Friday,
18th February, 1898

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXXVII

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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA

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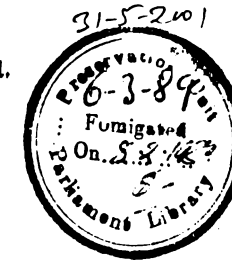

CALCUTTA
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1899

Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House, Calcutta, on Friday, the 18th February, 1898.

PRESENT:

His Excellency the Earl of Elgin, P.C., G.M.S.I., G.M.I.E., LL.D., Viceroy and Governor General of India, *presiding*.

His Honour Sir Alexander Mackenzie, K.C.S.I., Lieutenant-Governor of Bengal.

The Hon'ble Sir J. Westland, K.C.S.I.

The Hon'ble M. D. Chalmers.

The Hon'ble Major-General Sir E. H. H. Collen, K.C.I.E., C.B.

The Hon'ble Sir A. C. Trevor, K.C.S.I.

The Hon'ble C. M. Rivaz, C.S.I.

The Hon'ble Rahimtula Muhammad Sayani, M.A., LL.B.

The Hon'ble Pandit Bishambar Nath.

The Hon'ble Joy Gobind Law.

The Hon'ble C. C. Stevens, C.S.I.

The Hon'ble Sir H. T. Prinsep, Kt.

The Hon'ble H. E. M. James, C.S.I.

The Hon'ble M. R. Ry. Pannappakkam Ananda Charlu, Vidia Vinodha Avargal, Rai Bahadur, C.I.E.

The Hon'ble Sir G. H. P. Evans, K.C.I.E.

The Hon'ble J. J. D. LaTouche, C.S.I.

The Hon'ble F. A. Nicholson.

The Hon'ble Rai Bahadur Pandit Suraj Kaul, C.I.E.

The Hon'ble Sir Lakshmishwar Singh, G.C.I.E., Maharaja Bahadur of Durbhanga.

The Hon'ble Gangadhar Rao Madhav Chitnavis, C.I.E.

The Hon'ble Allan Arthur.

NEW MEMBER.

The Hon'ble MAHARAJA BAHADUR OF DURBHANGA took his seat as an Additional Member of Council.

MEMON BILL.

The Hon'ble MR. CHALMERS moved that the Hon'ble Sir John Woodburn be substituted for the Hon'ble Mr. Rivaz as a member of the Select Committee on the Bill to render it permissive to members of the Memon community to declare themselves subject to Muhammadan Law.

The motion was put and agreed to.

INDIAN STAMP BILL.

The Hon'ble SIR JAMES WESTLAND moved that the Hon'ble Mr. James be added to the Select Committee on the Bill to consolidate and amend the law relating to Stamps.

The motion was put and agreed to.

CRIMINAL PROCEDURE BILL.

The Hon'ble MR. CHALMERS presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Criminal Procedure. He said:—"In presenting this report I have to tender my thanks to the Select Committee and to each member of the Select Committee for the unsparing way in which they have devoted their time and attention to the consideration of this lengthy and intricate Code. The Committee have devoted more than twenty days, and long days too, to examining the details of this Bill and the large body of criticisms and suggestions which were submitted to them. I am sure also that I am speaking on behalf of all my other colleagues in expressing our obligations to Sir Henry Prinsep who undertook the laborious task of digesting all these criticisms and suggestions and presenting them to the Committee as we went through the Bill clause by clause.

"Hon'ble Members have not yet got the amended Bill before them, so it would be useless to-day to refer to the details of the changes we have made; but I wish to make one or two observations of a general character.

"Speaking broadly, we have treated the Bill as a consolidation Bill. We have not attempted to introduce any organic changes into the law of procedure. There are but few amendments in the Bill which do more than remove doubts arising from conflicting decisions, or put what we thought to be a convenient construction on a section where the Courts have held themselves constrained by the former wording to put an inconvenient construction upon it. Of course,

in electing between conflicting decisions we have often entered on controversial ground, and we have dealt with matters which may properly be discussed at a future stage.

"In cases of doubt we have retained the old language, and by mechanical means we have endeavoured to lighten the labours of those who will have to master the new Code. In the first place, by occasionally splitting a section into two, or by running two sections into one, we have been able to retain intact the old numbering of the sections. In the second place, we have distinguished the alterations in the law proposed by the Bill, as introduced, from alterations made by the Select Committee. When the Bill was introduced deviations from the Code of 1882 were shown in italics. These we have retained. Subsequent amendments made by the Select Committee are printed in heavy Roman type. When the Code becomes law, any one who takes a copy of the Bill as now presented, and compares it with the Code, could note up all the changes made in an hour. In dealing with the Bill throughout we have had regard to practical convenience rather than to any question of form. The Code has to be administered by busy men, and we have done what we can to make their task in mastering it as light as possible. As I said, I am not going to refer to the amendments we have made; but there were two amendments of which I gave notice on the 21st of December last concerning which I ought perhaps to say a word because they excited some public attention. I announced on behalf of the Government that we should provide by amendment in the schedule that offences under section 124A of the Indian Penal Code should be triable by Magistrates of the first class and Presidency Magistrates in addition to Courts of Session. That was a proposition which was laid before the Select Committee. The Select Committee considered that proposition carefully and have modified it. We propose that the jurisdiction to deal with these offences shall be confined to Chief Presidency Magistrates and to Magistrates of the district. In making this change we were influenced to some extent—we thought it desirable on other grounds—but were certainly influenced—by the strong expression of opinion from our Native colleagues. We gave them time to consider it, and they were clearly of opinion that the change was a desirable one. In addition we have made some consequential amendments on that proposition. We have provided that the appeal, instead of lying from the Magistrate to the Court of Session, shall lie direct to the High Court.

"Now I come to another section of which I gave notice. It was a section which provided that security might be taken from persons who disseminated obscene, seditious or defamatory matter, instead of proceeding against them by way of prosecution. The Select Committee have inserted that section, but with modifications, which Hon'ble Members will see when the Bill is in their hands. In the first place, we have cut out the reference to 'obscene matter'. We think the existing provisions of the Penal Code relating to obscene matter are quite sufficient, and that offences of that class should be dealt with by prosecution and not by taking security. The alterations in the Penal Code Amendment Bill which we are going to proceed with to-day have necessitated an alteration in the term 'seditious matter.' We have substituted for the term 'seditious matter' matter which comes within section 124A, or matter which comes within section 153A. Then we came to the question of defamation, and we thought that defamation was too wide a term. There is a great deal of defamation which of course may be dealt with either by criminal prosecution or by civil action. We have no desire to interfere in cases of that kind. We have confined defamation to defamation of judicial officers, as it is essential in some parts of India to protect our subordinate Native officers from continual and habitual attacks made upon them. I suppose the European officers do not care much what is said about them, but the Native officers for some reason will not prosecute, and they are in some places—well, I might say—almost systematically blackmailed by a certain small class of papers. We think that that is a case where the law ought to interfere. It will be noted that we have omitted from our definition of sedition what is contained in the English definition, namely, that it amounts to sedition to bring into hatred or contempt the administration of justice. To some extent this new provision, which I have just adverted to, will supply the place of that provision of the English law."

INDIAN POST OFFICE BILL.

The Hon'ble SIR JAMES WESTLAND moved that the Bill to consolidate and amend the law relating to the Post Office in India be referred to a Select Committee consisting of the Hon'ble Mr. Chalmers, the Hon'ble Babu Joy Gobind Law, the Hon'ble Mr. James, the Hon'ble Rai Bahadur Ananda Charlu and the mover.

The motion was put and agreed to.

INDIAN PENAL CODE AMENDMENT BILL.

The Hon'ble MR. CHALMERS moved that the Report of the Select Committee on the Bill to amend the Indian Penal Code in relation to Extra-territorial Offences be taken into consideration. He said :—"I desire to trouble Council with a few remarks on the scope of the Bill, and to discuss some of the objections which have been urged against the measure.

"In the first place, this Bill is approved by the Local Governments. We have, of course, been in communication with the Local Governments from the earliest inception of this legislation, and we are now proceeding with it, backed by the cumulative weight of their authority. Now what does this mean? It means that the high officers who are responsible for the peace and good government of the provinces under their charge consider that these provisions are required. Those high officers are all men of wide experience, and they are intimately acquainted with the conditions and requirements of their respective provinces, and when we get a coincident body of opinion from them, that opinion is entitled to the utmost weight.

"Now where do the main objections to the Bill come from? They come from people who are in the happy position of being able to criticise without having any responsibility for the result thrown upon them. If we adopted their suggestions, we should not shift the responsibility from our shoulders to theirs. It is the Government of the country, and the Government alone, which is responsible for maintaining its peace and tranquillity.

"There is another general observation which I wish to make. Most of the important criticisms on the proposed measures have come from the presidency-towns. I am not going to belittle the presidency-towns. A citizen of Calcutta, Madras or Bombay may well say that 'he is a citizen of no mean city.' If we were legislating only for the presidency-towns, I should attach the greatest weight to these criticisms. But we are not. We are legislating for India as a whole; we are legislating for 260 millions of people in all stages of progress and civilisation, and not merely for the two millions or so of people in the presidency-towns.

"Now I want to mention some of the specific criticisms which have been made. In the first place, it is alleged that in the new section 124A we are altering and extending the existing law under the existing section, section 124A. This criticism is mainly based on some remarks made by Sir Fitzjames

Stephen when introducing the Act of 1870. I agree that it might be inferred from some passages in his speech that he considered an appeal to force to be an element in seditious utterances. But it is a familiar rule of law that proceedings in the Legislature cannot be resorted to to interpret an Act. To discover what the law is, when its meaning is contested, you must look at the language of the Act itself, and, if that language has been interpreted by the Courts, you must look to the interpretation of the Courts. The Courts of Justice, and they alone, can put an authoritative interpretation on the meaning of an Act of the Legislature. If that test be applied, I feel sure that no one who candidly and carefully reads the consentient decisions of the Calcutta, Bombay and Allahabad High Courts can come to any other conclusion than this—namely, that in our new section we are keeping well within the existing law, though we are expressing that law in less ambiguous language. By dropping the term 'ill-will' from the explanation of 'disaffection' we may be somewhat restricting the existing law, but we are not extending it. In confirmation of what I have said, I will read an extract from the unanimous decision of the Allahabad High Court which considers and sums up the previous cases. Sir John Edge in delivering that judgment observes:—

'In our opinion any one who by any of the means referred to in section 124A of the Indian Penal Code excites or attempts to excite feelings of hatred, dislike, ill-will, enmity or hostility towards the Government established by law in British India, excites or attempts to excite, as the case may be, feelings of "disaffection," as that term is used in section 124A, no matter how guardedly he may attempt to conceal his real object. It is obvious that feelings of hatred, dislike, ill-will, enmity or hostility towards the Government must be inconsistent with and incompatible with a disposition to render obedience to the lawful authority of the Government and to support that lawful authority against unlawful attempts to subvert or resist it. The "disapprobation of the measures of the Government" may or may not in any particular case be the text upon which the speech is made or the article or letter is written, but if upon a fair and impartial consideration of what was spoken or written it is reasonably obvious that the intention of the speaker or writer was to excite feelings of disaffection to the Government established by law in British India, then a Court or a jury should find that the speaker, or writer, or publisher, as the case might be, had committed the offence of attempting to excite feelings of disaffection to the Government established by law in British India. To paraphrase is dangerous, but it appears to us that the "disaffection" of section 124A is "disloyalty"; that is the sense in which the word "disaffection" has been generally used and understood during the century. We are further of opinion that the ordinary meaning of disaffection in section 124A, having regard to the evils at which section 124A strikes, is not varied by the *explanation* contained in the section.

'The intention of a speaker, writer or publisher may be inferred from the particular speech, article or letter, or it may be proved from that speech, article or letter, considered in conjunction with what such speaker, writer or publisher has said, written or published on another or other occasions. Where it is ascertained that the intention of the speaker, writer or publisher was to excite feelings of disaffection to the Government established by law in British India, it is immaterial whether or not the words spoken, written or published could have the effect of exciting such feelings of disaffection, and it is immaterial whether the words were true or were false, and, except on the question of punishment or in a case in which the speaker, writer or publisher is charged with having excited such feelings of disaffection, it is immaterial whether or not the words did in fact excite such feelings of disaffection.'

"Then it is urged that the proposed clause goes further than English law, and again some passages in Sir Fitzjames Stephen's speech are referred to. All I can say is this. If in 1870 he thought that an appeal to force was a necessary constituent of sedition, he afterwards changed his mind. After he had served on the Criminal Code Commission, which was composed of some of the most distinguished Judges of modern times, he published his *Digest of the English Criminal Law*. In Article 96 of that Digest he states the English law in the clear and precise terms which I read to Council on the 21st December. There is nothing in that article, and there is nothing in the almost identical article framed by the Criminal Code Commission to suggest that an appeal to violence is a necessary factor in the offence. I take it that the offence is complete both in India and England if it be proved that the offender has attempted to excite disaffection towards the Government. It is not necessary that he should himself appeal to force. What he does is to excite or attempt to excite feelings of discontent which make people ready for mischief should the opportunity arise.

"But after all these arguments are more or less academic. No one in his senses would contend that because a given law is good and suitable in England, it is therefore good and suitable in India. Take, for instance, the English Marriage Laws which are the foundation of English society. They are based upon monogamy protected by the severest penalties. But no one would think of introducing them into India, any more than he would think of enacting by law that the people of India should wear top hats and trousers. If a rule of law exists in England we may fairly consider whether it is suitable to India, but the answer to the question must always depend on the conditions which prevail in India. How much license of speech can be safely allowed is a question of time and place. If I smoke a cigar on the *maidan* it pleases me, and it hurts no one else. If I

smoke a cigar in the powder magazine of the Fort, I endanger the lives of many and do an act well deserving punishment. Language may be tolerated in England which it is unsafe to tolerate in India, because in India it is apt to be transformed into action instead of passing off as harmless gas. Look at the cow-killing riots in Western India, with the deplorable loss of life that followed: look at the murder of Lekh Ram at Lahore, at the Poona murders, and at recent events in the Peshawar District. Just the other day a Brahmin gentleman and a native doctor were murdered at Sinnar by a fanatical mob. That apparently was the reward for their self-devotion in attempting to grapple with the plague and save the lives of their fellow-countrymen. In legislating for India we must have regard to Indian conditions, and we must rely mainly on the advice of those who speak under the weight of responsibility and have the peace and good government of India under their charge.

"Now let me say a word or two about the changes introduced in the Select Committee. We have added a further *explanation* to clause 124A. The second *explanation* was intended to protect fair and honest criticism which had for its object the alteration of the policy pursued by the Government in any particular case. Some people were apprehensive that the express declaration of this principle might be held impliedly to negative the right of people to criticise Government action when that criticism could not lead to a reversal of such action; for instance, criticism on past expenditure, or criticism on an appointment which the critic may think objectionable. I think this apprehension was quite unfounded, but in order to allay it we have introduced the third *explanation*. We have also removed the offence of stirring up class hatred from the sedition clause, and have inserted it in the chapter relating to offences against the public tranquillity. This offence, no doubt, only affects the State indirectly. It affects the State through the danger it causes to the public tranquillity. It is less akin to treason than a seditious attack upon the Government by law established, and therefore we have provided a much smaller punishment. But in India the offence is a very dangerous one. When class or sectarian animosity is directed against any section of Her Majesty's subjects, the members of that section are in peril. Any accidental event may cause an explosion, and it is difficult to foresee the direction which the explosion will take. The persistent attacks made on the officers and helpers engaged in plague operations have already resulted in sad loss of life. A squabble over an alleged mosque gave rise to a dangerous riot which at one time it was feared might turn into a general attack on the European community in Calcutta. We wish to trust to prevention rather than cure, and

by taking power to punish people who foment class animosities to obviate the necessity of putting down the consequent disturbances with a high hand.

"In section 505 the Select Committee have made a considerable modification. As the clause now stands, I think it need cause no apprehension to any speaker or journalist who acts in good faith. It must be borne in mind that the clause does not strike at mischievous and mendacious reports generally. It is aimed only at reports calculated to produce mutiny or to induce one section of the population to commit offences against another. If a man takes upon himself to circulate such a report, he surely cannot complain if he is asked to show that his intentions were innocent, and that he had reasonable grounds for believing the report.

"But though we think and believe that the measures we have proposed are necessary, we have provided safeguards against any possible abuse of them—safeguards which, I may observe, are unknown to English law. My Hon'ble friend the Maharaja of Durbhanga says in his note of dissent that under the proposed section 124A 'it is quite possible to punish a journalist or public speaker who is only guilty of using indiscreet language calculated at most to give rise to trifling feelings of irritation.' May I call his attention to section 95 of the Indian Penal Code, which provides that 'nothing is an offence by reason that it causes, or is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.' In the highly hypothetical case which he puts, it seems to me that his journalistic friend would have committed no offence, and would have nothing to fear. If you put hypothetical cases, and assume that the law will be strained and administered without common sense, there is scarcely a section of the Penal Code that ought to be allowed to stand for five minutes. But we have provided another and wider safeguard. As the law now stands, no prosecution under section 124A can be commenced without the authority of the Local Government or the Government of India. We intend, of course, to maintain that rule and further to apply it to offences under sections 153A and 505. There remain the rights of appeal and revision. Every sentence passed under the provisions I have referred to can be brought in one form or the other under the cognizance of the High Court.

"I freely admit that our proposals have met with a good deal of adverse criticism. But, then, what are the alternatives? We have been urged both from official and private sources to re-enact the Press law. But we are entirely

opposed to that course. We do not want a Press in leading strings that can be made to dance to any tune that its censors may think fit to call. We want simply a free Press that will not transgress the law of the land. We are aiming at sedition and offences akin to it, and not at the Press. Sedition which is taught and preached orally is even more dangerous than written sedition, because it operates more directly on the ignorant, and therefore the dangerous, classes. Some of our critics apparently would have us sit idle till an outbreak has occurred, and then call upon us to suppress it by violent methods not known to the law. As a sample, let me cite an extract from a Calcutta daily paper which disapproves our present proposals:—

'We cannot govern Calcutta as a Western city. In places like Algiers or Samarkand the religious leaders of the Muhammadan community are told that they will be held responsible for order, and it is found that it has a magical effect. In England, to lock up the clergy would be probably ridiculous and quite useless as a means of avoiding a riot, but that is the difference between Calcutta and London, and yet we try to govern Calcutta just as we govern London. We must begin by recognising that we live in the East and do as the East does.'—(*Indian Daily News*, 12th July, 1897.)

"But we have chosen much less drastic methods than those suggested to us. We have proposed what we think, and are advised, to be reasonable amendments in the law, and we intend to supplement the substantive law by providing a prompt and workable procedure to put it in force."

The Hon'ble MR. ALLAN ARTHUR said:—"Whatever the views of the mercantile community may be in regard to the means which the Government propose to take to curb that section of the Press in India which so frequently exceeds the bounds of legitimate and healthy criticism, there is no doubt that the mercantile community are at one with the Government in thinking that there is a disease in some parts of the country for which it is necessary, in the interests of the public good, to find a remedy. With reference to the remarks made by the Hon'ble Mr. Chalmers in regard to giving Magistrates and Presidency Magistrates power to try sedition cases under section 124A, I feel bound to mention that there is a strong feeling against giving Magistrates such power under this section, the punishment for which may be penal servitude for life, although presumably Magistrates will not be given the power to inflict such a punishment. It is thought by many non-officials that it would be better to provide for the punishment of reckless writers under sections of the Indian Penal Code dealing with cases which are triable by Magistrates in order to avoid giving a worthless person all the *eclat* of a State trial.

"In regard to the Bill before the Council, the views which have been put forward by some of the non-official bodies would, if adopted, have the same effect, it is believed, as the measures proposed by the Government, and, in so far as they would, in the opinion of these bodies, have made the law clearer and therefore more difficult to evade and at the same time cause less friction, I regret the Government have not seen their way to adopt them.

"With regard to *explanations* 2 and 3, it will certainly be difficult for a speaker or writer to criticise the actions of Government without exciting a certain amount of contempt, but the country has had a most direct assurance from Your Excellency that the Government have no desire or intention to interfere in any way with the liberty of the orator or of the Press, which assurance ought to be perfectly satisfactory to the ordinary person who has none but loyal feelings. In so far, however, as the assurance is not placed in the Statute-book, it fails to satisfy every one.

"As the European mercantile community are entirely in accord with Government on the broad principle that it is necessary to find a ready means to check the evil that has arisen in connection with the writings of a certain section of the Press in India, and as they have every desire to avoid embarrassing Government at the present time, I am prepared generally to support the present measures. If they result in the raising of the tone of the Press in India, they will undoubtedly be in the best interests of the people and of the Empire."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS said:—"My Lord, the fourth section of the Bill as amended by the Select Committee repeals section 124A of the Indian Penal Code, and offers a substitute. It introduces important innovations. With regard to one of these I feel that there cannot be any difference of opinion. That a person who attempts to bring Her Majesty into hatred or contempt, or to excite disaffection towards Her, should be held to have committed an offence and should be liable to be punished, is manifestly right and proper. This addition to the penal law I heartily welcome. We in this country are accustomed to invest sovereignty with a character of sanctity, and deem any insult to the King as almost a sacrilege. Her Gracious Majesty the Queen-Empress has, however, other claims on the affection and gratitude of the Indian people than those of sovereigns in general. By Her wise and beneficent measures, by Her many acts of kindness, by Her watchful and active sympathy with the millions of Her Indian subjects,

she has laid them under obligations that they scarcely know how to acknowledge. And a law purporting to protect Her against disrespectful and disloyal treatment by speech or writing cannot but command universal approval. I may be permitted, however, to point out one little defect in the drafting of this part of the section. The phrase 'Her Majesty' is not only an abbreviated and elliptical form of the expression 'Her Majesty the Queen of Great Britain and Ireland and Empress of India,' but is obviously applicable only to Her and not to all Her possible successors. To prevent the law from being futile and to obviate the necessity of verbal amendments on the occasion of changes in the succession to the British Crown, I would beg to suggest that the words 'the Sovereign for the time being of the United Kingdom of Great Britain and Ireland' be used in place of the words 'Her Majesty'.

"To the rest of the section I have some serious objections. 'Brings or attempts to bring into hatred or contempt' are words of very vague import, and hardly distinguishable from 'excites or attempts to excite disaffection.' Whoever brings Government into hatred or contempt will be held to excite disaffection towards it, and whoever excites disaffection will be treated as bringing Government into hatred or contempt. Another difficulty that cannot but arise in cases of alleged sedition is to know exactly when Government is brought into contempt or hatred, and when disaffection is excited towards it; to determine, that is to say, the limits of legitimate criticism. There may be occasions when a Court will be disposed to treat any adverse criticism of Government, however reasonable, as tending to bring it into hatred or contempt, or to excite disaffection towards it. I apprehend, therefore, that the section when it becomes law may seriously interfere with the free discussion of measures of Government, for any criticism that is not commendation may be adjudged as seditious. I confess I do not see my way to supporting a provision which, though no doubt conceived in a good spirit, is likely to have the effect of restraining the expression of opinion on topics of public interest.

"The ambiguity of the text of the section is not removed by any of the three *explanations* appended to it. *Explanation* 1 does not interpret or explain 'disaffection,' nor exhaust the different feelings included in it. It only states, what might very well have been presumed, that disloyalty and feelings of enmity are covered by it. If the *explanation* does not tell us what disaffection *is*, neither does it tell us what disaffection *is not*. *Explanation* 2

specifically exempts some comments from the operation of the measure, namely, comments which, though they express disapprobation of the measures of Government, are made with a view to obtain their alteration by lawful means.

"*Explanation* 3 gives a little more liberty than the *explanation* 2. It states that comments on all actions of the Government will be excused even though they express disapproval. With regard to such comments it is not necessary that they should have been made with any particular view. A comparison of the two latter *explanations* naturally suggests a question as to the distinction between measures and actions; but it is difficult to find an answer. No principle is apparent which would justify one rule with regard to measures and another with regard to actions. Neither *explanation* 2 nor *explanation* 3 indicates the kind or degree of disapprobation which will not be held to excite hatred, contempt or disaffection. I venture to think that all objections to the vagueness of the words introduced into the section would be met if the simple fact of resistance, or rather the disposition of resistance, to the lawful authority of Government were made the test of disaffection, disloyalty or enmity.

