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LEGISLATIVE ASSEMBLY.

Monday, 12th February, 1923.

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

QUESTIONS AND ANSWERS.

Vacancies during Probationary Period on Railways.

336. ***Rai Bahadur G. C. Nag:** With reference to the answer given on the 15th January, 1923, to unstarred question No. 5, is it a fact that vacancies in permanent posts sometimes occur before the probationary period of any of the probationers; and if so, is it the normal practice on railways to make temporary arrangements for filling such vacancies to admit of probationers being permanently appointed thereto on completion of their probationary period?

Mr. C. D. M. Hindley: Unforeseen vacancies naturally do occur. There is no normal practice for dealing with such unforeseen vacancies. Each case has to be decided on its merits, taking into consideration its own particular circumstances.

Rules of Companies Working State Railways.

337. ***Rai Bahadur G. C. Nag:** With reference to the answer given on the 15th January, 1923, to unstarred question No. 84, is it a fact that companies working State railways do not furnish Government with copies of their rules?

Mr. C. D. M. Hindley: There are no orders requiring them to do so. The policy of Government is to interfere as little as possible with details of domestic management.

Establishment of the Railway Board.

338. ***Rai Bahadur G. C. Nag:** With reference to the statement of "Establishment of the Railway Board" appearing in the Railway Revenue Budget for 1922-23, will Government kindly state (*a*) which of the posts require engineering qualifications, (*b*) whether any of such posts have ever been filled by officers of the company-worked railways, (*c*) whether any of such posts have ever been filled by Indians, and (*d*) if the reply to either (*b*) or (*c*) is in the negative, why not?

Mr. C. D. M. Hindley: (*a*) The only posts in which engineering qualifications are required are:

(1) Chief Engineer,

(2) Two Assistant Secretaries,

(3) Additional Assistant Secretary.

(*b*) and (*c*). No.

(*d*) The posts are filled by selection and hitherto Indian and Companies officers with suitable qualifications and whose services could be spared have not been available when the vacancies occurred.

I. C. S. AND LOCAL VERNACULARS.

339. ***Mr. B. N. Misra:** (1) Is it a fact that the Indian Civil servants are compelled to pass in Local Vernaculars?

(2) If so, is there any time limit during which they are required to pass in Local Vernaculars?

The Honourable Sir Malcolm Hailey: (1) Yes.

(2) No period is prescribed but officers have the best incentive to pass their departmental examinations quickly as until they do so they are not eligible for increments of pay.

Mr. K. Ahmed: Is it desirable for any judicial officer of the service to perform any functions in the Court, as for instance, to hear evidence . .

Mr. President: The Honourable Member is asking for an opinion, not for information.

Mr. K. Ahmed: Is it not a fact, Sir, that members of the service cannot possibly discharge their onerous duties when they are sitting on the judicial bench, unless they pass examinations in the vernacular, to take down the evidence of witnesses?

Mr. President: I think that is a matter of opinion too.

Mr. K. Ahmed: Is it not obvious, Sir, that it is impossible for members of the service, unless they know the vernaculars, to record evidence and to write out judgments thereon?

WAITING ROOMS FOR INTERMEDIATE AND THIRD CLASS PASSENGERS.

340. ***Khan Bahadur Sarfaraz Hussain Khan:** (*a*) Is it a fact that the male and female passengers of Intermediate and Third Classes are not provided with separate waiting rooms?

(*b*) If not, do the Government propose to order such arrangements to be made as to prevent the male and female passengers of the Intermediate and Third Classes from grouping together at one and the same place?

Mr. C. D. M. Hindley: (*a*) and (*b*). It is understood that Railways provide separate waiting accommodation for intermediate and third class lady passengers where necessary.

In this connection the Honourable Member is referred to the answer given on the 14th March, 1921, in this Assembly to question No. 464, asked by Rai Bahadur Pandit Jawahar Lal Bhargava regarding waiting accommodation for third class lady passengers.

WAITING ROOMS AT DELHI STATION.

341. ***Khan Bahadur Sarfaraz Hussain Khan:** (*a*) Is the Government aware that the 1st and 2nd class waiting rooms at the Delhi Junction have been removed to the upper storey of the station?

(*b*) If so, will they be pleased to order their removal to some such place as may be close to, and on the same floor, as the Refreshment Rooms?

Mr. C. D. M. Hindley: (*a*) Yes.

(*b*) The Railway Administration intend to open the main refreshment rooms in the upper storey shortly. A lift has been installed for the convenience of passengers.

STAMP PRINTING IN INDIA.

842. ***Mr. B. S. Kamat:** With reference to the question of Stamps Printing in India, and the discussion thereon in the Assembly in March, 1922, will Government be pleased to furnish the following information:

(*i*) Have any steps been taken to notify to Messrs. De la Rue that their contract may not be renewed after 1924;

(*ii*) Have any steps been taken to find out if any Firms in India, either Indian or European, are willing and able to undertake the contract and if necessary, to import and instal the necessary special plant for stamp printing? If the answer is in the affirmative, will Government please state the nature of their inquiries and the result? Had Government offered to guarantee the contract for a definite number of years?

(*iii*) Is it true that the Controller of Stamps, Stationery, and Printing was addressed by an Indian Firm of Printers in this matter in 1922, and that he replied that this contract would be given only for one year at a time unlike the contract for 10 years given to Messrs. De la Rue & Co.?

(*iv*) Is it true that Government have deputed one officer (Mr. Ascoli?) to England to study the question of stamp printing? When is this officer likely to return? What experience had he of printing processes before going to England?

(*v*) What are the present arrangements for printing Post Cards and embossed envelopes?

(*vi*) What are the rates and the terms and conditions settled with Messrs. De la Rue & Co., in the matter of their existing contracts?

The Honourable Mr. C. A. Innes: (*i*) No. The contract does not expire until the 31st December, 1924, and it is only necessary to give six months written notice of an intention to terminate it.

(*ii*) No detailed inquiries have so far been instituted by Government but information on the subject has been supplied to two firms who have addressed the Controller on the matter.

(*iii*) Yes, an Indian firm did make certain inquiries of the Controller of Printing, Stationery and Stamps, in this connection in March, 1922. That officer did not say that any new contract would only be an annual one.

(*iv*) Colonel Willis, an officer of the Mint Department, has been deputed to England to examine the question of the possibility of printing Currency Notes in India. He has also been asked to take up the question of the printing of stamps, and Mr. Ascoli who is on leave in England has been associated with him in the latter inquiry. Mr. Ascoli is expected to return from leave in July next. For some months before he went Home he was on special duty in connection with the re-organisation of the printing presses under the Government of India and in the course of this work he acquired considerable experience of printing processes in India.

(*v*) Postcards and embossed envelopes are printed by Messrs. De la Rue and Company, though at times it has been necessary to get Postcards printed in this country, *e.g.*, when the new half-anna Postcards were introduced.

(*vi*) The contract with Messrs. De la Rue and Company is a lengthy document consisting of 82 clauses and 7 schedules and covers 32 large pages of print; it is available in my office for inspection by the Honourable Member or any other Honourable Member of this House.

OFFICIALS AS M. L. A.'s.

343. ***Maulvi Miyan Asjad-ul-lah:** Is it a fact that a person who is an official or who is in service of the Crown in India is not qualified for election to be member of the Indian Legislature?

Sir Henry Moncrieff Smith: If the Honourable Member will refer to sub-section (1) of section 63E of the Government of India Act, he will find that the answer to his question is " yes ".

SPECIAL TRAINS FOR ENGLISH MAILS.

344. ***Mr. W. M. Hussanally:** 1. Upon what lines of Railway in India are special trains run to and from Bombay carrying English mails and passengers?

2. What was the total cost of running these trains in the last financial or calendar year details for which may be available?

3. Do these trains carry passengers other than those going to or returning from the United Kingdom? If not, why?

4. What is the amount of time saved by running these special trains?

5. Do these trains pay for their running from passenger fares? If not, what was the total loss to the public exchequer during the last financial or calendar year?

6. Is any extra postage charged for mails carried by these special trains? If so, what was the amount of this extra postage gained during the past financial or calendar year?

7. Has the Government considered the advisability of stopping these trains until better times? If not, do Government propose to consider the matter?

8. Is it a fact that ordinary mail and passenger trains are held up at roadside stations to allow the special trains to pass on?

Mr. C. D. M. Hindley: The Honourable Member is referred to the reply given to question No. 138 asked by Mr. N. M. Joshi in this Assembly on 7th September, 1922, on a similar subject.

MAIL CONTRACTS IN POONA.

345. ***Mr. A. B. Latthe:** Will the Government be pleased to state—

(*a*) For which years and for what respective places were mail contracts given to Messrs. Sultan Chivoy, Contractors, East Street, Poona?

(*b*) For which of these contracts were tenders invited from other Motor Companies in Bombay and Poona? and

(*c*) If reply to the part (*b*) of the question be in the negative in full or in part, why were tenders not invited?

Colonel Sir Sydney Crookshank: The necessary information is being obtained and will be supplied to the Honourable Member as soon as possible.

RECOMMENDATIONS OF ASSAM LABOUR INQUIRY COMMITTEE.

346. ***Rai Bahadur G. C. Nag:** Are the Government of India aware that the majority of the Assam Labour Inquiry Committee recommend that Act XIII of 1859 should cease to apply to the tea gardens in Assam, and that the Governor of Assam in Council accepts the recommendation? Do Government propose to bring in a Bill during the present session either to repeal Act XIII of 1859, or at least to give effect to the above recommendation by amending it?

The Honourable Sir Malcolm Hailey: Yes. Government are at present considering the replies of Local Governments to the reference made to them as a result of the discussion in the Assembly on the 10th September, 1921, on the Resolution moved by Mr. Joshi. The final replies have only recently been received. It is possible, however, for the Government of Assam by action under section 5 of the Act as amended in 1920, to secure that the Act shall not apply to some or all of the tea-gardens in Assam.

COMPOSITION OF THE SHIPPING COMMITTEE.

Mr. T. V. Seshagiri Ayyar: Will the Government be pleased to give to this House information regarding the composition of the Shipping Committee and also the qualifications of Sir John Biles who has been appointed a Member of the Committee, his previous pay, and his experience in the India Office also?

The Honourable Mr. C. A. Innes: I am sorry that I have not got available an answer regarding the composition of the Committee but Honourable Members know, I think, that its composition was published in the Gazette of India of Saturday last. As regards Sir John Biles, Kt., K.C.I.E., LL.D., he is Honorary Vice-President of the Institution of Naval Architects, Member of the Society of Naval Architects of the United States of America; Honorary Member of the Japanese Society of Naval Architects. He has been Naval Constructor with the Admiralty, Naval Architect and Manager to the Clydebank Shipyard; Professor of Naval Architecture, Glasgow University, and is senior partner in Sir J. H. Biles and Company, a firm of Naval Architects and Engineers. He has visited professionally the United States of America, Canada, Japan, China, India and Australia. He has served on at least nine Committees appointed by the Board of Trade to inquire into different marine questions. He is a Past Master of the Worshipful Company of Shipwrights and a Past President of the Engineering Section of the British Association. He is Consulting Naval Architect to the India Office. It is understood that he succeeded the late Sir E. Reed in this post.

The Mercantile Marine Department of the Board of Trade supplied on request the names of certain gentlemen with expert knowledge who had dealt with shipbuilding problems on a large scale and were capable of taking broad and long views on such matters. Sir John Biles was invited to serve on this Committee in view of the fact that he had already visited India and in regard to his well recognized position as an authority on shipbuilding.

I have no information as to what remuneration he has drawn from the India Office.

Mr. T. V. Seshagiri Ayyar: Has a Secretary been appointed to this Committee?

The Honourable Mr. C. A. Innes: Yes. Mr. J. H. Green.

Mr. T. V. Seshagiri Ayyar: Is it not generally the rule that where a European President is appointed to a Committee, an Indian Secretary is appointed and *vice versa* where there is an Indian President an English Secretary is appointed?

The Honourable Mr. C. A. Innes: I am not aware, Sir, of the existence of any such rule, but I may say that I offered the appointment to an Indian gentleman who refused it.

STATE MANAGEMENT OF RAILWAYS.

Sir Campbell Rhodes: Sir, I wish to ask the Honourable the Home Member the question of which I have given him private notice:

In view of the fact that the Bengal Chamber of Commerce has expressed very emphatic and definite views on the question of State Management of Railways, which views it naturally desires should be voiced in this Assembly by its President, and in view of the fact that Government have provisionally fixed for the discussion of Maulvi Miyan Asjad-ul-lah's Resolution two dates on which it is impossible for the President to attend owing to the Statutory Annual Meeting of the Chamber of Commerce on 27th instant, I beg to inquire whether it would be possible for the Government to allot some other day for the consideration of the Resolution.

The Honourable Sir Malcolm Hailey: I am very sensible of the difficulty due to the fact that we have had to postpone the discussion of this important Resolution to a date on which it will be impossible for the President of the Bengal Chamber of Commerce to be in his place. The Bengal Chamber of Commerce is of course intimately concerned with this question, and moreover we ourselves would have welcomed the assistance of Sir Campbell Rhodes in our discussion on the subject, not only as a representative of the Chamber but on personal grounds. But, the difficulty of arranging another date is very great. It would mean of course that we should be obliged to postpone the discussion till March, but there are few dates available in that month, and it is possible that even those dates must be occupied by other urgent Government business. I am afraid, that in the circumstances I can see no way of surmounting this difficulty.

UNSTARRED QUESTIONS AND ANSWERS.

MHOW GRIEVANCES.

154. **Mr. Pyari Lal:** 1. Has the attention of the Government been drawn to an article headed "Mhow Grievances" published in the *Cantonment Advocate* of 10th November, 1922?

2. Is it a fact that Mr. A. A. Dadabhoy, a representative of the local House-Owners Association nominated to the Cantonment Committee, has been told that he could take part only in those meetings where question regarding house property is to be considered and that his participation in the deliberations of the Committee will be confined to that question only?

3. Is the Government aware that as a protest against this imposition of this limitation on his appointment as a member of the Committee, Mr.

Dadabhoy has never taken part in any meeting of the Cantonment Committee?

4. Is it a fact that as a result of Mr. Dadabhoy's absence from the Committee, the important interests of the House-Owners Association have gone unrepresented on the Committee?

5. Will the Government be pleased to state why this qualification has been imposed upon the appointment of the representative of the House-Owners Association and under what law?

Mr. E. Burdon: 1. Yes.

2—5. The Government of India have no information on the subject, but inquiries are being made. I will let the Honourable Member know the result in due course.

FEE IN CANTONMENT GENERAL HOSPITALS.

155. **Mr. Pyari Lal:** 1. Is the Government aware that fee is being charged in Cantonment General Hospitals for professional services rendered within the premises of the Hospital?

2. Is it a fact that the Cantonment Reform Committee has recommended the desirability of stopping this practice?

3. Do the Government propose to direct or suggest to the Cantonment Committees, the desirability of carrying out the recommendations of the Cantonment Reform Committee in this connection?

Mr. E. Burdon: 1. Fees are leviable for treatment in Cantonment Hospitals and dispensaries under the provisions of Section 207 read with Section 206 of the Cantonment Code.

2 and 3. The Honourable Member is presumably referring to the recommendation made by the Cantonment Reforms Committee in paragraph 64 of their report.

Government have no information that charges of the kind there described are in practice levied, but if the Honourable Member will report to the local military authorities any cases of the kind that have come to his notice, the Government of India feel sure that the matter will receive proper attention. They do not think it necessary to issue directions or suggestions on the subject to Cantonment Committees.

RAILWAY CATERING DEPARTMENTS.

156. **Sir Deva Prasad Sarvadhikary:** (*a*) Will the Government be pleased to state whether there are any catering Departments in the East Indian Railway and Eastern Bengal Railway on the same lines as that obtaining in the Bengal Nagpur Railway or lines similar thereto?

(*b*) If there are not, what are the reasons for absence thereof and what takes their place for providing food and refreshment for the travelling public on the journey?

(*c*) Is it proposed to introduce on the East Indian Railway and Eastern Bengal Railway arrangements like those obtaining on the Bengal Nagpur Railway.

Mr. C. D. M. Hindley: (*a*) The catering on the East Indian and Eastern Bengal Railways is not done by the Railways themselves as in the case of the Bengal Nagpur Railway.

(*b*) To introduce the departmental system at the present time, with high prices prevailing, would involve an expenditure on initial outlay which the railways cannot afford. Food and refreshments are provided by Contractors and Vendors under railway supervision and this arrangement has been in force for a number of years.

(*c*) No, not at present.

INDIAN STUDENTS IN ENGLAND.

157. **Sir Deva Prasad Sarvadhikary:** (*a*) Will the Government be pleased to state what action has been taken on the recommendations of the Lytton Committee about Indian students in England?

(*b*) If no action has been taken what action is proposed to be taken and when?

The Honourable Mr. A. C. Chatterjee: The Report has been published and circulated to local Governments and Administrations and is under the consideration of the Government of India. It is hoped that Local Governments will shortly be addressed in the matter.

MUTUAL BENEFIT SOCIETIES.

158. **Rao Bahadur C. S. Subrahmanayam:** 1. Has the Government framed rules under explanation to Section 10 (2) (*iii*) of the Indian Income-tax Act, 1922, *re*: Mutual Benefit Societies?

2. Is it a fact that in the Income-tax Manual, page 90, it is stated that no change in law has been made as no rules have been framed?

3. Will the Government be pleased to state whether the rules have been framed, since the publication of the Manual?

4. Will the Government be pleased to state when they will make these rules?

The Honourable Sir Basil Blackett: 1. No.

2. No. The statement in the Income-tax Manual is that " no action can be taken (under the explanation) until a rule is made ".

3. No.

4. Applications have been received from several Societies but action has been postponed pending a decision of a High Court to which reference has been made as to whether profits of such Societies are taxable at all.

PRINTING OF STAMPS IN INDIA.

159. **Rao Bahadur C. S. Subrahmanayam:** 1. Will the Government be pleased to state what stage has been reached in the consideration of the question of printing Stamps in India?

2. Will the Government be pleased to state whether Indian States do use Indian-made stamps for their judicial, non-judicial and postal services and if so, which of them and for what purposes?

3. Will the Government be pleased to state how many printing establishments there are under the Government of India?

4. Have the Government instituted a system of exact costing in regard to the printing establishment of the Government?

5. With reference to the Honourable Mr. Chatterjee's answer to my question on the same subject, will the Government be pleased to lay on

the Table the results of any inquiry regarding the system of exact costing obtaining in the printing establishments under the Government of India, that may have been made already?

Mr. A. H. Ley: 1. The question of printing stamps in India has been taken up by Government, and Government are now awaiting a report from an officer who has been specially deputed to examine the practicability of the proposal.

2. The Government of India have no official information on the subject.

3. Twelve, including the printing establishments of minor Administrations, Residencies, Commercial Departments and State Railways.

4 and 5. There is already a system of costing in force in the main Government of India Presses, which shows the cost of each job including overhead charges, depreciation of machinery, etc. Except possibly in one or two minor respects, the existing system seems to be complete; but it is now being subjected to a close examination in order that Government may be satisfied that any defects are brought to light and remedied.

Railway Expenditure in England.

160. **Rao Bahadur C. S. Subrahmanayam:** (*a*) Will the Government be pleased to state the total amount spent in England on account of the Railways in India and on what class of materials?

(*b*) Has any attempt been made to get any of those supplies in India?

Mr. C. D. M. Hindley: (*a*) It is assumed that the Honourable Member desires to know the amount spent in England during the current year. The expenditure to end of November 1922, the latest period for which figures are available, is £5·68 millions.

Materials purchased in England for State-worked railways are those not produced or manufactured in India or not obtainable in India in the quantities required or to the conditions as to quality or price prescribed in the Stores Rules. Generally they include specialised machinery and plant, locomotives, wagons, steel rails, etc. The Company-worked railways have full powers to make their own arrangements for the supply of stores and usually purchase the same classes of materials in England.

(*b*) State-worked lines are governed by the Stores Rules the general conditions of which are that articles produced or manufactured in India should be purchased in India provided the quality is satisfactory and the price not unfavourable. In accordance with these Rules tenders are invited in India for such articles as are produced or manufactured in India of the requisite quality. Company-worked lines generally speaking follow a similar procedure.

Registrars, etc., of Joint Stock Companies.

161. **Rao Bahadur C. S. Subrahmanayam:** (*a*) Are the Registrars of Joint Stock Companies or their Assistants, Chartered Accountants or holders of diplomas in Accountancy?

(*b*) Will the Government be pleased to see that these or some of these posts are filled by men who possess such qualifications?

The Honourable Mr. C. A. Innes: (*a*) Under Section 248 (2) of the Indian Companies Act, 1913, appointments of Registrars and Assistant Registrars of Joint Stock Companies are made by Local Governments. The Government of India have not therefore detailed information about the qualifications of the particular officers, but it is understood that the first Registrars at Calcutta and Bombay were respectively a Chartered Accountant and a lawyer well trained in Company Law.

(*b*) The Government of India invited the attention at the time when the Companies Act was passed of Local Governments to the desirability of appointing a wholetime officer in the large commercial centres, at any rate, with special training and experience fitting him for the work required.

CONSTITUTION AND FUNCTIONS OF THE PUBLIC SERVICES COMMISSION.

162. **Sir Deva Prasad Sarvadhikary:** (*a*) Will the Government be pleased to state what action, if any, has been taken under section 96-C. of the Government of India Act since the answers given to Mr. Samarth in the Assembly on the same subject?

(*b*) If no action has been taken, will the Government please state when and what action is proposed to be taken?

The Honourable Sir Malcolm Hailey: The constitution and functions of the Public Services Commission provided for in section 96-C of the Government of India Act cannot be determined until a decision has been reached on some of the questions involved in the larger problem of the increased Indianization of the services, which is now under consideration and will doubtless engage the attention of the Royal Commission. It has been decided, therefore, to hold the matter in abeyance for the present.

THE MALABAR (COMPLETION OF TRIALS) SUPPLEMENTING BILL.

The Honourable Sir Malcolm Hailey (Home Member): I beg to move:

"That the Bill to supplement the Malabar (Completion of Trials) Act, 1922, be taken into consideration."

I fully explained the circumstances under which this Bill was introduced on Saturday last, and as it is of a formal nature, I need not further enlarge on either the principle or the details of the measure.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I welcome this Bill because it rectifies an error; but I have to draw the Honourable the Home Member's attention to an obvious duty on the part of the Government to rectify other errors, and also to rectify a very serious omission. In the first place, I fear that such omissions and errors have occurred in connection with the Ordinances passed by His Excellency the Governor General. It is obvious, because this is one instance of it. Now the particular matter to which I wish to draw the attention of the Honourable Member is that the last of the Ordinances, one of the provisions of which this Bill proposes to continue by an Act of the Legislature, expires next Monday, and there are other provisions under these Ordinances which have expired and which may result in very serious consequences, as I shall presently point out. I mentioned this matter to the late Home Member, Sir William Vincent, and what I suggested was

that after these Ordinances have expired, it would be necessary to allow the Indian Legislature to pass a General Indemnity Act with regard to the powers exercised under these Ordinances. On Saturday last when this Bill was laid on the table—it was not circulated before but laid on the table—I mentioned it to the present Home Member, Sir Malcolm Hailey. He asked me to give the matter my consideration; but yesterday being a Sunday I have been unable to refer to books and authorities. All the same I have looked into these Ordinances very carefully, all of them, and I am deliberately of opinion that it is absolutely necessary now on the part of the Government to get a General Indemnity Act passed with regard to them.

