of thing a spy would do, and yet he proposes to omit this clause altogether.

The fact, Sir, is that this clause was inserted in the Act of 1920 as a result of our experiences at Home during the war. It was found that England was, I might almost say, honeycombed with foreign agents. Possibly the position is not yet so bad in India, but it might become so, and in fact, I think there is reason to suppose that it is likely to become so from a certain quarter. Now, in a case like this, it is absolutely necessary to be fore-armed. The reasons which impelled the Home Government to put in this provision were expressed by the present Lord Chief Justice, then Attorney-General, as follows: " After first drawing attention to the fact that nobody is going to prosecute a person for going to have tea with a foreign agent or even for sending him a postcard, he says that if he is found doing any of the extremely dangerous things which constitute the offence for which he is to be tried, then these facts may be used in evidence against him." I think the House which passed the second sub-clause of clause (3) will agree with me that they should pass clause (4) which is really on the same lines and is intended to meet the same necessity. I do not wish to deal with the matter in detail, but I would only like to read what Sir Gordon Hewart said:

" I hoped that what I said when I last spoke with reference to the opening and governing words of the second Clause of this Bill would have met in advance any such criticism as that which has just fallen from my Honourable friend the Member for Consett. I am sure he sees that it is very important that this clause begins with words which limit its effect to proceedings in which a particular kind of offence is charged."

As I said, there is no prosecution under this section. It is simply an evidence section:

" In other words, the clause provides that where, for example, a man is found in Woolwich Arsenal and there is evidence to show that he is there for the purpose of spying, the further fact, if fact it be, that he has also been in communication with a German agent will be evidence that he has, for a purpose prejudicial to this country, obtained, or sought to obtain information calculated to be useful to an enemy."

Now, Sir, a foreign agent, it may be said, is to a spy what a jemmy is to a burglar; and as we have in our own criminal law a presumption about a man who is found in possession of house-breaking implements, so in respect of spies it is reasonable to expect that writing to foreign agents or communicating with them is a fact which he ought to be called on to explain and if he cannot explain it, it ought to count against him as proving that

the act with which he has actually been charged was done with a purpose prejudicial to the safety or interests of the State.

Mr. K. C. Neogy: Sir, I have got one question to put to the Honourable Member who has just sat down; and that is, whether this provision has been incorporated in any legislation that the Colonies may have undertaken. The House will remember that this clause is taken, not from the Act of 1911 which applies to all British Possessions, but from the Act of 1920 which does not apply either to Canada, Australia, New Zealand, South Africa, Newfoundland or India. So far as I have been able to see, the Colonies have not brought in this provision by any legislation of their own. (If I am wrong, the Honourable Mr. Graham will correct me.) If that be so, what is the special urgency of this provision being incorporated in the Statute Book in India? I want to be satisfied on that point before I vote on this clause.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): May I ask another question, Sir, suppose there is a " Miladsharif " going on in the House of the Consul-General of Afghanistan or probably there is a general prayer, and as a Muhammadan, every Muhammadan must go there and say his prayers in the house of the Consular-General of Persia. Will that be a communication? Or suppose out of friendship the Consul-General pays a visit to a Member of the Legislative Assembly and he drops his visiting card and the Member of the Assembly returns the visit by dropping a visiting card of his, or probably in his diary he enters an entry that he dined with him on a certain day. Will that Member of this Assembly come under this section? If so, this would be an immoral law, it is a law which is illegal, I feel is an extraordinary thing that the people living in India will have to obey it, it is a law which is not only of a harsh nature but a law which a civilized nation should not have. Therefore, I expect my Honourable friend, Mr. Graham to satisfy the House how far its inclusion in sections 3 and 4 of this Bill is justified and how far it comes within the spirit of the law of this country.

Mr. L. Graham: May I say, Sir, that if a reply were permissible on an amendment, I would be able to satisfy Mr. Kabeer-ud-din.

Mr. K. C. Neogy: What about my question?

Mr. L. Graham: That will be dealt with in another quarter.