"As regards punishment, the Select Committee have no doubt made an improvement on the original draft of the Bill by reducing the maximum term of imprisonment from ten years to three. But even in its present form the section lays down a punishment which is unduly severe. Transportation is an extreme form of punishment that is hardly called for by the necessities of the case, and, as regards imprisonment, the purposes of justice would, I believe, be fully met if the simple and not the rigorous form of that penalty were prescribed. I read the following in Archibold's *Pleadings and Evidence in Criminal Cases*: "The Prison Commissioners shall see that any prisoner under sentence inflicted on conviction for sedition or seditious libel shall be treated as a misdemeanant of the first division, notwithstanding any statute, provision or rule to the contrary." Misdemeanants of the first class are not considered criminal prisoners and are allowed privileges denied to the latter. They are not sentenced to hard labour. They are not imprisoned for more than two years. It thus appears that, if it is intended to frame the Indian law of sedition on the model of the English, the punishment as now laid down in the section has to be materially altered.

"The strongest objection to the section has yet to be mentioned. It is that the section is unnecessary. Penal and restrictive legislation is never justified

except on the plea of necessity. It is an evil which is brought in to correct greater evils. In the present case I do not see that the circumstances of the country and the state of the law call for such a measure as this section purports to be. The country is not rife with sedition, nor convulsed by disturbances. The existing law has not been found to be inadequate or nugatory for dealing with cases which the State has considered to be cases of sedition. Its proposed modification, therefore, is wholly unnecessary. The section that embodies the present law has been tried and not found wanting. Its proposed substitute is, I hope to be pardoned for observing, a venturesome leap in the dark. Its construction by the Courts, its effect on the country, can only be subjects of uncertain and not very hopeful speculation at the present day.

"It has been said, my Lord, that recent events have necessitated the proposed alteration in the law. In other words, a belief has evidently arisen, as has just been said by the Hon'ble the Legal Member, that the recent unfortunate events in the Bombay Presidency were directly or indirectly the result of newspaper writings. But this is a belief in which the educated Indian community do not share. Possibly some papers, in the excitement of the time, gave vent to their feelings in indiscreet and improper language. Can that be reasonably regarded as a ground for amending the general law of the land and fettering the liberties of the entire Indian Press? My Lord, differences of opinion there must always be. Such unfortunate events as occurred last year must always produce a feeling of unrest. But it is for Your Excellency's Council to consider if such trifles necessitate a change in the law of the land. We have it upon Your Excellency's authority that, although it was desirable that the general tone of the papers in India were not so often unduly coloured by prejudice, no general imputation of disloyalty can on that account be laid at their door. It is a valuable testimony, my Lord, to the loyalty of the Indian Press generally—a testimony which only imperfectly reflects the generous principles upon which the Government of this country is conducted, and upon this testimony alone I would take my stand and urge that no alteration in the substantive law of the land is necessary. The educated community of India represented by the leading newspapers of the country are at any rate acute enough to foresee that in any disturbances that might arise they would be the first to suffer, and the instinct of self-preservation alone, if nothing else, prompts them to abstain from any line of action that would be likely to bring ruin upon their heads. The Hon'ble and learned Member in charge of the Bill has assured the public

that Government has no quarrel with the Press. Much less then has the Press any quarrel with the Government. Any idea of a contest between the Government and the Press in this country is too ridiculous to deserve serious consideration. When it is declared that the Government welcomes all fair, candid and honest criticism it is recognised that the Press is a necessity in this country. It is a necessity, my Lord, because with all its defects it is a mirror reflecting the thoughts and wishes of the people, from which an enlightened administration cannot fail to derive much benefit and advantage. Even hostile critics have admitted that the newspapers in this country are the great safety-valves of the Empire. What would be the condition of things, my Lord, if the newspapers in this country were to die out, or if, through fear of State prosecution, they were to abandon all honest criticism and take to singing the praises of officials and their acts in season and out of season? It will be said that Government does not intend such a course to be taken, that Government does not wish honest journalism to be abandoned. My Lord, the most hostile critic will not question the intentions of the Legislature, and yet, if the Bill be passed in its present form, the boldest of editors will feel that a sword is hanging over his head. It is for Your Excellency's Council to consider whether any value could be attached to what he might write under the influence of such a feeling.

"My Lord, I cannot but regret that it should have become my duty to oppose so largely a measure purporting to embody the views of Your Excellency's Government. But I have every assurance that my protest will be received in the spirit in which it has been meant and made. Liberty of the Press, or rather liberty of speech, is a principle valued by no nation more highly than the English. If we have learnt toappreciate it, it is because we have been subjects of the English Government, because we have received our training at the feet of English instructors, because we have been governed on principles that are English. English training and English methods of Government have bred in us aspirations of the English sort, and furnished us with methods of criticism that cannot be described otherwise than as English. I cannot believe that it is intended to restrict criticism, however trenchant, of public measures, but I have thought it necessary to present to the Council what I consider to be the probable consequences of the measures now under consideration. A withdrawal of sections 4 and 5, or a material modification of them, or a postponement of the consideration of them to the next session, will be an act of grace and magnanimity for which the country cannot but be thankful; and, in

conclusion, I can only couple the protest I have already made with an appeal for one of these three possible concessions to public opinion.

"My Lord, what I have said is not merely the coinage of an individual brain. The views and sentiments I have expressed are also the views and sentiments of such important and influential public bodies as the Chamber of Commerce, the Anglo-Indian Defence Association, the Calcutta Bar, the British Indian Association, the Indian Relief Society and of such leaders of thought as the *Englishman*, the *Madras Mail*, the *Indian Daily News*, the *Statesman*, the *Amrita Bazar Patrika*, the *Indian Mirror*, the *Hindu Patriot*, the *Hindu*, the *Indian Nation* and others. I would also most respectfully draw the attention of Your Excellency's Council to the representations of the Calcutta Bar and the Indian Relief Society on the amended Bill. My Lord, one of the objects of these representations is that the further consideration of the Bill should be postponed till after the amended Bill has been translated into several Vernaculars of India and a reasonable time has been given to the public to express their views thereon. In my humble opinion this request is a very reasonable one.

"My Lord, there is one point in the speech of the Hon'ble Legal Member to which I would beg to refer. He says that most of the criticisms that have been received on the present Bill have emanated from presidency-towns, My Lord, if any intelligent criticism is expected, as has been received in connection with this measure, it must be from places like the presidency-towns, where education has made the most progress. It is in the presidency-towns, or only in towns of some importance, that sedition cases, however few, have taken place. Very few such cases have occurred in the mufassal, and it is on that account I hold that criticism from the presidency-towns should receive greater consideration at the hands of Government. I will leave the consideration of other points in the speech of the Hon'ble Legal Member to my learned colleagues in the Council who like me think the introduction of this new section either unnecessary or the section itself too wide in its scope.

"With regard to the proposal of the Select Committee for the insertion of a new section 153A in the Penal Code, I beg to reserve my remarks till I come to move my second amendment. As regards section 505, I may observe that my leanings are for the changes proposed by the Select Committee."

The Hon'ble PANDIT SURAJ KAUL said:—"My Lord, in supporting the motion I would wish to say that I approve generally of the Bill, except in

regard to one point which I consider to be of some importance. That point is the insertion of the words 'with criminal intent' before the words 'brings or attempts to bring' in line 4 of the new proposed section 124A and the insertion of the same words before the words 'promotes or attempts to promote' in lines 4 and 5 of the new proposed section 153A.

"These additions would in my opinion have removed all possible doubt and prevented the occurrence of any difficulty.

"As, however, the Select Committee did not think it necessary to insert these words in the proposed new sections, I am willing to accept the conclusion at which the majority arrived and have not thought it necessary or desirable to move a formal amendment. I think it right, however, to give expression to my opinion in the matter before assenting to the motion now before the Council."

The Hon'ble MR. NICHOLSON said:—"In considering the numerous criticisms upon the Bill before the Council, a few remarks have occurred to me as desirable since I had not the advantage of discussing it in Select Committee.

"Many of the criticisms on the proposed alterations in section 124A urge that the liberty of the individual, of the Press, and of public discussion generally, is endangered by the proposed changes; some deem that the Bill 'extends' the existing law of sedition, while others term it 'a complete' reversal of the liberal and enlightened policy which has been so long pursued. In endeavouring to ascertain the history of the present section I was interested to find that the same objections, often in similar language, were used at its introduction in 1870, and I draw from this and other facts the comforting belief that, after all, the liberty, the elasticity and, perhaps I might say, the causticity of discussion will not be impaired by the proposed alterations in the section.

"For, in fact, the section, as now proposed, is simply the existing law made clear; it is not an 'extension' but merely an unfolding of the law. Whereas the word 'disaffection' has been by the present law left to the interpretation of the Courts, while a merely negative *explanation* showed what was *not* disaffection, the proposed section, following both the English law, the words of the English Law Commissioners, and the recent decisions of three High Courts, affirms clearly and in their language what before was simply connoted, *viz.*, that the bringing of Her Majesty or of the Government into hatred or contempt is

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an integral part of the existing Indian law of sedition. As stated by the Hon'ble the Legal Member, it is most desirable that codified law should be explicit, *i.e.*, that it should distinctly unfold to view what is comprised within a given term.

"And I take it that the present moment is not inopportune for such explaining or unfolding of the law, for in the lapse of years since 1870, and with so general a word as 'disaffection' standing alone in the Statute-book, the boundaries between free discussion and disapprobation on the one hand, and seditious libel—whether by incitement to hatred or contempt or otherwise—on the other hand, may have become indistinct. Hence the words now newly inserted in section 124A serve, if I may so say, as danger signals; *pace* various criticisms, the words 'hatred,' 'contempt,' and 'enmity' are perfectly clear and distinct, and it is well that they should now stand out clearly in the law in which till now they were latent. Indeed, I would say that if, on the question of clearness, we are to choose between the words 'hatred,' 'contempt' and 'enmity' on the one hand, and 'feelings incompatible with a disposition to render obedience,' etc., on the other, we must prefer the former, which are distinct and definite concepts, to the vagueness of the latter. I understand the word, perhaps the feeling, 'hatred,' but I am not so sure as to what might or might not be considered a 'feeling incompatible with a disposition to render obedience.' If it is urged, as it has been urged, that 'hatred' and 'contempt' have, when used judicially, a special and technical meaning, still the position is unchanged, for since it is the Courts which will apply the law they will also use the words in their special meaning, if any, in applying them to the facts.

"I think from reading various criticisms that perhaps the expressed apprehension as to the effect of the law upon the liberty of discussion is partly due to mistaking explanations for exceptions. It is, however, obvious that the explanations, even as now entered in the amended Bill, are not intended to be exhaustive exceptions delimiting the area of safety, but are merely explanations pointing out for public guidance that certain common and necessary forms of criticism are not, within certain limits, seditious; they are finger-posts, not boundary-marks. Hence it does not in any way follow that, because a case does not fall within the four corners of these explanations, it is therefore seditious. With reference, moreover, to other proposals, I would deprecate any attempt to enter within explanations, exceptions or provisos all possible

cases which are not seditious; it is for the law to lay down in explicit terms what is sedition with such explanations as may serve for general guidance, and for the Courts to apply those terms to the facts.

"Finally, I would remark that the safeguards to honest discussion and disapprobation as distinguished from disaffection lie not merely, perhaps not so much, in the expressions in which the law may be clothed as in the judicial common-sense with which the law will be applied, and in the political common-sense with which the right of free discussion will be used. It is impossible to imagine that, under the safeguards provided by the Penal Code, as in section 95, by the provision that prosecutions shall only be undertaken with the prior sanction of Government, by the independence and sound judgment of the Courts, and by the more explicit declarations of the proposed law, any writer or speaker of political common-sense can be in the slightest danger, or that any *bonâ fide* discussion of public affairs or any disapprobation of public men or measures or methods, however severely expressed, can be mistaken for or will be treated as 'disaffection'. Sir James Stephen has been frequently quoted in their support by objectors to the section under discussion, and I will therefore read the following pertinent extract from his speech of November 25th, 1870, made when moving that the present section be added to the law:—

'It might be difficult,' he said, 'to frame a definition which would, by mere force of words, exactly include the liberty of saying all that you meant to allow to be said, and exclude the liberty of saying all that you did not mean to allow to be said. But, although there was considerable difficulty in framing a definition of the kind, there was none whatever in drawing a line for yourself. Every man who was going to speak, every man who was going to write, ought to know perfectly well whether he intended to produce disaffection. If he did (so intend), he had himself to thank for the consequences of his acts; if he did not, he (Sir James Stephen) was quite sure of this, that no words which that man could write would convey to other people an intention that he did not intend to express. He (Sir James Stephen) did not believe that any man who sincerely wished not to excite disaffection ever wrote anything which any other honest man believed to be intended to excite disaffection.'

"Such, my Lord, were Sir James Stephen's words, and it appears to me that one important advantage of the section as now proposed is that, by its more explicit statement of what constitutes disaffection, honest public writers and speakers will be more fully safeguarded than before, in that they can determine more precisely for themselves whether their words can produce, or can be interpreted as tending to produce, disaffection.

"Objection has been taken to the severity of the punishment possible under the law. In this matter the proposed section merely reproduces the punishments of the present law, which range from mere fine to transportation for life. I would here again refer to the speech of Sir James Stephen, who points out that it is necessary to have in the law possible penalties commensurate with the possible gravity of offences, as measured by the state of public affairs, by the position, character and circumstances of the accused, etc.; a violent speech by one person at one time may call for only a petty penalty, while an agitation under different circumstances may deserve the severest punishment. Sir James, in fact, indicated in his speech two instances in which the maximum penalty might be called for or was actually inflicted. I see no necessity to alter the law on this point.

"Turning now to section 153A. I desire to concur in its introduction into the Penal Code. The Madras Presidency has been happily described as 'that peaceful Province,' and I am glad to affirm the general truth of that description. Nevertheless, even there may be found the '*amari aliquid*,' and, as a Magistrate of many years standing, I can recall cases in which the powers given by the new section would have been desirable, as in the case of various sectarian differences, of the long-standing and easily-excited feuds between the castes of the right and left hand, of the recent agitation against a whole tribe or caste, etc. I do not doubt but that the new provision of the law is at least equally—I understand that it is even more—desiderated in other provinces. I am unable, moreover, to concur with those who fear that the introduction of this provision will accentuate or encourage the intolerance of opposed classes who, it is said by objectors, 'are now kept under restraint by the consciousness that the British law allows the free expression of conflicting and even antagonistic opinions' or 'who will become impatient of advice or antagonistic opinions which, under the present law, are perfectly free from criminal liability.' I conceive, rather, that the mere declaration in the law that such wilful promotion of enmity will, in future, be criminally liable, will have a most useful effect not merely by reason of the penalty provided, but also from the fact that the Government, through the law, will have declared its policy and its determination; and I believe that it will have this salutary effect, even though the section remain, like section 298 of the Code, an almost unused provision of the law.

"One last remark is suggested by the minute of dissent of the Hon'ble Rai Bahadur Ananda Charlu. For prosecutions under all the main clauses of this

Bill the sanction of Government will, it is believed, be a necessary preliminary, and my hon'ble friend admits, and rightly admits, that this will be 'something of a guarantee,' presumably against wanton or needless prosecutions. But I regret his remark that the action of Government in such cases 'will mostly depend on the strength with which the case is urged by the District Officer.' I content myself, however—it is all that seems to me necessary—with pointing out that in cases of this nature the tendency of any Government will be to sift proposals with the most jealous care so as to avoid embarking on any prosecution which in itself is unnecessary or undesirable, or which is uncertain in its result; Government itself will, of necessity, be the keenest critic of a case; it is not the strength with which a case is urged, but the intrinsic strength of the case, that will determine the action of Government."

The Hon'ble MR. LATOUCHE said:—"My Lord, I do not propose to repeat or add to what has been said by previous speakers regarding the definition of sedition. In my opinion, the meaning of clause 124A is clear, and it is not difficult for a plain man to understand what sedition is. If such a man does not wish to incur the penalty of sedition, let him abstain from sedition.

"It is because I believe that the proposed provisions will not fetter or restrict the free expression of legitimate criticism and honest opinion that I approve of them. As the Hon'ble the Legal Member has pointed out, the law has not been in any respect substantially altered. During the 28 years that section 124A has been on the Statute-book no instance can be alleged where a person has been wantonly or needlessly vexed by a prosecution under that section, and under British rule there is no ground for supposing or fearing that any one will be needlessly vexed in the future.

"I do not anticipate that the passing of the present Bill will be followed by a crop of prosecutions.

"Rather do I hope that the discussion to which this Bill has given rise will result in an increased sense of responsibility, in greater self-respect, and in greater care in verifying facts on the part of those who undertake to express and direct public opinion.

"If this should be the result, the usefulness and influence of the Press, against which this legislation is not specially directed, will be largely enhanced, while at the same time the principles of toleration and true liberty will be preserved and extended.

"I wish to make a few remarks regarding the new section 153A which the Hon'ble Rai Bahadur Ananda Charlu has in his note of dissent from the Report of the Select Committee characterised as impolitic and dangerous. I consider that the provisions of this clause and of the cognate clause 505 (*c*) are not only necessary for the maintenance of the Queen's peace, but eminently desirable in the interests of the vast majority of the people of India. Peace and tranquillity are the true interests of the people, and the first duty of a Government is to maintain public order and to prevent a disturbance of the public peace.

"The essence of seditious writings and preaching, the element in sedition which demands measures for its punishment and prevention, is that seditious practices are calculated to disturb the tranquillity of the State, to cause groundless alarm to ignorant men, and to excite them to break the peace.

"The people of India is a large phrase, and I speak now only of that portion of the population with which I am best acquainted, and I do not include the educated classes who do not require protection. The great mass of that population is possessed of many estimable and amiable qualities. They are law-abiding and of a kindly nature, but they are ignorant, impressionable and credulous. Such men should be protected against the preaching of sedition.

"The need for protection will, I think, be admitted by all who recall to their recollection the occurrences which took place a few years ago in the eastern districts of the North-Western Provinces. At that time a number of Her Majesty's subjects were filled with feelings of hatred against another class of Her Majesty's subjects, and were instigated to the commission of crimes of violence. In the result the criminals were punished and saw too late that they had been misled.

"It is such persons (ordinarily law-abiding citizens) that the clauses referred to will protect, and in the existing state of society in India these persons need protection.

"One cannot help feeling compassion, not alone for the sufferers from such deeds of violence, but also in a lesser degree for the misguided dupes who committed the crimes. But the mischief-makers who endeavoured to stir up strife between classes, who sought to promote mutual hatred and enmity—these are pernicious citizens, and for the repression of their practices I welcome the provisions of the new clauses."

The Hon'ble SIR GRIFFITH EVANS said :—" The amendments of the Penal Code which are before the Council to-day for discussion deal with three evils—first, attempts to make the people of the country hate or despise the Government; second, attempts to promote hatred between different classes; third, the dissemination of statements or rumours likely to lead to mutiny, tumults or riots.

" The first is dealt with by section 124A, the second by section 153A, the third by section 505.

" I propose to offer some observations upon each of the proposed sections under three heads—first, the evil to be dealt with; second, the remedy proposed; third, the objections to that remedy.

" First, then, as to the evil to be dealt with by clause 124A. The Government of this country is, broadly speaking, a Government of foreigners which has to discharge the gigantic task of governing the inhabitants of this great continent, numbering over 250 millions of Asiatics, mostly ignorant and credulous, comprising many nationalities, creeds and sects.

" I think the verdict of posterity will be that the Government has attempted to rule with justice and to improve the condition of the inhabitants.

" Amongst the boons which they have conferred upon the people are cheap education and the liberty of the Press. Very many, though only a small proportion, of the inhabitants have become educated, some more and some less, and of these many have taken to the Press as an occupation.

" The advantages of free and intelligent criticism and discussion of the acts and measures of Government, and of pointing out abuses and failures and suggesting remedies, are apparent and undeniable, and the liberty of the Press is a household word dear to the heart of every Englishman. I am glad to think that a large number of the newspapers in India, English and Vernacular, have carried out these objects and have discharged their duties as fearless critics to the benefit alike of governors and governed. But a free Press is an exotic in India, and indeed in Asia, and, like plants and animals transplanted into new surroundings, is liable to strange developments.

" For many years a portion of the Native Press, and particularly of the Vernacular Press, has devoted itself to pouring forth a continual stream of calumny and abuse of the British Government in India and to teaching its readers that all

their misfortunes, poverty and miseries arise from a foreign Government, which draws away their wealth and is callous to their miseries, and from whom they can expect neither justice nor sympathy; and they point to a golden age of prosperity and plenty which preceded the incubus of this unrighteous Government.

"Now it needs no argument to prove that writing of this character, whatever the motives or ultimate objects of the writers may be, circulated daily for years amongst a credulous people, must tend to make them hate the cause of all their woes.

"It is a hopeless task for any Government, especially a foreign one, to endeavour to win or retain the affections of the people by just government and solicitude for their benefit, if the minds of the people are daily poisoned with matter of this kind, written in their own language and by men who know how to appeal to their sympathies, credulity and religious feelings.

"The existence of the evil and the necessity of putting it down seem to be admitted by many, if not all, of the European associations who have sent in memorials or notes on this Bill. Their objections are mainly to the remedies to be applied.

"Some of the apologists of the Native Press minimise the evil, while others appear to claim a right to excite as much ill-feeling as they please against the Government so long as they use no direct incitement to violence.

"But although subject people may acquiesce in a Government which they hate so long as it appears irresistible, yet when the time of trouble comes they cannot be expected to stand by it or support it even if they do not actually join the enemy or break out in insurrections. The '*oderint dum metuant* of the Roman Emperor is not a safe maxim of government at any time, still less for an alien minority ruling hundreds of millions of people.

"It is very true that contentment and good-will can only be produced by just and beneficent government and not by repressive legislation; but legislation can put some check on the writers who seek to poison the minds of the people against their rulers and can give the rulers a fairer chance of having the beneficence of their rule recognized.

"Others say, leave this apparent evil alone and treat it as a vent or escape for gases of discontent arising from below which, if confined, might explode.

But to those who have watched it, as I have for thirty years and for twenty years as a member of this Council, it is apparent that this is the work of a small minority who have partaken of the cheap education of our schools and who distil and sell the poisonous product of the ferment in their heads of ill-assimilated and misapplied Western ideas. This opinion is not a hasty one; it is the same as I expressed in this Council in 1878, and as was then expressed in weighty language by the present Advocate-General of Bengal, whose knowledge of the country none can deny and who has never been accused of want of sympathy with its inhabitants. He then said:—

'Having attentively considered these extracts, I am irresistibly led to the conclusion that it is intended by these publications to disseminate disaffection, to excite evil prejudices, to stir up discontent, and to produce mischief of the gravest character: in short, *to render the Government, its officers, and Europeans generally, hateful to the people.* These are evil purposes which should be repressed with a strong hand and their controversy restrained from all further attempt to administer their subtile poison to the lower orders of the people, to saturate their minds with evil thoughts and to arouse their evil passions.'

"Since then the evil has grown greatly.

"So much for the evil. As to the remedy: there existed in 1878 the section 124A of the Penal Code now sought to be amended, and there were doubts as to its construction, and also it was felt that State trials with all their publicity were an objectionable means of dealing with this evil. The Vernacular Press Act was introduced to check license while leaving liberty. It worked well and without hardship, but was repealed in 1882. Since then the mischief has spread rapidly, and at the time of the *Bangobasi* prosecution in 1891 the alteration of the section was under the consideration of the Government. But it was decided first to take the opinion of the Courts as to the construction of the existing section, and whether it could reach the evil. The charge of the then Chief Justice of Bengal showed it could do so, and the recent decisions in Bombay and Allahabad and in the Privy Council have, I think, laid down clearly the proposition that under the section as it stands attempts to excite feelings of hatred and hostility towards the Government are punishable, while disapprobation of its acts in the way of criticism goes free.

"This is as it should be, and personally I should not have thought necessary, had I had any voice in the decision of the matter, to undertake

any revision of the section at the present time, knowing the storm of criticism it would provoke. But the Government has thought it its duty, considering the doubts which so long existed and still exist in the minds of many whose opinion is entitled to much respect as to whether the view taken by the Courts is the correct view of the section, to set these doubts at rest, by definitely adopting in the proposed section the main principle of those decisions, that attempts to excite feelings of hatred and hostility against the Government are attempts to excite feelings of disaffection and are punishable as such.

"Practically speaking, this is what is done by the revised section, and certainly it does not go further than the present decisions, probably not so far as some of them. This is the proposal which is denounced so strongly as dangerous and reactionary.

"As to the objections taken, I will now only notice some of the principal; the Council will hear enough of the details and legal criticisms upon the various amendments.