I shall take first the Ordinance, No. II of 1921, which purports to declare Martial Law with regard to Malabar. That Ordinance has got an indemnity section, section 23, but that has absolutely expired because the life of these Ordinances only lasts for six months. I am not saying this in any captious spirit, but I am pointing out to the Government an obligation, a duty, which is absolutely incumbent on them. Now the first Ordinance which was passed, Ordinance No. II of 1921, was passed on 26th August 1921. What did it purport to do? It purported to declare Martial Law in Malabar. That was quite right and we do not question the policy or justification at all. Now what is our present position with regard to the declaration of Martial Law? My Honourable friend will remember that there was a statutory provision, the Bengal Regulation of 1810. Yesterday being Sunday, I have not been able to look into the date of that Regulation, but my Honourable friend, Sir Henry Moncrieff Smith, will correct me if I am in error. It was a Regulation of 1810, the Bengal Martial Law Regulation, which was extended to the whole of India, and Martial Law could be declared thereunder. That was the position before it was repealed. Under the recommendations of the Repressive Laws Committee, that Regulation was repealed.

Mr. President: I should like the Honourable Member to explain how this matter is relevant to a measure which is extremely narrow in scope, namely, enabling appeals to be made to the High Court which would otherwise not be made, unless we pass this Bill.

Mr. J. Chaudhuri: Yes, I shall explain it this way. Sir, you will notice that the Statement of Objects and Reasons recites that on the expiration of the Malabar (Completion of Trials) Ordinance, this Act is to come into operation. This Ordinance—the Completion of Trials Ordinance, 1922—is the last Ordinance; it will expire next Monday. Some of the later Ordinances refer to some of the earlier ones, some of which have expired. My submission is that Government should come forward with a proper Indemnity Bill. They have now come forward with a Bill, a very proper Bill, for extending the Completion of Trials Ordinance, because if this Ordinance expired on Monday then a number of appeals which are pending before the Madras High Court and other appeals about to be filed will fall to the ground. The Local Legislature passed an Act for continuing the jurisdiction of the High Court of Madras with regard to appeals from trials held under the Malabar Ordinances in Madras; and one of the Acts which was passed by the Local Legislature was found to be *ultra vires*, that is, was against the statute law of India. Now, the Honourable the Home Member has come forward very justly with an Act which would rectify that *ultra vires* legislation. Now, I say since the last of these Ordinances expires on Monday, the 19th instant, and many have expired

[Mr. J. Chaudhuri.]

before. I ask the Government to bring forward an Indemnity Bill before this House. . . . .

Mr. President: The mere fact that the Honourable Member finds it necessary to ask the Government to bring forward another Bill shows that his remarks on this Bill are not relevant.

Mr. J. Chaudhuri: What I say is that this Bill . . . . . .

Mr. President: I am prepared to allow the Honourable Member to ask his question of the Government; I am not prepared to allow him to argue the merits of the question.

Mr. J. Chaudhuri: Then, Sir, I shall sum up by putting this question. What I would ask is this. We have got also a responsibility in regard to this matter. When these indemnity sections have all of them expired, I earnestly request the Home Member to bring before this House a general Indemnity Bill, and I can assure him that we are not so wanting in the sense of responsibility as to obstruct. But it is absolutely necessary in the interests of the public servants . . . .

Mr. President: The Honourable Member is now arguing the merits of the case; he had better put his question and see whether the Government is prepared to answer it.

Mr. J. Chaudhuri: I ask whether Government will consider that question, and I would point out the obligations of the Government with regard to sections 127 and 128 of the Government of India Act and also ask them to take into consideration the fact that Bengal Regulation with regard to martial law has been repealed. Whether it is repealed or not, in every instance where martial law has been in force an Indemnity Act has been brought before the House; that has been invariably the practice; and I am of opinion that without an Indemnity Act serious consequences may arise . . . .

Mr. President: The Honourable Member can use that argument when an Indemnity Bill is before us. I ask him now to confine his remarks to the subject of the present measure.

Mr. J. Chaudhuri: What I wish to point out is that it is an *ultra vires* legislation on the part of the Government of Madras which this Bill seeks to rectify by an Act of the Imperial Legislature. I say that this is not a complete Act; there are other Regulations and things done under the Ordinances which might have been *ultra vires*, and since the Ordinances have expired, they would be regarded as *ultra vires*, and I would therefore ask the Honourable the Home Member to bring forward another Bill embodying general indemnity for the protection of all military and civil officers as also private citizens who have acted under any of these Ordinances. That is all that I have got to say.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I wish to raise a point which I hope you will hold a little more relevant than the one which has been raised by my friend, Mr. Chaudhuri. It is this. I would put it in the nature of a question to the Honourable the Home Member—whether he considers that this constant resort to the central Legislature is desirable or necessary, whether the proper course would not be for moving the Parliament to so change the Government of India Act as to

make it unnecessary for Local Governments to seek the aid of the Central Legislature?

Mr. President: I am afraid the Honourable Member was a little sanguine in his opening remark—in thinking that his point was more relevant than that raised by Mr. Chaudhuri.

Mr. T. V. Seshagiri Ayyar: I am putting it in the nature of a question: whether it is not desirable that we should avoid this constant recourse to the Supreme Legislature, and so amend the Government of India Act as to make it possible for the Local Legislature to pass laws which would be applicable throughout the whole of the Presidency; otherwise we have to come here often and the result is that there will be a great deal of delay. I myself had to apply to the Central Legislature to extend an Act to the Presidency Town, because the Government of India Act was in that respect defective; and also the Government of Madras finds that in regard to the Religious Endowments Bill they cannot pass a law which would apply to the Presidency Towns because the Government of India Act is defective. I bring it to the notice of the Honourable the Home Member so that he may move Parliament for the purpose of correcting this defect and avoiding, if possible, unnecessary resort to the Central Legislature.

The Honourable Sir Malcolm Hailey: Mr. Chaudhuri mentioned to me on Saturday the point which he has elaborated to the House; I am afraid, that I was not able to give to it the same extensive study as he was able to bestow on it, because my Sunday was otherwise engaged—engaged in what will no doubt appear to those who have objections to the taking of animal life, a much less innocuous occupation. But I can nevertheless deal sufficiently with his point. He suggests the necessity of bringing in a general Indemnity Act which will cover anything done under martial law in Malabar and provide for any other case which like the one now under discussion reveals action taken *ultra vires*. A general Indemnity Act is of course a natural corollary to martial law. Those who remember the celebrated discussion in the Imperial Legislative Council of 1919 will bear me out when I say that it was amply proved to that Council that everywhere where martial law has been applied a general Indemnity Act has followed. But equally, it is not usual to bring forward such an Act until practically every incident of Martial law has closed; you cannot propose to the Legislature that they should give a general *carte blanche* to Government and must place it in possession of the completed story of Martial Law transactions when you are asking it to legislate for indemnity.

As regards Malabar and the incidents which occurred there, it is still a matter of consideration whether we should put forward a general Indemnity Bill, applying to all acts taken in pursuance of Martial Law. Mr. Chaudhuri suggested that the Bill we now propose in itself illustrates an action which needs covering as being *ultra vires;* but the statement which I made to the House on Saturday will show that we are not in this Bill dealing with any act committed outside the law by any officer in exercising Martial Law functions. Nor again are we as he suggests proposing to extend the operation of the Ordinances. The effect of the last of the Ordinances will expire on the 18th or 19th of this month and in view of that expiration the Madras Council itself passed an Act granting certain Magistrates the powers as a speedy procedure for disposing of a large number of cases still pending on their hands. That Council could not, however, in so doing affect the powers of the High Court because under the Letters Patent the local Legislature has no authority to do so, and that is the sole reason why it is

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necessary for us to legislate in order to confer the necessary powers on the High Court. Our Bill, therefore, is very restricted in scope. It is merely necessary in order to supplement the legislative powers of the Madras Council.

Mr. Seshagiri Ayyar asked whether it was necessary to have such frequent resort to the Central Legislature in order to get over difficulties of this nature. That is a question as to how far we are prepared to legislate or to ask for legislation in order to allow local Legislatures to deal with modifications in the Letters Patent for the Presidency High Courts. I am sure that the Assembly will not desire that I should enter into this question this morning. It is a somewhat important matter and it is one to which we should desire to give a good deal of thought.

Mr. President: The question is:

"That the Bill to supplement the Malabar (Completion of Trials) Act, 1922, be taken into consideration."

The motion was adopted.

Clause 1 was added to the Bill.

Mr. J. Chaudhuri: Sir, with regard to the Title I have to point out . . .

Mr. President: If the Honourable Member had been watching, he would have seen that I gave him an opening. Clause 1 now stands part of the Bill.

Clause 2 was added to the Bill.

Mr. President: The question is that this be the Title to the Bill.

Mr. J. Chaudhuri: It is not clear, Sir, whether this Act is of this Legislature or of the Madras Legislature, and I want to draw the attention of the Honourable the Home Member to it. It is usual to cite the local Acts as the Bengal Act, Madras Act, and so on, and so this omission might lead to confusion, and therefore I would suggest that we should put down the title as the Malabar (Completion of Trials) Act, No. (Madras) of . . . .

The Honourable Sir Malcolm Hailey: The Title is put in the present form, because we do not yet know the No. of the Act passed in Madras. But I think that the Honourable Member's intention will be sufficiently met if when we print up the Bill we place in the margin, the proper reference to the Madras Act.

The Title was added to the Bill.

The Preamble was added to the Bill.

The Honourable Sir Malcolm Hailey: Sir, I move that the Bill be passed.

The motion was adopted.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. President: The Assembly will now proceed to the further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State. On the last occasion clause 127 was postponed for further consideration in view of the fact that the amendment standing in the name of Mr. Agnihotri, though

acceptable in principle to Government, required re-drafting. I understand that it is now found that the amendment will be more appropriate in clause 127A.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I want to move another amendment which stands in my name, and that is that the order under this section shall be appealable . . . .

Mr. President: We are now on amendment No. 339.

Mr. K. B. L. Agnihotri: As advised I beg to withdraw it, Sir.

Clause 127 was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move that for 127A, the following be substituted, namely:

"127A (1). Section 489 of the said Code shall be re-numbered as sub-section (1) of section 489, and in that sub-section as re-numbered for the word 'fifty' the words 'one hundred' shall be substituted:

'(2) To the same section the following sub-section shall be added, namely:

'Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 488 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly'."

This clause relates to maintenance section in the Criminal Procedure Code, and this is the draft which the Government and myself have agreed to put into this clause. Therefore, Sir, I propose that this amendment be accepted by the House.

The motion was adopted.

Clause 127A as amended was added to the Bill.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, in moving my amendment No. 342 to clause 129 (2), I wish to point out the law as it stands at present. Under the present Code of Criminal Procedure, a Public Prosecutor can only be appointed in respect of cases triable by the Court of Sessions. The amendment proposed by Government does away with that condition and makes it lawful for the Government to appoint a Public Prosecutor in all cases, whether triable by a Magistrate or by a Court of Sessions. Honourable Members will find that a Public Prosecutor may be appointed either generally or in any specified class of cases or in any particular case by the Governor General in Council or the Local Government. That is the general provision. In the clause under reference, provision is made for the appointment of a Public Prosecutor by the District Magistrate or, subject to the control of the District Magistrate, the Sub-Divisional Magistrate, and it is pointed out that, where such a Public Prosecutor has been appointed, no private Prosecutor can be appointed except in two cases and two cases only, namely, in the absence of the Public Prosecutor or where no Public Prosecutor has been so appointed. Reading the two clauses together, Honourable Members will find the law is boiled down to this that in all cases where a Public Prosecutor has been appointed for any area—let us say a district—no person can be appointed as a Public Prosecutor in any particular case, and therefore no person appointed as such can possess the right of withdrawal from the case. The amendment I propose for the acceptance of this House is intended to enable the District Magistrate or, subject to his control, the Sub-Divisional Magistrate to appoint any pleader as a Public Prosecutor only for the purposes of that case in which he appears,—not only in cases where the Public Prosecutor has not been appointed or is absent, but also in cases

[Dr. H. S. Gour.]

where the Public Prosecutor, though generally appointed for the district, is not interested in that particular case. Honourable Members will see that criminal cases in the Courts—and I am now referring to the magisterial cases—are sub-divided by the Criminal Procedure Code into compoundable and non-compoundable cases, but, as Honourable Members are aware, a case may be a compoundable case and yet the prosecutor may desire to withdraw from the case, either because he finds that his witnesses do not support the case or because, for other reasons he thinks it expedient to withdraw from the prosecution of the case. Now, in a case of this kind, let us assume instituted upon complaint and more or less of a *quasi*-criminal character, take the case of defamation, insult, adultery and the like, in which the Public Prosecutor, though appointed for the district, is not likely to be appointed for the conduct of the prosecution of that case,—what is to be the procedure? The law, as proposed by the Government, would disentitle a pleader appointed by the complainant to prosecute the case and while in full possession of the facts to withdraw from the prosecution because forsooth there exists in the district, in the shadowy background invisible to the Court and unknown to the parties concerned, a Public Prosecutor. Let us assume for the sake of argument that the pleader appointed in that particular case wishes to conform to the provisions of law and goes to the Public Prosecutor generally appointed for the district. He goes to him and says: "My client had complained against the accused for an insult. I find I have no witnesses and therefore I wish to withdraw from the case." The Public Prosecutor will say: "I know nothing about the facts of your case. The law must take its course. The case must go on and must be disposed of upon its merits." Therefore, the Public Prosecutor retained in that case is deprived of the liberty of cutting short a trial and has to prosecute the case, whether he wishes it or not, till its termination, ending in the discharge or acquittal of the accused. I submit this would involve in many cases sheer waste of time on the part of the Magistrate, and I do not see how the interests of justice would be served by disqualifying a private Prosecutor appointed by the Magistrate to conduct a prosecution in a particular case. I quite see the position of the Government of India would be that where in a particular district a Public Prosecutor has been appointed, he is in sole charge of criminal litigation on behalf of the Crown. He is a man who takes a detached and independent view of all criminal cases entrusted to him and he is the best law adviser of the Crown and, as the right of withdrawal is incident to the ordinary functions of a Public Prosecutor, he and he alone must possess that power. Now, on this point, I invite the attention of the House to the provision contained in the Code of Criminal Procedure, section 4, sub-clause (*t*). Honourable Members will find that provision lays down:

> "'Public Prosecutor' means any person appointed under section 492 and includes any person acting under the directions of a Public Prosecutor."

It is perfectly clear, therefore, that the power of withdrawal was not intended to be conferred upon a Public Prosecutor alone. It was equally intended by the Statute to confer the power of withdrawal upon the person acting under the directions of a Public Prosecutor, and he is for the purpose of withdrawing from the case included in the general definition of a Public Prosecutor. Therefore the argument that the Public Prosecutor should be the sole public servant who should possess the power of withdrawing from criminal prosecution is certainly not the policy of the law as embodied in

the present Code of Criminal Procedure. But even assuming for the sake of argument that that were the policy of law, my amendment provides that the person who is to be appointed to conduct a prosecution with the power of withdrawal is to be appointed by the District Magistrate or by the Sub-Divisional Magistrate subject to his control, and that gives the legal representative of the Crown, the District Magistrate, ample jurisdiction and discretion to decide whether he will entrust the prosecution of a particular case to the complainant's pleader and thereby confer upon him the right of withdrawal. As soon as an application is made to the District Magistrate by the complainant's pleader or by the complainant that he wishes the case to be prosecuted through a particular law agent and that he should be appointed a Public Prosecutor or a Prosecutor with the power of withdrawal within the meaning of section 492, clause (2), the District Magistrate will open his book and see whether the case in which the application is made for his sanction to prosecute is of such a character as might be left to a Public Prosecutor, and if he finds that the State has a very remote interest, or no interest at all in the case, and that the offence is of a character in which the conflict is between two parties rather than between the State and a private person, he will allow the prosecution to be conducted by the complainant's pleader. If, on the other hand, the District Magistrate finds that the case is of a serious character and one the prosecution of which should not be entrusted to a private individual such as the complainant's pleader, he will withhold his sanction. I therefore submit that any argument that might be addressed to this House on behalf of Government that it would take away a salutary check which at present exists in allowing all prosecutions to be conducted by an accredited agent of the Crown will fall to the ground. I do not see, Sir, in what way the Government will be prejudiced by accepting my amendment. On the other hand, I wish to draw the attention of the Government to the very great benefit and economy of time which will ensue if they accept my amendment. I have already pointed out that the jurisdiction of the Public Prosecutor is now to be extended from Sessions to magisterial Courts. I have further pointed out that if there is a Public Prosecutor appointed for a particular District, not necessarily for the conduct of any particular case, that would be an impediment and an insuperable impediment, to the appointment of a Prosecutor under this section with the power of withdrawing from the case. I have further pointed out, Sir, that if such a person is appointed a Prosecutor, it must always be, as my amendment proposes, subject to the general control and sanction of the District Magistrate and I have further pointed out that in a very large number of cases, if the matter is left to the sole discretion and judgment of the Public Prosecutor, it would be left to the judgment of a person who has probably in many cases least knowledge of the facts of the case. I wish to point out further that in concentrating this power of withdrawal in all cases in a District in the Public Prosecutor, there would be a strong incentive on the part of a private litigant to employ the Public Prosecutor as his Counsel in the case. But that, surely, is not the object of Government The object of Government is that all State prosecutions must be subject to State control. That object is perfectly intelligible to Honourable Members. It is intelligible to me and I am not combating their views on that subject. The further object the Government have in view that the Public Prosecutor, if he exists, or if he is appointed in any District, he and he alone must possess the power of withdrawal, is a matter upon which I have already addressed this House. I therefore submit that we shall gain nothing by allowing the Government

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amendment to be passed into law and we shall, I submit, greatly improve the Code if we make the provisions of section 492, sub-clause (2), a little more elastic to suit cases instituted upon private complaint, at the instance of a private complainant, in which the State is not directly and intimately concerned, and which is after all a matter of quarrel between two parties, the complainant and the accused. What objection can there be to the complainant or his pleader asking the District Magistrate, " Please allow my pleader to appear in this case and prosecute the case possessing the power of withdrawal from the case if he is unable to prove his case or if otherwise he should be so minded." These are matters, Sir, upon which I hope the Government will meet Members of this House half way. I have given notice of my amendment in one particular form but on maturer consideration I find that the addition of the words would satisfy the requirements of my amendment, that is, if after the words " where no Prosecutor has been appointed " " in any case " be added. That will completely satisfy me and serve the purpose I have in view. I have left copies of the amendment with the Secretary to the Assembly. (*An Honourable Member*: " How would the section read then?") The section would then read thus:

" The District Magistrate, or subject to the control of the District Magistrate, the sub-divisional Magistrate may, in the absence of the Public Prosecutor, or
12 NOON. where no Public Prosecutor has been appointed in any case, appoint any other person, not being an officer of Police below such rank as the Local Government may prescribe in this behalf, to be Public Prosecutor for the purpose of the case."

That ensures the fact that if the Public Prosecutor is appointed in any case he and he alone will conduct that prosecution, but if for any reason owing to the triviality of the offence or other character of the offence the Government do not wish to go to the expense of appointing a Public Prosecutor in any case, it should not debar the District Magistrate from giving power to any other pleader appearing on behalf of the complainant to conduct the prosecution. That, I submit, is all that I want. I think my request is reasonable and I ask the House to endorse it. With these words I move my amendment.

Mr. President: Does the Honourable Member move the amendment as printed in No. 342?

Dr. H. S. Gour: I move it, but I have suggested this alternative change in the form which I think will serve my purpose. I may point out that I am absolutely indifferent how the section is worded. I am only anxious that the object I have in view is brought out. Language is of no consequence to me and I am quite prepared to accept any draft that the Government suggest in conformity with my views.

Mr. President: Amendment moved:

" In clause 129 (2) after the words ' same sub-section ' insert the following:

' after the word ' may ' the following words shall be inserted, namely: ' appoint a pleader to conduct the prosecution in any case pending in a Court subject to their jurisdiction, and they may and '."