Rao Bahadur T. Rangachariar: There is a lot of misapprehension as regards the scope of the section. This section by itself does not create any offence. This section merely says what facts are relevant in a trial for an offence under section 3; it merely lays down the rules of evidence. Having regard to the peculiar nature of the case, the peculiar nature of the offence,—incidents which do not occur in ordinary human life do occur in such cases, insidious and underhand methods, and that is why a special legislation has to provide what special facts shall be relevant. If Honourable Members will notice, all that section 4 (1) says is, " shall be relevant " for the purpose of proving a particular fact, not that the Court is bound to draw the inference, not that it is conclusively proved, not even " shall be presumed "; it is merely relevant, it is a piece of evidence which the Court can admit in order to come to a conclusion whether the man has committed the crime or not. Honourable Members will remember that under section 3 it is essential for the prosecution to prove one or other of the three acts specified therein, that is, a person in order to be

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convicted, (*a*) must either have approached, inspected, etc., etc., any prohibited place; (*b*) he must have made a sketch, plan, model, etc., etc., which will be useful to an enemy; and (*c*) he must have obtained, collected, recorded, etc., etc., information which would be useful to an enemy (*A Voice*: "Might be"), might be, intended to be, or calculated to be (*Mr. K. C. Neogy*: "Directly or indirectly.") You have got to catch all sorts of cases so that the language should not be too narrow. Therefore these facts must be proved in the first place. In order to prove that fact, this will be one of the relevant facts taken into consideration. In order to find out whether this man has really communicated with an enemy, has really communicated an information to a foreign enemy, it would be relevant to know whether he is on visiting terms. If he is on visiting terms, that will be one of the facts proved. All that section 4 (1) says:

"In any proceedings against a person for an offence under section 3, the fact that he has been in communication with, or attempted to communicate with, a foreign agent whether within or without British India, shall be relevant for the purpose of proving"

the commission of the offence. Therefore, it is merely a piece of evidence to which the Court may give such weight as it thinks fit taking into consideration the other circumstances which may be proved in the case. Then the latter portion is:

"For the purpose of this section, but without prejudice to the generality of the foregoing provision,—

(*a*) a person shall be presumed to have been in communication with a foreign agent if—"

he has done all those things mentioned thereunder. That is, in order to prove that he has been in communication, the law lays down a presumption—a presumption which is rebuttable. That, my Honourable friend who has spoken against this section has forgotten. It is not a conclusive presumption. If you go merely and innocently for tea or if you merely go for the purpose of doing business in the business premises of a foreign agent, why it is the easiest thing to prove that you had a transaction to buy a horse or to buy some Persian carpet or do some other thing. It merely says 'shall be presumed.' In a case like this, in order to avoid difficulty, having regard to the delicate and serious nature of the offence, the law has to take care. It cannot be too careful and too cautious in such matters. Remember we are dealing with enemies of the State. When once you have that in mind, all these difficulties now help up which no doubt may appeal to unthinking people but to those of us who are here such argument is not convincing, it is very easy to catch popular or newspaper applause by holding forth and pointing out the dangers and pitfalls, but we as legislators have to be careful in dealing with legislation which deals with enemies of the State. You should not leave loopholes through which these fellows can escape. I have no mercy for them. I have no sympathy with them, however patriotic I may be and you must never be kind and leave a loophole for an enemy of the State to escape Therefore you must catch them by all means even if you err. It does not matter if you err because prevention is better than cure in such a case. While I am at one with my Honourable friends that we should not encroach upon ordinary methods of proof, I recognize these are peculiar cases and peculiar cases have to be dealt with in a peculiar way and after all our Legislature is not committing any enormity. We are trying to follow the English people in all their political institutions and rights. If it is

good for an Englishman, why should it not be good for us. True we have not got our own Government. That is the real secret of all this opposition. I quite admit that, but this is not the way to get rid of the foreign Government and establish our Government. In order to keep the State going you must have these measures in your armoury so as to deal with enemies of the State, not enemies of forms of Government. Now, I am an enemy of the present system of Government. I want to get rid of it and substitute Government by my countrymen. But this does not apply to me. It applies to the enemies of the State. My Honourable friend says he is not quite so sure, but I daresay that if he was on the Bench and I were appearing as Counsel for an accused person I would be able to satisfy him in no time that this is the intention of the Statute. After all, you must remember what the intention of the Statute is in a case like this. The courts are not there merely to go upon the literal meaning of the words. They will construe in a liberal spirit in favour of the accused and after all this is merely laying down what facts may be relevant and will carry weight, so that it is not conclusive proof at all and I therefore think that there is really no harm in retaining this section.