"One of the objections taken by some of the European associations is that this section should be restricted to the graver class of offences, and that the lighter ones coming within its scope, as I have described it, should be relegated to the chapter of Defamation, and that defamation of Government should be dealt with summarily, like defamation of individuals, instead of being elevated to the dignity of sedition. This is, I understand, the course alluded to by the Hon'ble Mr. Allan Arthur as being preferable. There is much to be said for this view as a means of summary suppression, but in order to carry it out it would be necessary to provide that some of the defences open in cases of defamation of individuals should not be open to the defamers of the Government; otherwise to an indictment for defaming the Government by publishing the statement 'that the existence of the British Raj was the cause of all India's miseries, that it would be better for the country if it had never existed or should cease to exist,' it could be pleaded that the alleged libel was true and that it was for the public benefit to say so. But no Government can submit such questions to the Courts, nor would a trial of such a question either by a jury or a Magistrate be an edifying spectacle or one that could be allowed in any country.

"This is, I understand, admitted, and so to deal with these cases as defamation alterations of the defamation chapter would be necessary. What the exact

alterations would be have not been suggested in any of the notes. It is not to be wondered at that the Government under these circumstances has preferred to take its stand upon the construction of the existing section 124A given by the Courts, in place of taking this new departure, however attractive. That it could be done by alterations in the defamation chapter I quite admit, and also if done it would probably work the desired result, but that it would in any way disarm Native objections I more than doubt.

"Next, it is said that we are going back to the law of seditious libel in England as it stood in 1792 and previously, and that prosecutions of this sort are not of recent years ever instituted in England. I shall leave it to the Legal Member of Council, who has more leisure than I have for such purposes, to deal with the question whether there has been any, and what, change in the English law since 1792. But I wish to point out to the Council that there are other reasons than change of law in England for the result. These are the system of party Government and the fact that the power has passed into the hands of the people, and the Government has become to a great extent a democracy.

"Under the system of party Government and party newspapers, the object of many partizans is to villify the party in power by every possible means, fair or unfair, and so excite such feelings of hatred and contempt for them in the minds of the people as to induce them to turn them out by their votes at the next General Election. But this is not hatred of the Government as by law established in England. The party exciting it hope to get into office themselves and so supply from among their members the Cabinet Ministers for the time being.

"Next, in a democracy, as the power is in the hands of the people, they can practically do what they like by the votes of the majority, and so exciting hatred and contempt against Her Majesty's Ministers has no tendency to any political trouble unless it is attended by exhortations to turn them out by force instead of by votes, or to resist the executive. Thus the evil which exists in India cannot easily exist in a democracy.

"When the Native Press in India complain that they are not allowed by this section to treat the British Government as by law established in India in the same manner as the Opposition Press in England treats the Ministers in office, I can only answer that the conditions are so utterly dissimilar that the complaint is absurd. How a democracy in which the power would be in

the hands of the lowest classes who would have power to tax them out of their lands would suit the great landholders like my friend the Maharaja of Durbhanga I need not pause to enquire, as the question is not within the pale of practical politics; but, if ever that day comes, the newspapers will no doubt have all the license they claim. But I doubt if that will be much consolation to the landholder.

"Next, it is said the words are vague and want definition. To this I answer that both the Law Commission and Sir Fitzjames Stephen refused to define disaffection. The latter says, you cannot define 'insult,' but you know the difference between the familiarity of friendship and the familiarity of insult, though it cannot be defined. So the Courts of Equity would not define fraud, lest fraudulent people should commit frauds outside the definition.

"Thus, when the Native papers say, let us know exactly what we are forbidden to say and we will keep within the exact words of the prohibition, the answer is in plain English and according to the English common law: 'you may not attempt to excite the people to hate or despise the Government by law established; whether what you wrote is such an attempt the tribunal which tries you must decide;' and further it is added that disapprobation of the measures or acts of Government is a different thing from hatred of the Government, just as we may disapprove of many of the actions of our friends without hating them or even ceasing to love them. As the Hon'ble Legal Member has said, if the words of sections are construed without some common-sense, few of us could escape some section of the Penal Code in our daily lives—notably the defamation section, which apparently is capable of being construed so as to include all depreciatory remarks upon the intellectual capacities of our neighbours and acquaintances.

"As to section 153A, I will reserve my remarks on it, as I have an amendment to move. I will only say that, if such a provision was part of the common law of England, it is much more necessary in a country like India with its discordant elements and hostile races and religions. The power to prosecute is placed in the hands of Government to prevent its being abused by private prosecutors and to ensure its being put in force only for the purpose of preserving public tranquillity.

"Next, I come to section 505. The evil here is the dissemination of statements or rumours which are likely to lead to mutiny or violence.

"The power to prosecute is again placed in the hands of Government for the public safety. That some such power should exist in a more workable form than the old section is, I think, conceded. Some of the objections have been met, and some it will be more convenient to consider when we come to the proposed amendments. I will only notice one.

"It is said 'the time has not come to prohibit the telling of the truth in India.' There is no denying the humour of this comment.

"But if the learned authors of it had met a man who had found out that by an accident there was something wrong with the grease for the sepoys' cartridges and who was going to take that information into the sepoy lines with the probable result of an immediate mutiny in which my learned friends, their wives and their children would be slaughtered, I much fear they would have laid violent hands on that man in preference to dying in defence of the principle so neatly enunciated. In such cases—*salus republicæ, suprema lex.*

"The alarm created by the proposals of Government seems to spring from a very slender basis so far as this Bill is concerned, and I confidently trust that if this Bill becomes law all reasonable men will find themselves still in possession of all the liberty of speech and writing which they could reasonably desire.

"If I thought that the Bill would make free discussion of measures and petitions for the redress of grievances penal and leave it to the generosity or discretion of Government to prosecute or not, I certainly should not vote for it. It is with very great regret that I find myself in this matter holding a view opposed to that of the Calcutta Bar, of which I am a member, and which contains so many for whose opinion I entertain the most sincere respect, notably the learned Advocate General. But when dealing with matters of political gravity I have the responsibility on my own shoulders and cannot shift it. Had it been possible, I would gladly have done so."

The Hon'ble RAI BAHADUR P. ANANDA CHARLU said:—"In summing up the discussion on the 21st December last, Your Lordship said that in interposing to prevent sedition you were only acting on behalf of the public, whose interests suffer if the passions of the ignorant are excited and the peace of the country is imperiled. In thus placing the two conditional clauses in immediate juxtaposition, you have but stated the law as laid down by the most eminent Judges of England; for you have recognised that the

exciting of the passions is the cause—the proximate cause as I take it as distinguished from remote antecedent events—and the imperilling of the peace as the effect, *i.e.*, the immediate effect as distinguished from what might be the composite result of a series of intermediate occurrences and acts of other responsible persons. Herein lies the whole distinction, if the law is to remain intelligible. Such is not only the law laid down by eminent Judges, but it is, in reality, the law as laid down for India by the Legislature as expounded through its accredited spokesman Sir James Stephen, then Mr. Stephen, the greatest criminal lawyer of Great Britain by universal and even judicial admission, and an uncompromising foe of tradition and authority merely as such. Those words of Mr. Stephen have been already quoted too often to be unfamiliar at the present day. I must nevertheless quote them from my place here.

"In one part of his speech in proposing the section 124A now in the Penal Code he said:—

'So long as a writer or speaker neither directly nor indirectly suggested or intended to produce the use of force, he did not fall within this section.'

"In another part of his speech he further elaborated his view, which by the way was the view of the Legislature, as follows:—

'Let it be shown that the matter complained of was not consistent with a disposition to obey the law; let it be shown that it was consistent *only* with a disposition *to resist the law by force*, and it did fall under this section. Otherwise *not*.'

"Nothing—let me repeat—can be plainer from these lucid statements than this, *viz.*, that where the excitement of the passions is the proximate cause, producing or capable of producing the use of force, and it imperilled the peace of the country as a natural and proximate effect, the offence is committed. Nothing in any degree short of it—however near to it—*is* an offence. This being precisely what Your Lordship's words implicitly involve, no right-minded man can have anything to say against Your Lordship's Government proceeding to examine the section 124A with *that* view of the law and in order to re-word it in the declared spirit, which is at once unselfish and humane. That an occasion for examining the true meaning of the section has arrived is, to my mind, a matter for congratulation, and I shall welcome it as a godsend, if this opportunity is taken to state or rather *re-state* the law, so as to clearly bring it—if necessary to bring it back—within the declared intentions of the Legislature which

introduced the section, and so as to do away with subtleties and technicalities which stand in the way of that true intention being unerringly given effect to. It would be, I venture to think, to mis-use the opportunity and to drift into slippery ground to go beyond the firm and intelligible position defined by Sir James Stephen so carefully and with so full a grasp of both law and the claims of perspicuity and precision. That the wording now proposed goes vastly beyond that intention and perilously enlarges the scope of the law of sedition is my honest conviction; and I beg to be excused for saying so; for I think that I have no business to be here if I flinch from avowing my convictions. I shall make good my said conviction in detail when later on I shall come to move my amendments.

"In going on with my further remarks at this stage I shall assume that not only has the scope of the offence of sedition been enlarged, but that it is the explicit intention of the Government to do so. It has been pleaded that, when so enlarged, the Indian law will be the same as English law. Whether such an enlargement is or is not an adoption of the English law is, in a sense, a purely academical discussion; for, if any exigencies of the present day necessitate the *extension*, it must take place, be it English law or not, provided, of course, it is intrinsically unobjectionable and free from obscurity. The fact of its being English law or not has only a subordinate use, *i e.*, by supplying a link in the chain of argument for or against the change. But, after all, the change must either stand or fall, according as there are or are not the necessary conditions precedent for it and according as it is sound and intelligible or otherwise.

"Coming back again to the position that the present legislation has been embarked on in the interests of society and of the peace of the country, the question naturally arises, have there been or are there any symptoms of a danger in this direction? I may at once declare that, if there were any ground for apprehending any such danger, I should be the foremost to support any measure that might fitly answer. Myself and those of my countrymen who have spoken out against this measure and whose well-being I should do my best to safeguard have far too substantial interests at stake for me or for them to stand up for a mere sentiment or for what may be calculated to bring them or me harm and danger. We must abdicate our common-sense before doing such a suicidal thing. Fully alive therefore to those substantial interests and with my eyes and ears wide open, I feel bound to declare that there is no danger to

fear—none to need this widening of the section into shadowy regions of speculation as I view it. I have no doubt that Your Lordship had utilised the resources at your command before undertaking this legislation. But, without disparagement, I venture to submit that the information available to Government must be, at least, second-hand, and that, for that reason alone, if for no other, it can at best amount to no more than a presumption and supply a sort of working hypothesis to initiate action upon, but liable to be rebutted by the actual experience and declarations of those whose protection is aimed at and of those who, while entitled to share that protection, possess opportunities at first hand to ascertain and voice the exact state of things and to aver whether the proposed alteration of the law will prove beneficial or prejudicial to public interests. I for one claim to possess that opportunity.

"To begin with, there is a great meaning in the absence of that ubiquitous class of persons who used invariably to bestir themselves under the notion that thereby they would please the Government of the day and make a parade of divergence from the public in pursuit of selfish ends of their own: for the fact shows that even such self-seeking spirits have recognised the peril and quailed before it. There is equal meaning in the fact that the Native officials who were competent to give an opinion, and whom the Government has considered to be worthy of being consulted, have all, with one voice, counselled against this measure. This is not all. The entire non-official European and Eurasian community have, through their mouthpieces, spoken against the measure in unqualified terms; and it is no wonder. With the culture and intelligence they possess, with the great stake they have in the maintenance of the right of manly and frank discussion of public questions to correct errors, to which a bureaucratic system of Government is too prone,—let me add, unwittingly—and with the sense of fairness that should belong to them in taking an unselfish interest in public affairs—they could not be so far hoodwinked or beguiled as to be victims of any deceptive theory that in this respect there could be one law for them and another law for their Indian fellow-subjects; for they, of all men, are sure to recollect that Governments had not hesitated to prosecute even exalted persons, as for an instance Sir Francis Burdett, and even Members of Parliament—a thing as possible here as elsewhere any day, inasmuch as sedition is generally viewed, and rightly viewed, as a political offence, differing both in kind and degree from crimes, involving moral turpitude and grovelling selfishness.

"Another body, justly reputed to be the most staid and (if anything) too cautious, *viz.*, the historic British Indian Association, has come to the front with its unequivocal disapproval of the measure, notwithstanding that the members of that body have in this country the very greatest interest, which would be the very first to be jeopardised in case there was any real sedition here. Perhaps it may even be said with truth that it is *because* they have all that weighty interest and *because* that interest will suffer serious damage if this Bill suppresses the public voice (as its tendency is sincerely believed to be) they have stepped forward, seeing (few can see better than they) that the ogre of sedition is nowhere to be found. Not content with the expression of their own opinion, that influential body called a conference of nearly all the men of light and leading in this city to examine the measure from all standpoints and in all its bearings on the public weal. That conference, too, pronounced unfavourably on this measure. Having been shown the courtesy of being invited to that conference, I was a personal witness to the deep earnestness and the unfeigned fear, which pervaded, of the perilous character of this measure. That conference—be it noted—was presided over by one who holds the first place not only in the people's but in the Government's esteem, unless I am sadly mistaken, and it was composed of scores of persons, each of whom, in the language of Emerson, may count for a million and who possess, in the aggregate, more substantial stake in the way of property and so forth in this country than many of those who may view this measure with complacency. Similarly, other public bodies and the public of Bombay, Madras, Calcutta and other places in open meeting assembled recorded their objection to this measure. On the top of all these exponents of the lay public, the Bar of Calcutta, which is the foremost of its kind in all India, has deprecated this Bill, and the adverse verdict of all other professional bodies is quite in accord with that of the local Bar. Then, again, the leading public organs, the Indian all over the country and all the Anglo-Indian at the spot where the Legislature entitled to pass the Bill is sitting, have condemned it. It will be idle to deny to these organs the character of being the mouthpiece of some section or other of the public. Now, taking all this into account, I shall not be speaking out my mind in perfect frankness if I do not declare that two things are most discernible. First, there is no sedition, and therefore there is no need for any repressive measures. Secondly, the present Bill, while it has proved a standing and demoralising menace to frank and candid discussion of public interests, will itself become, if passed into law, a standing and irritating grievance, as it must amount to a declaration that the

whole of the people in this land, indigenous, domiciled and sojourning, are less than dust in the Government balance.] In saying this I do not lose sight of the fact that all the representations that have reached us have come to us only from the English-knowing classes, and that none has been received ***directly*** from the masses, who are usually set down to be ignorant, and between whom and their educated brethren some sort of antipathy, or at any rate a want of sympathy, is fancied to exist. But I do not also forget that, by not causing the translation and publication of this Bill and the reasons for it, so as to bring them home to the masses, Your Lordship has virtually recognised the English-speaking classes as fairly and fully representing and reflecting the mind of the entire people in this matter. Of one thing at least I feel absolutely sure, that Your Lordship at any rate will not brush aside all the several bodies above referred to as constituting 'the small number of individuals' whom you spoke of as 'out of touch with the sentiments which animate their fellows.'

"I think what is thus a necessary inference from the course adopted by Your Lordship is likewise a fact. One may well ask—and ask in all confidence and fearlessness—if one and all of the bodies that have been loud in the protest are to be pushed aside as unfit to represent those that are called 'the ignorant,' who else are fit and on what credentials? In my humble judgment, there is none such. If there should be any doubt about what would be the attitude of 'the ignorant,' I would venture to make a suggestion and be quite prepared to take all the consequences of its being accepted and acted upon. My suggestion is: let the Bill and the opinions of the members of the Select Committee be translated into the Vernacular languages and brought home to the so-called ignorant. Let a reasonable time be granted to admit of their conveying to us an expression of their ideas on the subject. If at the end of the prescribed period, and as a result of their realising the possibilities and bearings of this legislation on their abiding interests and well-being, the Bill should receive their hearty approbation, by all means let us pass it: but let us not act on any *à priori* theory that they would approve of it or that they know not their own interests or that the several bodies who have already spoken out are not fit to be accepted as their exponents. In the meantime, and in the absence of any such evidence to the contrary, I must hold that it has been conclusively shown to us that the measure runs counter to all sound and weighty opinion in the country, and that its necessity is negatived and its uncertainties and dangers have been laid bare by the very public for the protection of whose interests and safety, in Your Lordship's words, this measure

has been brought forward. Where things have been reduced to this predicament, the course of wisdom open to the Government was set forth in the most unequivocal terms within the last two years. Having to considerably modify the Bills which dealt with juries and legal practitioners, the late Law Member, presumably with Your Lordship's approval as the Head of the Government, said as follows :—

'I think one of the great advantages of the system of legislation which prevails in this country is that we are not obliged, as some other Governments of which we know something practically are, to stick to every proposal which we make, right or wrong, from an instinct of self-preservation ; but that we have the opportunity, and freely use it, of discovering, after we have put our proposals into the form that *primâ facie* recommends itself to ourselves, what the opinions of persons who are capable of giving advice in the matter from the outside are, and are able and willing to accept the advice we receive from outside persons and bodies so far as it commends itself to our judgment. I know it will be said—I know it has been said—that that is a weak thing; that having made up your mind you ought to stick to it, right or wrong. I confess that my opinion (and I am glad to feel that it is the opinion of my colleagues in the Government of India) is very contrary, and that obstinacy of the kind described is a sign of weakness, not of strength, and that it is a proof of strength after having asked for opinions to be able to accept them so far as they seem to be well-founded.'

"I trust—and I hope I do not trust in vain—that the measure now before us may be dealt with on the principles pointed out in the above passage. Dealing with this measure on those declared principles, I cannot help saying that the measure, if it is to be persisted in, should be modified in accordance with the constructive suggestions that have reached us, notably the excellently-matured recommendations of the Defence Association, re-echoed or concurred in by almost every one else who chose to exercise his mind on the subject. Prompted by my anxiety to describe this measure as it at present stands in the most fitting terms, I cannot do better than borrow Your Lordship's well-chosen words that 'I am most strongly of opinion that an Act of this nature is obnoxious in principle, uncertain in operation and not necessary under present circumstances'—words which seem to be quite as fit for this measure as for the now defunct Vernacular Press Act to which Your Lordship applied them.

"This is all I meant to say before I entered the Council. But since then I have heard some remarks made by some of the speakers before me, and they ought not to be passed over in silence. Many of those observations will have

to be dealt with in connection with the amendments I shall beg to submit later, but I wish just now to refer to those points on which I shall not have any other opportunity to have my say. The Hon'ble Mover said that the fact to be borne in mind is that the Government is a responsible Government, and that its critics were irresponsible critics. Yes, nobody denies that the Government is acting under a sense of responsibility, but I am very sorry indeed to notice that the Hon'ble Member has been characterising the critics of this measure as irresponsible critics. If those whose criticisms have been before us are not responsible for conducting the Government, they are responsible for aiding the Government in the maintenance of the peace; they are responsible for their own safety; they are responsible for their own property, to their own children, to their own kith and kin. To put down and describe all these people as irresponsible is to do what to my mind is most improper. Government is undoubtedly responsible, but the people are also responsible for looking at every question the Government deals with, with an eye not only to the responsibility of those conducting the Government, but also with reference to the fact that measures of this kind have a direct bearing upon the welfare of the people, their lives, their liberties and interests.

"Again, I have heard frequent appeals to common-sense as an evident safeguard, neutralising the dreaded results of this measure. But I must suppose that the many hundreds of men who have spoken against the Bill do possess that common-sense as well, and (to put it mildly) it is a grievous impropriety to say that common-sense is the monopoly of the handful of us and must outweigh the accumulated common-sense of them all. They are all cultured men, and quite as cultured as ourselves. The Hon'ble Mover would have done well if he had not indulged in the pretension that we, the handful, are incomparably superior to them all, so numerous.

"I must likewise take serious exception to the Hon'ble Mover's remark that the opinions received by us are mainly from the presidency-towns and must be discounted on that account. Whose fault is it that the masses have not directly expressed themselves? They have been given no opportunity. Anticipating this sort of talk, I have thrown out a challenge. I have asked that the Bill and its Objects and Reasons be translated and published with the dissents that have been recorded by those who claim to reflect their views. Why not accept that challenge and refute the objectors by the event? Let the Hon'ble Mover accept that challenge and act upon it and take the

consequences as I have said I am prepared to do. To talk in the style in which the Hon'ble Member has done, as if the educated section is a section as isolated from their fellow-men as the alien ruling classes, is a grievous mistake, to say the least of it. It must be patent, on the slightest knowledge of the true situation, that almost every resident in the presidency-town has a large circle of relations and friends in the mufassal and meets and converses with them almost every week, in their friendly gatherings, in their dinners and in their feasts, during the numerous auspicious and inauspicious ceremonies and religious rites which are scattered almost over every month through every year. To speak without due regard for these obvious facilities and opportunities for repeated intercourse between those in the presidency-towns and the rest of the provinces and for interchanges of ideas between them, argues a regrettable want of grasp of the actual conditions here. I deeply deplore that gentlemen, purporting to speak for the Government, should commit themselves to faulty and unfounded statements such as the one I am compelled to animadvert upon.

"The Hon'ble Mover has facetiously described what he proscribes by having recourse to a simile. I thank him for it, as it also exactly depicts the injury that the public have a right mainly to complain of. He says that there is no objection for a man to smoke a cigar on the wide maidan, but that no person will be permitted to do so in a powder magazine. I join issue with him there. In the first place, I ask what right has he to deny to any one the right to smoke, even in a powder magazine? Any one that does so takes the risk of doing so. It is his lookout. So long as he takes care not to throw away the stump carelessly in the powder magazine and controls the sparks from escaping, what does it matter? Why should he lose his right? In the second place, let us remember how wide the Hon'ble Mover's powder magazine is. It is, according to him, as wide as the whole country; the bulk of the population who are said to be ignorant, credulous and highly impressionable constitute his inflammable material. One may well ask then, where is that 'maidan' to smoke in? Evidently there is no space left in the country for it to be represented. At any, rate no haunts of men can answer to it. The result then is this. Public speakers and public writers are gravely told to shun the haunts of men and the people at large and publish their utterances where there will be none to hear or read or none will care to hear or read. Is this not, in plain and honest English, a virtual denial of the right, by piling up imaginary fears and fancying powder magazines where none exist?"

The Hon'ble MR. JAMES said:—"My Lord, I was a member of the Select Committee upon this Bill, though unfortunately I arrived only in time for its last sitting, when the amendments were practically complete. And since the receipt of the amendments I have had no time to communicate with the Local Government which I represent on this Council, though at least some of the crimes which led to the introduction of this Bill occurred in my presidency. But I think I can say with confidence that the Bombay Government would strongly support this Bill, even though it has been altered. Speaking for myself, I feel, like Rai Bahadur Ananda Charlu, that I have no business to be here if I do not express my convictions, though my convictions differ a good deal from my hon'ble friend's, especially as regards smoking in powder-magazines. I desire to express just the least feeling of regret that so much has been made of the safeguards provided by the Bill for persons treading on the perilous edge of crime, and that one can detect the least little feeling of apology for some of the clauses, which seems quite unnecessary.