Sir Henry Moncrieff Smith (Secretary, Legislative Department): I think it would have been better for the House if Dr. Gour had made clear at the outset which was the amendment he intended to move. He spoke for something like 25 minutes and we all thought he was moving the amendment which appears on the paper. However, he has said he

is prepared to accept any wording that the Government may put into the Bill which will give him what he wants. I am suggesting to the House that the Bill as it stands gives him what he wants. There is no necessity for any amendment whatever. Dr. Gour's real motive seems to me to give a very wide extension to the category of compoundable offences. He said, where a case is a case between two parties, not a case between the State and a party, why should not a pleader, though he may not have been appointed a Public Prosecutor, be able to withdraw? The House spent some time—the Members of this House spent a great deal of time outside this Chamber—in examining the categories, the list of compoundable offences, and decided what offences should be compoundable and what offences should not and I think the House should be prepared to leave it at that. If there is to be a question of withdrawing from a prosecution in a case which is not, according to the decision of the House already arrived at, compoundable under the Code of Criminal Procedure, then the discretion should be in the hands of an impartial authority like the Public Prosecutor. Sir, I have some apprehension that Dr. Gour has not properly understood section 492 (2). First of all, under section 492 (1) the Government has the power to appoint a Public Prosecutor, and under sub-section (2) certain Magistrates have power to appoint a Public Prosecutor in cases where none has been appointed by the Government or any Public Prosecutor appointed by the Government is absent. I think all the lawyer Members of this House at all events know quite well that it is a most frequent thing for the District Magistrate to appoint a Public Prosecutor for the purposes of a particular case. One obvious reason for that is that one person cannot be in several places at the same time. The magisterial Courts in the district are numerous and possibly there is only one Public Prosecutor and he cannot attend to all the cases that are going on. Dr. Gour said, why should there be no power to withdraw a case, because somewhere in the shadowy background there exists a Public Prosecutor about whom the parties know nothing? That remark may have deceived the House. It is quite irrelevant to the subject we are discussing. The point is if the Public Prosecutor is in the shadowy background, a Public Prosecutor will have been appointed for the particular case by the Magistrate and that Public Prosecutor will not be in the background; he will be there conducting the case and he will have the opportunity to withdraw. If it is a case that is compoundable, it does not matter whether there is a Public Prosecutor there or not, or whether there is a person in Dr. Gour's words appointed to conduct the prosecution or not. The complainant is quite capable of compounding the case. I listened to Dr. Gour's remarks to try and ascertain whether he proposed to draw any distinction between " a Public Prosecutor " and " a person appointed to conduct the prosecution ". It seems to me they are going to be exactly the same thing. It is not, according to his own words, a person appointed by the party to conduct the prosecution on his behalf. He intends this person to be appointed under the Code in the regular way by a Magistrate, and therefore this person will be a Public Prosecutor just as much as the Public Prosecutor appointed by the Government or by the District Magistrate. Dr. Gour has moved only amendment No. 342 on the paper but he directed his arguments to amendment No. 344 which follows and which is most certainly consequential. That is why I have referred very freely to the Public Prosecutor's powers to withdraw—the withdrawal power coming in section 494 of the Code. The fact is that any Public Prosecutor under the amendment which the Bill proposes in the Code, whether he is appointed by the Government or whether he is

[Sir Henry Moncrieff Smith.]

appointed by a Magistrate, will now have power to withdraw from a prosecution, and it seems to me quite unnecessary to make any further extension of the provisions with regard to the appointment of the Public Prosecutor or with regard to his power to withdraw.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, not only is this amendment unnecessary but I am afraid it may work an injustice to the complainant. Under the law as it stands, under section 495, Honourable Members will notice, the complainant who wants to conduct a prosecution may do so either personally or by a pleader. If this amendment of Dr. Gour's is accepted and if you leave it to the District Magistrate to appoint a pleader to conduct the prosecution, it may imply that without such an appointment by the District Magistrate the complainant may not be entitled to appoint a pleader to conduct the prosecution. There is that risk. Apart from that, I think it is quite unsafe to leave the withdrawal of a prosecution of an offence which is not compoundable in the hands of private parties. Our system ought to aim at all prosecutions for offences in this country to be in the hands of independent prosecutors, prosecutors employed by the Crown. My ideal is to have a Director General of Prosecutions in every province and, under him, Prosecutors, Public Prosecutors, for every district, who will act as independent legal officers bringing a judicial mind to bear upon the conduct of prosecutions in this country. Private prosecutors, we know, Sir, often act from motives of vengeance, motives of spite, and a pleader engaged by a complainant oftentimes partakes of the feelings of the complainant. A Public Prosecutor ought to be above such sentiments and feelings. He is not there to get convictions, as has often been pointed out by Courts; the Public Prosecutor is there to get justice done, and therefore, in non-compoundable cases we ought not to leave it to a private public prosecutor to say, 'I withdraw from the case': it ought to be left to the Public Prosecutor, and I therefore submit, Sir, that this amendment is unnecessary. The District Magistrate has now got the power to appoint persons to conduct a particular case. That, Sir, as has been pointed out, means to conduct a particular case as Public Prosecutor whether in the High Court and in the mufassil. There was never any difficulty felt, because there was a Public Prosecutor in the district who says you cannot appoint a Public Prosecutor to conduct a particular case. That difficulty was never felt,—I have been so appointed; I do not know where my Honourable friend gets the idea that it is only where the Public Prosecutor is not appointed or if the Public Prosecutor is absent from the district, then only a person can be appointed a Public Prosecutor for a case. In heavy batches of cases where riots take place, it is very common to appoint public prosecutors to conduct cases, although the Public Prosecutor of the district may be there and available. Therefore, there is nothing to prevent it, and I submit, Sir, that this amendment is unnecessary and likely to prove injurious to the complainant.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): I think, Sir, the House will be delighted to have a house divided against itself; and a party divided against itself is perhaps a better spectacle than a house divided against itself. I am rather inclined to think that sufficient importance has not been attached to the idea which Dr. Gour has in his mind in this matter. A point which seems to have escaped the notice of

my Honourable friend, Mr. Rangachariar, and also of the Honourable Sir Henry Moncrieff Smith, is this. There may be cases in which the Public Prosecutor, even in a non-compoundable case, will not be in a position to conduct the prosecution; for example the Public Prosecutor may have attachments to one of the parties, and it may not be desirable that he should be in a position to conduct the prosecution. Under those circumstances, supposing a person is appointed to be a public prosecutor, should he not have the power to withdraw? Apparently a great deal has been made both by Sir Henry Moncrieff Smith and Mr. Rangachariar based upon the apprehensions which they express, namely, that it is not desirable that in non-compoundable cases private persons should have the right to compound. Sir, these two Members have been to a certain extent confusing the right to withdraw with the right to compound. The two are distinct rights, and I do not think they have placed before themselves the distinctive character of each of these rights. What Dr. Gour wants is this. Not only the District Magistrate and the Sub-Divisional Magistrate should have power to appoint a Public Prosecutor in cases where the Public Prosecutor is unable to be present, but in all cases where it is desirable that a new pleader, that a new public prosecutor, should be appointed for a particular case, the District Magistrate should have the power. He wants to enlarge the powers of the District and the Sub-Divisional Magistrate, and I doubt very much whether the language is quite apt for conveying that meaning. If his view finds favour with the Government, the amendment may be differently drafted, such language may be used as would effectuate the purpose. The intention is this. Not only in cases where according to section 492 (2) the Public Prosecutor is absent or where a Public Prosecutor is not able to be present, but also in cases where it is desirable to supersede him and appoint a person for a particular case, the power should be vested in the District Magistrate for the purpose; and his power should not be circumscribed by the two conditions. If that idea is kept in view, you may use whatever language you like, even though Dr. Gour may have used language which may not be quite appropriate for the purpose, but that purpose should be effectuated by amending section 492 (2) in the manner suggested by Dr. Gour.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, it seems to me, with all respect, that there is a certain amount of confusion between the law as it now is and the law as it will be if the Bill now under consideration by this House is enacted. In the law as it now stands, we have a definition of public prosecutor covering every person appointed under section 492. But under section 494 we have the power of withdrawal from a prosecution permitted only to what I may describe as the original public prosecutor appointed by Government.

Sir Henry Moncrieff Smith: No, No. 492 is being amended.

Colonel Sir Henry Stanyon: Yes, but I am speaking of the existing law. In the Bill we have the appointment of a Public Prosecutor extended to every case, from a mere insult to a murder—from a case which may terminate in an apology to a case which terminates on the gallows—and the Mover of the amendment seems to have overlooked what I may call the consequential amendment of section 494 which has provided for the very inconsistency which he thinks to exist. The power of withdrawal will not be reserved under the amended Act to the prosecutor appointed by the Government but to every public prosecutor as defined in section 4 and as appointed under section 492. That is how I read the amendment. If that view is

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correct, then it seems to me that my friend, Mr. Rangachariar, has correctly described this proposed amendment as unnecessary. I have read the Bill very carefully, and I therefore agree with the view put forward by Sir Henry Moncrieff Smith and Mr. Rangachariar that in the circumstances, assuming that the proposed amendment of section 494 made by the Bill is carried, the amendment now proposed is unnecessary.

Mr. President: The question is that that amendment* be made.

The motion was negatived.

Mr. President: The question is that clause 129 stand part of the Bill.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I move the following amendment:

"In clause 130, sub-clause (*i*), after the word 'omitted' add the following:

'and after the words 'Public Prosecutor' the words 'or complainant in proceedings instituted on complaints' shall be inserted'."

Sir, this clause 130, sub-clause (1), refers to section 494 which authorises any public prosecutor to withdraw any case from any Court. The Honourable Dr. Gour, when he moved his amendment, wanted this power to be extended even to other persons, whether they be public prosecutors or not, whether or not the case was a cognizable one or whether or not the case was a compoundable one. The explanations that came from the Government Benches and the opponents of Dr. Gour went to show that any person could be appointed as a Public Prosecutor for any purpose, and, the person who was appointed as a Public Prosecutor could also withdraw the case. But who is to appoint a Public Prosecutor? The Public Prosecutor is to be appointed either by the District Magistrate or, subject to the control of the District Magistrate, by the Sub-Divisional Magistrate. That means that in every case in which a person wants to withdraw the case he will have to approach the District Magistrate or the Sub-Divisional Magistrate to appoint him as a Public Prosecutor in that particular case and for that particular purpose, that is to withdraw the case. This involves an unnecessary burden on a complainant of approaching the District Magistrate for this purpose. In this very section 494, we also provide that even the Public Prosecutor cannot withdraw a case without the consent of the Court in which the case be pending. Therefore, when the consent of the Court has already been provided as necessary in this section, where is the necessity of asking the complainant to go to the Sub-Divisional Magistrate or the District Magistrate for a formal appointment of the complainant or his pleader as a Public Prosecutor for the purpose of withdrawing the case? Even the District Magistrate, were he so minded to appoint the complainant or his pleader as a Public Prosecutor to withdraw the case, would invariably consult the Magistrate in whose court the case be pending, to find out as to whether the case was of such an importance that permission to withdraw should not be given. Why should this further obstruction be put in the way of the complainant or his pleader to go to the Public Prosecutor? I think it would meet the ends of justice and is a

* "In clause 129 (2) after the words 'same sub-section', insert the following:

'after the word 'may' the following words shall be inserted, namely: 'appoint a pleader to conduct the prosecution in any case pending in a Court subject to their jurisdiction, and they may, and'."

sufficient safeguard that the Court concerned, that is the Court in which the case be pending, is required to give its consent for the withdrawal of the case to the complainant or to any other person. Sir, there may be many cases which are not cognizable, *i.e.*, in which the police cannot arrest the accused without a warrant. In those cases in which the police cannot arrest an accused without a warrant or in those cases which are not compoundable, it should also be provided that the complainant or his pleader could withdraw with the consent of the Court. The Court could very well look after the interests of the State or the public. If the police thought that the case was of importance and in which the public was interested, the Court may not allow its withdrawal; but in every petty case, say, for instance, of insult, to approach the District Magistrate for the appointment of a Public Prosecutor or to send the record for the perusal of the Public Prosecutor to be appointed by the Government, would be a very tedious job and would much delay the trial of criminal cases. Therefore, I beg to move my amendment; but I shall be willing to accept any amendment of my amendment if any be suggested by the Government and if the Government Member accepts the principle, which I am afraid they do not, because Sir Henry Moncrieff Smith had said that the withdrawal of cases in non-compoundable cases should only be left in the hands of the Public Prosecutor. But from what I have said before, it would seem to be undesirable that in many petty cases this question of withdrawal be left in the hands of the Public Prosecutor or the District Magistrate.

With these words, Sir, I commend my amendment for the consideration of the House.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I submit to the House that the Assembly has twice very emphatically given its opinion on the subject raised by the Honourable Member. When he moved his amendment No. 226, he proposed that in all warrant cases instituted upon complaint, if the complainant was absent on the day fixed for hearing, then the Magistrate should be able to discharge the accused. Again, in his amendment No. 263, he suggested that all cases instituted upon complaint should be compoundable. In both those cases, Sir, I believe that the amendments secured the support of only one person in this House. The issue raised by the present amendment is exactly the same, and I would submit, therefore, that it is rather a waste of the time of the House to move it. Of course, as I pointed out on the first occasion, and as was accepted by the House, such a proposal really leaves the door open to blackmail and abuse of justice. The amendment would also be entirely in the wrong place, because this Chapter deals with Public Prosecutors and not with private complainants.

The motion was negatived.

Clause 130 was added to the Bill.

Mr. T. V. Seshagiri Ayyar: My amendment seeks to substitute for the proposed proviso to clause 131, the following:

"Provided further that nothing in this section shall prevent a Magistrate acting under section 107, sub-section (4) or section 117, sub-section (3) from imposing such conditions as to him seem advisable before releasing the accused on bail."

This relates to the question of bail. Hitherto, there was no provision like the one which the draftsman on the present occasion has introduced. My object is that in regard to cases under section 107, clause (4), and section 117, sub-section (3), the Magistrate should have power to impose such conditions as would enable the accused person to be present whenever

[Mr. T. V. Seshagiri Ayyar.]

called upon. The House will find that section 107, clause (3), relates to proceedings for keeping the peace, and there is no reason why in such proceedings the Magistrate should not have power to impose conditions, because it does not really deal with an offence, it is really a preventive measure, and more than in non-cognizable cases there should be every facility given to the Magistrate as well as to the accused to be bound by certain terms, and that the accused should not be detained in custody. Section 107, clause (3), says: "Where any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace," and so on. Then, it says " after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons."

My amendment suggests that, instead of sending him in custody, the Magistrate may release him on such conditions as to him may seem advisable. A bond may be taken from him, so that he may appear when called upon. If you pass the clause as it is and if you bring in these provisos under section 496—the result of it will be that the Magistrate will have no power to impose such conditions upon the person who is asked to keep the peace; and the accused must necessarily be detained in custody. The proviso says:

" Provided further that nothing in this section shall be deemed to affect the provisions of section 107 etc."

Under these circumstances the House will see no difficulty in regard to the first part of my amendment, that is, as regards 107 (4).

There is some little difficulty as regards 117 (3). I am prepared to admit that; but I think even there it is desirable to extend the power. Some provision must be made for imposing conditions even on persons who are brought before the Court under section 117 (4). If the House will turn to section 117, clause (3), the Members will find that pending the completion of the inquiry under sub-section (1) the Magistrate if he consider that immediate measures are necessary for the prevention of a breach of peace or a disturbance of public tranquillity and so on may direct the person in respect of whom the order under section 112 has been made to execute a bond with or without surety for keeping peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or in default until the inquiry is concluded.

No doubt there is some provision here for executing a bond for keeping the peace; but the accused is to be detained in custody pending the execution of the bond. Now take a case where a Magistrate wants a bond with sureties. It will take the accused some time to find a surety. Why should he be detained in custody till he is able to find a surety? Why should he not be released on certain conditions that he agrees to, and why should he not be called upon to execute a bond afterwards?

As regards 107 (4) there is no difficulty whatsoever. It is a clear case, and I think it is a case of omission on the part of Government. As regards 117 (3) it is desirable that a provision like the one that I am asking to be introduced should be substituted for the present proviso. Sir, I move the amendment standing in my name.

Mr. H. Tonkinson: Sir, those Honourable Members who have studied the report of the Lowndes' Committee will find that they treated an amendment of section 496 on similar lines to those now in the Bill as absolutely consequential, and I submit, Sir, for the consideration of this House that that is really the position as regards the proviso which my Honourable friend proposes to omit from the Bill and for which he proposes to substitute another proviso. Of course section 496 refers to a person other than a person accused of a non-bailable offence. It therefore covers cases dealt with in the proviso and unless some such proviso is included, then the provisions of section 496 will practically, or might be thought to, override the provisions of section 107 (4) and section 117 (3), which have already been approved by this House.

As regards section 107 (4) my Honourable friend suggests that there is no doubt that his amendment should be accepted. I think, Sir, that this House has already, in connection with the amendment moved by my Honourable friend, Mr. Rangachariar, on the 18th January, rejected that contention. My Honourable friend's motion was that any person who is detained in custody under sub-section (4) or is brought under arrest and so on should be able at once to make the final bond and secure release. That proposal was rejected, because it is covered by section 117(3). And that is my point now, Sir, as regards 107 (4). Section 107 (3) relates to a case when a Magistrate who does not have jurisdiction decides that immediate measures for the prevention of a breach of the public peace are necessary and arrests a person. He sends him to a Magistrate having jurisdiction and under sub-section (4) of section 107 the Magistrate is able to detain him in custody until he takes further action under the Chapter. The further action is taken practically at once, because the order under section 112 is read out and then immediately the provisions of section 117 (3) apply. We have those definite provisions, they have already been accepted by the House and I submit, Sir, that we certainly ought not to substitute for the proviso in the Bill the proviso recommended by my Honourable friend.

I would proceed a little further, Sir, with reference to the exact form of the amendment which has been moved. I would like, Sir, to ask my Honourable friend what conditions the Magistrate is going to include in the bond which he would cause to be executed if this proviso is accepted.

Mr. T. V. Seshagiri Ayyar: Not to address a meeting for a particular period.

Mr. H. Tonkinson: Well, he can say "You shall not leave your house, never go outside your own house." Well, Sir, we have definitely in section 117 (3) covered both the cases of 107 (4) and 117 (3) and there is really no necessity for the amendment which my Honourable friend has moved.

Rao Bahadur T. Rangachariar: Sir, I am afraid my Honourable friend, Mr. Tonkinson, has not sufficiently realised the difference between executing a bond as required by section 117 and a bail bond as required by section 496. The bail bond is for appearance at the inquiry whereas the bond required in section 117 (3) is the bond which will eventually have to be executed on the completion of the inquiry with sureties for keeping the peace or for good behaviour. That is the bond which he is called upon to execute under section 117 (3). Now, Sir, in a case where the person is not convicted of any offence—in fact he is not even accused of an offence—the Magistrate should not have the power to detain him in custody when he is prepared to execute a bond for his appearance. That is all my

[Rao Bahadur T. Rangachariar.]

Honourable friend proposes. My amendment was to give absolute power to give bail, which I dropped in favour of Mr. Seshagiri Ayyar's modest amendment, because a Magistrate taking a bail bond may impose also certain conditions suited to the case. Therefore I do not see how anybody suffers. It is not that we are anxious to shut a man up in jail whether he is a good man or a bad man. It is not an easy job to find sureties. Many an innocent person is kept in jail because he is not able to find sureties. In the case of a bail bond for appearance I am sure people will be more readily found to stand surety, but to get people to stand surety for good behaviour and for keeping the peace may be more difficult. Therefore there is a good deal of force in Mr. Seshagiri Ayyar's amendment, and my Honourable friend Mr. Tonkinson tried to confuse the issue by referring to an amendment of mine at a former stage which was altogether a different amendment from the present one. There I asked that the man may be released if he executes an *ad interim* bond. That was my amendment—an *ad interim* bond on the same terms and on the same conditions as would apply to a bond which he will have to execute, that is, the security bond itself. But Mr. Seshagiri Ayyar's idea is not a security bond, but a bail bond under section 496, namely, a bail bond for appearance. Therefore, Sir, I support the amendment.

Sir Henry Moncrieff Smith: Sir, just one word. Mr. Rangachariar has explained that the intention of Mr. Seshagiri Ayyar's amendment is to enable a Magistrate, instead of acting under section 117 (3) and taking an *interim* bond for good behaviour during the proceedings, to take bail for appearance with conditions imposed. I desire, Sir, to point out to the House that Mr. Seshagiri Ayyar's amendment will not achieve that. It merely lays down, Sir, that when a Magistrate acts under section 117 (3), that is to say, takes an *interim* bond from the accused, or gives the accused an opportunity of furnishing an *interim* bond for his good behaviour, the Magistrate will then in addition to the terms of the bond be able to impose further conditions. As Mr. Tonkinson pointed out, by adopting this amendment the House will be giving to the Magistrate an opportunity to impose all sorts of onerous conditions on the accused. All we want, Sir, is that the accused during the pendency of the proceedings should be of good behaviour; we do not want to empower the Magistrate to say in addition to that—as Mr. Tonkinson suggested—"You shall not leave your house; you shall stay in a particular place and you are to report yourself at the police station every day." All these conditions will be possible under Mr. Seshagiri Ayyar's amendment and I think it is distinctly undesirable that that power should be put in the hands of a Magistrate.

Colonel Sir Henry Stanyon: Sir, I venture to oppose the amendment. It seems to me that the proviso entered in clause 131 of the Bill is as necessary for Legislative consistency as the amendment proposed by the Honourable Mover would be inconsistent. We have legislated already on sections 107 and 117 of the Criminal Procedure Code—preventive sections, the primary objects of which are to prevent breaches of the peace and to secure good behaviour. A person brought up under section 107 to keep the peace is not a person accused of any offence whatever; therefore, as Mr. Tonkinson has very clearly pointed out, he is not a person accused of a non-bailable offence, and he can claim to be released on bail as a matter of right the moment he is brought before the court, if the proviso now proposed by the Bill is not introduced. By sections 107 and 117, as

amended by us, we have given a discretion to the Magistrate to detain such a person until the preventive sanctions have been obtained. If the proviso proposed by the Bill to be added to section 496 is not enacted we shall immediately take that discretion away; that is inconsistent. A small illustration will perhaps make clear what the effect of the amendment would be having in mind the clear explanation of the difference between a bond to keep the peace and a bail bond, given by my friend, Mr. Ranpacharlar A and B anxious to get at each other like two fighting cocks are brought up before a Magistrate who requires them to execute bonds to keep the peace. The Magistrate is of opinion from the evidence before him that, if these two persons are not detained until that bond is executed and they have been bound down as far as they can be bound down to peace by such a bond, a breach of the peace between them will take place. Now, if these people can claim (as they would be able to do under the amendment now proposed or as they would be able to do if the proviso sought to be introduced by the Bill is not introduced) to be released on bail as soon as they are brought up, what is likely to happen? They will gladly find bail for the sake of going and having their fight. Where then would come in the preventive provisions of section 107? A man who is desperate about committing a breach of the peace against any person or body of persons will give a bail bond for his appearance without any difficulty, and then he will go and commit his breach of the peace and then appear in answer to his bail bond. No bond will be broken; there will be no forfeiture, but the breach of the peace which the section was intended to prevent will have taken place. Therefore, for the sake of consistency, the proviso which is sought to be introduced by the Bill is absolutely necessary, and I oppose the amendment.

The amendment was negatived.

Clause 131 was added to the Bill.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): Sir, I move this amendment* that stands in my name and for explanation make the following observations. The clause of which mine is an amendment is an amendment of section 497 of the Criminal Procedure Code. That provision relates to bail and as the law now stands under section 497 the Magistrate has got discretion to grant bail in non-bailable cases only where there appear reasonable grounds for believing that the accused is not guilty of the offence. Section 497 runs:

"When any person accused of any non-bailable offence is arrested or detained without warrant by the officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused."

Clause (*i*) of the Bill proposes to substitute words "an offence punishable with death or transportation for life" for the words "the offence of which he is accused." Now in one way this clause is intended to liberalise the bail provisions as they now stand by not fettering the discretion of the Magistrate in granting bail as it was fettered before so that if there were grounds for believing that the accused was guilty of the offence the Magistrate had no discretion to grant bail, but now he has, except in cases

* "In clause 132 (*i*), omit the words from 'in sub-section (1)' to the word 'substituted' and in their place substitute the following:

'in sub-section (1) the words beginning with the words 'but he shall not be' to the end of the sub-section shall be omitted'."

[Mr. Harchandrai Vishindas.]

where the offence is punishable with death or transportation for life. But if you look into the question a little deeper, this provision in another respect is rather illiberal and goes backwards from the present law. Because under the present law, unless the Magistrate is of opinion that there are reasonable grounds for believing that the man is guilty of an offence punishable with death or transportation for life, he can release him on bail even in cases of such offences, that is to say, if he thinks, or I may put it roughly although I may not be precisely accurate, if the Magistrate thinks that the case is a doubtful one or if he does not think that the accused is guilty of the offences punishable with death or transportation for life. Under the present law he has got the discretion of granting bail in such cases also, but this proviso takes away that right from him, because the section reads thus:

"When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears, or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused."

Rao Bahadur T. Rangachariar: That was so even before.