Dr. H. S. Gour: Sir, my friend on the right has accused the House and the Members thereof from suffering from a lot of misapprehension. Whatever may be the case with other Members, I have not the slightest doubt that my learned friend on the right has taken a lion's share of that misapprehension. He opened his speech and wound it up by saying 'We want to deal with the enemies of the State.' But, Sir, this section is not dealing with the enemies of the State. It is dealing with a piece of evidence and we are yet to find the enemies of the State. The question my friend has assumed, that we are dealing with enemies of the State, is mere claptrap: the whole question is, who are the enemies of the State. My friend told us, and he has repeated that statement, that we are dealing here with the enemies of the State, by which I presume he means that we are here dealing with foreign subjects. Let me warn the House that this Bill, if passed into law, shall equally apply to all British subjects, Indians, Europeans or foreigners. It applies to everybody, and it is not the case, as my Honourable friend has assumed, that it is intended to lay the enemies of the State by the heels. Even if it were so, are not the enemies of the State entitled to justice? Are they not entitled to fair trial? Are they to be convicted without any judicial evidence, without any formulated pleas set out and proved against them? Are special chambers of horror to be devised for the purpose of impaling and pulverising foreign people? Surely, Sir, no Member in the House will endorse the pseudo-patriotic appeal which my Honourable friend on my right addressed to us. Let us, I say, be free from this cant, and address ourselves to the main question. Is the evidence, is the special rule of evidence which this section creates, is it warranted by the natural principles of equity and justice? That is a short question which I submit should engage the attention of this House. Let us be clear of those extremely vivid but at the same time misconceived notions of protection of the State and laying by the heel its enemies. We have neither the enemies of the State nor the protection of the State in view; in this section we have nothing but pure justice in view. Is it, I submit, consonant with the natural justice that with regard to a man who is found with a visiting card containing the address of a person or the person with whom he resided, that it should be a relevant factor? Turn to the section and you will find, Sir, another *reductio ad absurdum*: a person shall be presumed to have been in

[Dr. H. S. Gour.]

communication with a foreign agent—and I now leave out other words and select the words which suit my purpose, and it will show to you the absurdity of it, such a case is conceivable, and because the section lays down a large number of circumstances, and I am going to present you with one of them. If he has visited the address of a foreign agent, namely, any address—clause (c)—used for the receipt of communications,—(a person is charged with the offence under section 3); the evidence against him is given that he is presumed to have visited a foreign agent; the evidence given is that the foreign agent has an address. But ' address ' is defined in clause (c) as a place where letters intended for that agent are received. Such a place might be a popular hotel or a large bank. As a matter of fact, Honourable Members know that when they tour about the country they generally have their letters addressed to a bank or a hotel. If therefore in such a place of common resort the foreign agent has left his address, a person shall be presumed to have been in communication—the accused shall be presumed to have been in communication with him if he has an address. If you have the address of that hotel or bank you shall be presumed to be in communication with a foreign agent. It is absolutely unnecessary to labour the point. These special rules of evidence were defended in the House of Commons by our present Viceroy, then the Attorney General . . . (*A Voice*: " No, you are mistaken.") . . . by Sir Gordon Hewart . . . (*Mr. L. Graham*: " I may say that you are again mistaken.") . . . . . Yes, by Lord Hewart—then the Attorney General, but not upon the grounds to which my learned friend has adverted to in this House. I say, Sir, look at the section: look at its extreme danger: address yourself to its complete artificiality and its divorce from the ordinary rules of the law of evidence to which this country is subject, and I have no hesitation that you will discard this clause as wholly unnecessary and as calculated to do injustice in the trial of offences. I wish to warn Honourable Members that this clause might be used against any one of them. It is not a clause which is reserved, as my Honourable friend from the right has pointed out, only for the enemies of the State. It may be used against the most loyal citizen; it may be used for manufacturing enemies, as my friend, Mr. Seshagiri Ayyar, aptly points out. It is therefore, I submit, open to be used as an engine of oppression, and it is on that ground that I ask the House to support this amendment.