"My Lord, Earl Canning contemplated this Council meeting at places outside of Calcutta, and I could have wished we had met at Patna, Azamgarh, Peshawar, Hyderabad in Sind, Poona or the Moplah Country. I believe we should not have seen one recommendation of the Select Committee, or at least that it would have been modified. Offences under clause 5 should, it is suggested, only be prosecuted 'under the authority of the Government.' I agree that private prosecution should not be allowed, but I would add to the words 'of the Government' the words 'or of the District Magistrate.' This Council should, I submit, recollect that the District Magistrate is the keystone of the fabric of our government. Compared with him, Governors and Councils are merely ornamental excrescences. And the tampering with his position and influence, as our Select Committee has suggested, in its recommendation that he should not take action under clause 5, without a prior reference to the local Secretariat, is, I think I may say without much exaggeration, a blow struck at the fabric of our administration. I admit that cases of actual sedition are sufficiently serious to justify a reference to Government for orders, but clause 5 comes under another chapter, that relating to public tranquillity, which is essentially one for District Magistrates and not for the Secretariats to administer. District Magistrates, of course, remain in touch with the Government and take their orders on matters of public policy from Government, but the responsibility for action should rest, sole and undivided, on the Magistrate. I shall be told, perhaps, that

we have young Magistrates, weak Magistrates and incapable Magistrates. If so, the remedy is simple. Turn them out, as the Bombay Government did the other day to one who, I am told (for I have not seen the papers myself), excused himself for not preventing or dispersing a bloody riot at his door because he was opening his morning's post. But this was surely an exceptional case. The Civil Service of India has been made frequently the theme of admiration by public speakers, to an extent that really makes one blush sometimes. I for one don't claim for us that we are all plaster saints. We are simply honest, hard-working officials, doing our work to the best of our power, and I doubt if any one will have the temerity to say that the present race of District Magistrates are less capable of exercising the same powers and duties as their predecessors, even though—as, indeed, a Lieutenant-Governor once told me himself—owing to the want of backing which they meet with nowadays sometimes in the performance of their very difficult and responsible duties, a race of young District Magistrates is growing up that looks to Codes and law treatises rather than to the exercise of that personal influence which, far more than the laws you pass, and which not over one in a hundred of the people ever heard of, maintains your power in India. Our District Magistrates, taken as a whole, are a body of plain common-sense fair-minded men, Gallios as regards contending sects, who would infinitely prefer to keep their districts quiet without having recourse to prosecutions or other severe measures. Still they must now-a-days have legal sanction for all their acts. Your power to govern India, I repeat, rests on the capacity of your District Magistrates. It is essential that if by their personal influence they cannot, when agitators and mischief-makers are abroad, keep people from flying at one another's throats—and I would like the Council to reflect that for one case of actual rioting that comes to the notice of Government there are hundreds where the personal influence of the Magistrate has nipped disturbances in the bud, kept the peace, and Government has never heard a word about it—if, I say, the Magistrate cannot keep the peace without it, he must have power to strike, on his own responsibility, promptly and quickly. For, in the words of the present Prime Minister, the commencement of disturbances in India must be put down with an unfaltering hand. Even in England the Magistracy, and not the Home Office, are responsible for keeping the peace, as Sir William Harcourt told the House of Commons during the colliery riots in Derbyshire, I think. With increasing facilities for inter-communication between towns and districts, with developing education, with an uncontrolled and, in some cases, a distinctly

seditious Vernacular Press, every day the risk becomes greater and the task of keeping the peace more difficult, and you must strengthen and not weaken your laws and your executive. Of late years we have seen people over large areas in India in a state of unrest, and the old Adam in them is strong and not to be appeased and controlled by platitudes such as fill the papers of objections to this Bill which have been placed before us. As, therefore, the reign of law advances and arbitrary power disappears, so must the legitimate personal influence of the District Magistrate be maintained and increased, and he must not be encouraged to shirk his responsibility by referring for orders to the Secretariat. To put it shortly, when trouble is in the air, and the leaders will not listen to reason and promote strife instead of allaying it, the Magistrate must have power promptly to lock them up.

"While the provisions of the Bill will be found no doubt a most valuable addition to the law, yet in two more instances alterations have been made which are, I fear, open to criticism. For instance, the punishment of imprisonment laid down by clause 124A, which was extended to ten years, has been put back to three, with the object of drawing a broad line between serious and merely contemptible offences. I concurred in the reason and in the alteration, but I suggest that a rider of some kind is necessary. Who is to decide whether a particular case of sedition is serious or contemptible? The Courts? The Courts cannot take cognizance of facts outside those elicited on the trial. How is a Judge to know the inner workings of the local Native society, how honeycombed it is, or otherwise, with seditious poison, whether a severe example is needed, and whether transportation or three months' imprisonment should suffice? And I would hope that a device may yet be found of fixing a minimum of punishment when Government declares a case of sedition serious.

"The next alteration, I regret, is that in the exception to clause 505, for the salvation of newspapers and public speakers, if an editor or a speaker at a public meeting publishes a false report, he is to be free if he can give plausible reasons for saying he believed it and that he had no intention to cause mutiny or disturbance. Such a loophole, I submit, might well have been left closed. I venture to regret that in this matter the views of Sir Antony MacDonnell, Sir Frederick Fryer, Sir Mackworth Young, Mr. Justice Strachey, and last, but not least (if I understand his letter aright), His Honour the Lieutenant-Governor of Bengal, have been set on one side. If it is not too late, I should like to see following the word 'intent' in the excepton 'and without such likelihood

as aforesaid.' Every one setting on foot rumours likely to cause the offences enumerated in clause 505 should learn that he does so at his peril, be they true or be they false. There is yet enough common-sense and feeling of justice left in the Government and their officers not to prosecute in cases of mere accident, or oversight, or ignorance. I cannot but attribute this alteration to the enervating ultra-legal air of Calcutta. We are of course always in a situation of difficulty when legislation of the kind is being undertaken. As pointed out, though in different words, by the Hon'ble Mr. Chalmers, we need only milk-and-water legislation for Bengal—at least for a great part of it. We want strong meat for the Punjab, Sind, the Mahratta Brahmin-ridden Dekkhan, and for the North-Western Provnices. It is easy for gentlemen sitting in comfortable chairs here or in Bar libraries or Association rooms to write philosophic treatises on the liberty of the subject or on freedom of discussion. They have not known, as I have done for a considerable time, the feeling of anxety when the two most important sections of the Native community in a large town were embittered against one another, and when the slightest false move on the part of the Magistrate, the least paltering on his part with any overt act or word tending to exacerbate the situation, might have brought on a terrible collision. For the sake of the people themselves, as Mr. LaTouche has said, the hands of the Magistracy must be strengthened and the Government, as by law established, must have power to check and punish those malicious scoundrels who make mischief between classes and races, and sow feelings of disloyalty towards the Government which has done so much for them. While, therefore, I welcome the Bill, I for one would not have been sorry had it been stronger."

The Hon'ble MR. STEVENS said :—" My Lord, I do not propose to discuss those provisions of this Bill which deal with extra-territorial offences. They appear to be necessary, and will, I presume, be accepted by this Council. But those portions which are intended to amend the law of sedition have naturally led to much discussion—indeed are the outcome of much discussion ; and I think that I ought not to give a silent vote upon the proposal to take them into consideration.

" All parties, my Lord, appear to be agreed in one respect, if only in this one. They hold that the law relating to sedition and cognate matters should be made as plain and simple as possible. There are some who would attain this simplicity by removing the whole subject from the Statute-book. 'The law of sedition' (I have read) 'is an anachronism.' I fear that the time is not ripe for

the adoption of this course! There are others who think that the wiser plan would be to be content with the law as it now stands, since it has been made clear by the interpretations of the highest Courts. There is much to be said in favour of this opinion. The third way is to endeavour to take advantage of the recent interpretations, and to increase their authority and add to their definiteness by casting them in the more concise form of substantive law. This last method has this advantage, that the opportunity may be taken to supply defects which the judicial decisions could not touch because they were irrelevant to the cases before the Courts. And I see that there is a considerable weight of judicial opinion in favour of legislation. Mr. Justice Strachey, notwithstanding (or perhaps because of) the infinite pains which he took to examine and explain the existing law, has expressed himself very decidedly on this point. I think, however, that I should be wasting the time of the Council if I were to discuss this matter further. We are not now in the position of having to decide whether there should or should not be legislation. The Bill has been introduced, and cannot possibly be abandoned. All that we can do is to see whether the Bill, as it now stands before the Council, is sufficient to safeguard the interests of the public while not likely to endanger the safety of any individual who may honestly discuss political affairs.

"The Select Committee, with the approval of the Government, have very carefully reconsidered the Bill by the light of numerous criticisms, some of them of great weight. Several important modifications have been the result; all of these appear to be improvements in either substance or language.

"It was strongly urged upon us that the term 'Government' should be struck out, and 'Government as by law established' substituted. This has been done.

"The critics thought that the new offence of setting class against class was in its nature akin rather to offences against public tranquillity than to sedition. We accepted the suggestion and drafted a new section. At the same time, the maximum punishment was reduced to two years' imprisonment. In fixing this period regard was had to a new clause in the Criminal Procedure Code Amendment Bill, which has been before the public for some time. This clause provides that a person offending for the first time may, instead of being sentenced, be called upon to give security, either with or without sureties, to appear and receive judgment when required.

"The term 'ill-will' in clause 124A was strongly objected to as being too vague. The Select Committee have removed it.

"Fault was found with the original draft in that the maximum term of imprisonment under this clause had been raised from three years to ten. This change had not been made without reason, but the Committee restored the original term.

"The *explanations* have been enlarged and made fuller.

"Further, the *exception* to clause 505 has been much modified with the object of removing the misgivings which had been expressed as to the probable working of the clause.

"All these changes show sufficiently clearly how ready the Government and the Select Committee have been to consider and accept criticisms not inconsistent with the objects and principles of the Bill. It is disappointing to find how little importance is now attached by the less candid of the critics to the modifications which, before they were accepted, were pressed with so much urgency.

"On one point of great importance the majority of the Select Committee could not give way. They did not think it right that the operation of clause 124A should be restricted to such direct attacks on the Government as constitute an excitement to disaffection. In their judgment, it is only less injurious to the public welfare to permit the dissemination of writings or the utterance of speeches the object and tendency of which must be to bring Her Majesty and the Government established by law into hatred and contempt.

"I will not anticipate the amendments of which notice has been given, but I trust that the Bill, with its main principles unaffected, will be passed by the Council. Such a law will, I am persuaded, be perfectly compatible with the existence of a free and strong Press, at once a patriotic leader of public opinion and a respected coadjutor of the Government.

"I say this with the more boldness because my desire for a sound and efficient Native Press has long been known, and the latest expression of it has received the public approval of Your Excellency.

"I think that the safeguards against possible abuses are as strong as they well can be. Every conviction and sentence will run the gauntlet of appeal and

revision. Though the Government can mitigate or remit punishments, it is powerless to inflict them; in this respect the influence of the Courts is paramount. No prosecution under section 124A can now lie without the sanction of Government, and in the amended Criminal Procedure Code presented this day it will be found that due provision of the same kind is proposed. Attempts are (it is true) being made to minimize the effect of this provision. The Hon'ble Member (Mr. Ananda Charlu) in his minute of dissent says that in the case of clauses 153A and 505 the value of the guarantee 'will mostly depend on the strength with which the case is urged by the District Officer;' he fears that, in the face of a strong representation by such an official, 'the Government would, naturally and perhaps not improperly, hesitate to take upon itself the responsibility of withholding sanction.' I venture, in concurrence with the Hon'ble Mr. Nicholson, to think that this apprehension has no foundation whatever, either in experience or in probability. The Government will never make its sanction depend on the urgency of any subordinate officer.

"It is true enough that in some matters the Government may have to depend on a local officer for the facts, and may possibly be misled by him: but the present case is obviously not one of these, for the words on which the prosecution would be based must be before the Government. The responsibility of the Government will be direct and substantial.

"The Hon'ble Member, however, goes on to admit that 'the mischief of these sections lies not so much in the natural results which will follow, as in the unnatural and exaggerated dread they would undesirably inspire in most cases.' I feel sure, my Lord, that the Hon'ble Member and others who, like him, enjoy the confidence of important sections of their fellow countrymen, will, in the interests of those whom they represent, point out to them how 'undesirable' this factitious and 'exaggerated dread' is, and instruct them to turn their minds to those 'natural results' which the Hon'ble Member himself admits to be comparatively free from mischief, and which we hope will be highly beneficial.

"The latest contribution to the controversy on the proposed legislation is a letter bearing the signature of the junior member of the Calcutta Bar, and purporting to come from that body. From this paper we learn that, in the opinion of its learned authors, clause 124A as drafted will, without doubt, render liable to transportation for life a writer whose own loyalty, and the

absence of any wish or intention on whose part to tamper with the loyalty or true allegiance of others, are indisputable. The result of this Bill (we are told), if passed into law, will make it penal amongst other things—

(*1*) effectively to criticise the policy of the Government with reference, for example, to the present war beyond the frontier;

(*2*) effectively to oppose and to give true utterance to the feelings of the people, or a section of the people, against a proposed tax that may be considered oppressive;

(*3*) to present a petition for the redress of serious grievances, showing the existence of such grievance hitherto unredressed.

"I will not stop, my Lord, to enquire what meaning is to be attached to the word 'effectively' in the above extract. I will merely say that I have done my best, as a layman, to consider the extract with the draft clause, and really cannot find that in order to fairly and reasonably criticise the frontier war, to propose fair and reasonable arguments against unpopular taxation, or to prepare a petition for the redress of grievances, it is necessary for the critic or the opponent or the petitioner (as the case may be) to 'bring or attempt to bring into hatred or contempt, or excite or attempt to excite disaffection towards, Her Majesty or the Government established by law in British India.'

"The majority of the Judges who have recorded their opinions accepted the clause even as it originally stood.

"It has been conclusively shown by the Hon'ble Member in charge of the Bill, with the assent of Sir Griffith Evans, that as it now stands it does not go beyond the interpretations given by the Courts to the existing law. Yet we see politicians proclaiming that they have been 'gagged and muzzled' with as much energy and volubility as if the judgments had never been given!

"And so, my Lord, I believe it will be when this Bill has passed into law."

The Hon'ble BABU JOY GOBIND LAW said:—"My Lord, there does not appear to me that there is any sufficient reason for the changes that are proposed to be made in the existing law. Whatever difficulties may have formerly existed in the interpretation of the present sedition law have been cleared up by the decisions of some of the highest Courts. If, my Lord, it is intended to catch the small fry of ignorant and irresponsible writers whose productions so often

betray their ignorance, it is not worth the trouble, for no sensible man believes in such writings and the writers may well be left to 'stew in their own juice.' I think a great deal too much stress has been laid upon such writings. But, my Lord, no Government is infallible, and situated as is the Government of India in respect of a heterogeneous population, to which it is alien, and whose inner thoughts and sentiments are but imperfectly understood, I say that it is extremely desirable, nay essential, for the good government of the country that it should have as many sources of information open to it as possible, irrespective of official sources. If the Bill is passed in its entirety, these sources will, it is apprehended, be no longer available to the same extent, and what would be left may be something colourless and unreal, something manufactured to order to suit the new restrictions in the law. Therefore, my Lord, it does appear to me that a policy of restrictions such as are proposed in the Bill is not one that is best calculated to secure the ends of good government and the contentment of the people."

The Hon'ble PANDIT BISHAMBAR NATH said:—"I have listened with great attention and interest to the most able and exhaustive speech just delivered by the Hon'ble the Legal Member. I notice a chorus of felicitation has proceeded here, in respect of the Bill, from some of the Hon'ble Members who are responsible for giving a sound advice to Your Excellency's Government.

"Before I proceed to offer a few general observations in connection with the proposed amendments in the law of sedition, I feel, I am bound, both as a citizen, and as one associated with this Council, to express my deep sense of thankfulness to the Government of India for its wise decision not to re-enact any Press law on the lines of the Act of 1878, which, I think, was certainly a blot upon the Indian Statute-book, and another instance of which, I trust, will never recur again even in a different shape. I must also say that I heard with great satisfaction the assurance announced by Your Excellency and the Hon'ble the Legal Member, at the sitting of this Council held on the 21st December last, that it was not the intention of the Government of India to check a free expression of opinion or to restrict in any way the exercise of the freedom of speech within proper and legitimate bounds.

"The measure having now reached rather an advanced stage, it would, I am afraid, serve no practical purpose if I were to say that it came upon us

somewhat abruptly. Indeed, we were taken by surprise, as we had no previous notice of the proposed amendments.

"When I submitted a short note on the subject towards the end of December last, I purposely refrained from offering any comments upon the necessity or policy that has dictated the repeal of section 124A, with certain other alterations. It strikes me that the Government of India feels itself justified in forcing its hands into the matter, in consequence of what unfortunately took place some time ago. It is, I presume, with the object of making the law effective that it has been deemed expedient to introduce an additional element of rigour into section 124A, to create a new offence in the form of the amended section 153A and to re-cast section 505.

"As if these alterations were not enough, certain other changes have been made simultaneously in the Criminal Procedure Code as well, to which I think I cannot refer here in detail with propriety. Regard being had to the grave apprehension and alarm felt in the mind of the general public in consequence of the State trials we had had recently, if any alteration was required to be made in the existing law, it was, I venture to submit, necessary in the direction of *leniency* and not of *stringency*.

"The proposed amendments are certainly not calculated to soften the rigour of the law. The new section 124A in its present form is no improvement upon the old one, which, it has been observed, is wanting in precision. Judging by the results, the section as it stood before did answer its object well for all practical purposes. The late prosecutions were not hampered at all, owing to any supposed radical or technical defect in the section which, it is to be remembered, had been carefully considered both by Sir James Fitzjames Stephen and by Sir Barnes Peacock when it was first imported into the Code in 1870. As to the Indian Penal Code itself, it is needless to say it is regarded generally as a model of clear drafting, characterised as it is by a scientific arrangement. The section, says a lawyer, 'is very carefully drawn, so as to represent the law in England since Mr. Fox's Libel Act of 1792.'

"It is true the three High Courts which had occasion to discuss the interpretation of the term 'disaffection' did not construe it rather in a uniform sense. But that difficulty, I apprehend, must continue still to stare us in the face, as the term has been left practically undefined in spite of a divergence of opinion noticeable upon that crucial point in the judgments of those Courts.

"We do not want to know what the expression 'disaffection' *includes*, but what it *means* precisely. It may as well be observed parenthetically that according to the amended section (124A) the unlawful intention is to be of the essence of the offence contemplated by it, though it may be argued, as has been very appropriately observed by the Hon'ble Sir Antony MacDonnell, that 'the evil to be repressed being so great and touching the foundations of order, the test should be the external character of the act, rather than the actor's subjective or mental state.'

"I notice some critics have even gone so far as to hazard an assertion that the law of sedition now proposed to be brought into accord with that of seditious libel, as understood in England, does not, in fact, harmonize with the latter system, which, it is pointed out, has been much tempered in modern times with the humanizing effects of a liberty-loving civilization, and that so great is the sanctity attached there to the freedom of speech, that trials arising out of the offence of seditious language have of late been far and few between.

"I must confess I myself have not been able to test sufficiently the correctness of the assertion, but what I could gather from such scanty materials as I happened to lay my hands upon, is that the law in Great Britain has not been systematically codified or logically arranged in a compact form. Attempts at codification having proved abortive on a previous occasion, the law lies still in a diffused state in the decisions of several sedition cases by distinguished Judges, from which it appears that 'the criminal intention and incitement to violence against constitutional authority' are conditions essential for the purpose of constituting the offence of sedition. That being so, the proposed amendment, which introduces terms of an extremely vague and ambiguous character, such as 'hatred, contempt, enmity' and the like, is not in consonance with the English law upon the subject. The result is that the existing section has been dangerously widened, so as to imperil seriously the liberty of Press and speech, and interfere with all open and honest criticism of public measures, which is essential for helping the Government in effecting necessary reforms or rectifying administrative errors.

"I am aware that almost all the Heads of Administrations, the Local Governments and the Judges of several High Courts have approved of the amendments generally. No doubt, their opinions are entitled to great respect and weight, but any adverse decision arrived at by them, simply from an administrative point of view, would, if accepted, operate injuriously upon the liberty of the subject.

"Against the weight of official opinion there is a remarkable and an unprecedental unanimity amongst all classes of Her Majesty's subjects, including the Bar, the Press and the members of non-official Anglo-Indian community, in condemning the amendments as being exceptionally severe and uncalled-for. Their views, and the opinion enunciated by a majority of the learned Judges of the Calcutta High Court, are, I think, entitled to consideration.

"As the combined and cumulative effect of these obnoxious amendments would, I apprehend, be to revive indirectly and in a different form the evils to which an attempt to re-enact the Vernacular Press Act might have led, with all its repressive consequences, it is desirable to revise the measure, making the language of the law so precise and certain as to leave no room for doubt or ambiguity in construing its meaning."

The Hon'ble MR. SAYANI said:—"My Lord, I have reluctantly come to the conclusion that the Bill now before the Council should either be dropped altogether, or postponed to some future date, or, if neither of the above courses is possible, it should be referred back to the Select Committee for re-consideration.

"The Bill, although a short one, is of a serious character. It has arrested the attention both of the European and Native communities, and has been discussed by the public generally. It has been commented upon by public bodies and in the Press, both Anglo-Indian and Vernacular. It is obvious, therefore, that this Bill is regarded as a measure calculated to seriously affect vital interests. It is, therefore, the duty both of Government and of this Council to give to this measure their most careful consideration. This Council ostensibly is responsible for legislative measures, but no measure can be introduced in this Council, except by or with the consent of Government, and practically no measure can be passed by this Council except with the consent of Government, as Government and the official members constitute the majority. I, therefore, request the most careful consideration both of Government and of this Council to this measure.

"Before examining the principle of this Bill, I will briefly refer to a few collateral points bearing upon it. It is believed to be the opinion of some persons, who are educated, cultured, experienced, well-meaning and sympathetic, that it is desirable that Government should be invested by the Legislature with plenary powers, but that such powers need not be used by Government unless

there is urgent necessity for doing so. But these persons should remember that Government, that is, the chief executive authority in each centre, cannot personally administer the whole of the centre for which it is ostensibly responsible, and that the powers nominally given to them have practically to be delegated by them to others who may not be equally educated, cultured, experienced or sympathetic; that no human administration, however well devised and however carefully recruited, can possibly be perfect, that the mere fact of passing an examination does not make a ripe administrator; that years of hard work and close observation are requisite for the purpose; that training is as essentially necessary as an educational test; and that an administrator is not usually born, but has to be both educated and trained up to. It is not safe, therefore, to place plenary powers in the hands of every one, simply because he happens to be a Government servant. It must also be remembered that India is a vast continent and the habits and circumstances of all the persons inhabiting it are not identical. It must also be remembered that because an insignificant part of the country or an infinitessimal portion of its inhabitants have to be, on an occasion, kept strict in hand, it does not necessarily follow that the whole country or that all its inhabitants should be treated with the same rigour. It is true that it is difficult to legislate for a particular division of the country or for a particular portion or class of its inhabitants. But the proper course is that the rigour of the law should be softened and its provisions should be so hemmed in as to prevent the law from operating harshly. It must also be remembered that India is a peculiar country, and that it is inexpedient to put it under all the rigorous measures of Europe, and that, if it is necessary to import some of these measures, care should be taken that simultaneously with the introduction of such measures all the concomitant safeguards obtaining in Europe should also be introduced. It is inadvisable, for example, to work the proposed law relating to seditious offences and offences against public tranquillity without at the same time giving the accused the privileges which are given in England, where a grand jury, consisting of the fellow-subjects of the accused, has first to find a true bill, then the accused has to be tried before a jury of his fellow-subjects, and the persons prosecuting him, the persons giving evidence against him, the persons judging him, are all his fellow-subjects, and the whole thing, moreover, is keenly watched by a strong public opinion, and, lastly, Parliament is near at hand to put in an immediate and effective interference.

"Assuming, however, that the proposed legislation is necessary by reason

of the non-efficiency or ambiguity of the existing law, it is respectfully submitted that the present is not an opportune time for undertaking such legislation. For some time past India has been subjected to a succession of calamities, each heavy enough in itself to exhaust the patience and to disturb the equanimity of even such a mild nation as the Indians. There has been a famine in the land, which has been admitted to be the greatest calamity of this century. There has been plague, than which a more hateful malady does not exist on the surface of this earth. There has been an earthquake which was sufficient to unhinge the equanimity of even the most resigned hearts. In addition to these supernatural calamities, there has been a bloody warfare on the North-West Frontier. In spite of all these peace-disturbing calamities, profound peace has prevailed throughout the land, and the people have borne their misfortunes with patient endurance and unswerving loyalty to Government. Government—British, enlightened, generous and sympathetic Government—ought to take into consideration these important facts and put off passing such a measure, assuming it to be necessary, to some future period. At the present juncture the people are naturally inclined to regard this measure as an additional misfortune. The misfortunes of the people deserve sympathy. Their loyalty deserves consideration. Nothing will be lost by a postponement of the intended legislation. Urgency has not been pleaded, much less made out.