Mr. Harchandrai Vishindas: I stand corrected, and so far as this part of my speech is concerned, I think I was wrong. Further, I say that the discretion even as regards these offences should not be withdrawn from the Magistrate, because I understand that the conditions attaching to the refusal of bail in all civilized countries, at least in some civilized countries that I am aware of, are that provision should be made to see that the accused person does not run away or escape justice, but otherwise so long as he is under trial his liberty should be granted to him until he is convicted. For that reason I would like that the whole of this clause, as it has been provided, should be withdrawn so that in all cases whether this condition which is prescribed in the last clause of the sub-section exists or not, the Magistrate should have discretion to grant bail.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, I have refrained consistently during this month from taking part in the debate over this Bill. I venture, however, this morning to intervene in this debate on the ground that the issue to-day seems to be somewhat important, and secondly on a much more slender ground, that at one time—I do recollect it—I was an unpaid Magistrate, and some years before that still I had my legal training at the University Examination.

Now, Sir, speaking of the merits of this amendment and the issue involved, it seems to me that the amendment which Government propose to make in the Criminal Procedure Code, and on which my friend, Mr. Harchandrai, has just now spoken, is not a desirable one. Section 497 (1) deals with non-bailable offences. The Magistrate under that section has the ordinary discretion to release an arrested person on bail, but that section proceeds to say that he shall not be released if there appear reasonable grounds for believing that he has been guilty of the offence with which he is charged. Government now come forward and say that they want to stiffen this section up. (*A Voice*: "No, no. It is just the other way about.") Government say that the accused shall not be released if the Magistrate has reasonable grounds to believe that he will be guilty of an offence punishable with death. That is the criterion which Government now . . . .

Sir Henry Moncrieff Smith: It is not the Government; it is the Joint Committee.

Mr. B. S. Kamat: Or rather the Joint Committee—the criterion which the Joint Committee seek to introduce is the nature of the punishment. Now we shall take an illustration. Supposing a man is charged under section 409 of the Indian Penal Code, which is a section which deals with breach of trust as a public servant or as a banker, or as a merchant or as an attorney or as a broker or as an agent. Now, technically speaking, that offence is a non-bailable offence and also the punishment provided for it is transportation for life. Both these conditions are satisfied, if I read the Indian Penal Code aright. Now in such a case what is the Magistrate to do? Take the case of a banker in Bombay who is charged, say, with breach of trust or an attorney with breach of trust about a document. Now if the Magistrate puts the strictest construction on this section, he will say the punishment in this case is transportation for life, and I am not going to release even the biggest banker on bail. Is that a correct criterion? The correct criterion should be not whether the punishment for that offence is transportation for life but whether the man will abscond. Now, I will take another section of the Indian Penal Code. Take section 477 which deals with tampering with a will or with the authority to adopt a son. Now supposing a man is charged before a Magistrate with these offences. Now these are non-bailable offences and these are also punishable with transportation for life as an extreme punishment. What is the Magistrate to do if he reads this amendment strictly according to the letter? He will have no other alternative but to refuse bail. Now, a man who is charged with these offences, really speaking, may deserve bail. The only criterion, therefore, which should be introduced is whether the man is likely to abscond and defeat the ends of justice. The wording as proposed by Government does not satisfy that criterion, and I therefore think that I should support this amendment.

Dr. H. S. Gour: Sir, the provisions relating to bail have been the subject-matter of controversy for a large number of years, and the fact that no less than 16 or 18 amendments find their place on the agenda paper shows the wide interest this section of the Criminal Procedure Code evoked in this House. There is no doubt, Sir, judging from the multiplicity of amendments that we are dissatisfied with the present draft, and judging from their multiplicity, there is no reason whatever, Sir, to doubt that we are not quite satisfied with our own drafts. But the fact remains that there is a strong consensus of opinion in this House that the whole of the provisions relating to bail require re-examination and over-hauling, and here, I submit, it is the duty of the Government and the Government draftsmen to meet the generally expressed wishes of this House and bring the provisions of section 497 in conformity with our wishes. Honourable Members will find that there are two pertinent provisions embodied in the Code of Criminal Procedure which deal with the subject of bail. So far as the High Courts and the Courts of Session are concerned, they possess an unlimited and unfettered power to release any person on bail. That is section 498. But, when we descend from the High Court and the Court of Sessions to the Magistracy, we are immediately confronted with the qualifications which surround section 497 of the Criminal Procedure Code. Now, Sir, the release of a person on bail is often demanded after his arrest and before his trial and sometimes during his trial but before his conviction. In other words, the provisions of section 497 are brought into

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requisition in a case which is then *sub-judice*. What does the existing provision, however, provide? It says: no Magistrate shall release a person on bail if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused. The Magistrate is to prejudge the case and he is to say to the accused: I have reasonable grounds for believing that you have been guilty of this offence; therefore, whatever may be the reasons which would move me to release you on bail, you cannot be released on bail. That is the sole criterion from which Magistrates in India regard the question of bail. Now, if we turn to the English law, we shall find a very different criterion there for releasing persons on bail, and, in inviting this House to adopt either the one or the other, I shall ask the House to remember what is the underlying principle for arresting a person and releasing him on bail. It requires no large legal training such as my Honourable friend, the last speaker, possesses, nor need one be an unpaid Magistrate to understand that. When a man is arrested, the sole and single purpose of his arrest is that he should not run away, and, when he is released on bail, the sole criterion for releasing him on bail and fixing the quantity of bail is that he should not run away. (*Mr. N. M. Samarth*: "Nor commit suicide.") Very few people do that; and even people under arrest sometimes commit suicide. That is, then, the sole criterion. Well, I submit, if the Magistrate is assured that the man is not likely to run away—(*The Honourable Sir Malcolm Hailey*: "How?") —because the quantum of bail, the amount of bail which he gives is the best security against his absconding, is there any reason why he should be detained in custody? That, I submit, is what my friend the Mover of this amendment wants. You shall not prejudge a case, you shall not decide, before you have heard the evidence, whether the accused should be released on bail or not. You place yourself in a position of grave embarrassment to yourself, and you cause unnecessary suspicion in the mind of the accused against the impartiality of the very tribunal before whom his trial is pending. The Magistrate says: "I cannot release you on bail because during the course of this trial I have to examine and see whether you are not guilty, or, at any rate, whether there are not reasonable grounds for believing that you are guilty. I believe that there are reasonable grounds for believing that you are guilty." Well, the accused says: "Sir, you have prejudiced my case. You have prejudged me. You may not release me on bail, but it is perfectly obvious to me that after those observations I cannot consider you to be as impartial as I should expect a judicial tribunal to be." That, I submit, is a wrong view. That, I submit, places the Magistrate in a position of great awkwardness. That, I submit, is a principle of law which is not only contrary to the English law but contrary to the very first principles upon which arrest is made and bail granted. Therefore, Sir, this House demands that you shall place a right principle before the Magistracy for the release of persons on bail. What is the object you have in view? It is that the offender should not escape from justice. Make sure of it and make that the sole criterion for arresting, for keeping under arrest, or for releasing a person on bail. That, I submit, is a salutary principle. I have already pointed out to the Honourable Members that in the case of the High Court and the Court of Sessions, this is the principle. In fact, as I have said in the earlier part of my speech, they have an unlimited and unfettered power of releasing any person at any time on bail. Why should not the same power be conferred upon a Magistrate who has studied the case, who has probably recorded part of the evidence

and before whom the facts are laid by both sides with greater fullness than they can be in the miscellaneous papers filed before the Sessions Court or the High Court. I submit, Sir, that the Government should meet us halfway at any rate upon this point. The provisions of law which they ask the House to concur in are unacceptable to us. They must revise their draft and, if they can show that the object of the Legislature, that the object of the Government would be sufficiently fulfilled if the accused does not escape justice, they shall have combined commonsense with justice.

Now, Sir, one more point and I have done. Honourable Members will find that the Government draft, that is to say, the draft in the Bill is a great improvement on the existing law. It proposes to remedy the rigour of the present Code of Criminal Procedure by allowing the release of persons in circumstances mentioned in the proviso, even in cases where the offence is punishable with death or transportation for life. That is a wholesome change. We welcome it, but, at the same time. I would ask the Government in this connection to see that by the mere enumeration of circumstances which they have provided in their proviso now sought to be added to section 497, they have left out a large number of cases *ejusdem generis* which they could not compendiously enumerate and which would perhaps more conveniently have been stated in a more general principle. If these two conditions are fulfilled, there will be no necessity to press the numerous amendments of which notice has been given and I hope, Sir, that the Government will see their way to compromising with the various authors of the amendments upon the lines I have indicated.

Mr. H. Tonkinson: Sir, my Honourable friend, Dr. Gour. has informed us of what must be clear to anyone from a perusal of this page of amendments that Honourable Members opposite have not been able to suggest any satisfactory criterion to propose in substitution for the provisions in the Bill.

The amendment now before us proposes that in all non-bailable cases there shall be a discretion with the Magistrate to allow the person to be released on bail. I do not know whether my Honourable friend would propose later on the omission of the proviso, for the proviso would be quite meaningless if he makes the first amendment. Well, now, my Honourable friends, Mr. Kamat and Dr. Gour, have both suggested that the reason why we take bail is to secure the attendance of the accused. I accept that suggestion entirely. I accept the dictum of Lord Russell of Killowen in the case of Regina *versus* Rose that " it cannot be too strongly urged upon Magistrates that bail is not intended to be punitive, but merely to secure the attendance of the prisoner at the trial, or to come up for judgment." I accept that as the proper test to be applied in these cases. But, Sir, how are you going to apply that test? The real question is, what are the considerations to be used in applying the test? And here, Sir, I cannot accept at all the suggestion of my Honourable friend, Dr. Gour, that the proposals in the Bill depart from the principles of the English law on the subject. The various rulings as to how the test laid down by Lord Chief Justice Russell of Killowen should be applied have been summarised as follows: The first test should be the nature of the accusation. That, Sir, is a very similar provision to the one which we have in the Bill. The next test is —the nature of the evidence in support of the accusation. That, Sir, is an exactly corresponding provision to the words " reasonable grounds for believing " which my Honourable friend, Dr. Gour, takes so much exception

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to. The next consideration is—the severity of the punishment which conviction will entail. It is quite clear, Sir, that if you have a case in which the punishment which will be inflicted is very severe, then it does not matter what bail you take; the man will try and get away.

Rao Bahadur T. Rangachariar: What is the next test? Is there no other test?

Mr. H. Tonkinson: The fourth test given in this leading English law book is whether the sureties are independent or indemnified by the accused. We have not got any provision of that kind. These are the only tests given and I submit, Sir, that they are exactly on the same lines as section 497 will be if amended as in the Bill. Let us see what the provisions of section 497 will be. As my Honourable friend Dr. Gour has pointed out, they are subject to section 498 under which a Court of Session or the High Court may release on bail in any case. Now, the Magistrate can in all non-bailable cases under this proposal release any person who is under the age of 16 years. He may in all non-bailable cases release any woman. He may in all non-bailable cases release any sick or infirm person. The only restriction is in the case of a man over the age of 16 years, who is not sick or infirm. If there are reasonable grounds for believing that that man is guilty—of what offence? Of an offence punishable with death or transportation for life—then a Magistrate will not be able to release him on bail. I submit, it may be, and I agree myself, that the existing law in section 497 was unduly restrictive. But is it possible to say that in the conditions in India, these proposals in the Bill are unduly restrictive? Do we not, Sir, want to restrict our Magistrates to this extent? Even the best of our Magistrates make mistakes, and, as I have said, if there is a case which does not come within these provisions, it is always open to the accused to move a Court of Session or a High Court. I submit, Sir, that the proposals in the Bill should be accepted and that the amendment moved by my Honourable friend, Mr. Harchandrai Vishindas, should be rejected.

Colonel Sir Henry Stanyon: Sir, in the choice of several evils I venture to support this amendment. There is no question about it, in my humble opinion, that section 497, as at present law, is thoroughly bad. In sub-section (1) it invites the Magistrate to pre-judge against the defence. In sub-section (2) it invites the Magistrate to pre-judge against the prosecution. Sub-section (1) says: "he shall not be released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused," and sub-section (2) says that he shall be released "if there are not reasonable grounds for believing that the accused has committed the offence." That is a wrong criterion in principle, and it has been disastrous in practice. Magistrates, who, in general, are people desirous of doing honest and straightforward justice, have refrained from forming these prejudices in regard to cases before them. The result has been that in non-bailable cases the granting of bail has been steadily refused, and many persons have been detained whom justice required to be out on bail for the purpose of working up their defence, or because of their status and so on. Some Members of this House—and I include myself among them—have been criticised in the public press as unduly tender towards the criminal. That criticism seemed to me, when I read it in the public press, to be based on a very serious fallacy—a confusion of a prisoner under trial with a criminal. When you legislate a Penal Code,

you provide punishment for a criminal. When you legislate a Criminal Procedure Code, you make law for the fair trial of a person who is presumably innocent until he is proved to be guilty. It has been admitted, in his very fair and impartial remarks on the subject, by my Honourable friend, Mr. Tonkinson, that the ground of arrest and detention of accused persons is simply and absolutely to secure that they shall duly appear to stand their trial. There is no other reason. The law should not ask the Court, until the whole of the evidence is before it, to form any opinion whatsoever on the merits. Hear both sides and then decide whether there are reasonable grounds for believing that the accused is guilty or not guilty. To the four considerations which have been put forward by Mr. Tonkinson in connection with the dictum of Lord Russel of Killowen I venture to mention a fifth, and that is, the status and circumstances of the person accused. A rich banker may be accused of embezzling Rs. 200. He may have large properties, his family, his home and everything that he would lose by absconding, and a good defence if he were allowed out on bail so that he could attend to it. But that is a case punishable with transportation for life and even under the amendment proposed in the Bill before us bail would be refused to such a man. That surely is one instance where without any technicality one's common sense perceives an injustice in the mode of procedure. What Judge or Magistrate or lawyer has not heard the zealous police officer, in perfect honesty and with the best of intentions say " If that accused is let out on bail I cannot prove my case." Is that a consideration which any Magistrate ought to be allowed to hear? Yet that is the kind of thing that is put before him under the present law upon applications made for bail. It is for these reasons that I would prefer the risk of leaving an unfettered discretion to the Magistrate to deal with each particular case upon all its merits—upon all the considerations which have been mentioned—what is the nature of the offence? What sort of evidence is disclosed? Has the accused confessed? What sort of man is he? Is he likely to run away? We should not specify these things or put them in a definition. They should remain available at the discretion of the Magistrate. We must instruct the Magistrate, and then let him exercise his discretion. Let that discretion be controlled by higher authority. I admit in matters of release on bail the higher authority may come rather late. But there are these difficulties in every direction and we have to meet them. We cannot aim at perfection but must do the best we can; and I think it is better to leave an absolute discretion to the Magistrate—a properly trained Magistrate—than to try and limit his discretion with such limitations as exist in the present law and as will continue to exist if we require him under the amendment proposed in the Bill, to pre-judge cases—the most serious cases of all, cases punishable with death or transportation for life. On these grounds I support the amendment.

Rai Bahadur S. N. Singh (Bihar and Orissa: Nominated Official): I rise to oppose this amendment. The present position is that in all non-bailable cases the accused person may be admitted to bail unless there are grounds for believing that he has been guilty of the offence of which he is accused. The amendment proposed in the Bill is to confine the refusal of bail to cases where the person is accused of an offence punishable with death or with transportation for life. The proposed provision is therefore a distinct improvement upon the existing position, as the Honourable Mover of the amendment has himself admitted. Also, Sir, there is a very wholesome provision to the effect that if the Magistrate at any stage

[Rai Bahadur S. N. Singh.]

of the proceeding or trial does not think that the accused has committed the offence, he can admit him to bail. The object of keeping an accused person in custody is not only to prevent him from running away but also to prevent him from committing mischief outside custody, such as tampering with the evidence available against him, which, Sir, he would be tempted to do in such cases of serious offences. For these reasons I hope this amendment will be turned down.

Rao Bahadur T. Rangachariar: I move that the question be now put.

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, I have listened with very great respect to the remarks by my Honourable friend, Sir Henry Stanyon, on the subject of this amendment, but I feel constrained, in spite of his long experience, to differ from him. In the first place, I think he argued most of his case on the wording of the old section. He asked the House to remember that this section had been used in such a way that bail was refused in many cases in which it might perfectly, safely and legitimately have been given, on account of the way in which that section was worded. The object of the amendment which has been put forward by the Joint Committee is to remove that very objection from the section. It is admitted that the section was previously too restricted, namely, where the Magistrate was of opinion or had reasonable grounds for supposing that the accused had committed any non-bailable offence, bail should not be granted. But we are now confronted with a very different position. The number of offences in which bail cannot be granted under those provisions has now been very greatly reduced, and the question now before the House is whether an absolute discretion should be given to Magistrates in all cases or not. Well, with all respect to the opinion of my Honourable friend, Mr. Tonkinson, I would suggest in this country there must be some other considerations besides the mere appearance of the accused. (*Rao Bahadur T. Rangachariar*: "Why in this country?") In this country, because we are at present concerned with this country. I would ask my Honourable friend, Mr. Kamat, for example, whether he thinks it is really safe that when a murder has been committed and when a man has been arrested actually in the commission of the offence and is brought before the Court, a discretion should be given to the Magistrate even in such a case to allow the man to be released on bail. There are many cases in which it is obviously most dangerous that it should be possible for an accused in those circumstances to be let free; and, further, Honourable Members who support this amendment have persistently ignored the fact referred to by the Honourable Mr. Tonkinson that they, all of them, all accused in such cases, have an immediate remedy under section 498. They do not even require to go to the High Court; an immediate reference can be made to the Court of Session, and I submit, Sir, that that is a quite sufficient remedy in all cases of so grave a nature as are referred to in the sub-section as amended. Then, Sir, there is another argument which has been used both by Dr. Gour and Sir John Stanyon that the Magistrate has to prejudge the case because he is not to grant bail when there appear reasonable grounds for believing that the accused has been guilty of the offence of which he has been accused. Now, I submit, Sir, that it is not fair to say that this means that the Magistrate must prejudge the case. It merely means that on the evidence that is brought before him, he must see whether there is a *primâ facie* ground for supposing that it is reasonable that this man is possibly guilty of this offence. That is quite a different matter from an actual judgment on the case.

Dr. H. S. Gour: It is a belief.

Mr. P. B. Haigh: I did not catch the observation.

Dr. H. S. Gour: There are reasonable grounds for *believing*.

Mr. P. B. Haigh: Exactly, it is a mere belief. He has not to come to a decision on the point, he has merely got to believe that there are reasonable grounds,—that is to say that the grounds that are put forward when the accused is brought there are such that he may reasonably believe that the accused has committed the offence; it commits him to nothing, and I do not believe that in actual practice Magistrates have been hampered by the provisions of this section. Dr. Gour has asked the Government to meet the Honourable Members on the other side half-way, and I submit this is exactly what this clause as now amended by the Bill does: had the clause been omitted as is now proposed by the other side, they would not have gone half-way but the whole way: Government have accepted the recommendations made by the Select Committee that the old provisions are too restrictive, and they are prepared to remove them, except in the case of specified offences of a very grave nature, and I submit that you could not possibly have a fairer compromise than that, and that in going so far, the Government may be said to have gone exactly half-way. Sir, I oppose this amendment.

Sir Henry Moncrieff Smith: Sir, I do not agree with my Honourable friend, Mr. Haigh, that Government has gone half-way. Government has gone very nearly the whole way. I think I should make the position of Government clear to the House; and it is this—they view this matter with the very gravest concern. Those Members of the Joint Committee who attended its meetings—and Mr. Harchandrai was not one of those—will know how very seriously this matter was argued, and how the Government's point of view was put forward, and how the Honourable the Home Member of that time attempted to persuade the Joint Committee not to go as far as they did,—and how he tried to persuade them to introduce some sort of safeguard in this matter. I only want to make it quite clear to the House, Sir, that Government does view this particular question of bail in non-bailable cases with the gravest concern. I have a few remarks to add to what Mr. Haigh has said on the subject of pre-judging. Now, Sir, in the first place, the words 'having reasonable grounds for believing,' I would ask the House to remember, will only apply to a very limited class of cases; they will not apply to cases punishable with transportation or death, and, therefore, the Magistrate himself, Sir, will ordinarily not be able to try them and will not have to pre-judge the cases at all, any more than he has to pre-judge the case when he has to make up his mind whether he is going to commit the accused or not. He has to do exactly the same thing in this case, as Mr. Haigh has said,—he has to decide whether there is a *primâ facie* case against the accused or not; and if the Magistrate thinks that there is a *primâ facie* case against the accused, he commits the accused for trial. But he will not be pre-judging the case even to that extent if he says that this is not a case in which bail should be allowed. Now, Sir, we heard a good deal about the one criterion that should be applied in this case,—and that is, whether the accused is likely to abscond or not. We heard it suggested that there are non-bailable offences which are committed by persons hitherto most respectable, and those persons will not be likely to run away, and, therefore, there is no need whatever

[Sir Henry Moncrieff Smith.]

in these cases to impose any restriction on the discretion of the Courts. Sir, we have got to examine this matter from both sides. The House is proposing to enable a stupid Magistrate—and there are stupid Magistrates—a weak Magistrate—and there are weak Magistrates—to let out on bail at once a murderer caught red-handed, a *dacoit* who has been terrorising his district for five years, who has been caught with the greatest of difficulty; you take him before a weak Magistrate, and you get bail at once,—and the reign of terror proceeds again for another five years before he is caught. There is one very important point which has not been mentioned in this debate at all. The whole question has been argued from the point of view of the Courts. Now if the House will look at section 497, they will find that it deals not only with the question of bail before the Courts but it deals with the question of bail by police officers too, and, here, Sir, is the House seriously proposing to give a police officer full powers to release on bail a person accused of the most serious offence, without giving him any discretion or any guidance as to the way he should exercise those powers? Sir, is it not a very dangerous thing to do? Police officers, we have been told over and over again in the course of this debate, are not always honest, are corrupt: and when it is a question of a very rich man in custody—I understand it is the very rich man that the House is feeling so seriously about—of the very rich man whom the House wants to be released on bail because he can afford to pay and because he has been hitherto respectable, will that man not be able to make it worth the while of the police officer to let him go, and will you ever again catch that man? There is no question about it, that he will never be caught again. The criterion of the likelihood of the accused absconding is a very sound criterion, but if you take the clause as is proposed by the Bill, we are not trenching upon that criterion at all. You take the most serious offences, those punishable with transportation and those punishable with death. Can any Magistrate, any Court, say to itself that the accused person brought before him, who, it has reasonable grounds to believe, has rendered himself liable to the punishment of transportation for life or liable to the punishment of death, is not likely to take an opportunity of absconding? One Honourable Member has suggested that once you get bail,—that is all you want, I think it was Dr. Gour,—what more security do you want than bail that he will appear? Sir, will a murderer, a dacoit, be bound by any tender feelings for his friend who has stood surety for him? Will he, Sir, say to himself: ' my friend stood by me, he has got me out on bail, I must not let him down, I will surrender to the Court, and I will be hanged '? Sir, I do not think a criminal in this country, or the innocent person on his trial in this country as Sir Henry Stanyon has said, is likely to be affected by any considerations of that sort.

Sir Montagu Webb (Bombay: European): I move that the question be now put.

The motion was adopted.