Colonel Sir Henry Stanyon: Sir, with regard to the proposal to omit clause 4 of the Bill, in all humility I venture to support, with the strongest language at my command, the views put forward by my friend, Mr. Rangachariar; and, in the most friendly way, but again with the strongest language at my command, to refute the warning given to this House by my old friend, Dr. Gour. I would venture once more to draw the attention of the House to the fact that this is a legislation of a special kind. We are dealing in this legislation with an evil which is insidious beyond perhaps our imaginings: which works in the dark; and which can only be met with its own weapons. We are by this legislation giving powers to our judicial and executive authorities not to be misused, not to be abused, not to be applied as an engine of oppression, but to be kept in hand, just as we keep in hand all other defensive apparatus, to meet an evil which can only be met by special legislation of this kind. I do not suppose that any of us knows, or that we shall ever know, the extent to which the safety or the interests of the State were endangered and honeycombed with the evil of hostile spies and foreign agents during the last ten years. One

argument raised against this clause is that it comes not from the Statute of 1911 but from the Statute of 1920. To my mind that is one of its strongest recommendations. It has behind it the experience gained during the late war—which broke out in 1914. As the Honourable Mr. Rangachariar has pointed out, this clause contains special rules of evidence. Take it away and you deprive this enactment of a very large part of its usefulness.

(At this stage Mr. President left the Chair, which was occupied by Sir Campbell Rhodes.)

Dr. Gour is quite right in saying that it does not apply only to one set or class or race of people, but that it applies impartially to everybody; that is so. It applies to everybody; but it operates only against those who, be they English or be they Indian, guilty of the offence of spying, are enemies of the State. The whole of this clause rests upon the foundation given in sub-clause (*b*), namely, the definition of a foreign agent. That is the first thing you have to get. You must have a foreign agent. If he is not there, then it does not matter what is done by any gentleman, whatever his political opinions may be for the time being; but when you have got a foreign agent, then you have a snake: and if the poison of this snake is not to be disseminated, as it always is, secretly, clandestinely, with every ruse and stratagem that the brain of man can devise, you must have some provision like this to prevent it from spreading. We must trust our Courts. Later on we shall come to the question of the standard of Courts which are to try cases under this enactment, and it will be seen at once that as a Legislature we are not going to entrust these powers to irresponsible or inexperienced or weak or stupid Magistrates, but to Courts which can be trusted to use them only in those very special circumstances, to meet which this enactment is devised. I would like, speaking for myself, to see this House not divided against itself, but strong in laying down, for the information of all concerned, that spying in India,—spying that is in a way prejudicial to the interests and safety of the State,—is going to have a very poor chance of success in this country.

Mr. T. E. Moir (Madras: Nominated Official): I move that the question be now put.

The motion was adopted.

Mr. Chairman: The question is to omit clause 4.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I move part (*b*) of my amendment No. 12. I do not wish to move part (*a*):

"In clause 4, in sub-clause (2) (*a*) (*i*), after the words 'with a foreign agent,' insert the words 'having reasonable grounds for believing him to be a foreign agent'."

Sir, we have heard from the Honourable Mr. Rangachariar and the Honourable Sir Henry Stanyon that these laws are meant for offences of a special kind. Nobody ever doubted it and nobody ever questioned it. But the apprehensions and the fears we have are that the law as embodied in this Bill may be abused or misused and innocent persons may suffer, and it is with the object of safeguarding the innocent persons that this amendment is put forward. It was also said that the law to suppress spying should be as strict as possible. Nobody denies it. It was also said that the trial of such cases will not be entrusted to any weak or stupid Magistrates. Where is the guarantee for that? If the Government find that such and such a Magistrate is a weak Magistrate and such and such a Magistrate is a stupid Magistrate, they will not retain his services any longer. So long as the

[Mr. K. B. L. Agnihotri.]

Magistrates are occupying the Bench, we are to assume that they are intelligent and strong Magistrates,—though they might commit errors of judgment, which might give us cause to infer their weakness or stupidity at certain times. And, if they could be guilty of such an error of judgment at one time, they could be no guarantee that they will not indulge in similar error at some other time. Here we provide, Sir, that, if a man were to visit the address of a foreign agent and if that man happens to be a person whose character as proved is such as to lead to a presumption that the act which he committed is prejudicial to the interests of the State, then that man will be liable for conviction under this Act. What would be the case? Take the case of the political internee. What further evidence—for many of our Magistrates will there be necessary to prove that the man is not a bad character? If such a man were to visit a place which is suspected to be the address of a foreign agent and if such a person at the same time or thereafter goes or approaches any military station, or any military telegraph or telephone station that may be confined within a fort, he will surely be liable to be prosecuted under this Act. Take the case of Sitabardi Fort of Nagpur. The telephone or the wireless station in Sitabardi Fort of Nagpur may be considered to be a military station. If a political internee or convict or a non-co-operator or seditionist happens to go near that fort, which happens to be close to the railway station . . . .