"Experience teaches that whenever the Vernacular Press is bodily against an intended measure, it is an unmistakable sign that such measure is unpopular with the general Native public; further, that whenever the Anglo-Indian Press joins the Vernacular Press in opposing an intended measure, it may be safely concluded that such measure is not an advisable one, and that it is better to postpone, if not altogether to drop, it. It is sometimes said that the Vernacular Press does not represent popular voice; that it represents only the educated natives who form but a small minority of the people. It is true that in India the proportion of the educated to the uneducated is not the same as it is in Europe. But it is also true that in no country in the world are all the inhabitants educated and that for all practical purposes the educated classes are the leaders in all countries, and India is not an exception to this general rule. In fact, in India the respect for the educated has from ancient times extended even to veneration. At any rate education is a factor which cannot be entirely ignored. The Vernacular Press is but one of the fruits of education which it has been the noble policy of British rulers to foster in India. It is also sometimes said that the educated classes in this country are disloyal. This general statement is

without foundation. Indeed, there is no single class in India which is so loyal to Government as these educated classes, inasmuch as their interests, their aspirations and their sympathies are all intimately connected, even bound together, with the existence and maintenance of British rule in India. These classes have been brought into existence by that rule; they flourish under its ægis and without it they will be swept off the face of the earth. The educated are, moreover, the true, correct and sympathetic interpreters between the rulers and the ruled and are a necessary aid to the proper administration of the country.

"The Bill, moreover, is a retrograde measure. The Vernacular Press Act was repealed and the Press was declared free. That measure of repeal was one which will ever redound to the credit of British rule in India so long as history continues to be read. The Bill now proposed to be passed is regarded by the people as practically re-enacting the Press Act, if not even going further.

"Referring now to the reasons advanced in favour of the proposed legislation, it is a well understood principle in such matters that before Government interposes it should clearly be ascertained that, if Government does not interfere, public interests will undoubtedly suffer and the peace of the country be seriously imperilled. As a matter of fact, public interests are not suffering and the peace of the country is not imperilled at all. Public passions are not excited, the people are as quiet as possible, there is no sedition and consequently there is no necessity for repressive measures. It is stated—

'recent events in India have called prominent attention to the law relating to seditious utterances and writings. We have had anxiously to consider the state of the law regarding these matters and to decide whether, and in what respects, it required amendment .....The second [course] was to amend the general law relating to sedition and cognate offences, so as to make it efficient for its purpose....., ...We have come to the conclusion that the second course is the right one for us to take.....But we are also determined that the law shall not be a dead-letter and that offenders against the law of the land shall be capable of being promptly brought to book.....I cannot say that that section [124A] strikes me as a model of clear drafting.....The law might be expressed in clearer and less equivocal terms. When law is codified, the codes should be as explicit as possible.....Moreover, decisions [of the Calcutta, Bombay and Allahabad Judges] are not technically binding on other High Courts.'

"The reasons above quoted might be briefly stated to be (*1*) that the present law is not a model of clear drafting, and (*2*) that the decisions of the three High Courts are not binding on the other High Courts.

"Taking the latter reason first, the answer is, firstly, that it is extremely probable, nay almost certain, that the other High Courts will follow the 'consentient' and well-considered judgments of the three High Courts, and, secondly, that there was no danger, nor even inexpediency, in waiting for the decision of the remaining High Courts. As to the former reason, that the present section is not a model of clear drafting, the answer is that it has been considered and interpreted by three High Courts, and a statute as interpreted by a current of judicial decisions is, as a rule, much better understood and much better applied than a substituted piece of fresh legislation, which has in its turn to undergo the same process, as is abundantly evident from the history of English law. It is worthy of remark here that although the wording of the present section 124A has been, as above noticed, found fault with, the proposed substitute is no better. In fact, the proposed section 124A makes use of the words 'hatred,' 'contempt' and 'disaffection.' How far are these terms inclusive, exclusive or co-extensive nowhere appears in the proposed Bill. It is submitted, therefore, that the reasons given for undertaking fresh legislation are neither weighty nor urgent. The case for the proposed sections 108A, 153A and 505 is, if possible, still weaker. No urgent necessity, it is submitted, has been made out for their enactment. In fact, the whole of the proposed legislation might have been well left alone, or, at any rate, postponed until the revision of the Indian Penal Code which, it is understood, will shortly be taken in hand. Indeed, it is admitted that 'the interpretation of the section [124A] has recently been discussed before the Calcutta, Bombay and Allahabad High Courts,' who 'have *substantially agreed in the interpretation,*' and that the 'proposed new section *in no wise alters the law at present in force in India.*'

"Referring now to the sections of the Bill so far as is necessary to do so for the purposes of considering the same in general, it is true that Government have power by the existing law to punish its Indian subjects wherever such subjects may happen to commit offences, when such subjects return to British India. But unless the offences committed outside British India are of the nature of offences from the time immemorial recognised as the main and inexcusable offences against the laws of natural justice, such as murder, it is manifestly inexpedient, and even unfair, to take notice of them in the country of birth or domicile. For example, suppose a person residing in British India goes to the United States, resides there for a long period, and while so resident makes a speech, in the course of which in the heat of the moment he utters

words which under the proposed legislation might be punishable under section 124A or section 153A or section 505, or has a quarrel in the United States, in the course of which he causes hurt to a person there: after some years he returns to British India. Will it be reasonable to prosecute him under the proposed legislation? Again, if an Indian subject goes to England and whilst resident there he makes a speech consonant with the liberty and freedom common in England. He then returns to British India. Will it be reasonable or fair or expedient to prosecute him under the proposed legislation? Ought the British Indian Government, strong and powerful and great as it is, condescend to notice that speech and institute proceedings here? That person's European fellow subjects will not under similar circumstances be liable to be taken up at all. That person's fellow-subjects in England will also be free from any such liability. Will not the prosecution in British India of the Indian subjects mean that even in England, that thrice-blessed island, the land of liberty and progress, three several sets of persons doing similar acts, it may be even jointly doing the same act, will be liable to be differently treated? Will not this also mean that a person for doing a certain act in England may not be prosecuted in England, but may on his return to British India be prosecuted and punished for it in British India at the instance of the British Indian Government which is subordinate to the British Government? Will this be a dignified proceeding? England paid millions of hard-earned money for the emancipation of negro slavery. Englishmen deservedly boast that any one on landing on their country's shores, by the very fact of his landing there, becomes a free man. Will Englishmen, if once awakened to a sense of such a differentiating treatment, tolerate such a thing? Again, in these days of rapid communication and exchange of thought, will it be possible for the Indian Press to abstain from reproducing the views which may from time to time be expressed in the Press in England? It is a well-known fact that newspapers in England express their views with commendable candour and fearlessness. These views, if reproduced in India, will fall under the proposed legislation. Is the Press here to be prosecuted, or is the importation or circulation of the English papers to be prohibited? Again, it should be remembered that the political Government in England is carried on by means of Party politics inside the Houses of Parliament aided by Party Press outside. Both parties hit hard. The Englishmen in India naturally take interest in home politics. The Anglo-Indian Press necessarily refers to it and offers criticism. Will it be right or proper to prevent them from doing so? Again, the Press at home criticises, and very

properly, upon Indian matters. Will it be fair to require the Press out here to remain silent and not to reply? The fact that persons other than Indian subjects cannot be proceeded against under the proposed legislation as above pointed out will create an invidious distinction. It will mean that there is one law for one set of persons and another law for another set of persons. In fact, the proposed legislation is directly at variance with the principle of *lex loci*. In England it is believed Courts will take cognisance only of such torts committed abroad as are torts in England as well as in foreign countries in the same case.

"Again, Stephen's *Criminal Digest*, article 98, defines what is not a seditious intention. The new *explanations* in the proposed law are inadequate for the purpose.

"It is doubtful if the words 'measure or action' include also omission or neglect. It may reasonably be asked, therefore, for instance, that since the grievances of third class railway passengers cannot be regarded as directly due to any measures of Government nor to any action on the part of Government but that they may possibly be regarded as due to neglect on the part of Government to awaken the railway companies to a sense of their responsibility, will criticism in regard to such grievances be protected under the strict letter of the proposed *explanation* 2? Again, supposing a person says that the India Council should be abolished. Now the India Council is neither a measure nor an action of Government. It is an integral part of the governing machinery. Is the person above referred to protected by the *explanation*? Again, it is doubtful whether the words 'measure or action' include institutions and departments. Is criticism on institutions and departments protected? If a person wants to say that the present system of administration is costly and recommends some other system, will he be protected? The wording of the proposed legislation goes far beyond the expressed intentions of the framers of the existing section 124A and the scope of the law of sedition is vastly enlarged; and this extension is neither in the interests of society nor of the peace of the country. On the contrary, it is calculated seriously to endanger the right of manly and frank discussion of public questions. Again, take the proposed section 153A. The statement of a racial or a religious grievance is not protected. The social reformers in India advocate widow re-marriage. This advocacy does excite hatred and animosity. So also the social conference proceedings do rouse feelings of enmity towards reformers.

So also the vegetarian movement, the Brahmo-Somaj movement, the monotheism movement, the anti-idolatry movement, and the Prarathna Somaj movement do excite hatred and contempt. Are all these movements to be stopped? Again, take the proposed section 505. Cases under the proposed sections 124A and 153A, respectively, might fall under the proposed section 505. The result will be that in one and the same case the sections will operate differently. Again, if a *bonâ fide* statement makes a soldier or sailor to fail in his duty, should the person making the statement be punished? Will it not give rise, and properly, to a retort—why should the soldier or sailor forget his duty? Again, the proposed section 505 refers to three kinds of *intent*. If that intent is present, even *bonâ fides*, it is apprehended, will not protect. Again, what is to be done with statements *likely* to lead to the results mentioned in the proposed section 505 if such statements are made *bonâ fide*? The *exception* is silent on the matter. This is rightly regarded as a grievous omission. The section as it at present stands may possibly provide soldiers and sailors with an excuse or incentive to disregard their duty or to commit an offence? Indeed, any mischievous person may bring any one into trouble by acting disobediently or turbulently although no causal relation can be established between the writing and the act of disobedience or turbulence. Again, it is difficult to understand what is meant by the words 'in his duty as such.' Suppose a soldier or a sailor is employed in plague operations or in extinguishing a fire, and suppose he misbehaves, is criticism on his conduct criminal because it is likely to induce him to fail in his duty? Innumerable illustrations may be cited to show that the proposed section will be unworkable, that is, it may be condemned on the same ground on which the present law has been condemned in the speech made on the 21st December last in favour of the proposed new legislation. With all due deference, therefore, it is submitted that the proposed legislation is not a well-considered one, that it is not calculated to work smoothly, and that it will give rise to endless complications. It is to be hoped, therefore, that the proposed Bill will either be dropped altogether or postponed and considered along with the proposed revision of the Indian Penal Code, or at any rate referred back to the Select Committee for re-consideration. Although it is a short Bill consisting only of six sections, two Hon'ble Members had to dissent from it, and no less than five different Hon'ble Members have found it necessary to send in notices of amendments, and the number of such amendments is not insignificant. As a rule, every Bill is referred to a Select Committee, who thrash it out so fully that

usually the Council does not find much difficulty in disposing of it. The present Bill is an exception. It will be difficult to amend it in Council so as to put it in a proper shape, even after all the amendments have been duly put, considered and voted upon. It will, therefore, facilitate matters, if this Bill is to be proceeded with, to refer it back to the Select Committee for re-consideration."

The Hon'ble MR. RIVAZ said:—"I have only a very few general remarks to make on the Bill before the Council. The proposed amendments of the Indian Penal Code were made after consultation with the executive authorities who are responsible for the good government of this country, and I do not see how any impartial critic can regard them as going beyond what is absolutely necessary to support lawful authority and the prevention and dissemination of seditious matter which is intended to excite disaffection or to stir up dangerous strife. As regards section 124A, the Hon'ble Legal Member and the Hon'ble Sir Griffith Evans have pointed out that the new section does not extend the existing law regarding sedition, but only expresses it in clearer language. The new section 153A provides means, the necessity for which has been forcibly demonstrated by recent events, for taking prompt action towards checking the incitement of dangerous, racial or religious animosity, and I fail to see how this section will have the effect, which the Hon'ble Rai Bahadur Ananda Charlu anticipates, of proving detrimental to undoubted rights or useful work. As regards section 505, I need only repeat, what the Hon'ble Mr. Chalmers has said, that at all events as it now stands as altered by the Select Committee no writer or speaker who acts in good faith need fear it. All the proposed amendments of the Penal Code have therefore my full support. It must be remembered that no prosecution can be instituted under any of the three sections I have referred to without the previous sanction of the Government; but this is a safeguard which, with all deference to what my friend the Hon'ble Mr. James has said on the subject, I think is a desirable one. The apprehensions which some Hon'ble Members seem to entertain that the intention and object of the Government in making the proposed amendments are to repress legitimate freedom of speech or writing are, I need hardly say, absolutely groundless."

The Hon'ble SIR ARTHUR TREVOR said:—"My Lord, I do not think I can usefully attempt to add anything to the arguments which have been used in support of the Bill, but, as it has met with so much hostile criticism, I think it right to say that I support it generally, not only as a member of the Executive

Government as might perhaps be assumed if I merely recorded a silent vote, but also from personal conviction, which has been considerably strengthened by the course of the discussion."

The Hon'ble MAJOR-GENERAL SIR EDWIN COLLEN said:—"I did not intend to speak during this debate, but there are one or two points in the speech of the Hon'ble Rai Bahadur Ananda Charlu upon which I wish to offer a few observations, although of the briefest character. The first point is his declaration that there is no such thing as sedition in India, and that such a thing does not exist. I do not know where my Hon'ble friend derives his information from, but I am afraid I cannot agree with him. It has been my duty for many years past to study the utterances of the Press of this country, and although one must allow that a large section of the Press is marked in its writings with loyalty and intelligence, yet it can hardly be denied that at least some of the utterances of that Press are of a distinctly seditious character, however we may define the word 'sedition.' Can it be said that the dissemination of statements of this character is not dangerous to an uninformed and credulous people, or that such utterances conveyed, for example, to the minds of our native army, false and ridiculous as many of the statements may be, do not tend to sap that loyalty of which we are so justly proud, can it be said that those utterances are not injurious to the discipline of that great military class, the native army of India, whose loyalty, valour, and discipline have never been more conspicuous than at the present time? But my friend's second declaration was an especially alarming one. He announced his general intention of smoking in powder magazines, and he appeared to think that so long as he did not drop his lighted cigar in a powder barrel there was no harm done; but I must remind him that, even with those excellent cigars which are manufactured in Southern India, sparks occasionally fall from them, and, though we should be sorry to restrain my Hon'ble friend's personal liberty, I do not think we shall allow him to smoke in our military magazines, or even in his own particular private powder magazine. I rather think that such a proceeding on his part would come under the section of causing alarm to the public. My Lord, I believe that the provisions of the Bill when they become law will make for peace and tranquillity in India. I welcome clause 505, because I believe it is likely to protect the military and naval forces from the insidious attempts of agitators. I am not able to agree with my friend the Hon'ble Mr. Sayani that there is anything in that section which is likely to induce the offences which that clause is framed to meet; and I venture to think

that in due time those who now oppose the provisions of this Bill will become convinced that it is a wise and expedient measure, absolutely harmless to the loyal, and only a terror to persistent evil-doers."

The Hon'ble SIR JAMES WESTLAND said :—" It is not my intention to address myself in any way to the merits of the measure which is now before the Legislative Council ; I leave that part of the duty to my Hon'ble friend who is in charge of the Bill. But one or two statements have been made in the course of this debate as justifying a proposal for the postponement of the discussion which I desire to call in question. A statement has been made by my Hon'ble friends Mr. Chitnavis and Rai Bahadur Ananda Charlu that in respect of the proposals now before the Council we have against us the whole of the Native Press, the whole of the English Press and every representative body all over India. Now, my Lord, that is a statement which, considering the facts before the Council, ought not to be left without challenge. For example, it is quite true that the Bengal Chamber of Commerce addressed a memorial to Your Excelleney in which they made adverse criticisms on the Bill, but like sensible men they made those representations for the consideration of the Government and Legislature, and, having received upon them the decision of the Select Committee, we have heard to-day from the Hon'ble Mr. Arthur that the Chamber of Commerce and the commercial community generally, whatever they may desire as regards modifications in small particulars, give the Bill in its present form their general support. Another important Association, with respect to which the same statement was made, was the British Indian Association. It is quite true that that Association represents Native opinion, but it is one that represents Native moderate opinion. It has been most useful to the Council on many occasions on which it has submitted its criticisms for the consideration of the Legislature, but we know, and have evidence before us to which I shall presently refer, that that Association has withdrawn from any active participation in the opposition to the Bill as it has emerged from the Select Committee. I should also like to mention, with reference to the English Press, that within the course of the last week I have seen a disclaimer in one, if not in both, of the Bombay newspapers of the statement that they are in direct opposition to the Bill at present before the Council. In going through (as I was bound to do) the representations made before the Legislative Council, it is impossible not to observe what a singular character was common to them all. We have any quantity of representations from Pleaders' Associations here, from Local Practi-

tioners' Associations there and the different varieties by which those Associations call themselves. Now, I do not wish for a moment to say that gentlemen engaged in the practice of the law, or the more experienced among them at least, are not competent to give the Legislature advice as to the form the law should take; but it may be justly said that it is very remarkable that such criticisms as we have received from the public have almost all come from that particular section of it. We have heard in Calcutta within the last few days of a meeting which is called in a paper which we have to-day received 'The humble memorial of the inhabitants of Calcutta in public meeting assembled.' This public meeting was advertised first of all in the Calcutta papers of Monday last. I thought it desirable that I should study that advertisement in order to see exactly what importance could be attributed to 'the inhabitants of Calcutta in public meeting assembled' as there shown. The first thing that struck me was that although I knew Calcutta was a great European city, yet in the whole list of names—a pretty long list—of gentlemen at whose instance that meeting was called there was not a single European name. I am also aware that in Calcutta there are two or three hundred thousand Muhammadan inhabitants. I looked down the list and could not find a single Muhammadan name in the whole of it. I looked also for the well-known leading names among the Hindus; they were equally conspicuous by their absence. I appealed to the Directory to find out who these gentlemen were who proffered themselves as representing the inhabitants of Calcutta. A number of them were not known to fame even as it is represented in the Calcutta Directory. All that I could find about those who were mentioned there, was that they were gentlemen who are engaged in the legal profession or who are editors of Native newspapers. Now, as I said before, I do not in the least depreciate the importance of these classes if they desire to represent themselves; but I am afraid that I, as an inhabitant of Calcutta, entirely deny their right to represent me, or to meet and call themselves the inhabitants of Calcutta when, as a matter of fact, they are only numerically a very small section of them. At the meeting which took place yesterday and which again we are told is a meeting of 'the inhabitants of Calcutta in public meeting assembled,' there were, I think, four speeches of any length delivered. Two of these were delivered by gentlemen whose profession is that of editors of Native newspapers. Well again, I say, they are perfectly at liberty to explain their views and to try to bring to bear upon the Government and upon the Legislative Council such views as they possess; but I think, if they want to be absolutely straightforward in

the form in which they represent their views to Government and to the Legislative Council, they ought not to describe themselves as the inhabitants of Calcutta in public meeting assembled, but as gentlemen exercising the legal and the editorial professions residing in Calcutta. After going through a number of these memorials with such attention as I was able to give to them, I cannot help feeling that the forms in which the rules of Your Excellency's Legislature allow memorials to be presented, are used to the very great inconvenience of the Members of Your Excellency's Legislature. I, with others, am very willing indeed to hear anything which is said on the subject of our legislative proposals by any person who in any way has a right to make representations to us, but I do strongly object to being obliged to read long lucubrations sent to us by people who keep their names entirely in the background. The document which has been given to us with the respected name of Maharaja Sir Jotindro Mohan Tagore announces to us the conclusions of a conference assembled in Calcutta. From beginning to end of that document there is not the smallest hint of who that conference was composed of. I have heard to-day for the first time the name of one gentleman, namely, the Hon'ble Rai Bahadur Ananda Charlu, who took part in that conference."

The Hon'ble RAI BAHADUR P. ANANDA CHARLU : "I did not say I took part in the conference, but that I was present."

SIR JAMES WESTLAND continuing said : "I beg the Hon'ble gentleman's pardon ; but my point is that, though I have no doubt a conference took place, I think it is most unfair to Your Excellency's Legislative Council that we should be informed that a conference has taken place to pronounce some sort of conjoint opinion upon the measures which are before the Council, and that we should be left absolutely in ignorance as to whom that conference consisted of. Again, two or three documents have come to us with the pretentious introduction 'I am directed by my Committee to do so and so.' Again I ask who the Committee is ; I ask who it is they represent. I cannot find information of any kind ; it cannot be found in the Directory ; it can be found nowhere. We all know the story in England of the three tailors of Tooley Street who drew up a petition in which they styled themselves 'We, the inhabitants of England.' It seems to me that in certain cases in this country that precedent has been very largely improved upon. It has been considered here that it is a ridiculous waste of individuality that three persons should combine to send one memorial to Government. We are

much more likely to get three memorials under various designations from each of the gentlemen concerned. It is quite true that what is stated in these memorials, whatever importance it has intrinsically, we are able to give that importance to it; but still I claim on the part of Your Excellency's Legislative Council that we ought to know who the people are who are addressing us, and that they ought not to be allowed to give us lengthy opinions without at the same time giving us some indication of the source from which they emanate and the authority with which they are put forward. A single individual in this country can easily constitute himself into an association, and send in a memorial beginning with the pretentious form 'I am directed by my Committee to do so and so,' whereas as a matter of fact the young gentleman who writes the memorial, if he told the truth, would much more correctly say 'I am directed by Babu so and so to make the following representation.' I am not altogether without a precedent in making this representation to Your Excellency, because I find that all this class of memorial, when it is laid before that august body, the House of Commons, is rejected. It is a rule in the House of Commons that no person is allowed to sign for another or to put himself forward as representing another. If a memorial comes to that House, as several have come to us purporting to be sent by the inhabitants of so and so, the memorial is simply taken as coming from the particular individual who signs it, whether he calls himself chairman or president of a public meeting or anything else, and it is not regarded as coming from anybody else. I think, if Your Excellency would make a similar rule for the reception of documents purporting to represent the views of the public to the Legislature, you would attain wo very useful objects. In the first place, you would exclude a very great deal that is sent in to us by pretentious nobodies, and, in the second place, you would give just prominence to those who are entitled from their position or their experience to advise Your Excellency's Legislature and Your Excellency's Government on matters of legislation."

His Honour THE LIEUTENANT-GOVERNOR said:—"It is difficult to say anything now when following 17 other speakers in a debate like this, but I am unwilling to give a silent vote in favour of this Bill, both on account of its intrinsic importance and because there has been so much misapprehension as to its true scope and import, especially in Bengal, where the outcry against it has been particularly noisy, almost at times hysterical, the result, it may be feared, in some cases, of a specially guilty conscience. Much of that misapprehension ought to be removed by the speeches to-day of the Hon'ble Legal

Member and other Members of this Council, but I feel it to be my duty to express clearly the view that I take of the measure. Section 124A of the Penal Code has in some respects had a strange history. Sir Fitzjames Stephen in 1870 explained how by an extraordinary oversight it came to be omitted from the Code as originally passed. He showed that sections dealing with sedition had been drafted both by the original Code Commission and by Sir Barnes Peacock, and that the section drafted by Sir Barnes Peacock, the weight of whose authority will always be acknowledged, was not only more severe than the section prepared by the Code Commission, but more severe than the measure which he then invited the Council to pass. Under Sir Barnes Peacock's section not only were such feelings of disaffection banned as were likely to induce the people to resist the authority of Government, but such feelings as were likely to lead them to disobey that authority, and the mere omission to do what you were told to do was disobedience. To any one who remembers the conditions of 1870, and who carefully reads Sir F. Stephen's speeches, it will be manifest that what the Government had in its mind at that time was the Wahabi conspiracy and the open preaching of jehad or religious war against the Government. Sir F. Stephen framed his proposals to meet that exigency, and his purpose was to bring the Code more or less into harmony with the law of England as he then read it. He admitted, however, that the law of England, though similar to the proposed section, was in reality far more severe. Then in 1878 came the Vernacular Press Act, which added to the offence of creating disaffection the rousing of feelings *likely* to excite disaffection, or antipathy between different races, castes or religions. It was mainly to the machinery set on foot for the working of that Act that objection was afterwards taken; and even most of the Local Governments who approved of the repeal of the Act—along with all those who did not approve of the repeal—urged strongly that the repeal should be accompanied by an amendment of section 124A of the Code, so as to bring within the scope of the ordinary law the two offences referred to above. Had this advice been listened to, we might by this time have had a decently conducted Indian Press, and avoided any doubt attaching to the State trials of the last few years. Much of the outcry against the present Bill rests on its supposed divergence from the law of England on seditious libel, and on the assertion that the law as settled in 1870 was sufficient and ought to be final. Now I venture to assert these two propositions—first, that the law of England, built up by judicial rulings to meet the circumstances

of a homogeneous people directly interested in and sharing in its own government is not necessarily a norm to which the law of India ought strictly to conform; and, second, that the conditions of the country have themselves so altered since 1870 that what was adequate then is not necessarily adequate now. As to the first point, I said in my letter to the Legislative Department of the 18th January—

'In Sir Alexander Mackenzie's opinion, however, the question whether or not the draft section strictly follows the English law is not material. If the section is in strict accord with the English law, all criticism of it loses weight, since there could be no reasonable objection to the enactment for India of the same law of sedition as is in force in England: if it is not, there is, in the very great difference in the conditions of the two countries, ample justification for any deviation from the English law necessary for effectively checking the offence of sedition in India. It is clear that a sedition law which is adequate for a people ruled by a Government of its own nationality and faith may be inadequate, or in some respects unsuited, for a country under foreign rule and inhabited by many races, with diverse customs and conflicting creeds. It is impossible in India to accept the test of direct incitement to violence or intention to excite rebellion, and limit the interference of the Government to such cases. It is not the apparent intention of the writers or speakers so much as the *tendency* of the writings or speeches which has to be regarded, and the cumulative effect of depreciatory declamation on the minds of an ignorant and excitable population, to which attention has been drawn above, has to be taken into consideration. The Lieutenant-Governor does not think, then, that objections to the draft section based on alleged divergence from the English law should carry weight.'