Mr. President: Amendment moved:

" In clause 132 (*i*), omit the words from ' in sub-section (1) ' to the word ' substituted ' and in their place substitute the following :

' in sub-section (1) the words beginning with the words ' but he shall not be ' to the end of the sub-section shall be omitted '."

The question I have to put is that that amendment be made.

The Assembly then divided as follows:

AYES—34.

Abdul Rahman, Munshi.	Jamnadas Dwarkadas, Mr.
Abdulla, Mr. S. M.	Kamat, Mr. B. S.
Abul Kasem, Maulvi.	Lakshmi Narayan Lal, Mr.
Agnihotri, Mr. K. B. L.	Latthe, Mr. A. B.
Ahmed, Mr. K.	Misra, Mr. B. N.
Ahsan Khan, Mr. M.	Mukherjee, Mr J. N.
Asad Ali, Mir.	Nag, Mr. G. C.
Ayyar, Mr. T. V. Seshagiri.	Nand Lal, Dr.
Bajpai, Mr. S. P.	Neogy, Mr. K. C.
Basu, Mr. J. N.	Rangachariar, Mr. T.
Chaudhuri, Mr. J.	Reddi, Mr. M K.
Das, Babu B. S.	Shahani, Mr. S. C.
Dass, Pandit R. K.	Singh, Babu B P.
Faiyaz Khan, Mr. M.	Srinivasa Rao, Mr. P. V.
Ginwala, Mr. P. P.	Stanyon, Col. Sir Henry.
Gour, Dr. H. S.	Venkatapatiraju, Mr. B.
Gulab Singh, Sardar.	Vishindas, Mr. H.

NOES—41.

Abdul Rahim Khan, Mr.	Ikramullah Khan, Raja Mohd.
Akram Hussain, Prince A. M. M.	Innes, the Honourable Mr. C. A.
Allen, Mr. B. C.	Ley, Mr. A. H.
Barua, Mr. D. C.	Moir, Mr. T. E.
Bijlikhan, Sardar G.	Moncrieff Smith, Sir Henry.
Blackett, Sir Basil.	Muhammad Hussain, Mr. T.
Bradley-Birt, Mr. F. B.	Muhammad Ismail, Mr. S.
Burdon, Mr. E.	Mukherjee, Mr. T. P.
Cabell, Mr. W. H. L.	Percival, Mr. P. E.
Chatterjee, Mr. A. C.	Pyari Lal, Mr.
Clow, Mr. A. G.	Ramayya Pantulu, Mr. J.
Cotelingam, Mr. J. P.	Rhodes, Sir Campbell.
Crookshank, Sir Sydney.	Samarth, Mr. N. M.
Dalal, Sardar B. A.	Sarfaraz Hussain Khan, Mr.
Davies, Mr. R. W.	Singh, Mr. S. N.
Faridoonji, Mr. R.	Subrahmanayam, Mr. C. S.
Haigh, Mr. P. B.	Tonkinson, Mr. H.
Hailey, the Honourable Sir Malcolm.	Townsend, Mr. C. A. H.
Hindley, Mr. C. D. M.	Tulshan, Mr. Sheopershad.
Holme, Mr. H. E.	Webb, Sir Montagu.
Hullah, Mr. J.	

The motion was negatived.

The Assembly then adjourned for Lunch till Ten Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Ten Minutes to Three of the Clock. Mr. President was in the Chair.

Rao Bahadur T. Rangachariar: Sir, we have discussed this question at considerable length, and I need only say a few words in commending my amendment No. 352, which as Honourable Members will see from page 46 is as follows:

"In clause 132 (i), after the words 'for life' insert the following:

'and that the accused if released on bail would abscond and attempt to escape justice by avoiding or delaying an inquiry or trial'."

Honourable Members if they read the section will see how it has been amended by the Joint Committee. We have to acknowledge that considerable improvement has been made in the existing provision relating to bails. We acknowledge it with thanks. But at the same time the existing defects in the law, as forcibly pointed out by my Honourable friend, Sir Henry Stanyon, still remain in the most serious of cases,

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namely, offences punishable with death or transportation for life. If Honourable Members will just glance through the Schedule attached to the Code of Criminal Procedure they will find all sorts of offences which are punished with transportation for life—I counted about 47 this morning and I do not know if there are not more, I have not made an exhaustive count—ranging from criminal breach of trust to offences against the State. Therefore, Sir, it is refreshing to hear from the Treasury Benches an expression of the sentiments of which we have been gravely accused by the Anglo-Indian Press, that the Indian politicians betray such a lack of trust in the police and the magistracy that they do not realise their sense of responsibility, that they hold them up to ridicule and that the full measure of reforms for which they are yearning cannot come because of this over-distrust of the magistracy and the police. I am glad to have our sentiments echoed from the Treasury Benches. Sir, this morning we heard there are stupid magistrates, there are weak magistrates. Which is the more important? Is the accused to suffer at the hands of stupid magistrates or the prosecution to suffer? Is the accused to suffer at the hands of weak magistrates or the prosecution to suffer? That is our complaint. There are weak magistrates, and they succumb to the influences to the subtle influences, to the unseen influences at work, in order to get convictions. To borrow the phrase of my Honourable friend, Mr. Haigh, this is an unfortunate country. Everything must be different in this unfortunate country. I do not know why. I interjected a remark " why in this country?" My Honourable friend said " We live in this country." He had no other reason to give. As Sir Henry Stanyon pointed out, people should be presumed to be innocent until they are actually convicted by the Judge, Magistrate or jury as the case may be. That is a wholesome principle known to every system of civilised jurisprudence. If the Government will furnish the figures which they have of persons lodged in jail or in custody pending trial and afterwards eventually acquitted either by the trying judge or by the court of appeal, Government will, I daresay, repent, will have serious cause to repent, at the rigour of the existing provisions regarding bail. Even in England more than 50 per cent. of persons who are detained in custody pending trial because they are not able to find bail are eventually acquitted after detention in jail for three or four months pending the sessions trial. If that is so in England, much more so in this country. I wish the Government would give us the figures of people who are kept in custody pending trial and are eventually acquitted. Can they give us the figures for last year? Take any province. The figures of people who are eventually acquitted after being accused of crimes and yet kept in jail pending the trial will reveal an appalling number of persons, innocent persons kept in custody. Sir, they are deprived of their earnings in the meanwhile. Do we compensate these persons who are kept in jail? Do we provide for the maintenance of the families of those persons who are kept in jail? Therefore it seems somewhat odd that people should stand up here to defend the present system by which the discretion of the magistrate is sought to be tied down. Sir, we lost that amendment about leaving it to the good sense of the magistrate to see which case he should let on bail and which case he should not. Sir Henry Moncrieff Smith mentioned, I think, the case of a person caught red-handed committing a murder with the bloody instrument in his hand and asked " Is he to be let out on bail?" I say " No. Your magistrate will not let him out on bail, if he is a magistrate whom you have properly appointed." But if you appoint weak magistrates, stupid magistrates, that

is no reason why the law should be stupid, because your magistrates are stupid. Therefore that is no answer at all to a case of this sort. The provision as it stands says in effect, "Do not release him on bail if you have reasonable grounds for believing that he is guilty of an offence punishable with death or transportation for life." It is true that in such cases the magistrate does not actually convict; Sir Henry Moncrieff Smith is quite right in saying that such cases will probably go to the sessions court; not necessarily however; first class magistrates may deal with such cases and convict them of offences—although they may be charged with other offences —within their jurisdiction. But leaving it there, even as a committing Magistrate he has to come to a judicial conclusion as to whether a *primâ facie* case is made out or not before he commits the accused to stand his trial in the Sessions Court. You are now forcing his hands by the section as it stands to come to a conclusion before he has seen the witnesses,—because Honourable Members will notice this comes just at the time either when he is brought in custody or when he appears in Court—you are forcing his hands, even before a single witness is put in the witness box, to come to a conclusion. He simply sees the police diary or the police version or the prosecution version of the case, and he is asked to come to a conclusion beforehand that he has reasonable grounds for believing the man to be guilty. Sir, that is asking him too much. It is asking him to do injustice to the accused beforehand. Therefore it is not a good condition to impose; any way it is there.

3 P.M.

Now you want to give one direction to the Magistrate under the clause as it stands. I want to impose another direction, an additional direction, namely, that not only should he have grounds for believing that he is guilty of an offence punishable with death or transportation but he should also be satisfied that if let on bail the accused is likely to evade justice. I won't say that is the only consideration, but that should be the main consideration as the Honourable Mr, Tonkinson very fairly admitted. The primary ground for consideration at this stage should be whether this man is likely to evade justice.

My Honourable friend, Mr. Samarth, interposed with a remark 'what about suicides'? I provide for it. If the Magistrate is satisfied on account of the nature of the case, or on account of the temperament of the individual or on account of the gravity of the sentence which may be imposed upon him that a particular accused is likely to commit suicide, then he evades justice, and my amendment safeguards that doubt, and I hope my honourable friend Mr. Samarth will have no more doubt in his mind in supporting my amendment. Sir, that ought to be the test, the only test which civilized countries should impose. Let us not be guided away by the vague expressions about this unfortunate country. Unfortunately my Anglo-Indian friends present here think that this country is peculiar—I hope not all of them will think so. We have got a very good exception in my Honourable friend Sir Henry Stanyon, and I hope others will join his rank. Sir, as the Government feel strongly in this matter, we also feel strongly. Let us not be guided away or led away by those who say 'Oh, the Government feel very strongly in this matter'. People attach the greatest importance that their liberties should not be deprived before they are convicted. At the slightest provocation Magistrates have shut up persons in custody. Poor fellows are unable to defend themselves. All sorts of conditions are imposed. They have to interview their pleader in the presence of a jailor. What instructions can the accused give under such conditions? Therefore, Sir, it is not right. We should

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give a fair trial and all opportunities to the accused to defend himself. He has got money, probably he is the only member, the only adult male member of the family who can raise money, while you shut him up in gaol; and what is he to do? Are you giving him really a fair trial by shutting him up like that? Therefore I say here 'A Magistrate shall not release an accused if he is satisfied that he is likely to evade justice and that there are reasonable grounds for believing him to be guilty'. Therefore, I don't allow full discretion to the Magistrate. I say if you control it do so with proper safeguards. Do not make it compulsory on him to refuse bail simply because he thinks there are reasonable grounds for believing the accused to be guilty. But let there be an additional safeguard, namely, only if he is further satisfied that the accused is likely to evade justice then alone he should refuse. Sir, I move my amendment.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, in the discussion of this matter, I am afraid certain considerations which are not strictly relevant have been introduced. First, I should like to deal with that expression " reasonable grounds for believing that he has been guilty of offence ". Now you may make too much of it, but it has never been understood to mean that a Magistrate has come to the conclusion that the man is guilty. The significance of that expression must be considered when taken with the Court with which we are dealing with in this clause. It is the Court of the Magistrate, not the Court of the Judge who is going to try the offender. That distinction should at once appeal to those who are engaged in the administration of law. That is, the man who is inquiring into the case punishable with death or transportation for life is not the authority who is going to decide as to the guilt of the offender. He only collects the evidence, puts it together and then sends up the evidence and the accused to a higher Court for trial, if he feels that the case ought to be inquired into by a higher Court and not thrown out at once. So, when you take that clause with reference to the authority that is going to apply it, then I think all the argument that the Court is going to prejudge the case falls to the ground. How is it to prejudge? What materials has it to come to a conclusion? I think, with all deference, that difficulty must vanish. Because, after all, the Magistrates are human just as we are. They have got certain reports and depositions. They must in a sense come to some conclusion. If it is not an extreme case, like the one put by Sir Henry Moncrieff Smith of a man caught red-handed, but if there is plenty of evidence that the man has committed murder, no Magistrate, whatever the form of law may be, can shut his eyes or shut his mind and say that the man is innocent. Why, even Judges who try cases, when they start on a case, before going through the evidence, form some kind of first impressions. But their intellectual training, their culture makes them separate the two, separate their first impressions from the final conclusion which they are bound to come to after hearing the evidence, and we must assume in this discussion that the men have got some intellectual calibre, some training in sifting evidence and dealing with cases. If we look at it in that light, I think much of the argument that has been levelled at that clause and the psychological difficulties that that clause would introduce will disappear.

Now Sir, the clause which my friend, Mr. Rangachariar wants to introduce is a clause which will work considerable hardship on the accused themselves. How, I will tell you. Pause for a moment and consider how a Magistrate is to decide whether the man will escape and avoid justice.

It depends on the temperament of the accused. A very sensitive man, a man who feels the disgrace of a possible conviction and has worked himself to a desperate state of mind, possibly may run away and may go and drown himself or poison himself. Therefore, what criterion do you provide for a Magistrate to find out whether the accused person is a man who will escape (and therefore he will not give him bail) or he is a man who will not escape (and therefore he will give him bail). Is it easy for any Magistrate to come to a conclusion on that clause? Probably this clause will work hardship and I will presently show how it will work hardship. Suppose there is not a very wealthy man but an ordinarily wealthy man. The Magistrate will say, " If I leave this man he would recompense or recuperate the men who have stood as sureties and will run away to some other territory and abscond. Therefore he must be kept in jail." The consideration which will weigh with Magistrates or Courts in letting a man on bail is that he is a respectable man, a man of property and he will not run away. But if you put this clause in the Statute, if, as has been said oftentimes, you crystallise what is a ground of discretion by a clause in the Statute, you run the danger of people who are now getting bail being refused bail, because the Magistrate might say, " He is a respectable man, honourably connected, having respectable relations and leading a respectable life. Probably the disgrace that will follow as a result of the trial might drive him to desperation. Therefore I will keep him in jail." He might say that. While you are getting hold of one extreme, you ought also to consider the other extreme to which this clause will lead. Therefore, this clause is a dangerous clause to tack on to the section, I think as far as Sessions Courts and the High Courts are concerned, barring individual idiosyncrasies, no Legislature can correct them. These Courts generally are inclined to let people on bail on reading the depositions and on seeing the facts before them. As to Magistrates, that is a different business. One thing which I have frequently noticed in the discussion of the various provisions of the Code is not the defect in the law, not the defect in the terms of the law or the enunciation of the law, but in the actual working of the law in the lower courts, and for that, all I can say is that the executive governments of the various provinces are responsible. There is a habit—I mention that in order to make the Assembly understand how it is that such a dead set is made against the Criminal Procedure Code—there is a habit in every Local Government to issue circulars behind the back of the High Courts, circulars which have nothing to do with the recorded decisions and reported decisions of courts. Every Local Government, the District Magistrate, issues circulars saying " You ought to be careful not to let people indiscriminately on bail ". I mean some circulars are issued in the form of instructions to subordinate Magistrates who undoubtedly depend for their advancement on the head of the District, circumscribing the discretion vested in them by the law. It is that that is at the root of all the criticism which we have heard here. It is not against the authors of the present Code or the old Code which has been transmitted to us these sixty or seventy years by eminent jurists and lawyers. There is nothing wrong in the language of the Code. When we tried to tack on words to the Code, I sat down in great sorrow at the language which has stood the test of years and years being mangled here, and probably the consequences may be dire in the future interpretation of this section. But the cause of all the trouble which you have been hearing, Sir, is that the executive governments in the various provinces, ignoring the decisions or the interpretations of the High Courts of the actual provisions of the Code, have been issuing circulars tightening the provisions of the Code and

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enjoining upon subordinate Magistrates not to exercise a free discretion in the administration of Justice. It is those circulars that have been at the bottom of all these criticisms. I say we here cannot prevent the issuing of the circulars there. It should be a matter for the provinces, for the Provincial Councils to take note of such circulars, bring them up before the local Legislative Councils and see that they are not issued. If you go and mangle the law and add clause after clause to sections which are the result of the labours of very eminent lawyers, jurists and administrators, I am very much afraid that the result will not be what we all heartily desire. The clause, as it stands, gives sufficient discretion for letting off an accused on bail, and if this amendment be introduced, it will cause great trouble. This question of escape is a dictum of the Judges and that dictum is followed in the Higher Courts, but in the Magistrates' Courts it is not followed. I do not see how you can expect a Magistrate to follow that dictum and ask him to follow these dicta and to exercise his discretion this way or that way frequently when the accused is under trial. Why should we assume that in every case the accused person before trial is an innocent man. It is all judicially speaking quite right, but why in the discussion of a provision in the Legislature do you start with the ground that the case is false, that an innocent man has been falsely charged? Is that not an extreme way of looking at the thing?

The case is under inquiry, and so long as it is under inquiry,—it may take a few weeks, and in some difficult cases it may be 2 or 3 months—there must be hardship. That hardship you cannot avoid by any number of clauses in the statute. You cannot prevent one man prosecuting another man, you cannot prevent a policeman making a false charge. You can only await the result of the trial and take such remedies as the law provides. But if you go and mangle these provisions here, I do not think you will thereby be helping a large class of men who are now treated fairly by the Courts. Take the extreme limit of transportation for life. I do not think for a moment that a man who is accused with an offence punishable with death is going to be asked to be let off on bail, but even in such cases after the evidence is concluded and recorded, the Courts have let the men off on bail pending trial. I know such cases from my own experience. Therefore, I do not think that the weakening of this clause will do any good. Therefore I oppose the amendment of my Honourable friend, Mr. Rangachariar.

Mr. H. E. Holme (United Provinces: Nominated official): Sir, with due respect it seems to me that the proposed amendment must be either useless or mischievous, for either the Magistrate will decide on general principles that there is a danger of the accused absconding and evading justice in which case the words will be unnecessary, or else he will consider it his duty not to refuse to release the accused on bail unless and until he has satisfied himself that it is positively proved that the accused is likely to abscond and to hold that if in any case that cannot be said, the accused must be released on bail. As regards the argument that it is necessary for an accused to be at liberty during the trial in order to instruct his Counsel properly and to conduct his case, that argument would apply even if there were a danger of his absconding and therefore it does not seem to be conclusive. As regards the fear expressed that the Magistrate will have to prejudge the case, I should like to point out that, as matters stand, every Court has to, if the word is an appropriate one, provisionally prejudge the case at every stage. The Magistrate has to bear in mind all

through the possibility of its being his duty to discharge the accused at any stage before the charge is framed. The framing of a charge is itself a kind of prejudging, because it implies that if the accused does not cross-examine the witnesses or put in a defence, he will be convicted. As regards the apprehension expressed that many offences punishable with transportation for life are not offences in respect of which bail should be refused, that would be an argument against their being designated non-bailable in the Penal Code; and as regards the instance put forward by an Honourable Member, in many such cases the " respectable " man will be the most likely to abscond, as has often been seen in the case of rich bankers charged with embezzlement. In conclusion, I would deprecate too much attention being paid to the argument that anything which is objectionable to the speaker is opposed to the laws of all civilized countries. We have not before us the laws of all civilized countries, and even if we had, it would be unsafe to conclude that they would be incapable of improvement. Sir, I oppose the amendment.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I rise to support the amendment: After hearing my Honourable friend, the Mover of the amendment, I thought it would not be necessary to supplement his observations by anything that I might add to the discussion. But his speech has been followed by certain others, and owing to the new points which were intended to be made in the course of the debate, I feel I ought to say a word or two in reply to what has fallen from some of my Honourable friends. The first point that I take is that the amendment has been described as either mischievous or unnecessary. Now, Sir, if the matter of granting or withholding bail had been left entirely open for the exercise of free discretion by the Magistrate, we might say that the amendment could be taken as an attempt to restrict the exercise of such discretion. There might be some danger in that. But, as a matter of fact, we are now laying down certain lines along which we ask the Magistrate to exercise his discretion, and we are at present concerned with those lines and those lines alone. Now, it is perfectly clear that the amendment of section 497, Criminal Procedure Code, which the Treasury Benches have proposed is undoubtedly a great improvement upon the law as it originally stood and we are thankful for it. But even with that improvement, the question still remains whether the demands of justice have been fully satisfied thereby. Now, Sir, some objection has been raised on the ground that we should not have any feeling of tenderness for an accused person, and that any too wide a statement or proposition like the one stated above, is injurious to the interests of justice. But, we cannot help it after all. The British system is such that you must presume that a person who has been accused of an offence must be taken to be innocent until proof of his offence has been brought home to him. We cannot help it. We all have to act on that principle and the amendment proposed is only an attempt to give effect to that principle. The various amendments which have been proposed with regard to clause 132 of the Bill, are attempts to improve the amendment of the law brought forward by the Government Bill, still further. Now, Sir, what are the facts? What have we done by proposing the further amendments? We have in a manner indicated that in all cases punishable with transportation or death, the Magistrate shall not release the offender only if there appear reasonable grounds to believe that he has been guilty of an offence punishable with death or transportation for life. Now what we have got to consider is whether we should generalise the two classes of offences in that way and by so doing, include

[Mr. J. N. Mukherjee.]

cases which ought to be left out of the category in question. My Honourable friend, Mr. Rangachariar, has already invited the attention of the House to the fact that offences in the Penal Code which are punishable with transportation for life are, some of them, triable by Magistrates and not by Sessions Courts, alone. I have examined some of the sections of the Penal Code. For instance, we might take section 409, criminal breach of trust as a public servant, etc.; section 394, hurt caused in committing or attempting to commit robbery, 326, grievous hurt caused with a dangerous weapon; offences relating to coins; and many others might be discovered which are triable by Magistrates also. If they are examined, generally speaking, it will be clear that the determination of the offence in a criminal case depends very often upon ascertainment of facts by a tedious process of examination of evidence. So that, if we brought all these cases contemplated by the Bill under careful examination, it will appear that the Magistrate in considering the question of bail will be often handicapped in the exercise of his discretion, if we lay down the law in the manner the Bill proposes to do. Now, Sir, it may be different where a murderer is caught red-handed. In such a case I think it will be the plain duty of the Magistrate not to give bail. But very often we find that murderers and people accused of other heinous offences are acquitted after trial. Therefore, if we hamper the exercise of the Magistrate's discretion in the way suggested by the Bill, we shall not be working justice in many cases, by shutting out bail; and the result will be such as has been pointed out by my Honourable friend, Mr. Rangachariar. Now, Sir, we take up the case of the police officer. It has been suggested by the Treasury Benches that we contemplate in section 497 of the Code, not only Courts but police officers as well. But what can a police officer do in these cases? He can only keep an accused person in custody for 24 hours. After that he has got to take him before a Magistrate, and an order has to be obtained by him for a remand. So that, that is the chief point to be considered with reference to police officers. He is practically unable to do mischief in such cases. In the second place we have got to consider that an undue exercise of favour in respect of an accused person for reasons best known to the police officer, in the matter of bail, will be regulated, if I may say so, by the fact that, if he (the police officer) has to send up an accused person, he will have to say that a good case has been made out against him. Well, in the same breath he cannot say " I find good reasons for letting him off on bail." Either he has got to say that no *primâ facie* case has been made out against the accused person, or that such a case has not been made out. Therefore, I submit that the mischief which is apprehended in the case of police officers is not at all a likely event. I submit, Sir, the question of the police officer in this connection may be safely left out of consideration, under the circumstances.