Mr. L. Graham: On a point of order, Sir. Is not the Honourable Member speaking on clause 3?

Mr. K. B. L. Agnihotri: On clause 4, Sir, coupled with clause 3 and the definition of the ' prohibited place ' as given in clause 2 (*a*), which combined, make a man liable for conviction under this Act. Now, Sir, if the place is a military station, or if it has a military telephone and telegraph, and if it happens to be near the railway station where passengers have to go and if it enters into the head of the Executive that a particularly undesirable man should be prosecuted, or should be locked up, then what is there to prevent such an executive from prosecuting that man and getting him punished under this Act? My Honourable friend said that these laws are special laws, they may not be abused, they are not capable of being abused. Have the Honourable Members of this House forgotten the instances given by my Honourable and learned friend, Mr. Rangachariar, himself, of the abuse of section 107 of the Criminal Procedure Code? Have my friends here forgotten the excesses committed by the police as given on the floor of this House? Have my friends forgotten the instances and the judicial experiences given by my Honourable friend, Sir Henry Stanyon . . . .

The Honourable Mr. A. C. Chatterjee: May I rise to a point of order, Sir? I understand that the Honourable Member is moving the amendment relating to sub-clause (*b*) under clause 4, and, so far, I have not heard the use of the word " foreign agent " in his speech. He is referring to the question of convictions which has already been dealt with in clause 3.

Mr. K. B. L. Agnihotri: I was just pointing out that the visit of a man to a foreign agent's address by itself may not be sufficient for conviction but that when it is coupled with certain other facts, there will be sufficient evidence for his conviction. I am pointing out . . . . . .

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Dr. H. S. Gour: What is relevant may be sufficient for conviction.

Mr. K. B. L. Agnihotri: Sir, what is relevant is often sufficient for conviction.

Dr. H. S. Gour: May be sufficient.

Mr. K. B. L. Agnihotri : But in practice we see that it is more than sufficient and we will find that it is quite sufficient. We know that in theory it may be only relevant. Sir, I was pointing out, that when the simple provisions of the criminal law have been abused in the past, there could be no guarantee that such a drastic provision as is provided in this Bill may not work harshly against innocent persons. If we were to allow this sub-clause 2 (*a*) (1) of clause 4 to stand as it is, we make innocent persons unnecessarily liable under this Act in certain circumstances. Therefore as it is likely that innocent persons might suffer, I beg to propose that some safeguard should be provided to protect innocent persons from being made liable under this Act. Only those persons who have knowledge or have reason to believe that the person is a foreign agent, and knowing this if they happen to go to his place, then only should they be made liable under this Act. Therefore, Sir, I move my amendment. At the same time I would also like to say, that often when an amendment is put forward,—and there be some mistake in the amendment or when it does not fit in properly, Honourable Members on the Government Benches get up and say that the amendment has not been properly drafted, and take exception to the wording of the amendment which I think is not justified . . . .

Mr. L. Graham: I might allay the apprehensions of the Honourable Member by saying that I think his amendment is admirably drafted.

Mr. K. B. L. Agnihotri: It may be. But supposing there was any mistake, in that case I should certainly have been happy to accept " knowingly," or " intentionally " or any other words that the Government may like to put in, in order to safeguard the interests of innocent persons. That is my chief object. If a person were innocently to go and visit the place of a foreign agent, he should not be made liable, and that evidence should not be used as relevant evidence against him.

Mr. Chairman: Amendment moved:

" In sub-clause 2 (*a*) (*i*) after the words ' with a foreign agent ' insert the words ' having reasonable grounds for believing him to be a foreign agent '."