"As to the second point, I remarked in the same letter—

'The necessity for the proposed legislation is unquestionable. Ever since the repeal of the Vernacular Press Act, the Native Press has been year by year growing more reckless in its mode of writing about the Government, Government officers and Government measures. Doubts having been always felt by the law officers as to the scope of section 124A of the Penal Code, the general policy has been to ignore these attacks. But within the last few months the barefaced sedition promulgated in the Native Press of the Bombay Presidency has forced that Government to institute prosecutions, and has led to the conviction of some of the offenders; an editor has also been similarly convicted in the North-Western Provinces; and at Lucknow a Muhammadan preacher has been required to furnish security to keep the peace for seditious language used at a meeting. These convictions have shown that the offence of sedition can be punished under section 124A of the Code as it stands, but they have involved much discussion of the *explanation* to the section, and the interpretation of the Courts before which the cases came has been challenged by the Native Press and the Native community generally, who have them-

selves expressed a desire that the law should be made more precise. In Bengal the only Press prosecution for seditious writing has been that of the *Bangabasi* newspaper, instituted in 1891, in which the jury disagreed, and which terminated eventually in the acceptance of an apology by the Government from the offending editor. The absence of other prosecutions cannot, however, be urged as evidence that seditious writing is rare in Bengal, and that an alteration of the law is not therefore called for in this Province. Resistance to the Government by violence has, it is true, not been directly suggested in the Bengal Press, and a sufficient reason for this may be found in the character of the writers, who belong to, and whose readers are, a people wanting in the warlike spirit of many other races of India; but there has been incessant writing tending to bring the Government, whether in itself or through its officers, into hatred and contempt, and such writing, though not immediately leading to resistance by force to the Government, cannot fail by its cumulative effect to create disaffection and ill-will, and thus produce such a state of feeling as may eventually prove dangerous to the maintenance of order and find its culmination in active resistance. If it be agreed that the danger is not so serious in Bengal proper, with its timid and unwarlike population, as to demand exceptional measures, it must be borne in mind that other parts even of this Province have a population of higher spirit, and that the writings of the Bengal Press and the public utterances of Bengal speakers have circulation frequently in other Provinces. Any law dealing with sedition must, moreover, be general; and the condition not of Bengal alone, but of all the Provinces of the Empire, must be taken into account. Whether, then, we look at the objections which have been taken by the people themselves to the interpretation of the present law by the Courts, or to the nature of much that has been written in the Native Press, the necessity for an amendment of the law is clear. The proposed amendment, it is true, proceeds further than the mere removal of ambiguity from the law as it stands, but, legislation being necessary, it is obviously advisable to take the opportunity of correcting other defects and supplying deficiencies, so as to render the law thoroughly effective, in the judgment of the Government, for the checking of sedition or of conduct tending to the disturbance of public order.'

"To any one who studies, as I do from week to week, the utterances of the Press in India, nothing can be more clear than that, though we seldom have such bold sedition preached as led to the recent trials in Bombay or as prevailed here in 1870, we are nowadays face to face with a far more insidious and equally dangerous style of writing and speaking. That Indian newspapers can supply criticism without scurrility or malice is evident from the admirably conducted columns of the *Indian Spectator*, *Indian Nation*, and some few other papers I could name. But the majority of the newspapers simply revel in misrepresentation of the motives of the Government and the nature of its measures. And this is an evil which is yearly growing, and with the spread of what is called education is becoming more far-reaching in

its noxious effects. It is indeed, in my opinion, to our own system of education that we owe all the trouble. I have long been convinced that it is thoroughly unsound. Sir John Strachey in his *India* points out that our educational institutions give a more or less good imitation of the purely scholastic part of an ordinary English education; but the young men of India (he says) learn in them almost nothing about their own country, or about the Government under which they live, and least of all are they taught to be good and loyal citizens. We are turning out by scores of thousands young men who are trained only in words, look mainly for Government employment, and failing to get it become, as the Maharaja of Travancore described them, 'a host of discontented, disobedient, and sometimes troublesome young men.' Mr. Cotton, whose leanings towards the educated Native are well known, says: 'This accounts mainly for the discontent and restlessness which are perceptible in the rising generation.' This is the class that writes for the Native Press, perorates on platforms, and generally vents its spleen upon the Government which has not been able to find appointments for more than a fraction of its members. 'We taught them language, and their profit on it is, they know how to curse.' To honest well-informed criticism no English Government would ever object. But every Government has the right to object when its critics wander off from criticism to calumny. Criticism, it has been said, is but a child compared to calumny; mere bows and arrows to artillery. 'No one can well exaggerate the power of calumny or follow out her language and singular ingenuity without mixed feelings of envy and admiration. How clever she is, for instance,' says the same writer, 'in making use of dull, ignorant and idle people, using them as the conduits to conduct and the feeders to multiply the remarks and jokes and malice of cleverer people, so that she fertilises the whole groundwork of society with injurious reports, which cannot be well contradicted, about her victims (in this case the Government). Let any transaction be as white as a hound's tooth, she can so admirably discolour it that the original whiteness can never be restored.' Calumny begins, as Beaumarchais graphically describes it, with a gentle breath, but gathering as it grows becomes at last a general outcry, a public crescendo, a universal chorus of hate and denunciation. Practically, as applied to the Government and its measures, this is the sort of thing that has been growing more and more marked during the past twenty years, save that we now find the hostile denunciation in full cry, the whispering of sedition and calumny having been discarded as not strong enough for the vitiated taste of the newspaper writers and readers. It has in fact grown as the numbers of the semi-educated ex-pupils of our schools and

colleges have increased. Now the first duty of every Government, and especially of a foreign Government ruling as we do in India, is self-preservation. We have to ask ourselves: How is the Queen's Government in India to be carried on? It is true that behind the Government is the power of the sword, but it is no kindness to the people themselves to allow any mischief to proceed so far as to leave us no refuge but the arbitrament of force. There is, as has been well said, no strength in stagnation. 'Cautious passiveness and official negativeness will be found very insignificant barriers against evil either in quiet or in turbulent times.' I am not sure myself that we have not carried our cautious passiveness and official negativeness already beyond the limits of prudence. No Government such as ours in India can afford to allow the minds of an ignorant and credulous Oriental population to be gradually poisoned and embittered by persistent calumny of the Government and all its measures. I shall not take up the time of the Council by quotations to prove that this is a common offence at the present day. We know it, every one but Rai Bahadur Ananda Charlu knows it, to be a fact, and we are bound to put the evil down. There is unfortunately, as I have said, now amongst us a large class of discontented and semi-educated men, eager for notoriety, pining for the plunder of the State and its offices, and unable to understand the responsibility which attaches to all would-be instructors of the public. These men are a standing menace to the administration. By the law of England, conspiracy to diminish the confidence of the masses in the general administration of the law is sedition. We must safeguard the Government of India from similar seditious attempts to bring into contempt the Government as by law established in British India. I cannot pass over the remark by Mr. Chitnavis, where he accepts the provisions of section 124A as affecting Her Majesty personally but refuses to concede them to Her Majesty's Government in British India. At all meetings of his friends, where, if not rank sedition, sympathy with convicted traitors is freely expressed, 'cheers for the Queen' are usually given as though that condoned everything. The procedure is simply a fraud on the public and a blind to the uninformed at home. India is under the Queen's Government as by law established, and there can be no loyalty to the Queen without loyalty to Her Government.

"I believe that the mere existence in the Statute-book of the law which we are now considering will of itself go far to check the evil.

"I have often said that to my mind one of the most useful functions of the Indian Penal Code is the office which it performs of a moral text-book. It

serves to set before the people a standard to which they know that they must needs conform, and I trust that, when these sections take their place in the law, they will tend to improve the standard of journalism and platform oratory in India when dealing with the Government and its measures. As has been pointed out, the honest loyal journalist and speaker has nothing to fear. The propagandist of sensational calumnies and the apostle of racial antipathies will find his occupation gone, and no good citizen will regret the fact.

"A good deal has been said of the vagueness of some of the terms used in the sections. As Sir F. Stephen once pointed out, there are scores of words in the Code open to the same criticism. It is impossible to find words that would not by perverse interpretation be found open to cavil. We must trust to the common-sense and fairness of our judicial tribunals. The journalist must trust also to the common-sense and dignity of the Government, which would only expose itself to well-merited ridicule if it showed undue sensitiveness to fair criticism. Certainly it has not done so hitherto. It has treated with silent contempt the petty traitor whose sole object is to get notoriety and subscriptions, and those would-be patriots whose chief desire is to substitute themselves for the Government as by law established. It has done so, believing that, when the need arose to deal with *them*, the situation would be, as Macaulay puts it,—(and I would not venture to quote poetry here if the poet had not been himself Legal Member and author of the Penal Code, and if the stanzas had not been singularly applicable to the state of things now-a-days)—

'Once the jays sent a message
Unto the eagle's nest:
"Now yield thee up thine eyrie
Unto the carrion kite,
Or else come valiantly and face
The jays in deadly fight."
Forth looked in wrath the eagle,
And carrion kite and jay,
Soon as they saw his beak and claw,
Fled screaming far away.'

"But the time for absolutely ignoring this irresponsible chatter is over. The noise is becoming too persistent and clamorous, and if unchecked may get upon the nerves of the listening masses. Journalists and patriotic orators must learn to measure their phrases and test the sources of their information. They must not evolve hideous charges against the Government from the depths of their own turgid imaginations, and pass them off as reports that

have reached their ears from reliable correspondents. For the rest, as Sir F. Stephen said, 'men must be content to take the risks incidental to their profession. A journalist must run the risk of being misunderstood, and should take care to make his meaning plain. If his intentions really are loyal, there can be no difficulty in his doing so. If not, he cannot complain of being punished.' If these sections lead to more careful, well-considered and responsible journalism, they will confer a benefit not only on the State and the public, but on the journalistic profession itself. A free Press does not mean a Press free to say anything it likes. It can say anything it likes so long as it obeys the law, and the law contained in this Bill, as amended by the Select Committee, appears to me to be eminently reasonable and such as should be obeyed. The only serious flaw in the Bill, in my opinion, is that it omits to provide for bringing into contempt the general administration of justice, which is, to my mind, one of the most persistent, insidious and dangerous practices of a certain section of the Native Press.

"I am perfectly aware that there are many among the opponents of this measure who cannot fairly be included among the classes which it is meant to control. But I believe the opposition of all loyal persons will disappear when they find that the Government here and at home is firmly convinced of its urgency, when they see that it has been amended so as to meet all reasonable objections, and above all when they find that it is a weapon in the State armoury which will seldom be brought out save in case of real necessity."

The Hon'ble MR. CHALMERS said :—"I only wish to say a few words in reply to the various points which have been raised in the course of the discussion that has taken place. Perhaps the more convenient way would be to take the points as raised by the speakers in order. Some of these points I shall pass over for the reason that they will arise again hereafter on the amendments which are to be moved, and it will be unnecessary therefore for me to discuss them now. I will take the points in the order in which they have been raised. I will first take the speech of my hon'ble friend Mr. Allan Arthur, who, I am glad to see, has seen his way to give us the weight of his support. He feels, however, two doubts. First of all, he feels doubts about entrusting powers to try cases to Magistrates. Well, I may point out that this question does not arise on the present Bill. I hope that, when we come to deal with the Code of Criminal Procedure, we shall be able to supply arguments which will remove any doubts he may have on that point. At the present moment we are dealing with the substantive

law. Then, again, he feels, and several other members have expressed the same feeling, doubts about introducing into the section the terms 'hatred and contempt.' May I point out to him that we are doing nothing new. May I point out that for seven years in Calcutta that has been the law as expounded by the late Chief Justice of the Calcutta High Court, Sir Comer Petheram. I will read only two lines from Sir Comer Petheram's judgment. Speaking of section 124A, he says: 'It is sufficient for the purposes of the section that the words are calculated to excite feelings of ill-will against the Government and to hold it up to the hatred and contempt of the people.' That is the law under which my friend has lived for the last seven years. I do not know that he or any one in whom he is interested has found that law oppressive; but the very fact that he raises this objection seems to me to be a good reason why we should re-enact the provisions of section 124A and, as my hon'ble friend Mr. Nicholson said, why we should unfold its meaning, because, if people are liable to punishment, it is better for them to know beforehand in what respect they are so liable.

"I should like now to say one or two words in regard to what fell from the Hon'ble Mr. Chitnavis. I can relieve his mind at once about one criticism. He says that in the Bill we have used the words 'Her Majesty,' but have not used the words 'Her Majesty and Her successors.' If my hon'ble friend had been in the Council last year, he would have read an Act called the General Clauses Act, which was passed last year, and in that he would have found that the term 'Her Majesty' means 'Her Majesty and Her Majesty's successors.' I think, therefore, that I can remove his apprehensions on that score. Then he raises another—a very important—question, the question of punishment. He says that the punishment prescribed by the section is too severe. Well, the punishment remains the same as it was thirty years ago. It remains the same as it has been since 1870; we are not increasing the punishment. As a matter of fact, the extreme punishment has never been inflicted; but I am bound to point out that in a case the other day which was appealed to the High Court of the North-Western Provinces the learned Judges did observe that the punishment awarded by the lower Court was grossly inadequate. There may therefore be cases where, in the opinion of the High Court, these offences cannot be met by a small and summary punishment; but, no doubt, the mass of the cases can be met by a small and summary punishment. We propose, indeed, to limit the punishment by giving jurisdiction to Magistrates whose powers are limited. When a case is tried before

a Magistrate, *ipso facto* the power is thereby limited. I can only repeat again what I stated on the last occasion. Sedition is an offence which varies in its mischievous effects according to time, place and circumstances, and the punishment must vary accordingly. I can quite imagine a case where some words spoken or, say, rather written in a book dealing with political forms of government might be seditious. An adequate punishment, if any punishment was required, might be a very small fine indeed. But, if these same words were spoken to an angry mob with arms in their hands, why the words would require and deserve the severest punishment which the law provides. We have allowed for latitude of punishment according to the circumstances. We must trust the Courts to mete out proper punishment. If the offence by its surroundings calls for a severe punishment, the section allows it; if the offence calls for a nominal punishment, the section allows it; and, moreover, we have this additional safeguard, that if merely a nominal punishment is called for, the Government is not likely to authorize or sanction a prosecution.

"I come now to what was said by the Hon'ble Sir Griffith Evans, and he called our attention to an alternative suggestion which has been made to us from many quarters, namely, that we should not proceed against sedition but that we should amend our law of defamation and enable the Government to prosecute papers who defame it for defamation. Well, I have not consulted with my colleagues on that subject, but speaking for myself it appears to me that the proposed course would not meet our views at all. What is the meaning of the law of defamation? A prosecution or suit for defamation is a remedy given to a person who feels himself aggrieved because his reputation has been attacked. Is that the position of the Government? It seems to me, and I am speaking for myself, that the Government do not care a brass farthing for what is said about them; for what does it matter to them? What they care about, however, and what they wish to interfere with and prevent, is, not abuse of themselves, not abuse of the Government, but the spreading and stirring up of a spirit of sedition and discontent among the people which is an ever-present source of danger to the community. But, quite apart from that general objection, there are other difficulties of procedure. Suppose, for instance, that some paper which is published so far off as Quetta defames the Government and has to be prosecuted, how is that prosecution to be conducted? I suppose it would be pleaded that its allegations were true, and that they were published for the public benefit. Take, for instance, a statement I saw in a paper

last week, saying that, owing to the government of India by the British, the golden age had passed away, the people were unhappy and that it was better for them to die than to live under such a Government. Supposing the Government were to prosecute for defamation? I presume that the members of the Government would have to go down there, they would have to appear on the scene and be examined and cross-examined as to every measure the Government had ever taken; and I suppose the whole of the evidence given before the Welby Commission would be material to the issues to be tried. That clearly is an impossible procedure.

"Next, I want to say a word or two about my friend the Hon'ble Rai Bahadur Ananda Charlu's speech. I must say that I tender him my very hearty thanks. He has said more than I could say in favour of this Bill. I used as an illustration that, although I might lawfully and properly enjoy a cigar on the maidan, I could not do so lawfully and properly in the powder magazine in the Fort. My friend took issue on that point, and proclaims his right to smoke in the powder magazine in the Fort. Now, that is what I complain of in the attitude which is taken up by many of our critics. They say, 'We should have the right of free speech; we may cause an explosion; but we do not care who is injured so long as we can say what we like and when and where we like; we do not care whether our remarks are calculated to cause disturbances or whether they are not. What has that to do with us? We will smoke in the powder magazine.' But that is exactly what the Government are bound to see that people do not do. They are bound not merely to discourage appeals to violence, but they are bound to discourage smoking in the powder magazine; we are bound to see that a spirit of discontent is not spread abroad which might at any moment and at any place give rise to an explosion. It is perhaps difficult to express it in language, but that is the very point of our section. We want to discourage people who do this. They lay the train of gunpowder, they do not fire it themselves, they trust to a chance spark or to somebody else setting it alight. That is the very essence of the evil we have to aim at and to stop in India. My friend the Hon'ble Rai Bahadur Ananda Charlu says that there is no sedition in India. I quite believe that he is speaking in good faith; he is loyal himself, he mixes only with loyal people, and reads only loyal newspapers. I am very glad he does that; but, if he had to read through the weekly reports of the Press as we have to do, I am certain that he would come to a very different conclusion. He says we are acting on

sentiment, and not information, or only on second-hand information. All I can say is that we have more sources of information than he has. His information that there is no sedition in India is not only second-hand, but third or fourth hand. The Government is in the best position of anybody to get information as to what is the true state of the country, and we are acting now, I am glad to say, backed by the authority of our responsible advisers.

"There are one or two other points which I think I ought to mention. My friend the Hon'ble Pandit Bishambar Nath is afraid, if this law passes, the public Press will not be able to help Government by giving it information. There is nothing in the law to prevent the Press from giving information; but, even supposing it were so, I do not know that the best way to call the attention of the Government to some abuse that you want rectified is to write about it in an up-country Vernacular paper. I should say that a much better way is to call the attention of the Government directly to the point. If you write a letter (say) to the *Baluchistan Times*, it may not come to the notice of Government; but if you write direct to the Government they get the letter at any rate. I am perfectly certain there is nothing in the proposals which will in any way interfere with what my Hon'ble friend desires, that is, a free, fair and honest discussion of all public questions.

"I have only one word more to say about my Hon'ble friend Mr. Sayani's point. He seems nervous that persons who are natives of India should be liable to be prosecuted in British India for offences against British Indian law committed outside British India. All I can say is that this has been the law for twenty years. Ever since the Foreign Jurisdiction and Extradition Act of 1879 was passed, natives of British India have been liable for offences against British Indian law committed abroad. As a matter of fact, I may mention that a native of India has been hanged in India for a murder committed at Perim, and another has been hanged in India for a murder committed at Cyprus. But that law has never been used oppressively, and the proof that it has not been used oppressively is that my hon'ble friend does not seem to have been aware of its existence; he has never apparently read the Act, although it has been in existence for over twenty years; that very fact shows that the law has not been oppressively used in the past, and I do not think it will be used oppressively in the future.

"I have now to move that the Bill be taken into consideration."

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The Council divided :—

Ayes—17.

The Hon'ble Allan Arthur.
The Hon'ble Maharaja Bahadur of Durbhanga.
The Hon'ble Rai Bahadur Pandit Suraj Kaul.
The Hon'ble F. A. Nicholson.
The Hon'ble J. J. D. LaTouche.
The Hon'ble Sir G. H. P. Evans.
The Hon'ble H. E. M. James.
The Hon'ble Sir H. T. Prinsep.
The Hon'ble C. C. Stevens.
The Hon'ble Joy Gobind Law.
The Hon'ble C. M. Rivaz.
The Hon'ble Sir A. C. Trevor.
The Hon'ble Major-General Sir E. H. H. Collen.
The Hon'ble M. D. Chalmers.
The Hon'ble Sir J. Westland.
His Honour the Lieutenant-Governor of Bengal.
His Excellency the President.

Noes—4.

The Hon'ble Gangadhar Rao Madhav Chitnavis.
The Hon'ble Rai Bahadur Ananda Charlu.
The Hon'ble Pandit Bishambar Nath.
The Hon'ble Rahimtula Muhammad Sayani.

So the motion was agreed to.

His Excellency THE PRESIDENT said :—"Before we proceed to the consideration of the various amendments, I wish to mention that the alternative form in which many of those amendments have been submitted by Hon'ble Members is unusual, and I have no hesitation in saying that, if they were brought under strict Parliamentary procedure, they would be out of order altogether. However, we do not wish in any way to preclude the opportunities of which Hon'ble Members wish to avail themselves, and we have accordingly arranged, to the best of our ability, to give an opportunity for them all. The only remark I would make is that where two amendments are identical, or substantially the same, unless advised by Hon'ble Members that they wish the second amendment to be taken, I shall call upon the mover of the first and pass by the mover of the second amendment. For instance, in numbers 8 and

9 of the List of Business there are amendments by the Hon'ble Maharaja of Durbhanga and the Hon'ble Rai Bahadur Ananda Charlu, which are exactly the same, and I propose to call on the Hon'ble Maharaja of Durbhanga and not on the Hon'ble Rai Bahadur Ananda Charlu. The Hon'ble Rai Bahadur Ananda Charlu can of course speak on the first amendment."

The Hon'ble MR. SAYANI moved that in section 4, clause (*1*), of the Indian Penal Code, as proposed to be substituted by clause 2 of the Bill as amended by the Select Committee, the words "in any place without and beyond British India" be omitted and the word "and" be added; that in clause (*2*) the figure "(*2*)" be omitted; and for the figure "(*3*)" in clause (*3*) the figure "(*2*)" be substituted; and that in *illustration* (*a*) for the word "Uganda" the word "Kashmir" be substituted. He said:—"The effect of the amendment will be that both Native Indian subjects and other British subjects of Her Majesty will be placed in the same position. To treat the two classes of subjects differently will be to create an invidious distinction between them. Under the benign rule of Her Most Gracious Majesty all Her Majesty's subjects are treated alike and there is the same law for all Her Majesty's subjects in India. All Her Majesty's subjects, whether a prince or a peasant, a white man or a black man, are equal. Further, to treat the classes differently will give rise to complications and other undesirable results. It is true that the proposed legislation is not entirely new, but as it is now intended to put it actually into force it is necessary to consider carefully its effects before deliberately confirming and extending it. I have already pointed out some of the effects likely to ensue if the proposed section is allowed to stand as it has emerged from the Select Committee, and I accordingly commend my amendment to the favourable consideration of the Council."

The Hon'ble MR. CHALMERS said:—"On the part of the Government I must oppose this amendment. I have already noticed the point, but I will state rather more specifically my reasons for objecting to the amendment. The words my friend objects to add the words which render Native Indian subjects liable to the provisions of the Penal Code in respect of offences committed outside India. That has been the law for twenty years, and the law has been continually put in force when required, but although it has been enforced it has given rise to no trouble and no discussion. Let me read section 8 of the Foreign Jurisdiction and

Extradition Act of 1879, which extends extra-territorially the law relating to offences and criminal procedure:—

'8. The law relating to offences and to criminal procedure for the time being in force in British India shall, subject as to procedure to such modifications as the Governor General in Council from time to time directs, extend—

(*a*) to all European British subjects in the dominions of Princes and States in India in alliance with Her Majesty, and

(*b*) to all Native Indian subjects of Her Majesty in any place beyond the limits of British India.'