As regards the question of a Magistrate believing, or making up its mind as to an alleged offence, before the conclusion of the trial, I may say, as has been already pointed out, that in the matter of framing a charge by a Magistrate preliminary to commitment, as also in a case triable exclusively by a Court of Session, the law requires that the Magistrate should exercise his discretion in the matter. We have been led into psychological considerations such as those which have emanated from my Honourable friend, Mr. Subrahmanayam. But is there not such a thing as unconscious cerebration? A Magistrate at first sight comes to believe certain things.

Although the impression he then forms may not remain in his mind in a definite form, yet it may, all the same, work imperceptibly in his mind. The principle of the English law is such that it endeavours to place a Magistrate in a situation where things like the above may not work upon his mind at all. Therefore, Sir, wherever it is possible we should always try not to assume that an accused person is guilty before he is proved to be so, on the principle that an accused person is not guilty until his guilt is established. I submit, Sir, here is a case for the accused, with regard to the question of bail. What we have got to consider is—and the deciding factor in the case should always be, whether we are hampering the defence by unnecessarily restraining his movements;—unnecessarily, I say, only in such cases where he is a person who is sure not to try and escape justice. Where he is expected to do so, we shall be justified in putting a restraint upon his liberty of action; in other cases it will help justice if his movements are not restricted during trial. In such matters, the case is always one of balancing advantages against disadvantages. No proposition I may, perhaps, say, can be stated which is not open to criticism; but in all cases of the kind we have in view, we have got to judge between the two opposite aspects of the question, and the determining factor in the present instance, as I have said, ought to be the principle which has been so clearly accepted by the Honourable Mr. Tonkinson, and the principle which was so clearly enunciated by my Honourable friend to my left, Colonel Stanyon. Sir, if all the pros and cons of the question be taken into consideration, it will be clear that the supposed criminality of an accused person should not be brought into the scale at all, in granting him bail, supposing that a preconceived criminality of an accused person can influence the mind of a Judge. We make law in order that Magistrates may follow it, and therefore if the law is such that it will restrict the free exercise of the discretion of a Magistrate we ought not to have it. We should try and facilitate its free exercise in such cases and not restrict it by saying " In such and such a case you might not grant bail," though justice might require otherwise. That is the view, Sir, this House ought to take in the matter.

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): In forming a correct judgment upon this and the cognate amendments, I venture to submit it is necessary for Honourable Members to bear certain considerations in mind. In the first place, it must be borne in mind that the very classification of offences into bailable and non-bailable implies certain essential considerations. Offences which are comparatively insignificant or of less importance have by law been made bailable. In all those cases the accused is to be allowed his liberty after the institution of the prosecution until he is found guilty and has been convicted of the offence, the particular offence with which he may be charged. On the other hand as regards non-bailable offences it must be borne in mind that these are offences of a more serious character in so far as law and order and maintenance of peace in the country are concerned. That is the very reason, the basis of this class of offences being made non-bailable. That consideration, I respectfully submit, ought to be borne in mind. Again these non-bailable offences may in themselves be possessed of varying degrees of seriousness, some of less importance in so far as public tranquillity and law and order are concerned, and others of more seriousness and of greater importance. And of all these more serious offences it is obvious that the class of offences for which the Legislature has made capital punishment or life imprisonment as a punishment adequate or desirable,

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must in the very nature of things be regarded as the most serious. In the amendment which we ourselves have introduced into this section it will be noticed that we have made this last class of offences, the most serious of all offences, as the exception, in so far as grant of bail even in the case of non-bailable offences is concerned. I would ask Honourable Members to bear this fact in mind.

In the second place, let us turn to the actual effect of the amended section as it will stand, should this House accept the amendment which we have proposed and reject the amendments which certain non-official Members have put forward. What will be its effect? While in the existing state of law in respect of all non-bailable offences before a court the court is given discretion to release an accused person on bail, nevertheless it is laid down that in *all* non-bailable cases the court shall not let an accused person out on bail if certain circumstances specified in the present section exist. In the amendment which we propose in the case of certain classes of accused persons mentioned in the proviso we give the fullest possible discretion to the Magistrate, no matter how serious may be the offence with which such accused person may be charged, to release those accused persons on bail. It is only in the case of a limited number even of this class of persons that we ask the House to lay down that an accused person shall not be let out on bail. And, Sir, in this connection permit me to invite attention to this fact that cases before a Magistrate may either be cases with reference to which he himself has exclusive jurisdiction to try, that is to say, his functions are not limited to what is known as a preliminary inquiry before commitment and also cases in which his functions are so limited. In the case of those offences the trial of which ultimately will be held either in the Sessions Court or in the High Court, as the case may be, his functions are merely limited to what is known as the preliminary inquiry before commitment. Now there is nothing in the amended section as we propose to prevent the Magistrate from letting an accused person out on bail in all such cases until a certain stage. When a certain stage has arisen, that is to say, when on the evidence before him there is reason to believe that the accused person has committed the offence, it is only then that there is an express prohibition that he shall not release the accused person on bail. I see my Honourable friends, Dr. Gour and Rao Bahadur Rangachariar, shake their heads. Let me make the position clear. Now section 497 as amended will run as follows: "When any person is accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station "—let us eliminate that for the moment—" or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life."

Dr. H. S. Gour: When he is brought before the Court.

The Honourable Dr. Mian Sir Muhammad Shafi: Just one minute. As soon as he is brought before the Court, the Court has the fullest power to release him on bail, but he shall not be released if certain circumstances exist, that is to say, if the Court,—may be upon perusal of the police inquiry, may be after taking a certain amount of evidence actually produced before him in Court—has reason to believe that the accused has committed the offence, it is then and then alone that we lay down this prohibition that the accused shall not be so released. At what stage of the

inquiry or of the case the mind of the Court will, with relation to the commission of the offence, reach the position, *i.e.*, believe that the accused has committed the offence, will depend upon the circumstances of each case. That exact position, the mental position so far as the Court is concerned may, as I said just now, be reached at the very first instance, that is to say, after perusing the record of the police investigation or hearing the complainant or it may be reached after half the evidence for the prosecution has been heard or it may be reached right at the end of the inquiry, *i.e.*, when the whole of the evidence has been recorded. But as soon as that position has been reached, the prohibition embodied in this clause comes in. Until that position has been reached, there is nothing to prevent the Magistrate from letting an accused person out on bail even in most serious cases. If this were not the correct interpretation of the clause as we propose—after all, remember that all penal enactments must be construed as far as reasonably may be in favour of the accused person—that is a well known principle of law,—and if the interpretation which my Honourable friends, Dr. Gour and Rao Bahadur Rangachariar, seek to place upon this were to be the correct interpretation, I am afraid you would be driving a coach and four through that principle of interpretation to which I have just referred. If this were not the correct interpretation, then what is the meaning of these words " he may be released on bail "? Those words become absolutely meaningless. If the intention is that in all cases where the police thinks that an accused person has committed an offence and have sent a man up for trial, the Magistrate also is bound *ipso facto* to believe that the accused has committed the offence, then what is the meaning of those words " he may release the accused person on bail "? As I said those words become absolutely meaningless. No, Sir. I venture to submit the intention is this, that the Magistrate has discretion in all non-bailable cases to let an accused person out on bail, even though the offences are non-bailable, but, as soon as, from the facts of the case, from the evidence placed before him or from the circumstances with which he has already become acquainted from the record of the case, he has reason to believe that the accused has committed an offence, it is then and then only that his hands are tied; he no longer possesses any discretion. He must then refuse to release the accused person on bail. And in this connection, let me invite attention to the careful manner in which this clause is drafted. What is the language? It is this: " If there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life." Compare the phraseology adopted in this with the phraseology adopted in, say, section 254 of the Criminal Procedure Code, which relates to the framing of charges in warrant cases against the accused. Now, what is the phraseology adopted in this section 254? Section 254 says:

" If, when such evidence and examination have been made or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence, then he shall frame a charge."

Now, if you compare the phraseology adopted in 497, " there appear reasonable grounds for believing that he has been guilty of the offence " with this, it is obvious, at any rate to my mind, that the stage contemplated is the stage of a *primâ facie* case having been established against the accused.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Much stronger.

The Honourable Dr. Mian Sir Muhammad Shafi: This one is much stronger.

Dr. H. S. Gour: No, 497 is much stronger.

The Honourable Dr. Mian Sir Muhammad Shafi: At any rate, there is not much distinction to be drawn between these two. Then, I say, Sir, as this prohibition is limited to the most serious class of non-bailable offences and as the offences are in their very nature non-bailable, when once the Magistrate has, upon the record before him, upon the facts before him, upon the evidence or upon the other circumstances established in the case, reason to believe that the offence has been committed, then we as legislators ought to see that the power to release the accused on bail should no longer be exercised after that stage has been reached. To hold otherwise, I submit, would be contrary to all principles of criminal administration.

Now, it was said by my Honourable and learned friend, Sir Henry for whose opinion I entertain the highest respect, that this amounts really to prejudging the case. I submit, it does not. I submit there is no question of prejudging the case. From his own judicial experience, he must have over and over again felt that in the trial of criminal cases a certain stage has been reached, upon the evidence produced before him, when there is reason to think or to believe that the accused person has committed an offence. That does not mean that the case has been prejudged. It only means that a certain amount of evidence has been tendered by the prosecution, or a certain set of facts and circumstances have been established by the prosecution, which have changed the position at the beginning of the trial, *viz.*, the presumption with which the Judge begins in the course of a criminal trial that the accused must be presumed to be innocent and must continue to be presumed to be innocent until his guilt is established, to a somewhat different position, that position being that although the Judge is not yet completely convinced in his mind that the accused is guilty, yet from the facts placed before him, and from the evidence produced by the prosecution, the Judge has reason to believe that the accused has committed the offence. At that stage, I submit his discretionary power of granting bail in these most serious class of non-bailable offences ought to be taken away from him, because the offences are non-bailable and because these offences are the most serious class of non-bailable offences, and the Court trying the accused is neither the Sessions Judge nor the High Court but a Magistrate. I submit that in such cases this discretion ought to be taken away from him, and that is exactly what the clause as we propose contemplates.

Sir, it was said that the sole object of arrest is to prevent a person from running away or from protracting or delaying the trial. As a general rule that is a perfectly legitimate criterion. I admit that that is the main purpose of arrest. But cases might be conceived where other considerations also come in. Let me give but one case, which is not only possible but which we, some of us who have practised at the Bar long enough, can well conceive. A man falls out with two brothers. Bitter enmity subsists between that one man on the one side and the two brothers on the other. He has a fight with these two brothers intending to kill them, but succeeds only in killing one and injuring the other. He is arrested by the police. There is ample evidence against him to prove that he murdered one of the two brothers, and he knows himself that he cannot escape. He knows that he is sure to be convicted and hanged. Well, now, in a case like that, is it not conceivable that he would like to be released on bail in order to go and kill the other brother also before he is hanged? (Laughter.) With all deference, I am afraid that my Honourable friends from the South do

not know what stuff people of the north are made of. It is perfectly conceivable that that man may be anxious to be released on bail in order to achieve the very object with which he assaulted the two brothers, which object he failed to achieve in the first instance, and succeeded only in killing the one and simply injuring the other brother; and knowing that he will be hanged, before he is actually hanged, he may take advantage of his release on bail to go and kill the other brother. Sir, with all deference it is hardly right to say that the sole consideration is his presence at the next date of hearing. There may be other considerations also which come in in cases of this kind.

It seems to me that taking all the circumstances into consideration, seeing that admittedly the clause as we propose it is a decided advance, a decided improvement in the existing law, seeing also that the clause as we propose it gives the fullest discretion to the Magistrate in even the most serious class of cases in certain instances to release on bail and prohibits release on bail only when circumstances or facts have been established which have led the Magistrate to believe or have reason to believe that the accused has committed the offence—only in this very narrow circle is he prohibited from releasing the accused on bail in this most serious of all crimes,—I submit that the Legislature ought not to go beyond that, that the Legislature should limit in such cases the discretion of the Magistrate in so far as release on bail in non-bailable cases is concerned.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, the Honourable Mr. Subrahmanayam, while advocating the cause of the opposition, told us, and we feel surprised for that piece of advice, that the Magistrate has got only to collect the evidence and to send the case up for trial. I differ from him. My knowledge of the criminal law tells me that that is not the case always; Magistrates and Courts are not to be taken as post offices. Magistrates and Criminal Courts have got to see whether there is any evidence or not, even in murder cases. When there is a preliminary inquiry, if there is no evidence which can show a *prima facie* case, then the accused is entitled to a discharge. Therefore, this ground which has been set forth by the Honourable Mr. Subrahmanayam has got no force.

The second ground which he set forth was that the Magistrates are cultured people, and highly trained and therefore they will not allow themselves to do injustice and they will not allow themselves to refuse bail. Then in the same breath he asks, how can a Magistrate, how can a Criminal Court, know that the accused will abscond or will not abscond? This argument is inconsistent. In the first place, the Magistrate is said to be cultured and very well trained, and then it is said it is impossible for the Magistrate to find out whether the accused will abscond or not. I place his argument before this Honourable House, and I think the House will agree with me that his argument, in itself, is inconsistent. When a Magistrate is a trained and cultured man and the prosecution raises this contention that the accused will probably abscond or avoid the proceedings in the inquiry, the Magistrate will give consideration to it,—an application for bail on behalf of the accused, on the one side, and the reply on behalf of the prosecution, on the other side; the Magistrate then, after having weighed both the contentions, will come to some conclusion. Where is the impossibility as to how the Magistrate will be able to find whether the accused will abscond or not? The other contention which has been raised by my learned friend, the Honourable Mr. Subrahmanayam, was what is the profit, what is the gain? Well, the gain is this,—that the

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[Dr. Nand Lal.]

accused will be able to defend himself properly. This is the gain, and that ought to be the object of the administration of justice; this will be the profit that the justice will be done to the accused, and he will not be deprived of that right which is allowed to him. That is the gain. Then the Honourable Mr. Subrahmanayam says that the Magistrate will not allow bail if he comes to this conclusion that the accused will abscond away. Only a few minutes back he said it is extremely difficult for the Magistrate to find out whether the accused will run away or not; and after four minutes he raised this point, that if the accused is allowed bail, then the probability is that he will abscond away. I think there is no consistency in these two arguments at all. Why will he run away or abscond away? If he is a man of this type, no surety will come forward; his associates, his friends, his relations would not like to stand as sureties simply because he may leave the precincts of the Court or the District in which he is going to be tried. Then my Honourable friend says, it is better that discretion should be given to the Magistrate and the Magistrate's discretion should not be hampered. If he will read the terms of the amendment, they are, if I rightly follow them, " that the accused, if released on bail, would abscond and attempt to escape justice by avoiding or delaying an inquiry or trial." This is the second condition which has been laid down. What are those two conditions which will guide the Magistrate in allowing or disallowing the bail? They are these; (1) that the character of the offence will be so and so, that is an offence punishable with transportation for life or with death. (2) The second condition which has been recommended by this amendment is as already described above if there were grounds to believe that the accused if released on bail, will have the opportunity of tampering with the evidence, which is against him or he is going to delay the inquiry; then in those cases the Magistrate will not allow bail. A very reasonable amendment: it covers all the conditions, and therefore I do not find any force in the opposition. The Honourable Mian Sir Muhammad Shafi told us that in serious cases the bail will be allowed under certain conditions, and the provision which has been recommended by the Select Committee is very much improved. I endorse this view that certainly there has been some improvement in the provisions which have been sent up to us for consideration by the Select Committee, and the Select Committee should be thankful, but there is a room for improvement still and on account of that we are discussing the whole thing. He says that only in case of certain offences;—very limited offences which are punishable with transporation for life or death, we have laid down these strict conditions. Of course it is true but our fear is this that even in regard to these cases, if some accused, in some cases, are not allowed bail, there will be room for injustice. The Magistrate should not disallow bail simply because the offence falls within the purview of certain sections which provide a capital punishment or one of transportation for life. That should not be the criterion that, because the punishment provided for the offence is transportation for life or death, therefore, bail should be disallowed. That should not be be the measure for accepting or rejecting applications for bail, but something else. What is that something else? It is this as to whether there is a probability that the accused will abscond, whether his real intention is to escape justice or whether his desire is to prolong the inquiry. The mere fact that a complaint is under section 302 or a complaint under a section which provides punishment of transportation for life or death, should not induce the Magistrate or criminal Court to refuse to give bail.

Then the Honourable Mian Sir Muhammad Shafi says that the provision which has been recommended is very lenient. I am sorry I cannot share that view. Words which are of some importance and in favour of this amendment have been lost sight of. They are " if there appear reasonable grounds for believing," not presuming but believing. There could be no belief unless there is some sort of cogent evidence to induce him to believe. Presumption may be based on an inference, but, when you put down the word " believe ", then there should be something which may go to show really the accused is guilty. Then, further on, the provision says " that he has been guilty of the offence." So the Magistrate will be prejudging the whole case. But when we go to the provisions of section 254 which has been alluded to by my learned friend—I shall read only the relevant portion—you will find the words " that there is ground for presuming that the accused has committed an offence ". Mind that there is a ground for presuming only. Therefore, according to my way of construing the provisions of section 254, I am persuaded to come to this conclusion that the provision under section 497 is stricter, is harder, than that under section 254.

Then my Honourable friend says that there would be great temptation in the way of the accused, who will abscond, to destroy the evidence or to retaliate on other persons, and this argument has been illustrated. The illustration which was given was " that there is a person A who has got animosity with two brothers, and one of them has been murdered by him. Supposing this murderer is allowed bail, when he (murderer) secures his freedom, so far as bail is concerned, he will murder the other brother also. The second brother, who has escaped murder, would be brought before the Magistrate and would say before him ' I say this murder was committed by the accused '. Therefore, the accused will be tempted to do away with the life of the second brother also, in order to destroy the evidence." And therefore bail should not be allowed. My answer to this illustration is that if there is a case like that, then the Magistrate will not allow bail. The Treasury Benches have said, in so many words, that their Magistrates are very competent and one of the advocates of that view has given a very good certificate to them—they are cultured and trained people, he said. They won't allow bail in such cases. (*An Honourable Member*: " He *shall* ".) There is no word " shall ". The word " may " is given. There is no compulsion in such cases; and this is the recommendation which has substantially been made by the amendment. " If the object of the accused who is seeking bail is to avoid justice or prolong the inquiry, then bail will not be allowed." Sir, it is not the attempt nor the desire of this Assembly that the man who has committed an offence and who is guilty may go scot-free. But the serious desire of this Assembly is that he should be given fair trial, that he may not be hampered, that he may not have an excuse for saying " I was not allowed bail; I had no relation, no friend, no associate and therefore I am going to jail though an innocent man, and I have wrongly been declared to be guilty." That is the very sincere desire of this Assembly and this desire is couched in this amendment. Therefore with these few words I support the amendment.

The Honourable Sir Malcolm Hailey: If I rise to add to what has already been said so admirably by my friends to-day on this question, particularly by Mr. Subrahmanayam, it is because I feel it incumbent on me to do so for one reason only. We have been told that Government feels deeply on this question. Now in arguing matters which are prin-

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cipally of legal procedure, matters such as are involved in the Criminal Procedure Code, I am sure none of us really wish to suggest considerations not strictly relevant to the issue, nor to sway a decision by allusions to the general attitude of Government or its critics. We do not on our side say that those who have criticised the proposals of the Lowndes Committee or the Joint Committee have motives that are not in every way proper and public-spirited; I hope that the Assembly will give us credit also on our side, if we do feel deeply on a question like this, for basing that feeling on grounds which at all events have some solid reason and some propriety behind them.

References tending I think rather to obscure the real issue, have been made to the very large number of people who are unfortunately placed in the lock-up pending trial, not having been admitted to bail, and we have been asked to quote the numbers of such persons who afterwards are acquitted. It must not be forgotten however that any figures we could quote on the subject would refer entirely to a previous state of affairs—that is to say, the state of affairs obtaining under the present law—a law which we have proposed to ameliorate to the best of our ability, and the rigours of which we have attempted to remove. On a balanced survey of the situation in regard to bail I am certain that the Members of the House will readily acquit Government of any desire to press too hardly on the accused, or of any desire to so dispose its judicial arrangements that innocent men should be put to hardship in proving their innocence. If, as is said, Government feels deeply on this question, the feeling is one only, namely, the desire that the real criminals should not escape; and if we have any one motive in the matter, it is to make life possible and safe for the ordinary man—the man whose property is subject to theft, the man whose life is in danger from dacoity, the man whose possessions or whose safety is likely to be invaded by the more violent members of society. And we have a special responsibility in regard to legislation of this nature, because after all the actual administration of justice and law and order lies with the Local Governments; we do feel that we ought not ourselves to assent willingly to any modification of the criminal procedure which would seriously embarrass the authorities responsible for the maintenance of justice. With every desire to be liberal, that consideration must remain paramount in our minds. Now, it is perfectly true that the primary consideration which must govern Courts in giving bail is whether the accused will or will not appear to take his trial. There are however some other considerations which I do not think we ought to lose sight of. It is true, as Sir Muhammad Shafi pointed out, that we cannot pin ourselves down entirely to that one point. Every one with an acquaintance of district life and especially with life in those districts where violent crime is prevalent, knows that there are circumstances in which it is dangerous to allow at liberty, pending trial, a man of exceptionally violent character or influence for evil. One knows that such a man can, by mere terrorism, absolutely suppress evidence, perfectly trustworthy and reliable evidence that would otherwise have been given against him. I quote only one example, not a definite example of the harm done by releasing such man on bail, but an example illustrating what that harm might be. The House will remember a celebrated case in which a number of accused who were not let out on bail were held under trial in the Alipore Jail. Inside that jail itself they murdered an approver. Now, if men will do that when they are not released on bail, it may be left to

the imagination what they may sometimes do if they are released on bail. I feel that in the matter of bail we do after all occupy a strong and reasonable position. We have greatly liberalised the existing law; the stages are so well known to the House that I need not weary it by repeating them; but in the first place of course a man who desires bail can always apply to the Sessions Judge or the High Court, on whom no restrictions are placed in respect of its grant. It is surely reasonable that in dealing with other Courts and with the police we should apply some restrictions? Mr. Rangachariar has made great play with what Sir Henry Moncrieff Smith said this morning on the subject of weak or stupid Magistrates. I only want to say that Sir Henry Moncrieff Smith this morning was arguing on a slightly different case, a case with which at present we have no particular concern—I mean, the proposal that in all cases bail could be given without any restriction whatsoever. His remarks consequently hardly apply to the present case, for we now are dealing only with the right to give bail save in the case of persons believed to be guilty of grave misdemeanours. I believe the majority of the House will feel it reasonable, that we should lay down some restrictions in the grant of bail by Magistrates, seeing how serious the results may be to the society at large of allowing dangerous criminals to escape under cover of their bail. The safeguards proposed seem to be the minimum. We have been told that men should be held as absolutely innocent before they are convicted and that it is improper to place upon the Magistrate the obligation of deciding whether there is reasonable ground for believing that the accused person is guilty, before bail is granted to him. But does he really have to decide that? Let us be perfectly frank and honest about it. He only decides that there is a *primâ facie* case. Does any one believe that any one ever has been prejudiced in the course of his trial by the fact that he has been refused bail? (*Voices*: "Very often.") Let us be clear however to the exact grounds. Does any here believe that any man has been prejudiced when he came before a Sessions Court or before a Magistrate for trial on one of the graver offences, by the fact that the Magistrate has in refusing bail, prejudiced the case in the sense and to the extent alleged? Do you believe that? If you really believe that, you are in danger of falling into an extraordinarily illogical position—if you follow Mr. Rangachariar; that is to say, you are actually preparing to lay down that the Magistrate shall prejudge the accused not once but twice; he shall not only say, first, that there is a *primâ facie* case against this man, but, second, that he definitely believes that he is going to abscond and that he seeks to delay or evade justice. If there is substance in this objection, the accused is doubly damned in advance.