Mr. L. Graham: Sir, it is rather difficult to reply to Mr. Agnihotri in defence of the clause as it stands now, because what he has done is not to attack the clause as it stands now but to attack clause 3 which has already been passed by this House. I do not propose to start defending clause 3 which the House has already passed, but what I wish to point out is this. If you accept this amendment you will make it practically impossible for the evidence which is contemplated by this clause to be led at all. I take the position to be as follows: The man who is accused of an offence not under this clause but under clause 3 as you will remember, has been associating with a foreign agent. If Mr. Agnihotri's amendment is accepted, you will not be able to adduce that evidence that he has been associating with a foreign agent unless you can first satisfy the Court that the accused ought to have known that the person with whom he has associated was a foreign agent. I put it, Sir, that this is an impossible burden to throw upon the prosecution. Foreign agents do not display name boards in front

[Mr. L. Graham.]

of their residences with the words "foreign agent" inscribed in golden letters on it, and there is really no possible chance of satisfying the Court, that a foreign agent, being an unobserved and somewhat obscure person working in serpentine manners, is a person whom the accused ought to have known to be a foreign agent. It might be reasonable to require the prosecution to prove that an accused should have known anything which a person of reasonable intelligence would have known, but it is not fair to put on the prosecution the burden which this amendment would put on it. Therefore, Sir, I oppose this amendment.

The amendment was negatived.

Mr. K. B. L. Agnihotri: I move:

"In sub-clause (2) omit sub-clause (*a*) (*ii*)."

I need not say anything in defence of the omission of this sub-clause. Much has been said by Dr. Gour while moving the amendment about the omission of the whole clause 4. This sub-clause (*ii*) makes a man liable if he were to have only the address of any person who in the words of Mr. Graham does not declare himself to be a foreign agent and who is not expected to proclaim himself as a foreign agent as Mr. Graham has been pleased to say— still you want that innocent person to be made liable for this offence. He may be equally unaware that the man is a foreign agent; but if he happens to have his address either in a foreign country or in this country you make him liable. Therefore I move this amendment for omission of that sub-clause.

Mr. L. Graham: I think this is a forlorn hope of Mr. Agnihotri's. The House without a division has accepted the whole clause, and the small portion that Mr. Agnihotri wishes to take out is really a vital portion of this clause. I submit that any one who has voted against the omission of this clause as a whole must vote for retaining this portion of it. I would therefore oppose the amendment.

The amendment was negatived.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): May I interpose by suggesting that the House should adjourn now?

Dr. H. S. Gour: May I point out, Sir, that we have a very important Committee which is to meet immediately after the Assembly rises and of which I presume you are a Member. That Committee has been once adjourned and I do not think that it will be wise that that Committee should adjourn again. We have to transact a very important business and I would therefore request in view of the hour which is ten minutes past five, you might adjourn the House.

The Honourable Mr. A. C. Chatterjee: Sir, you and the House are aware of the congestion of public business in the House. Government are quite prepared to go on with this Bill. If we do not finish the Bill to-day or do not make satisfactory progress, our business will be put out of order. As you know, Sir, there is a lot of important work, in which the Members of the House are interested during the next few days and Government are quite prepared to go on. But if there is any strong feeling on the part, generally, of all Members of the House, we do not wish to press the question. We are prepared to leave it entirely to you. We should like to finish clause 4 if possible. We leave the decision to you.

Mr. T. V. Seshagiri Ayyar: May I point out to you, Sir, that we have been sitting during these two days until 6 o'clock and even after 6 o'clock, and it upsets a great many arrangements which we have already made. The hours fixed are between 11 and 4, and I think it is in consonance with the general practice in these matters that if it has to sit later it should be only in exceptional cases and that care should be taken to see that the Members of the House are not inconvenienced. If you say that you are going to sit till 6 o'clock, proclaim it once for all so that we may know where we are. The announcement is that we are expected to sit between 11 and 4 and if you are going to sit after 5, it necessarily upsets all arrangements which Members of this House may have entered into previously. To-day happens to be one of those occasions when we are required in some other place and I therefore suggest to you,—of course you have the right to adjourn or not and the matter is entirely in your hands,—that we do adjourn as soon as this amendment is disposed of. (*Voices*: "The amendment has been disposed of.") Then we had better adjourn now.

Mr. L. Graham: Do I understand Mr. Seshagiri Ayyar to refer to the amendments to clause 4?

Mr. T. V. Seshagiri Ayyar: No.

Dr. H. S. Gour: We will require some time to consider it.

Mr. L. Graham: I should not like to say that Dr. Gour's amendments are not important. My point is this. We have defeated an amendment to omit the whole of clause 4 and we are now dealing with clause 4 piecemeal. I think it would be more satisfactory to finish clause 4.

Mr. Chairman: The only argument that has been advanced is Dr. Gour's —that there is important business for some Members which follows this sitting. I therefore adjourn the House till 11 o'clock to-morrow.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 15th February, 1923.