"As I said before, it was under the provisions of a law which has been in force for twenty years that a British Indian subject was hanged in India for committing a murder in Perim and that another Indian subject was hanged for a murder committed in Cyprus. Then, perhaps, my friend may say—why incorporate it in the Penal Code? I will tell him. The Indian Penal Code, as Hon'ble Members are aware, is re-edited from time to time by the Legislative Department with any amendments that have been made in it. On the face of these editions the Code is misleading and incorrect. It does not show on the face of it what its extent is, because the Foreign Jurisdiction and Extradition Act is not an amendment of the Penal Code, although it extends it. Section 4 of the Code professes to apply to servants of Government who commit offences outside India, and that is the only section dealing with extra-territorial offences, so that the Penal Code does not show what is the law and what has been the law for twenty years. The Code, which is the criminal law of India, applies to Native Indian subjects all over the world. Clearly the words my friend wishes to expunge could not be left out. As regards the subsequent words, we make no change relating to Native Indian subjects, but, pursuant to the powers given us by the Statute 32 & 33 Vict., c. 98, s. 1, we make a change as regards British subjects who are not Native Indian subjects. As the law stands at the present moment, a British subject who is not an European British subject is not liable to a British Indian Court in respect of an offence committed in a Native State. The provision of the Foreign Jurisdiction and Extradition Act which punishes British subjects for offences committed in India generally relates only to European British subjects, and does not cover, for instance, Cingalese or any one coming from Hong-Kong or Tasmania, or any place of that kind. We go as far as we can under the statute, and we provide that all British subjects who commit offences in any part of

India shall be liable to punishment in British Indian Courts. For these reasons I oppose the amendment."

The Hon'ble RAI BAHADUR P. ANANDA CHARLU said:—"Every Government out of British India has its own penal laws and has its unfettered jurisdiction to bring to trial and convict persons who commit offences within it. Necessary legislative facilities exist for their apprehension if, to escape trial, they escape into British India. If their laws do not penalise any acts which British Indian law would hold to be crimes, or if they do not care or choose to prosecute in view to safeguards which may exist there, I see no reason whatever why the British Indian Government should busy itself with such an undertaking. Every offence is an outrage on the State, or on the society in that State, against its public tranquillity and against its other interests, safeguarded by its penal laws. If the actual sufferers do not mind what a man does or says in their midst, why on earth should we, in India, mind it? Numerous illustrations of how the assumption of power now claimed will work positive and gratuitous injustice are given by the Hon'ble Mr. Sayani in his speech. Till they are conclusively answered and unless they are conclusively answered, I for one cannot agree to this section passing, without the modifications suggested in the amendment before us. It is hardly necessary to point out that, embarking on this scheme of rendering the Indian society ideally perfect, we may often punish for what are offences in the eye of *our* law, without their being so under the laws of the land which was the seat of the acts or omissions themselves. On the hypothesis that the acts complained of are offences there as here, as well as on the hypothesis that they are offences here but not there, the section proposed seems hurtful and objectionable. These are among my reasons for supporting the amendment purposed by my Hon'ble friend Mr. Sayani."

The Hon'ble PANDIT BISHAMBAR NATH said:—"The second section of the Bill repeals section 4 of the Indian Penal Code and substitutes for it a new section, which has three sub-sections, one *explanation* and a number of *illustrations*.

"The present section 4 extends the Code to extra-territorial offences, so as to declare the provisions of the Code to be applicable also to any offence committed by any Native Indian subject of Her Majesty in any place without and beyond British India.

"The Indian Penal Code came into force on and from the first day of January, 1862, and the existing section 4 has continued in its present form for nearly thirty-six years. So far as I am aware, no necessity has been shewn for introducing the provision embodied in sub-section (*1*), especially if there is still an enactment in force in respect of the matter for which the proposed measure professes to provide.

"Ordinarily, the law of the country, where a crime is committed, applies to that crime; why should, therefore, an offence punishable under the Indian Penal Code, committed by a Native Indian subject of Her Majesty without and beyond British India, be made punishable according to the provisions of that Code, particularly where an act committed by him in such a place happened to be an act not punishable according to the law prevailing there? The alterations proposed in section 4, sub-sections (*1*), (*2*), (*3*), and *illustration* (*a*), by my Hon'ble friend Mr. Sayani are desirable.

"The Calcutta Bar in their recent letter to the Secretary to the Government of India, Legislative Department, dated the 17th February, 1898, have made an observation in this connection which deserves the consideration of the Council. They point out that under sub-section (*1*), section 4 of the Bill, 'any Native Indian subject of Her Majesty who petitions the British Parliament for the redress of grievances or against alleged oppression, and thereby excites or attempts to excite any feeling of enmity against the Government of India as by law established, would, though his petition were in such terms as were allowable according to the procedure of the British Parliament, be liable to transportation for life when found in British India.'

"The case they put may, perhaps, be regarded as an extreme one, but it is, I think, necessary to suppose a case of the kind in order to bring out a logical result. One of the Hon'ble Members here has already taken an exception to the *illustration*, and, though his opinion is entitled to great respect, I regret I am unable to appreciate its soundness."

The motion was put and negatived.

The Hon'ble MR. SAYANI moved that in section 108A, as proposed to be inserted in the Indian Penal Code by clause 3 of the Bill as amended by the Select Committee, for the words "without and beyond British India" the words "within the territories of any Native Prince or Chief in India" be substituted.

He said :—"The reasons for this proposal are similar to the reasons for the first proposal I have made, and I therefore do not want to take up the time of the Council by making further observations.'

His Excellency THE PRESIDENT :—"Do I understand that the Hon'ble Member withdraws the amendment?"

The Hon'ble MR. SAYANI :—No, my Lord, I do not withdraw it."

The Hon'ble MR. CHALMERS said :—"I do not think that this clause is on quite the same footing as the other. It arose from a recommendation of the Bombay Government. The point was this, and it is a point which it is necessary to provide for. The term 'India' is interpreted to mean British India and those parts of native territory which are under the suzerainty of Her Majesty. The case which gave rise to the recommendation from Bombay was this. A person in Bombay abetted the commission of a murder in Goa. Goa is not in India within the meaning of the Act. It is monstrous that a man in Bombay should be able to abet the murder of anybody in Goa or Chandernagore or elsewhere and then go free; we thought, therefore, that the Bombay Government was right in their recommendation. The High Court in deciding the case expressed the hope that legislation would be undertaken, and I think that the legislation is perfectly right."

The Hon'ble RAI BAHADUR P. ANANDA CHARLU said :—"My remarks as regards the previous amendment of my Hon'ble friend Mr. Sayani apply to this *mutatis mutandis*. I propose neither to repeat them nor add to them. I simply refer to them, yet fresh in the memories of my Hon'ble colleagues, as the grounds on which I support this amendment as well."

The Hon'ble PANDIT BISHAMBAR NATH said :—"In order to be consistent I feel I am bound to support the amendment.

"As regards the new section 108A which is proposed to be inserted after section 108 of the Indian Penal Code, I observe that the *illustration* (*a*) meets the case which arose some time ago in the Bombay Presidency. But it would be extending too much the operation of the law of abetment in British India as regards all offences generally, when committed beyond British India."

The Hon'ble MR. SAYANI said :—"I wish to make one observation, and that is this. My object is not that a man who in British India abets an offence which is committed anywhere else in India should not be punished, but the words are so ver wide that if the man, say, in Peru, or Chili, or South Africa, or elsewhere, commits an offence, that offence would, under this section, be abetted by a person in British India. That is my objection."

The motion was put and negatived.

The Hon'ble MAHARAJA BAHADUR OF DURBHANGA moved that in lines 4 and 5 of the new section 124A of the Indian Penal Code as proposed to be substituted by clause 4 of the Bill as amended by the Select Committee, the words "brings or attempts to bring into hatred or contempt or" be omitted. He said :—"I do not wish to take up the time of the Council with any remarks on this amendment, but I would wish briefly to point out that in many of the non-official representations that have been made I see that exception has been taken to the words 'hatred or contempt.' Whether the words are retained or not is a matter of little consequence, because the word 'disaffection' has been so well defined in the *explanation* that it will practically meet the case. As regards the word 'contempt' I will not say anything beyond what I have already said in my note of dissent. Effective criticism is impossible without exciting a certain amount of contempt for the measure criticised. And it is, I hope, not the wish of the Government to stop all kinds of criticism. The word 'hatred' is perhaps superfluous."

The Hon'ble MR. CHALMERS said :—"I must oppose this amendment of my Hon'ble friend the Maharaja of Durbhanga. I agree with him that it makes very little difference whether the words 'bring into hatred or contempt' are inserted or not, because if they were not inserted they would be there impliedly. They are comprised in the term 'disaffection' according to the decision of the Courts; as Chief Justice Petheram says:—'It is sufficient for the purposes of the section that the words are calculated to excite feelings of ill-will against the Government and to hold it up to the hatred or contempt of the people.' Therefore those words are already by implication in the section: but the very fact that criticisms have poured in on the use of those words shows that it is necessary to unfold the meaning and to explain to people what the section really means. We should have been justified of course in going still further and using words which were deliberately used by the High Court

of Allahabad. What were those words used by the Allahabad Court, not in a summing up but in a considered judgment ? 'In our opinion any one who, by any of the means referred to in the section, excites or attempts to excite feelings of hatred, *dislike*, enmity, *ill-will* or hostility, etc.' As I said before, instead of going further and extending the law, we have rather restricted it."

The Hon'ble RAI BAHADUR P. ANANDA CHARLU said:—"In section 124A, as it is now in the Code, there is but one word—and that comprehensively used—seemingly, *i.e.*, in a technical sense, *undefined*.

"An objection, on the ground there was not a regular definition of that term, was raised and considered by the Law Commissioners and by Mr. Stephen ; and it was set at rest by an assurance that the *explanation* appended to the section sufficed for all practical purposes. As is but natural, the lay public became satisfied with the assurance of such great authorities—authorities acknowledged as such even to the present day and even judicially.

"Later-day views would not accept that assurance in the spirit in which it was given; and hence the necessity has arisen to reconsider the situation and remove the ambiguity thus caused. This only adds another to the many illustrations of the hackneyed lines about critics in the *Essay on Criticism*. As the Statute makes a judicial have a greater binding force than a juridical pronouncement, the need has arisen, to my mind, to do away with the chances of subtlety, technicality and personal freaks neutralising the assurance, coupled with which the section 124A was accepted, when it was introduced. In this view, our duty is rigidly limited to this and nothing more and nothing less, *viz.*, so to rearrange the provisions as to give full effect to the assurance with which the section 124A was deliberately safeguarded. If this is the *raison d'être* of the present effort at legislation, as in fairness it is bound to be, then the only course open is to adopt my amendments 4 and 5. The why and wherefore of this opinion will be explained when I move those amendments.

"Before going further I must here notice a point just now insisted on by the Hon'ble Mover. He says, in effect, 'Never mind what Mr. Stephen said in his speech. It is inadmissible in the ascertainment of the meaning of the section. What is admissible is the interpretation put on it by Courts.' Speaking thus, he read to us a passage from the judgment of the Allahabad High Court. I quite agree that in a Court of Justice Mr. Stephen's exposition as to the scope of the section would be inadmissible. I equally agree that the Judge

who presides has an unfettered right to put his own meaning on the section. But a distinction ought to be recognised between the function of the Judge and the function of the Legislature. The former has the right to *evolve* the meaning of the section from the *expressed* words, irrespective of the issue whether those expressed words adequately express the *intention* of the Legislature. Instances of glaring divergences between what the Legislature *intended* and what the words *expressed* are many. Having regard to this, it is *our* duty to ascertain what we, through our spokesman of the time when the section 124A was introduced, *intended* to be its scope and how far the Courts have subsequently read it in it or missed it from it. For this purpose and not for the purpose of trying any one in a judicial capacity, we are perfectly entitled to take into account what we, through our recognised mouth-piece, declared the legislative *intention* to be and endeavour to reassert *that* intention, with all deference to the Courts which have taken a different view as to the intention *actually expressed* and not as to the intention which *was meant* to be expressed.

"But what is fully transparent is that, under the profession of attaining this object and on the plea that Mr. Stephen intended to give India the law in force in England, the words which I ask to be omitted are resorted to—words which introduce obscurity where there was none or which (to take a more favourable or lenient view) quadruple the obscurity which now exists. Dissociated from the explanation which unquestionably throws the necessary light on what is intended to be meant by the word 'disaffection' in the section, there can be no doubt about the latter term remaining unelucidated and therefore so ambiguous as to depend for its interpretation on the idiosyncrasies of the presiding officer of the moment. This difficulty we are bound to get rid of. The question is have we done this? My humble reply is that we have not: but that, on the contrary, we have done two other undesirable things. We have, firstly, indented for words which are far worse, if not the worst which could be chosen, and, secondly, the words we have, as it were, unearthed from their deserved burial-ground, vastly enlarge the scope of the offence of sedition so as to carry it from within the limits of intelligible sense, on to regions, shadowy and calculated to provoke endless and capricious speculation.

"If all this evil is only incident to practices which might be given up as a nasty job, and if it concern individuals merely and not materially prejudice the interests of the public, I for one would not care to bestow much thought on it. But the truth is that it is not so to be disposed of. The public and the

Government, far more than the individual writers and speakers concerned, stand in urgent need of the sort of service these individuals can render, and both the public and Government will seriously suffer by unnecessary stringency and unintelligible definition of the limits within which it is safe to write and speak and beyond which it would be an offence to do so.

"In my humble judgment, it is seriously impairing this engine of public good, by involving the law in infinite doubt and considerable obscurity, to keep on the words 'hatred and contempt.' These are indeed very familiar words; but therein lies the mischief. It is these familiar words which are the parent of endless confusion. The fact that words are familiar necessarily postulates their being understood by different men according to their varying intelligence and their varying degrees of culture. No two men, picked up at random, will have the same precise idea of such words. Degrees and varieties of shades must inevitably belong to such words, as numerous and as differing as the varying grades of men's minds and culture. This is one reason why, for scientific purposes, words out of common are, I believe, chosen, or, if they are utilised, unequivocal definitions are elaborately and carefully supplied. No such attempt is made here and none is quite possible. When Mr. Stephen referred to the definition now in the Penal Code as stating the law, freed from a great amount of obscurity and vagueness which hampered the law of England, he should have had these words in view in my opinion—an opinion that can be dislodged only by my being shown any other equally substantial instances of obscurity and vagueness as having been alluded to by him. I object to these words 'hatred and contempt' in the first instance as having been deliberately cast aside as utterly unsuitable by master-minds who had them before them, and who would have utilised them, if they were really serviceable.

"In the second place, I take exception to them as vastly vaguer and obscurer than the word 'disaffection.' Few will deny, I venture to think, that they are so, standing by themselves. I shall comment upon the words, taking each by itself. Let me take the word 'hatred' first. After the initial attempt was made to turn disaffection and hatred (in its widest sense) into convertible terms, every subsequent Judge, who has had to pronounce upon it, virtually qualified it by some adjective or expression to narrow its prevalent signification for making it admissible for legal use. Farran, C. J., thought fit to qualify it by the adjective *political*, thereby affording just ground for the necessary implication that by itself the word 'hatred'

covered a dangerously wider ground than is safe, legal and just. Mr. Justice Parsons went further and unequivocally declared that the word 'disaffection' *excluded* the idea of hatred as it is understood in common parlance. I may point out here that, in citing these differences in the interpretation of the word *hatred*, I do not in the least pretend to decide who is right and who is wrong. I call attention to the differences merely for the purpose of showing that the word, standing by itself, is of perilous vagueness and obscurity, and that therefore it should be eschewed where precision and perspicuity are the real aim.

"In the third place, I object to it also as included in the word 'disaffection' as explained in *explanation* 1 and therefore superfluous and misleading as if intended to cover some further idea. I ask wherein lies the difference between hatred and enmity which is in the *explanation* No. 1 ? Worcester found none to notice. His Highness the Maharaja of Durbhanga, whose culture is of a very high order, has been able to find none. The hosts of public bodies and persons who have sent us representations—all well cultured men—have found none. For my own part, with such lights as I possess, I have found none. If there is *any* distinction, it is a revelation yet to be made. None has been vouchsafed up till now and, in my present state of darkness in this respect, I cannot help objecting to its retention alongside of the word 'disaffection.'

"Now, coming to the word 'contempt,' it is, if possible, worse still. Is it not contempt to raise a laugh ? Is it not contempt to speak of a measure as ill-conceived or ill-advised and ill-executed, in so far as such a description implies intellectual weakness of its authors and lowers them in general esteem ? Is it not contempt to say that the Government has been misled or mistaken in this or other of its measures or administrative acts ; for it must mean that the Government was weak-minded enough to be led astray, though the criticism would fall within justifiable limits under the words of eminent Judges. How are these shades of contempt kept out of the section ? And yet it is but common-sense that they should be kept out.

" How utterly indefensible it is to include 'exciting hatred or contempt' under the category of an offence can be conclusively shown by a *reductio ad absurdum*. It must be conceded on all hands that a calm, well-reasoned and logical exposure is perfectly allowable criticism. But then it must necessarily follow that the more conclusive the reasoning and the more complete the exposition, the lower and lower must the persons criticised fall in public esteem, *i.e.*, in other words, there would result a case of deeper and deeper contempt.

But such a result should not follow and therefore no good or sound or conclusive criticism should take place. But *ex hypothesi* it is permissible.

"Having regard to these and other dangers in the use of such words as 'hatred' and 'contempt,' one cannot but feel—let me repeat—that Mr. Stephen and others before him bade adieu to these words, once for all and for ever for perfectly manifest reasons.

"It has been said that it is the English law, and if that were good for England, it must be *à fortiori* so for India. I beg to demur to each of these two propositions. I am unconvinced that it was ever English law in this sense that any one could be brought up or was ever brought up for exciting 'hatred or contempt' alone. These words were in the charges; but it is notorious that those charges were pleonastic to a degree for reasons which Mr. Stephen has well explained.

"These words are indeed found scattered also in the summings up of Judges to the jury. But it will be readily granted that a summing up at the *nisi prius* cannot, by itself, be accepted as law. But what is more to the point is that there is not a single case, so far as I am aware, in which a prosecution was started or conviction had—at least within this half a century—on the naked question of offence committed by exciting hatred or contempt, divested of the concommitants of disturbances and breaches of the peace. Up to the present day sedition is an affair of common law in England and the isolated Statute 60 Geo. III and Geo. I, c. 4, section 8, was enacted only to lay down what books or pamphlets, etc., were to be seized and destroyed upon the circulator's conviction—not to lay down the law on which he was to be tried and convicted. As this Statute had not been expressly repealed, Mr. Stephen included its effect in his Digest and Draft Code. But the fact remains that it has been a dead-letter almost ever since it came into being. Therefore, I venture to think that it is incorrect to say that it is English law in the sense of a living law, sanctified by the opinions of any eminent Judges, crystallised into a settled rule and embedded in the consciousness of the people. That it is not of this latter description is, at any rate, clear from the following passages in Sir James Stephen's *History of the Criminal Law of England*:—

'(*a*) It is . . . worthy of remark that though the law of England, if used in a stringent manner, might be at least as severe as the law of Germany as embodied in

the *Strafgesetsbuch*, it has in practice become almost entirely obsolete, so far as Press offences are concerned, for a period of about fifty years.

(*b*) Since the Reform Bill of 1832 prosecutions for seditious libel have been in England so rare that they may be said practically to have ceased.

(*c*) In one word, nothing short of direct incitement to disorder and violence is a seditious libel.'

" Even assuming that it is the English law, it could produce no harm in the face of an effectual guarantee which exists in England : for, by the system under which a criminal is tried in England, a unanimous verdict of a jury of twelve men is, among other safeguards, a great protection. Well has Abbott, C. J., said that ' it is one of the peculiar advantages of our (English) jurisprudence that the conclusion is to be drawn by the unanimous judgment and conscience of twelve men, conversant with the affairs and business of life . . . and not one or more lawyers whose habits might be suspected of leading to the indulgence of too much subtlety and refinement.' With such a guarantee as this the most stringent law must be sufficiently innocuous. If I may be pardoned a simile, this guarantee is like a coat of mail, against which the most rigid law will, like the sharpest sword, fail to do undue harm. With that armour the sharpest sword might be a negligible weapon. Without it, as in this country, it will prove nothing less than a veritable sword of Damocles. But after all, as I have already said, the real question is—not whether what is alleged to be the English law is such or not—but whether, on its intrinsic merits, the proposition proposed is good or vicious, and whether there is need for it if good. That it is most pernicious has been as much my conviction all along, as almost everybody else has not hesitated to declare. Before I close my remarks on this amendment, I must notice the sort of hazy idea that is floating in the minds of some, *viz.*, that *some* forms of hatred may well be conceived, which, while compatible with a disposition to obey the law or support the Government by law established, might yet need to be discouraged by the terrors of law. Though plausible, this is untenable. In effect this will be lapsing from the firm and intelligible into slippery and dubious ground. I cannot better refute this specious theory than in the words of an article in the last issue of the Madras Law Journal on a distinction made by Farran, C. J. The article says :

' The learned Judge draws a distinction between a man who is at heart loyal and who disapproves of the measures of Government and a man who is a rebel at heart, though

ready to obey Government and support its lawful authority. It seems to us that the distinction is metaphysical rather than practical and legal. The only kind of conduct which laws and Courts can enforce is external conduct ; and it would be idle and impracticable for a Court to embark upon an enquiry into the workings of a man's mind, even though his conduct is that of a law-abiding citizen and has no tendency to make his fellow-citizens less law-abiding. So long as the words used by a person do not lead or tend to lead his fellow-subjects to disobey or refuse to support the Government, it would be a most futile task to attempt an examination of his psychological condition.'

"Before I conclude, I crave leave to read to the Council a passage from the latest edition (1896) of *Odger on Libel* as bearing on the law as to 'bringing into contempt' of the King :—

'Many dicta,' says Odger, 'in the old text-books represent the law as stricter on this point than is stated above. According to Hawkins' *Pleas of the Crown*, I, c. 6 (8th edition by Curwood, p. 66), and 4 Blackstone 123, c. IX, II, 3, it is high misprision and contempt merely to speak contemptuously of the King or curse him or wish him ill, to assert that he lacks wisdom, valour or steadiness, or, in short, to say anything "which may lessen him in the esteem of his subjects, weaken his government or raise jealousies between him and the people."

'But I can find no decision reported which supports so wide a proposition, and I venture to doubt if, in the present day, it would be deemed a crime to call the King a coward or a fool. Mere words of vulgar abuse can hardly amount to sedition.'

"With these words and reminding you that the words *hatred* and *contempt* are *not* defined, while the word 'disaffection' is attempted to be, I commend to the judgment of the Council the amendment which is before it"

The Hon'ble PANDIT BISHAMBAR NATH said :—"The Bill as originally framed, it appears, was designed as one to amend the Indian Penal Code in relation to extra-territorial offences. It was subsequently deemed expedient to patch up to the Bill certain amendments as well relating to offences of sedition. It is obvious that the arrangement is equally illogical and inartistical. It is, however, not the form of the Bill that troubles us so much as its substance, against which the public feeling is intensely strong.

"The offence of seditious libel appears to have received a kind of statutory definition for the first time in 1819, by Statute 60 Geo. 3 and 1 Geo. 4, c. 8; the words 'any seditious libel tending to bring into hatred or contempt the person of His Majesty,' etc., occur there. That Statute, it seems, was enacted upon a conviction for a *blasphemous* libel, in order to empower a

Court to seize all copies of such libel in possession of a person convicted. It is, therefore, not necessary or desirable that the words used in an old Statute of that kind, nearly a century ago, should be introduced in 1898 into the description of the law of sedition as it is now sought to be defined in section 124A.

"On a brief survey of the history of State trials held in England from January, 1793, down to May, 1881, in connection with seditious libels, I have not been able to trace a single important case in which a person was ever charged with, or convicted of the offence of, 'bringing into hatred or contempt the person of the Soyereign'.

"The words 'hatred and contempt,' being too vague and indefinite, are calculated to lead to mischievous results, and appear to have been borrowed from an old Statute, which I understand is now practically a dead-letter. In a trial held in 1839, since which time prosecutions for seditious libel have been in England so rare that they may be said practically to have ceased, the summing up of the Judge (Littledale, J.) states the modern view of the law on the subject plainly and fully. He is reported to have said 'In one word, nothing short of direct incitement to disorder and violence is a seditious libel.'