Then as to the second restriction; discretion to grant bail is full save in cases in which the penalty is death or transportation for life. Much play has been made of the fact that transportation for life applies to a somewhat large number of offences. Well, we are at present engaged in considering legislation regarding the abolition of transportation, and there is no reason whatever why, when we bring that legislation into force, we should not, in so doing, take the opportunity of making the restriction in this section, which now applies to transportation, apply only to the graver offences punishable with long terms of imprisonment. We are not particular in insisting on details if the principle is maintained. But leaving that aspect of the case alone, you are not justified in arguing only on the somewhat milder cases of the defaulting clerk or possibly even the defaulting banker (though in England we know how readily he defaults)—you are not justified in arguing only on these cases, because,

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after all, you must provide also for your major and really serious cases in which transportation for life is the penalty, and for which when we abolish transportation, a long term of imprisonment must be the penalty. These, I say, you must keep. Now, Sir, those are the very simple requirements that we have laid down, and which up to date the House has accepted; what does Mr. Rangachariar ask us to add? Mark that in all cases of this kind, the law should seek to apply as far as possible a clear and certain test, a test which will allow the man who makes an application to a Magistrate to know the grounds on which he ought to put that application forward and on which he can fairly hope to succeed. The test should be clear enough to provide the Magistrate with some standard or criterion for decision. Well, we ourselves have got these in the provision as drafted by the Select Committee. But Mr. Rangachariar would add a test which is no test at all, and a criterion which is impossible to work. The applicant will have to prove a negative,—that he is not likely to abscond; the Magistrate will have to satisfy himself as to his intentions. How, I don't now; and no one can tell us how to secure the gift of prophecy to Magistrates, but that is the first of Mr. Rangachariar's requirements. It is a problem in psychology—to inquire into the future intentions of a man with whom presumably the Magistrate has no previous personal acquaintance, or it is to be hoped he has none. That is a task which may well baffle the Magistrate—a task, I think, even more difficult than the one which Mr. Agnihotri set us the other day when he asked us to decide the exact second at which police influence died out in a man's mind. Think of the alternatives: "This is a rich man and he has much to lose; so he will not cut his bail. Yet the disgrace of conviction is all the greater for a rich man; he can therefore afford to cut his bail and indemnify his surety. So probably he will abscond." Or should he say I don't know the answer to that puzzle. Or again: "This is a poor man; he has no position to lose and so conviction will not mean so much. So perhaps he will not abscond. Yet he has no property to forfeit, so perhaps he will." On the whole it looks to me as if the case is rather weighted against the poor man; we have heard so much about the respectable man who will not abscond, that it looks as if Mr. Rangachariar's intention is to favour the rich man; if so, I can only say that we ought not to make an alteration in our law which should weight the case against the poor man. But, as I say, his new provision provides no criterion and no test at all, for it involves a Magistrate in a speculation into the man's future intentions, a speculation of the most difficult nature, for neither the antecedents nor the outward circumstances of the accused can help the Court to probe into the attitude of his mind in regard to future action. The invariable result, let me point out to the Assembly, will be that, if an application of this kind is refused, then there will be a further application to the revisionary Court, and the speculation as to the future intentions of the accused will be canvassed again and in an equally obscure atmosphere of guess work and uncertainty. But Mr. Rangachariar does not end there. We thought, when we first discussed this question, that all that we were required to do was to make sure that the man turns up to stand his trial. He adds, at the end of his proviso, certain mysterious words which I frankly confess have baffled me so far. He adds: "and attempt to escape justice by avoiding or delaying an inquiry or trial." Now, it will be remarked that he thereby lays on the Magistrate the necessity of investigating a double condition, both as to the intention of absconding and his ultimate reasons for doing so.

Rao Bahadur T. Rangachariar: That is the language of the Calcutta High Court, if I may say so.

The Honourable Sir Malcolm Hailey: That may be so, but that is a very different thing from putting the prescription into law. The High Courts, after all, are not the sole repositories of wisdom, when it comes to legislation, great as is their position when it comes to interpreting law. I ask anybody here, looking at that section, to place himself in the position of a Magistrate who has to decide the two things, first, whether the accused if given bail is likely to abscond, and secondly, whether his motive in absconding is only to avoid justice by avoiding or delaying an inquiry or trial (for he might have many other and even more undesirable motives); he will indeed feel that he has set the Magistrate a baffling task. But let me conclude. We have liberalised our law already. Now, legislation of this kind must always be progressive. We have taken one great leap, which I think will be viewed by some people with misgiving. Is it reasonable to ask us, and to ask the Local Government who are responsible for the administration of justice and law and order, to go even further at one operation? Again, is it proper to place on the Magistrates the extraordinarily difficult task of deciding on the intentions of the accused, with all the knowledge that if he decides the conundrum in the wrong way he may make it possible for real criminals to escape from justice by the simple process of evading their bail? I say it is not reasonable to ask us to go these lengths after we have gone so far already in the liberalisation of the law.

Rai Bahadur S. N. Singh: I move, Sir, that the question be now put.

The motion was adopted.

Mr. President: Amendment moved:

"In clause 132 (*i*) after the words 'for life' insert the following: 'and that the accused if released on bail would abscond and attempt to escape justice by avoiding or delaying an inquiry or trial.'"

The question I have to put is that that amendment be made.

The motion was negatived.

Dr. H. S. Gour: Sir, the amendment I have to move is as follows:

"In sub-clause (*i*) of clause 132 after the words and figures 'sub-section (1)' insert the words 'without special cause' after the words 'so released'."

The object of my amendment is to provide for the release of a person accused of an offence punishable with death or transportation for life for a special cause. Honourable Members will see that the Select Committee themselves recognise this principle in the proviso which they have added to the section, for they have provided that in all cases punishable with death or transportation for life, any person under the age of 16 or any woman or any sick or infirm person may be released on bail. The only difference between me and the Government is this. They have specified four cases of special cause when a person may be released on bail. I want them to make this clause more elastic to provide for contingencies which may occur in practice. I will give the Honourable Members a simple illustration of the limitations which are apparent on this proviso. It has been provided that the Court may direct that any person under the age of 16 may be so released. If the inquiry shows that the accused is just 16 or one day more than 16, the Magistrate will have to say, "That one day makes all the difference in your case, between your enlargement on bail and incarceration in prison. Surely, Government never intended that the proviso should work an injustice as it would in the case I have quoted. Take

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another illustration. It has been recognised, and rightly recognised, by the Select Committee that a person who is sick or infirm is entitled to apply for his release on bail even in non-bailable cases punishable with death or transportation for life. But now suppose, though the person himself is neither sick nor infirm, his wife or his only child is dangerously ill, let us assume, from bubonic plague, and his withdrawal from his wife or child means a probable, if not certain, death of his relation. Is not that a special cause which would justify the Court in releasing the accused on bail? Then other cases might be conceived where in the circumstances of the case and for special cause the Magistrate should exercise his power of releasing the accused on bail. You have yourselves recognised the principle that in non-bailable cases of the character described here the accused may be released on bail for special cause. The only difference is that your enumeration of " special cause " is incomplete and I want to complete it by adding a general clause, namely, " special cause " in the main section, to enlarge its scope. I do not think, if the Government are in a reasonable attitude—(*A Voice*: " No ") some Members here say they are not—I believe they are in a reasonable attitude,—I have not the slightest doubt that they will see that my amendment really supplements the proviso and is a salutary improvement which would meet unforeseen and probable contingencies, and that if my amendment is not passed it will make the proviso inelastic and rigid and shut out from its beneficent provisions some cases, which I have said, are easily conceivable and which I assert are deserving of equal commisseration with those enumerated in the proviso. Sir, I move my amendment.

Sir Henry Moncrieff Smith: Reasonably or unreasonably, I am afraid I must oppose my Honourable friend's amendment, chiefly on the ground of what I may call its hopeless vagueness. The words are "-without special cause ". The Courts will ask themselves, " What had the Legislature in its mind when it used these words?" The Court will say, " It is perfectly true that the Legislature has put in a proviso regarding a minor or a woman or a sick or infirm person. Now this ' special cause ' that the Legislature has introduced into section 497(1) must be something quite different, something on different lines from that. What the cause is going to be, the Magistrate I think will find some difficulty to decide. Dr. Gour has suggested that there are innumerable special cases not covered by the proviso, but, Sir, he has only mentioned one, and that is the case of the accused husband with a wife who is dangerously sick. Sir, I do not see that we can provide for that case. The accused person, the person we are dealing with, is one who is accused of an offence punishable with transportation for life or death, and the Court, Sir, has reason to believe that the person is guilty of that serious offence. Sir, if that person had a sick wife, I think he should have borne that in mind beforehand; the law cannot take any account of those considerations. If the man could commit such a serious crime, or do an act which led the Court to believe that he had committed such a serious crime, then, with his wife ill, Sir, is there any reason why the Court should release him on bail? The chief objection, however, to my friend's amendment is that it is hopelessly vague; it gives the Court no indication whatever of the special causes which are to enable it to allow an accused person out on bail. If there are special causes, Sir, if the Magistrate has gone wrong and refused bail in a case in which he should have given bail, my Honourable friend will remember that there is the Sessions Court next door and the High Court possibly not very far away, and it is always possible in every

case, whatever the crime may be, and whatever the circumstances may be, to go to those Courts, the Sessions Court and the High Court, and to ask for bail there.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, in clause 132, I am not moving all the amendments standing in my name in the Amendment No. 359 (*a*) and (*b*), but I beg your permission to move only clause (*b*), namely, omit sub-clause (*iii*). Sir, sub-clause (*iii*) reads: "the following sub-section shall be inserted after sub-section (2), namely: "An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2) shall record in writing his or its reasons for so doing." Sir, it is much regretted—and as has been observed also by other speakers previous to me, I am constrained to observe that the attitude of the Government on the matter of bail has been unsatisfactory and undesirable.

The Honourable Sir Malcolm Hailey: I presume the Honourable Member means the attitude of the House.

Mr. K. B. L. Agnihotri: Oh, no. I mean the attitude of the Government in not accepting some reasonable amendments put forward by us—I need not attribute it to the House, because, to-day, I think, more than half belong to the Government Benches.

The Honourable Sir Malcolm Hailey: No, no.

Mr. K. B. L. Agnihotri: Sir, we heard some very lucid and weighty arguments advanced by the Honourable Sir Henry Stanyon and the Honourable Mr. Rangachariar in support of further liberalizing the provisions under section 497, but they have all been in vain. And under section 497 we now find that one clog after another has been put to fetter the discretion of the Magistrate. I do not know the reason for not including in this section any clause to the effect that the Magistrate should also give reasons for refusing or for not granting bail but, on the contrary, I find a provision made that he should assign, and write out his reasons, for granting bail. What will be the effect? The Magistrates, of whom, it has been said for the first time to-day, from the Government Benches that some are stupid, will take it as a limitation on their discretion and would be afraid of granting bail to an accused person even where he deserves it under section 497. Therefore, I propose that either there should also be a provision for requiring the Magistrate in cases of refusal to write out his reasons for refusing to grant bail or, if that provision is not to be made in this section 497, then it is much better that even this sub-clause (*iii*) be dropped.

Sir, I beg to move that sub-clause (*iii*) of clause 132 be omitted.

The motion was negatived.

Rao Bahadur T. Rangachariar: Before sub-clause (*iv*) is taken into consideration, I have got an amendment which has been drafted by the Legislative Department which will probably come in this place. It reads as follows:

"That in clause 132:

(*a*) in sub-clause (*iii*), for the word 'sub-section' the word 'sub-sections' be substituted and after the proposed new sub-section (3) the following sub-section be added, namely:

'(4) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence,

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it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered."

(*b*) In sub-clause (*iv*) the proposed new sub-section (4) be re-numbered (5) '."

The reason for this amendment is this. As Honourable Members are aware, at the conclusion of a trial in an original Court, often times judgment is not ready for delivery at once, but the Court has come to the conclusion, after taking the verdict of the assessors or the jury in a Sessions trial, or the Magistrate has made up his mind, that the accused is not guilty and, therefore, proposes to acquit him. As sections 366 and 367 stand, a doubt has been expressed whether really the accused could be set at liberty before judgment is actually pronounced. In fact, an unfortunate client of mine, was acquitted like this and judgment was delivered a week later. The complainant took the matter up to the High Court and a Full Bench had to sit to consider the question whether the whole trial was not vitiated by such a procedure. In order to avoid such things, this provision is necessary. Therefore, Sir, I move the amendment as it stands.

The motion was adopted.

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

" In clause 132 after sub-section (4) the sub-section that has just been added—the following sub-section shall be inserted, namely :

' The District Magistrate may release on bail any person accused of an offence in any case; and may revise an order of a Subordinate Magistrate refusing to grant bail in any case '.'

Sir, at present as the law stands it is the High Court and the Sessions Judge that have been authorised to release persons on bail in any case or to revise the order of a Magistrate under section 498. But by this amendment I wish to provide that the District Magistrate may also be authorised to grant bail in any case and to revise the order of other Magistrates. I need not remind the House that there are districts where the Magistrates are distributed in the interior far away from the district headquarters and further away from the Sessions Court. For instance the tahsildars or the Honorary Magistrates in the mofussil. If the court of the Honorary Magistrate, or of the Tahsildars or of the Magistrates in the mofussil were to refuse bail to an accused person, then it works very hard for the accused or his friends who have to go up for bail a long distance to the Sessions Courts or a longer distance to the High Courts which are almost inaccessible to many such accused owing to the distance and owing to their poverty. In such cases it will not be undesirable but is an absolute necessity to authorise the District Magistrates to allow granting of bail. Such difficulties have arisen before and the Bombay High Court has held that the District Magistrate could not grant bail in a case where the subordinate Magistrate had declined to grant bail to an accused. So in order to avoid the trouble and inconvenience especially to the poor accused, it is necessary that this provision should be incorporated in this Bill. Therefore, Sir, I move this amendment.

Sir Henry Moncrieff Smith: Sir, I would merely point out to the House that under the law, in the first place the police officer, if it is a case in which the police have effected an arrest, can release on bail. Then, Sir, the Court itself before which the accused is produced can release the man on bail; and if up to this time the accused has not been successful he can go to the Sessions Court; and thereafter, Sir, he can go to the High Court. There are four separate stages at which the accused will be able

to get bail and I would suggest to the House that it is quite unnecessary that we should provide a further fifth opportunity for enabling the accused to obtain bail and be released.

The motion was negatived.

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

"In clause 132 after sub-section (4) the following sub-section shall be inserted, namely:

'For an offence triable in a summary way any person accused of a non-bailable offence shall, during the pendency of trial, be released on bail by any Judge or Magistrate'."

Sir, it will appear that I have omitted certain words in the amendment of which I gave notice and I wish to have your permission to move the amendment in the form in which I have just read. By this amendment I wish to provide that in petty cases or in summary trials the accused should be released on bail. If Honourable Members will refer to section 260 which provides for trials in a summary way they will find that there are many non-bailable offences that could be tried in a summary way where they are of a petty or of a trifling nature. Therefore, I wish to provide that in such cases which are triable in a summary way the accused should always be released on bail. It often happens, Sir, just as was pointed out by Sir Henry Stanyon, that a very well-to-do man or a man of exceptionally good character is accused of a non-bailable offence but of a very trifling character. In that case to keep the accused under lock-up will not be proper and will not meet the ends of justice. In such cases even if they end in conviction the accused would at the most be fined or released on probation under section 562, and so it is undesirable to keep him in the lock-up during the pendency of the trial. I know a case where a son of a big landlord happened to have in his possession a pair of shoes, old and worthless; he was chalanned by the police and put up on trial under section 379 or 414, I am not sure which, and when an application was made before the Magistrate, he declined to release him on bail and the accused had to approach a higher authority who granted him bail. So in such cases it is hard to keep them in the lock-up like this. In another case a railway ticket inspector was put on trial for having been in wrongful possession of a pair of wooden pegs and he was not released on bail even though the value of the pegs was only four annas. Such cases are very hard for the accused and therefore, Sir, I suggest that it may not be left to the discretion of the Magistrate in such cases to grant bail, but that in such petty cases the accused should as of right be entitled to be released on bail. With these words I beg to move my amendment.

Mr. H. Tonkinson: Sir, the amendment which has been moved will take away in these cases the discretion from the Courts; that is to say, in all these cases it will be compulsory upon the Courts to release a person on bail. I would merely invite the attention of the House to the fact that section 457, for example, is included in section 260. Such an offence would of course not in actual practice be tried in a summary way, but an offence under that section is in the words of the amendment "triable in a summary way," so that your burglar, the man who has committed house-breaking by night with intention to commit theft, must necessarily by this amendment be released on bail.

5 P.M.

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, mine is not an amendment to give a fifth or further opportunity to the accused person to be enlarged on bail. My amendment is that the one opportunity he had may not be taken away from him. Here the clause provides that "a High Court or Court of Session, and in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody." This gives the power to these authorities to cancel a bail already given, and that, Sir, without any limitation, without any reason, the Court can do so. Now I provide that it can only do so if it is satisfied that the accused is attempting to abscond or escape justice. There must be some reason on which a bail once granted should be revoked. I heard of a case where a Magistrate ordered the release on bail and then directly a police Inspector turned up and when the accused had gone about 20 or 30 yards, the police Inspector came up and said to the Magistrate 'Why did you release him on bail? He made a noise about it, and then the Magistrate at once cancelled the bail. It ought not to be left to the free will and pleasure of these authorities to cancel the bail once granted. It should only be revoked on proper cause. I have suggested a proper cause, and I submit, Sir, that can be the only proper cause for which a bail should be cancelled. I therefore, Sir, move the amendment, and I hope and trust the Government will not see its way to oppose it. I see a very ominous shake from my Honourable friend Sir Henry Moncrieff Smith that my amendment is doomed. However, I am satisfied with having tried my best in this direction. I move my amendment which runs as under:

"In clause 132 (*iv*) in proposed sub-section (4) after the word 'may' and before the word 'commit' insert the words 'on being satisfied that the accused is attempting to abscond or escape justice'."

Sir Henry Moncrieff Smith: Sir, I would ask the Honourable Mover of this amendment what is going to happen when the High Court or the Court of Session has caused a person to be arrested and then it is not satisfied that the accused is attempting to abscond or evade justice? As a matter of fact, Sir, Mr. Rangachariar probably put his words into the wrong place of the section.

Rao Bahadur T. Rangachariar: Put them in the right place then.

Sir Henry Moncrieff Smith: As it stands, it will mean this, that the High Court has a person brought before it in custody, and then it has to be satisfied that the person is trying to abscond even before he is committed to custody.

I would suggest to Mr. Rangachariar that once a man is in custody before the High Court, it is rather difficult for the High Court to say to itself: This man is attempting to abscond. He has no chance of absconding. But, Sir, in any case how is the Court going to be satisfied that the man is attempting to abscond? I would suggest to the House that there is no question of attempting to abscond at all. If a man is going to abscond, he absconds. There is no question of attempting, there is no half-way house between them. The man is gone. And therefore, Sir, I think this amendment will not help the accused, it will not help the Court, and that we should throw it out.

The motion was negatived.

Mr. President: The question is that clause 132, as amended, stand part of the Bill.

Mr. K. B. L. Agnihotri: Sir, before you put that question, may I point out that we adjourned the consideration of some provisions under clause 11 to be dealt with in the Chapter on bail. So I think that will have to be considered before the question is put in this connection, and I move that the consideration of this section 132 be postponed.

Sir Henry Moncrieff Smith: Sir, I would suggest that we have already postponed the consideration of this matter for Mr. Agnihotri's benefit for some weeks and I assumed that Mr. Agnihotri would now be prepared to come forward with an amendment on the bail sections which would meet his point with regard to arrest without warrant. I have received no notice of an amendment, Sir, from Mr. Agnihotri.

Mr. K. B. L. Agnihotri: Unfortunately, it only struck me just now.

Clause 132, as amended, was added to the Bill.

Clauses 133, 134 and 135 were added to the Bill.

Mr. J. Ramayya Pantulu: Sir, I propose:

"In clause 136 in proposed section 514-A, omit the words 'under this Code'."

I believe, Sir, the words "under this Code" here are meant to qualify the words "becomes insolvent" and not the word "dies" also. But I have not been able to understand, Sir, what the authors of this section mean by a person becoming insolvent under this Code. I have not been able to discover any provisions in the Criminal Procedure Code regarding insolvency. Therefore, I propose, Sir, that the words "under this Code" be omitted.

Mr. H. Tonkinson: Sir, I admit that my Honourable friend, Mr. Pantulu, has discovered a printing mistake in the Bill. Sir, it is true that people do not become insolvent or die under the Code. I think, however, that we must retain the words "under this Code" and I would therefore propose the following amendment in lieu of that which has been moved by my Honourable friend:

"That in clause 136 in proposed new section 514-A, for the words 'becomes under this Code' the words 'under this Code becomes' be substituted."

Mr. J. Ramayya Pantulu: I agree.

Mr. President: Has the Honourable Member leave to withdraw his amendment?

Mr. Pantulu's amendment was, by leave of the Assembly, withdrawn.

Mr. President: Further amendment moved:

"That in clause 136, in proposed new section 514-A, for the words 'becomes under this Code' the words 'under this Code becomes' be substituted."

The question I have to put is that that amendment be made.

The motion was adopted.

Mr. Harchandrai Vishindas: May I suggest, Sir, that you will be pleased to have the House adjourned as we have a Conference to attend?

Mr. President: I will consider that presently.

Clause 136, as amended, was added to the Bill.

Mr. J. Ramayya Pantulu: Sir, I move only the second part of my amendment:

"In clause 137, in proposed section 516-A, for the words 'such evidence as it thinks necessary' substitute the words 'its reasons'."

The section runs:

"When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy or natural decay, may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of."

I do not think that anything is gained by requiring the court to record any evidence. I think that what is necessary is to require the Court to record its reasons for ordering the property to be disposed of. The Court might record any evidence that it thinks necessary. It will make some sort of inquiry before passing the order, and it is only necessary to require the Court in such cases to record its reasons for ordering the property to be disposed of. With these words, Sir, I move my amendment.

Mr. President: Amendment moved:

"In clause 137 in proposed section 516-A, for the words 'such evidence as it thinks necessary' substitute the words 'its reasons'."

Mr. H. Tonkinson: Sir, I would merely point out to the House that the Bill as it stands does not require that evidence shall be recorded. The evidence which it might be desirable to record will be evidence identifying the property and so on. It is certainly most desirable in such cases to identify the property by evidence before you make an order for the disposal of property pending trial. For these reasons, Sir, I oppose the amendment.

The motion was negatived.

Mr. President: The question is that clause 137 stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 138 stand part of the Bill.

The motion was adopted.

Mr. J. Ramayya Pantulu: I propose, Sir, that in clause 139, sub-clause (*ii*), the words "or at any time within one month from the date of the conviction" be omitted.

This clause, Sir, refers to section 522. The section as it is runs as follows:

"Whenever a person is convicted of an offence attended by criminal force, and it appears to the Court that, by such force, any person has been dispossessed of any immoveable property, the Court may, if it thinks fit, order such person to be restored to the possession of the same."

The Bill proposes to amend this by inserting:

"when convicting such person or at any time within one month from the date of the conviction."

Well, this section gives power to a Magistrate when convicting a person of an offence attended with criminal force to make an order, if any person is found to have been dispossessed of any property by the commission of that offence, restoring the property to the person. The section as it stands does not fix any limit

of time within which that order should be passed. But the Bill provides that such order should be passed either at the time when the accused person is convicted or within a month after that. I propose that the words giving power for the order to be passed within a month after the conviction be omitted. For, I do not see why any time is necessary for a Court to pass an order restoring possession of property to the person who has been dispossessed. All the evidence that is required to enable him to come to a decision on that point has already been recorded in the course of the trial of that offence, and the very fact that the Magistrate has found the man guilty of that offence ought to be sufficient to enable the Court to come to a decision as to whether any person has been forcibly dispossessed of property or not. I do not think that the section contemplates any inquiry subsequent to the disposal of the original case. All the evidence that is necessary to enable the Magistrate to form a judgment in the matter has already been adduced and recorded. That being so, I do not see why any time should be given to the Magistrate to make this order, especially as no such time is given in the present Code. I, therefore, propose the omission of the words as mentioned in my amendment.

Mr. H. Tonkinson Sir, my Honourable friend suggests that section 522 of the Code at present, if I have understood him aright, requires that possession shall be given simultaneously with the conviction. I do not know if I have understood him aright, but that is what I understood my Honourable friend to say.

Mr. J. Ramayya Pantulu: It leaves the question open. There is no time limit fixed.

Mr. H. Tonkinson: The present clause is to some extent doubtful. There was an old ruling reported in 4 Calcutta Weekly Notes which was to the effect that the order must be simultaneous with the conviction but that has been very frequently dissented from since and there is at any rate one recorded case in which possession was restored after 22 months. Now, Sir, in the Bill of 1914 we proposed to enable such an order to be passed within six months after the conviction. The Lowndes Committee thought it was desirable to reduce that period and they said, they accepted the amendment but they substituted a period of one month for six months from the date of conviction as the time during which an application for restoration must be made, because they said "We do not think that an order of restoration need be made simultaneously with the conviction, but we think that any application for such an order should be made promptly and that one month is sufficient time to allow for this purpose." Surely, Sir, the Bill is really reasonable in this respect. The complainant may imagine that as soon as the conviction has been secured in a criminal case, he will immediately secure possession of the immoveable property. But then, if he finds that he does not get the property back, why should he not be able to apply promptly and get an order from the Criminal Court that he should be replaced in possession? For these reasons, Sir, I oppose the amendment.

The amendment was negatived.

Mr. President: The question is that clauses 139 and 140 stand part of the Bill.

The motion was adopted.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir, may I submit, before I move my amendment, that this is a very important clause and besides my amendment there are six other amendments which will take a very long time. Honourable Members are anxious to attend a conference as has been represented by Mr. Harchandrai Vishindas. So, we will be obliged if you will kindly adjourn the business now.

Mr. President: We have been considering this Bill now for a very considerable period; and in view of the state of public business I am afraid I must proceed with it a little further to-night.

Mr. B. N. Misra: My amendment* relates to clause 141 which relates to section 526 of the Criminal Procedure Code. This section deals with application for transfer of cases from Magistrate's Courts or appeals from Sessions Judges. Whenever it appears that they cannot get a fair and impartial inquiry in the lower court, under this section they are to move the High Court for a transfer of their case. My amendment relates . . . .

Mr. President: Which amendment is the Honourable Member moving? Is he moving both together?

Mr. B. N. Misra: Practically the two parts are connected.

Mr. President: The discussion ought really to turn on the omission of sub-clause (*ii*). The Honourable Member will move the omission of sub-clause (*ii*) first. We will go to the other part of the amendment later on.

Mr. B. N. Misra: Side by side, I shall have also to speak about the other. My arguments for both are practically of the same nature. My amendment relates to section 526, clause (5). Sir, clause 5 provides that when an accused person makes an application under this section, the High Court may ask him to execute a bond with or without sureties on condition that, if convicted, he will pay the costs of the prosecution. That was the old section. The present section provides the condition that he will, if convicted, pay any amount which the High Court has power under this section to award by way of costs to the person opposing the application; and the other portion, clause (2), is a new one, entirely a new one; it says that whenever any application for the exercise of the power conferred by this section is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay, by way of costs, to any person who has opposed the application, any expenses reasonably incurred by such person in consequence of the application. This is entirely new. Sir, under the original provision, when an order was made by the High Court that, on conviction of a certain person, he will be liable to pay the costs of the prosecutor, it was a case which was never pressed because when the accused was convicted, really the anger of the prosecution ceased, and the man was also in jail;—no doubt it could compel the accused to pay the costs of the prosecution. Then there was no provision made for the costs incurred in the High Court. Really, the cost that were then intended, were the costs of the prosecution in the lower Court; in such cases generally the costs are a very small amount, even if the costs were paid, they were not such a heavy amount and they did not really cause such hardship to the accused. The old Code never made it compulsory for payment of costs by both the parties. It was only in cases of conviction that the accused was asked to pay the costs,—if he was convicted. In cases under 526, it is the prosecution also

* "In clause 141, omit sub-clause (*ia*) and sub-clause (*ii*)."

who can apply for a transfer. There was no provision made that even if the prosecution or the complainant or the Crown made the application, they were liable to pay any costs. But the amendment as it now stands makes any applicant liable to pay to the other party opposing the application. In the present case it is not only the accused that has to pay the costs of the prosecution, but, if the prosecution applied, and lost his application, he has to pay the costs of the accused. I submit this is really a hardship. It does not make provision, for the payment of costs when the application is granted. When an application is granted, it is obvious that on account of the misconduct or on account of the misbehaviour of the Magistrate the party did not expect to get a fair trial or fair justice. It is obvious, that is why he was driven to go to the High Court. In such a case when the application is granted, I think in fairness the Government ought to provide that the Magistrate on whose account the party came before the High Court ought to pay the costs. I think Government will not do such a thing against the Magistrate whose conduct drove the party to go before the High Court. I submit, Sir, really it is the conduct of the Magistrate that drives a party to go to the High Court. Parties ordinarily do not go to High Court unless they really apprehend injustice—I mean, they apprehend an unfair trial. They apprehend that they cannot get justice. Sir, section 526 says that whenever it is made to appear to the High Court that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or that some question of law of unusual difficulty is likely to arise—there are also other matters such as a view of the place is necessary and so forth,—or that such an order is expedient for the ends of justice or is required by any provision of this Code—it may make an order to transfer a case from one court to another court. So it is not, simply because, a party apprehends that he cannot get justice in the lower Court but there are many other grounds for which a party can make an application before the High Court. It is not because the accused says that he has not committed a crime or that he is innocent that a case comes before the High Court but for several other reasons. It may be that the accused wants that the trial should not take place before the particular court from whom he suspects that he cannot get fair justice. It is mainly on this ground that a party comes before the High Court. If the High Court refuses the application, it will under the new provision allow the costs reasonably incurred by the party opposing the application. The Criminal Procedure Code contemplated costs to be awarded under certain sections. We know that under section 148 costs are to be awarded by a Magistrate when there is a dispute about immoveable property, and we see also under the same Code costs are allowed under section 488 in maintenance cases. The only section that contemplates costs to be paid to the prosecution is section 545 and under that section the costs that are allowed are only the costs incurred by the prosecution, such as the costs for the Court fees and other things. There are several rulings, Sir, 4 Bombay and 24 Law Reporter Madras I. L. R. If compensation is to be paid to the prosecution, it has to be paid out of the fine and not under a separate sentence.

(At this stage Sir Campbell Rhodes took the Chair which was vacated by Mr. President.)

The particular case, 24 Madras, which I wish to place before the House is this: "The accused was convicted of having caused hurt and fined Rs. 15 and was also ordered to pay compensation of Rs. 12-4, or Rs. 2-4 being Court fees paid by the complainant and Rs. 10 being

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damages for other expenses incurred. *Held* that the levy of Court fees of Rs. 2-4 was warranted by section 31 of the Court-fees Act, VIII of 1870, as the duty of the Court to award Court and process fees in addition to the fine is imperative. But under this section the Court has the discretion to award the expenses of the prosecution, which must be taken to exclude those expenses in regard to which the Court has no discretion. Expenses other than Court fees incurred in the prosecution can only be awarded to the complainant out of the fine levied from the accused and cannot be levied from the accused in addition to the fine."

In a case like this, when a man comes before the High Court, the party who opposes the application is to be paid costs. This is an additional cost now being put under the present amendment. We know, Sir, the heavy costs that are incurred in applications before the High Court. Sometimes, if you engage counsels like Mr. Norton or Mr. Hassan Imam, they demand Rs. 1,000 per day. In such cases, if a party opposing an application has engaged such a counsel and paid heavy fees, perhaps the Court may say that these heavy fees were reasonably incurred. It will be really preventing people from making any application before the High Court or from going to the High Court. Sir, when a man comes to the High Court, practically he is under the tyranny of the Magistrate. That is why he comes and now you put another pressure on him in the High Court that he will have to pay so much. Practically he will never dare come before the High Court and make an application for transfer of a case. This will really result in serious injustice, and it will encourage such Magistrates as cannot exercise their discretion properly to do any thing they like. There is grave danger that a party cannot have a fair trial. This will be putting a premium on the high-handedness of Magistrates because the applicants cannot go before the High Court. Sir, I notice that the Honourable Members have left the Chamber, I have no hopes about my amendment being carried. I still say that this is really a very hard provision for one party to pay all the money to the other party for opposing the application in the High Court. I do not know why this provision, which is entirely a new one, has been introduced in this Bill for the first time.

Sir, the second part of my amendment is about frivolous and vexatious applications. Of course it will be something for the lower Court, which is trying the case, to find out and say if the case is frivolous or vexatious. How can the Honourable the High Court find out if a certain application is frivolous or vexatious? The procedure laid down under this section is that a party making an application will have to verify it by an affidavit. The High Court has no opportunity of knowing whether an affidavit is frivolous or vexatious unless there is an inquiry or trial. It is not contemplated that the High Court should find out whether the allegations made in the affidavit are true or false. In such a case, how can the Honourable Judges of the High Court find out that the application is frivolous or vexatious. I submit, Sir, it will be simply shutting out the doors to a party coming before the High Court asking for a transfer, which is really a very wholesome procedure and which very often checks the vagaries of the lower Courts. Sir, the High Court Judges cannot have sufficient materials to adjudge whether an application is frivolous or vexatious. I do not think the Honourable Members of the Government Bench do really wish—that the High Court should adjudge an application to be frivolous or vexatious without any materials before them. In the case of enhancement of punish-

ment at least there is some material before the High Court. In the present case what material is here before their Lordships? Simply there is an affidavit, and they say " we believe it or not;" there is no other material. How can they call it frivolous or vexatious, or ask the party to pay the expenses reasonably incurred by such a person in consequence of the application? I submit that on both grounds it is unjust to introduce the provision that costs should be paid in the High Court by an applicant who loses. Sir, with these few words I commend my amendment to the House.

Mr. H. Tonkinson: Sir, I think it will only be necessary to say a very few words with reference to this amendment. The proposal in the Bill was introduced because of the manner in which section 526 is used, or rather abused, at present. As a matter of fact when the Lowndes Committee noted upon the point they said they were satisfied that advantage is frequently taken of the section to obtain an adjournment which would otherwise be refused without the least intention of making any application to the High Court. " It is reported to us for instance that in the Dacca Division during the past three years adjournments were obtained in not less than 125 cases in which no attempt was made to move the High Court." Well, Sir, that is the reason why such a provision has been introduced. Now, look at the provision. The application must be frivolous and vexatious. This must be found by the High Court and not on an affidavit as suggested by my Honourable friend, but when the application is finally dismissed. You have then got the whole of the trial record before the Court. It is when the final order is made that this order is passed. And when the High Court finds that the application was frivolous or vexatious the clause only provides that it may direct that the expenses reasonably incurred by the person opposing the application shall be paid.

The amendment to omit sub-clause (*ii*) of clause 141 was negatived.

Sir Henry Moncrieff Smith: Sir, I understand my Honourable friend has also moved the first part of his amendment—in fact most of his speech was directed towards it. The first amendment having been defeated this amendment followed as a matter of course because sub-section (5) is merely consequential throughout to sub-section (6A). It has, however, been brought to notice that there is a mistake in sub-section (5), a consequential amendment which should have been made and which the Joint Committee overlooked. Sub-section (6A) lays down that in every case where the High Court is of opinion that the application was frivolous or vexatious it should have power to award costs to any person who has opposed the application. Sub-section (5) enables these costs to be paid in cases where the accused is convicted. But, Sir, as I said, sub-section (6A) enables these costs to be awarded in every case whether the accused is convicted or not; the criterion simply is that the application was frivolous or vexatious. Further these words are out of place and should be amended to bring them into line with (6A) which the House has now approved. I would therefore with the indulgence of the House move:

" That in clause 141 in sub-clause (*ia*) after the figure (5) the following be inserted, namely, ' for the word ' convicted ' the words ' so ordered ' be substituted and."

The amendment was adopted.

Mr. J. Ramayya Pantulu: I propose, Sir, that in clause 141, sub-clause (*iii*) in proposed sub-section (8) after the word ' inquiry ' the words " prior to the accused entering on his defence," be inserted. This section relates to applications made to the High Court for transfer of cases. The

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existing law is contained in sub-section (8) of section 526. It runs as follows:

"If, in any criminal case or appeal, before the commencement of the hearing, the Public Prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending, his intention to make an application under this section in respect of the case, the Court shall exercise powers of postponement or adjournment given by section 344 in such a manner as will afford a reasonable time for the application being made and an order being made thereon, before the accused is called on for his defence, or, in the case of an appeal, before the hearing of the appeal."

Well, the Bill modifies this provision, and the modified section runs thus:

"If in the course of any trial or inquiry or before the commencement or hearing of any appeal, the Public Prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending his intention to make an application under this section in respect of such case or appeal, the Court shall adjourn the case or postpone the appeal for such a period as will afford a reasonable time for the application to be made and an order to be obtained thereon."

It will be seen that so far as trials and inquiries are concerned, the amendment proposed in the Bill makes it compulsory on the Court to adjourn the case on application being made therefor at any stage of the inquiry or trial.

(At this stage Mr. President resumed the Chair.)

Whereas under the existing law, such an application can be entertained,—the Court is bound to entertain such an application if made before the commencement of the hearing. The proposed section makes it compulsory for the Court to adjourn whenever the applications may be made during the trial or inquiry so far as trials and inquiries are concerned. My proposal is that such an application should be entertained, and the Court should be bound to grant an adjournment only when such an application is made before an accused person is put on his defence or before he is charged. I quite conceive that applications on this behalf may be made by the prosecution as well as by the accused, but in either case, I suppose the main ground on which the application for a transfer from a court will be made to the High Court will be that justice and impartial trial cannot be expected from that particular Court. I think the complainant or the accused ought to be able to form a judgment as to the impartiality of the Judge by the time the prosecution is concluded and the accused is put on his trial. From the practical point of view, Sir, the procedure that is prescribed in the new section is likely to result in much delay in the trial of cases. A very frequent sort of cases which arise is this. A charge has been framed against the accused, and the defence evidence has been recorded and the Magistrate adjourns the case for delivering judgment. Supposing at that time the Magistrate is transferred and is waiting to be relieved by his successor. He has heard the case completely and he has only to write the judgment. And at that time, if the accused thinks that the case has gone against him and that he is likely to be convicted, his only chance lies in getting an adjournment of the case in the hope that this Magistrate or Judge may be transferred and, when the new Judge or Magistrate comes, he may have a fresh trial. This is a very frequent trick that is adopted by accused persons to apply for an adjournment to enable him to apply for a transfer after the case has been practically closed. In such cases, it will be very undesirable that the Court should be bound to grant an adjournment. Of course, there is nothing to prevent a Court from granting an adjournment, at any time, even as it is. Under the new section also it can grant an adjournment, whenever a person makes an application, whatever be the stage of the

trial at which that application is made. In cases such as that I have mentioned, it will result in great delay as the new Magistrate will have to start a retrial of the whole case. I, therefore, Sir, propose that in this section, after the word " inquiry " the words " prior to the accused entering on his defence " be inserted.

Sir Henry Moncrieff Smith: Sir, we have no objection to the principle of the Honourable Member's amendment. His proposal is, I understand, in principle to keep the law as it stands at the moment and to keep it as it stood in the Bill as introduced. I would suggest, however, on the subject of drafting, that his words do not come in very well after the word " inquiry " because in an inquiry the accused is not called upon to enter on his defence. Therefore, I would suggest that they be inserted after the word " shall ". The present law is that, if an application is made in the case of an inquiry or trial, then the Court shall give an adjournment before the accused enters on his defence so as to enable him to have a reasonable opportunity for making the application. I think it would read better, Sir, if these words " prior to the accused entering on his defence " were inserted not after the word " inquiry " but after the words " the Court shall ", and then, Sir, insert the word " shall " before the word " postpone ". It will read:

" The Court shall, prior to the accused entering on his defence, adjourn the case or shall postpone the appeal."

Mr. J. Ramayya Pantulu: Sir, I do not know whether that will be all right, but, since you are agreeing to the principle you can put it as you like best.

Sir Henry Moncrieff Smith: Sir, the draftsman suggests that in place of the words proposed to be inserted by Mr. Pantulu the words " before a charge is framed against the accused " might be inserted. It is much the same thing. Of course, the words " entering on his defence " would not apply to an inquiry, but in an inquiry a charge is framed, and therefore the stage of the trial is practically the same, the framing of the charge and calling upon the accused for his defence.

Mr. President: Amendment moved:

" In the proposed amendment, omit the words 'prior to the accused entering on his defence' in order to insert the words 'before a charge is framed against the accused'."

Further amendment moved:

" In line (1) of sub-section (8) to substitute the words 'inquiry or trial' for the words 'trial or inquiry'."

The question is that that amendment be made.

The motion was adopted.

Mr. President: Further amendment moved:

" That the words 'before a charge is framed against the accused' be inserted after the word 'trial' in the sub-section as amended."

Mr. J. Ramayya Pantulu: That will exclude summons cases. The words " after the accused is put on his defence " will be general.

Sir Henry Moncrieff Smith: I would suggest that after all Mr. Pantulu's original amendment would be suitable after what we have already done in the sub-section.

Sir Henry Moncrieff Smith's amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That the words 'prior to the accused entering on his defence' be inserted after the word 'trial' in sub-section (8) as amended."

The motion was adopted.

Clauses 141, as amended, 142 and 143 were added to the Bill.

The Honourable Sir Malcolm Hailey: Sir, I beg to move that:

"In clause 144, sub-clause (*ii*), for the words "in clause (*d*), the word 'want'" the following be substituted, namely:

'the word 'want' where it occurs for the second time'."

I do not think I need comment to this House on this very luminous amendment.

The motion was adopted.

Sir Henry Moncrieff Smith: Sir, I should like to move the amendment which stands in the name of Mr. Seshagiri Ayyar, namely:

"For sub-clause (*i*)-of clause 144 the following be substituted:

'(*i*) Clause (*b*) shall be omitted'."

The reason being, Sir, that we thought on consideration of Mr. Seshagiri Ayyar's amendment that it was very sound and that clause (*b*) of section 537 was of no use.

The motion was adopted.

Clause 144, as amended, was added to the Bill.

Clauses 145, 146, 147, 148 and 149 were added to the Bill.

The Honourable Sir Malcolm Hailey: I beg to move:

"That in clause 150 for the words 'and not' the words 'and the method of recovery of which is not' be substituted."

The motion was adopted.

Clause 150, as amended, was added to the Bill.

Clauses 151, 152, 153 and 154 were added to the Bill.

Mr. J. Ramayya Pantulu: I propose that the consideration of the Schedule may be postponed till Wednesday.

Sir Henry Moncrieff Smith: I move:

"That in clause 155 the necessary amendments be made to give effect to the decision of the House with regard to compoundable offences."

Mr. President: The question is that in clause 155 the necessary consequential amendments be made to give effect to the decision of this House in relation to compoundable offences.

The motion was adopted.

Clause 155, as amended, was added to the Bill.

Clauses 156 and 157 were added to the Bill.

The Honourable Sir Malcolm Hailey: I could have wished, Sir, that all our debates on this Bill had been conducted with a harmony such as now prevails. But we are approaching the end of our good work, though we seem to be pursuing it alone. I now propose:

6 P.M.

" That in clause 158:

' (1) for sub-clause (*iv*) (*b*) the following be substituted, namely:

' (*b*) the words ' and cannot be recovered by distress of the moveable property of the said (name of complainant)' shall be omitted '."

Mr. President: The question is that that amendment be made.

The motion was adopted.

The Honourable Sir Malcolm Hailey: I move, Sir:

" That in clause 158, in sub-clauses (*v*) (*b*) and (*v*) (*d*) the word ' moveable ' be omitted."

Mr. President: The question is that that amendment be made.

The motion was adopted.

Mr. President: The question is that clause 158, as amended, stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 159 stand part of the Bill.

The motion was adopted.

Sir Henry Moncrieff Smith: Sir, with the indulgence of the House I should like to move the following amendment:

" That after clause 159 of the Bill the following clause be inserted, namely:

' 160. This Act shall come into force on such date as the Governor General in Council may by notification in the Gazette of India appoint '."

The reason for the amendment, Sir, is, I think, obvious. When the Legislature is making a very large number of amendments in the Code of Criminal Procedure applicable to the whole country, unless we have a commencement clause of this kind the new law will come into force when it is assented to by the Governor General. It is obvious that we must give considerable notice to the Magistrates and to the lawyers of this country of the amendments that are being made, so that on one particular date which may be appointed hereafter, the whole of the new law shall come into force.

Mr. President: The question is that that clause be added to the Bill.

The motion was adopted.

The Honourable Sir Malcolm Hailey: Sir, we have one or two clauses which we postponed for final consideration on previous occasions. But I do not think we could very well proceed to their discussion this evening, and I would therefore suggest, Sir, that, if you have no objection, we might now adjourn the further consideration of the Criminal Procedure Code.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 14th February, 1923.