"The difference of opinion as disclosed in the recent decisions of the High Courts with regard to the interpretation of term 'disaffection' had abundantly demonstrated the necessity of defining it with precision and accuracy amounting to certainty.

"The danger of retaining the words 'with transportation for life' has already been clearly shown by an improper exercise of discretion in passing the original sentence in the late Satara trial. Punishment of that nature is enormously severe when we bear in mind that according to English law the offence of seditious libel is only a misdemeanour, punishable with imprisonment or fine, such an offender being, besides, treated as a misdemeanant of the first division, who is permitted to maintain himself and allowed other facilities subject to certain disciplinary rules. Surely there is nothing so peculiarly dangerous in the condition of the people here as to necessitate the imposition of a sentence of transportation for life, even in extremely bad cases of exciting disaffection.

"It would no doubt be a difficult task to construe the words 'contempt,' 'hatred' and 'enmity' should occasion arise to do so ; and an attempt to define

them singly, when 'disaffection' has been left practically undefined, would make confusion worst confounded, besides affecting the symmetry of the section itself.

"For instance, leaving out of consideration the secondary or tertiary sense of these words, 'contempt,' apart from its ordinary signification, which is the act of despising, means, in law, disobedience to the rules or orders of a legislative body, while 'hatred' means very great dislike, aversion or 'enmity.' Thus, it is manifest that 'enmity,' which is one of the words employed in the section in question, is a synonym of 'hatred,' and 'enmity' signifies also 'ill-will,' an expression that is now proposed to be discarded. These are not hair-splitting distinctions which have occurred to me, but which would arise of necessity in determining the true import of these convertible terms. It is unsettled yet whether *explanations* are to be regarded as part of the law which they mean to explain, but it is certain that the language employed in them should be in strict accordance with that of the scope or context of the section or sections to which such *explanations* are attached as a matter of arrangement. This rule has not, however, been observed in formulating the *explanations* 2 and 3 subjoined to the amended section 124A.

"What I mean is that 'exciting or attempting to excite hatred or contempt' is no part of the offence of sedition as described in the text of the section itself, which is obviously limited to the words 'whoever brings or attempts to bring into hatred or contempt,' etc., etc. Notwithstanding that, the same words, that is, 'exciting or attempting to excite hatred or contempt,' are so used in both the *explanations* 2 and 3 as if they were really the component parts of what constitutes the offence of sedition under the section. These words, thus, improperly used in both the *explanations*, must, therefore, be omitted for this reason also. Unless bringing into 'contempt' or 'hatred' conveys the same sense as 'exciting hatred or contempt' the text of the section and *explanations* 1 and 2 are not reconcilable in that respect.

"With due deference I must observe further that the whole section, including its three *explanations*, is nothing but a process of permutations or combinations of four vague words, *viz.*, 'hatred,' 'contempt,' 'disaffection' and 'enmity,' besides 'disloyalty'. This is certainly a very imperfect and misleading statement of the law which the section professes to lay down, and

must either be eliminated or completely modified. Having myself been engaged on the Select Committee in connection with the Criminal Procedure Code, I could not think of moving amendments as regards the present Bill, but as they are already proposed by some of my Hon'ble colleagues, I would beg leave to support some of them now, and shall do so as others are duly taken up in their order."

The Hon'ble MR. SAYANI said :—" My Lord, I simply beg to say that I am also in favour of this amendment."

The motion was put and negatived.

The Hon'ble MAHARAJA BAHADUR OF DURBHANGA moved that in lines 4 and 5 of the new section 124A of the Indian Penal Code as proposed to be substituted by clause 4 of the Bill as amended by the Select Committee, before the words " brings or attempts to bring into hatred " the word " intentionally " be inserted. He said :—" My Lord, in moving the second of the amendments that stand in my name, I cannot, as an elected representative of the non-official community, allow the occasion to pass without respectfully calling Your Lordship's attention to the marked opposition with which the present measure has been received by all classes and sections of the non-official public. Their unanimity is as complete as it is perhaps unprecedented. I do not think that it would be possible to name any occasion upon which a legislative measure has met with so little approval and so much unfavourable criticism from the public. The advocates of the Calcutta Bar, the merchants of Calcutta, as represented by the Chamber of Commerce, the large body of Europeans and Eurasians in the metropolis, as represented by the European and Anglo-Indian Defence Association, the British Indian Association, the great body of educated Native opinion in the Bombay Presidency as voiced by the Poona Sarvajanik Sabha and the Presidency Association, the inhabitants of Madras, the Indian National Congress, composed of representatives from all parts of India—these form in themselves a sufficiently formidable body of opposition.

" It is true that in Your Lordship's Council my Hon'ble friend Sir Griffith Evans is understood to intend to give his general support to the measure. But my learned friend has been altogether thrown overboard by his colleagues at the Calcutta Bar, so that he cannot be said to represent their views in any way on the present occasion : and, weighty as his observations always are, they can-

not, I submit, be taken to convey more than the expression of his own personal opinion upon the question.

"Coming now to the subject-matter of the amendment, I have to observe that the Hon'ble the Legal Member in moving to introduce the Bill announced that it was his principal object to bring the law of British India with regard to sedition into harmony with that of England. I do not dwell upon the obvious criticism that it does not at all follow, because a certain condition of affairs is suitable and applicable to one country, that the case is identical with regard to a country which is dissimilar and markedly dissimilar in more than one important respect: I am bound to accept, and I fully and unreservedly accept, the Hon'ble the Legal Member's assertion. The Hon'ble gentleman is reported to have observed that 'in England words spoken or written with seditious intent constitute a criminal offence, and the intent is presumed from the natural meaning of the words themselves without reference to the feelings of the person who used them.' My Lord, I am no lawyer, nor can I claim to pretend to any legal knowledge: but in a question of this kind there can be no lack of authority accessible alike to the layman and the practitioner, and I have had the curiosity, inasmuch as the question is one of considerable importance, to examine some of these authorities in order to satisfy myself that they were in support of the Hon'ble Legal Member's contention. But with due deference to the Hon'ble and learned gentleman, I am obliged to say that they are rather in the opposite direction. To my mind they appear to establish conclusively that in England and according to English law it is necessary, in order to punish a writer or a speaker for sedition, to show that his intention was criminal and seditious, and that his object was to create public disorder. Take the words of the late Mr. Justice Cave in the well-known case of *Queen* v. *Burns*, which is reported in the sixteenth volume of Cox's *Criminal Cases* at page 364. The learned Judge thus interpreted the law of sedition in England:—

'I am unable to agree entirely with the Attorney-General when he says that the real charge is that, though these men did not incite or contemplate disorder, yet, as it was the natural consequence of the words they used, they are responsible for it. In order to make out the offence of speaking seditious words, there must be a criminal intent on the part of the accused, they must be words spoken with a seditious intent, and although it is a good working rule to say that a man must be taken to intend the natural consequences of his acts, and it is very proper to ask a jury to infer, if there is nothing to show the contrary, that he did intend the natural consequences of his acts, yet, if it is shown from

other circumstances that he did not actually intend them, I do not see how you can ask a jury to act upon what has then become a legal fiction. I am glad to say that, with regard to this matter, I have the authority of my learned brother Stephen, in his *History of the Criminal Law.*'

"It will be observed that, according to the English law, to punish a writer or speaker for sedition, it must be shown that his intention was criminal or seditious and that his object was to create public disorder. According to the English law, the criminal intention must be proved. But, according to the proposed law for India, the intention is to be inferred from the words used. As regards the assertion of the Hon'ble the Legal Member that in England the intent is inferred from the words used, I would venture to observe that Sir James Stephen has given a very different testimony, as will be seen from the following lines quoted from his *History of the Criminal Law of England* and which are those referred to by Mr. Justice Cave in the extract I have just given :—

'The maxim that a man intends the natural consequences of his acts is usually true, but it may be used as a way of saying that, because reckless indifference to probable consequences is morally as bad as an intention to produce those consequences, the two things ought to be called by the same name, and this is at least an approach to a legal fiction. It is one thing to write with a distinct intention to produce disturbances, and another to write violently and recklessly matter likely to produce disturbances.'

"My Lord, I cannot forget that although Sir James Stephen, in spite of the protest of a large section of the Native and European public, thought fit to support the enactment of the Sedition Law of 1870, he yet felt bound to give that protection to freedom of speech and writing to which it is entitled, by providing good safeguards, namely, by making criminal intent and incitement to force essential ingredients of the law of sedition. In his several speeches before this Council, that hon'ble and learned gentleman repeatedly emphasized these points. 'So long as a speaker or writer,' he said when moving for leave to introduce the Bill on the 2nd August, 1870, 'neither directly or indirectly suggests nor intends to produce the use of force, he does not fall within the section.' In this he was but adopting the words of Mr. Justice Cave in the *Queen against Burns*, where it was laid down that 'there must be a criminal intent on the part of the accused' and that 'the language used by the defendants' must be used 'with the intention to produce violence.' In this he was but expressing the sentiment which we find reiterated in the second volume of his *History of the Criminal Law in England*, where, after a careful review of all the cases on the subject, he remarks with his usual terseness and forcible directness :

'In one word, nothing short of direct incitement to disorder and violence is a seditious libel.'

"In this view Sir James Stephen is, as I have endeavoured to point out, supported by Mr. Justice Cave in the latest judicial pronouncement on the subject: and I would go further and say that this is the kind of intention that has been laid down by every judicial authority in England, who has considered the question, to be the ingredient of the offence. In my position of a layman it would be impertinent in me to attempt to dogmatize: but I venture to say that I shall be much surprised if it can be shown that there is a single case on record, at any rate in modern times, in which a man in England has ever been charged with sedition, much less tried and convicted for it, unless his words or writings were criminal or seditious and calculated and intended to cause disturbance. Intention such as this is nowhere emphasized and brought into prominence in the amended section and explanations as they have left the hands of the Select Committee.

"Similarly, the other safeguard, namely, incitement to physical force, has also been taken away by the proposed amendments. In short, to create a mere feeling of contempt or hatred against Government, without any intention of doing it and without any incitement to violence so as to resist or subvert its authority, will be enough to make a man liable to be prosecuted. The situation then is this: under the existing law in India, and in England as interpreted by English Judges, the people know that so long as their disapprobation of the Government is compatible with a disposition to render obedience to the authority established by law, they have no chance of being prosecuted on a charge of sedition. 'Let it be shown,' said Sir James Stephen in 1870, 'that the matter complained of was not consistent with a disposition to obey the law; let it be shown that it was consistent only with a disposition to resist the law by force, and it did fall under the section, otherwise not.' But the effect of the section as amended and of the explanations appended to it is to take away the idea of force and intention altogether. You have to produce only an unfriendly feeling against Government, however mild it may be, and you make yourself liable to be transported for life or at the very least imprisoned with hard labour. Such a provision will make it almost impossible for a journalist or a public speaker, or even public bodies, and perhaps Members of Councils, to criticise the policy and measures of Government with honesty and independence. It has therefore seemed

to me, my Lord, that I should lay before Your Lordship's Council the views of the majority of the non-official community upon this important point. The object of my amendment is to make it quite clear, by the insertion of the word 'intentionally,' that an intention to produce the effects contemplated by section 124A is the basis of the offence. In this proposal I am happy to find that I have been so fortunate as to obtain, among others, the weighty and valuable support of the majority of the Hon'ble Judges of the Calcutta High Court, and of the Calcutta Bar. I observe, on reference to the letter received from the High Court, that the majority of the Court are of opinion that it should be clearly stated in the section that the gist of the offence of sedition lies in the intention to produce the effects mentioned therein. I need not dwell upon the importance or upon the significance of such a declaration from such a body. To the deliberate opinion of these matured and judicial minds I have to add that of the Calcutta Bar. It is in the ranks of the Calcutta Bar that Your Lordship will find some of the most brilliant intellects and some of the ripest and most experienced lawyers in the country. I have only to mention such names as those of Sir Charles Paul, Mr. Pugh, Mr. Jackson, Mr. Bonnerjee and Mr. Garth to command instant assent to my proposition. What do these learned counsel and their colleagues of the Bar say with regard to this matter?

"The gist of the offence undoubtedly is the intentionally exciting or attempting to excite feelings incompatible with due obedience as a subject and disposition to assist the Government of the country in time of need. Anything short of this may be defamation, but it is not sedition."

"The force of circumstances has devolved upon my unworthy self the task of acting as the spokesman of the views of this learned body, than whom no better exponents of the law are to be found in this country. But they do not stand alone. Apart from the legal profession and the majority of the Hon'ble Judges, we have, as I have already pointed out, the British Indian Association, the Calcutta Chamber of Commerce, the European and Anglo-Indian Defence Association, the Bombay Presidency Association, the large and representative conference of Calcutta notabilities presided over by my friend Maharaja Bahadur Sir Jotindra Mohan Tagore, and a host of minor bodies and associations, united in opposition to this measure. I would respectfully ask Your Lordship and the Hon'ble the Legal Member, in face of these representations, to consider the advisability of accepting the amendment now before the Council.

'It is a principle of natural justice as well as of law,' said Lord Chief Justice Kenyon in the old case of *Fowler* v. *Padget*, 'that the intent and the act must both concur and constitute the crime.' 'It is undoubtedly a principle of English criminal law,' says Mr. Justice Wills in the case of *The Queen against Tolson*, 'that, ordinarily speaking, a crime is not committed if the mind of the person doing the act in question be innocent.' Mr. Justice Cave's observations in the same case are very similar.

'At common law,' he says, 'an honest and reasonable belief in the existence of circumstances which, if true, would make the act for which the prisoner is indicted an innocent act, has always been held to be a good defence. Honest and reasonable mistake stands in fact on the same footing as absence of the reasoning faculty, as in infancy, or perversion of that faculty, as in lunacy. So far as I am aware, it has never been suggested that these exceptions do not equally apply in the case of statutory offences unless they are excluded expressly or by necessary implication. Now it is undoubtedly within the competence of the Legislature to enact that a man shall be branded as a felon and punished for doing an act which he honestly and reasonably believes to be lawful and right; just as the Legislature may enact that a child or a lunatic shall be punished criminally for an act which he has been led to commit by the immaturity or perversion of his reasoning faculty. But such a result seems so revolting to the moral sense that we ought to require the clearest and most indisputable evidence that such is the meaning of the Act.'

"Again, in his judgment in the same leading case, Mr. Justice Stephen observes—

'The principle involved appears to me, when fully considered, to amount to no more than this. The full definition of every crime contains expressly or by implication a proposition as to a state of mind. Therefore, if the mental element of any conduct alleged to be a crime is proved to have been absent in any given case, the crime so defined is not committed, or again, if a crime is fully defined, nothing amounts to that crime which does not satisfy that definition.'

"Lastly, I will quote the judgment of Lord Esher, then Mr. Justice Brett, in the case of *The Queen* v. *Prince*, reported in Law Reports, 2 Crown Cases Reserved, at page 162:—

'It would seem that there must be proof to satisfy a jury ultimately that there was a criminal mind or *mens rea* in every offence really charged as a crime. In some cases the proof of the committal of the acts may *primâ facie* either by reason of their own nature, or by reason of the form of the statute, import the proof of the *mens rea*. But even in those cases it is open to the prisoner to rebut the *primâ facie* evidence, so that, if in the end the jury are satisfied that there was no *mens rea* or criminal mind, there

cannot be a conviction in England for that which is by the law considered to be a crime.'

"In this view of the law, as stated by the late Master of the Rolls, all the other Judges, fifteen in number, before whom the matter was heard, practically acquiesced, and Mr. Justice Hawkins, in *The Queen against Tolson*, expresses his entire agreement with it as expressive of his own views touching the principles of law which govern such questions. We have it then, my Lord, on the authority of these eminent Judges, that intention is *primâ facie* the gist and the essential ingredient of every criminal offence. Of course, as Mr. Justice Hawkins has pointed out, the rule that there must be a mind at fault before there can be a crime, is not an inflexible one, and a statute may relate to such a subject-matter and may be so framed as to make an act criminal whether there has been any intention to break the law or otherwise to do wrong or not. In such cases the acts are properly construed as imposing the penalty when the act is done, no matter how innocently, and in such a case the substance of the enactment is that a man shall take care that the statutory direction is obeyed, and that, if he fails to do so, he does it at his peril. But to what class do these statutes almost entirely belong? It will be found, my Lord, as I venture to think, that they are concerned mainly with the large body of municipal law which has been brought into being by the needs of the present day and which is conceived chiefly in this spirit, regulating as it does a variety of matters necessary for the welfare, health or convenience of the community. It is not, I trust, intended to place the law of sedition on the same footing as such enactments. The offence contemplated by the term 'sedition' is a serious one. Is a man to be held to have committed sedition 'unintentionally'? Is it intended that the mere fact of prosecution under this section (which, although it is undertaken under the sanction of Government, must after all be based on an *ex parte* representation of facts) should be treated as *primâ facie* evidence of guilt, unless the accused succeeds in establishing his innocent intention? It may no doubt make it more difficult to obtain a conviction if the *onus* of proving criminal intent is thrown on the prosecution. But criminal intent is the essence of the offence according to English law. The Hon'ble the Legal Member has told us that our present task has been undertaken with a view to assimilate the law of India on the point with that of England. I am unable to conceive that a trial for sedition differs in any way from a trial for any other penal offence. It is an established rule, and a salutary one, that in all penal cases the accused is entitled to demand that his guilt shall be fully proved against him by the

prosecution beyond all reasonable doubt. The burden of proof, says a leading legal text-book, is always on the party asserting the existence of any fact which infers legal accountability. This is a universal rule of jurisprudence founded upon evident principles of justice, and it is a necessary consequence that the affirmant party is not absolved from its obligation because of the difficulty which may attend its application. To prove a negative is in most cases difficult, in many cases impossible. Criminality is therefore never to be presumed. Your Lordship's Government is so situated in this country that under favourable circumstances the assistance of the Press is not only valuable, but necessary. Honest and free criticism on the acts, measures and conduct of the Government are welcome, inasmuch as the Government are enabled thereby to discover the thoughts that are at work in the minds of the people. I do not hold a brief on behalf of the Indian Press. I am not asserting that there are not ignorant and malevolent journalists whose conduct is not only reprehensible but deserving of punishment. Let them be punished by all means: but let it be clearly and unmistakably shown that they will not be punished unless they intentionally incite to sedition. Under the proposed section it seems to me that it is quite possible to punish a journalist or a public speaker who is only guilty of using indiscreet language calculated at most to give rise to passing feelings of irritation. But what did Sir James Fitzjames Stephen say upon the subject from his seat in Your Lordship's Council in 1870?—

'The section now before the Council did not make it criminal to do things which people knew to be likely to excite disaffection. To punish the doing of an act which you knew to be likely to produce disaffection might be to punish a man for doing an act which he had a right to do, although it produced disaffection. He could imagine many things which a public man might have a right to do, even at the expense of exciting disaffection, but which nevertheless should not be punishable.'

"I am afraid I have been taking up too much time of the Council by these lengthy quotations. But I have to ask the Council to allow me to quote only once more, and that from the letter that was received yesterday from the Calcutta Bar:—

'The result of this Bill, if passed into law, will make it penal amongst other things—

(1) effectively to criticise the policy of the Government with reference, for example, to the present war beyond the frontier;

(2) effectively to oppose and to give true utterance to the feelings of the people, or a section of the people, against a proposed tax that may be considered oppressive ;

(3) to present a petition for the redress of serious grievances, showing the existence of such grievances hitherto unredressed ;

and to leave it in the discretion of the Executive Government to prosecute or not.'

"If, however, Government thinks fit in exceptional cases to make it a penal offence for a journalist or a public speaker to use indiscreet language, even if his object is perfectly harmless, I have nothing further to say on the subject. Perhaps in times of exceptional political excitement it may be advisable to use the powers proposed by this section to prevent the spread of public discontent. But what I wish to point out is that in cases like these the mere infliction of a fine at most is likely to prevent any recurrence of similar acts of indiscretion. In my humble opinion the law should distinctly lay down the difference between intentional offences against the State and rash or negligent actions. I fully sympathise with Your Lordship's Government in their efforts to put the law of sedition on a sounder and clearer basis than it stands at present. And it is only with this object in view that I have considered it my duty to put before Your Lordship the views held by the majority of the Indian public. It is now for the Government to decide how far they are prepared to meet their wishes.

"One thing, however, I must mention before I conclude. On a former occasion also an Act was passed to repress sedition, but this Act had afterwards to be repealed. I allude to the Vernacular Press Act ; and I am glad to find that in dealing with the same question Your Lordship has avoided making any invidious distinction between different classes of newspapers and public speakers. And I feel sure that those who have studied the subject feel deeply grateful to Your Lordship for it."

The Hon'ble MR. CHALMERS said:—"I must oppose this amendment. These words do not occur in the existing section which has been in force for the last twenty years. No such consequences as the Bar seem to read into the section have occurred from the old section. I am unwilling to change the language used in the section which has stood for thirty years. As regards the English law, my Hon'ble friend the Maharaja of Durbhanga says that he speaks as a layman, but I must congratulate him on presenting to the Council

a learned legal argument. He takes to the law as a duck takes to the water. I can only congratulate the Bar of Calcutta that the Hon'ble Maharaja is not there to compete with them and to take away their practice from them. As regards the substance of his argument, I am afraid I have not the same facility for picking up law as he has, and I cannot answer him fully at a moment's notice, but I will just cite two short extracts in reply. He has referred several times to the words and the writings of my predecessor Sir James Fitzjames Stephen. I will read to him article 99 of Stephen's *Digest of the Criminal Law of England* and what he says about intention. Article 99 runs—

'In determining whether the intention with which any words were spoken, any document was published, or any agreement was made, was or was not seditious, every person must be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself.'

"I will read also a few lines from a very well known work, *Taylor on Evidence*. Speaking of conclusive presumptions of the common law, section 80, last edition, it is said—

'It is again conclusively presumed that every sane man of the age of discretion contemplates the natural and probable *consequences* of his own acts. Thus an intent to kill is conclusively inferred from the deliberate violent use of a deadly weapon; on an indictment for cutting with intent to do the prosecutor some grievous bodily harm, the prisoner is rightly convicted, though it appeared that his real intent was to wound another person; an intent to defraud a particular party will be conclusively presumed on an indictment for forgery, provided the defrauding of such party would be the natural result of the prisoner's act, if successful, and this even though it be proved that the prisoner did not entertain the intention charged; and on a charge of arson for setting fire to a mill, an intent to injure or defraud the mill-owners will be conclusively inferred from the wilful act of firing. The same doctrine would, apparently, on principle, apply to all other crimes.'

"Well, if we put the word 'intention' into the Act as my friend the Maharaja suggests, we must also put in Sir Fitzjames Stephen's article 99, which shows after all that the word 'intention' is a legal fiction—Mr. Justice Cave has pointed out that it is a legal fiction. We have nothing to do with what a man thinks and feels, but we have to do with his acts, judged by reference to their probable consequences. That is what Mr. Justice Stephen lays down in article 99, and what Mr. Justice Cave has pointed out in his summing up. Of course a man's intentions are only known to himself. When you come to deal with the question of intention in law, you must take what

he has done, you must consider the circumstances in which he has said or done a particular thing, and you must infer the intention from that. I think, therefore, if we accepted this amendment, we should not be in any way helping the cause which—I was going to say my Hon'ble friend, but I will say my Hon'ble and learned friend—has so ably advocated."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS said:—"My Lord, with regard to this question of intention, I would, with due deference to the Hon'ble the Legal Member, beg to remark that it has been somewhat cruelly banished from all considerations in the proposed law. The intention will be presumed from the natural meaning of the words themselves, without reference to the actual feelings of the persons who used them. Thus an accused under the proposed law would be left very little chance of being allowed to prove his intention except from what might be apparent from the words themselves forming the subject-matter of the charge. There is not the least doubt that words are the natural outward expressions of the mind, and no man whose mind has not been deranged would say anything which he had not meant. But, then, there are at least some indiscreet people in this world who use words without foreseeing what the natural consequences from the use of such words may be; upon such persons the proposed law would operate a little too severely. In my humble opinion there ought to be some room in the law for such foolish men to prove what their intentions were, apart from what might be presumed from the natural meaning of the words. How often do we hear or read expressions like these, 'what a contemptible Government it is to levy a tax on a famine-stricken people'; 'what a swindle it is to pay the Services in 1*s.* 3*d.* rupees when they were promised to be paid in 2 shillings the rupee.' Such expressions are, as a distinguished officer in the Civil Service of Bengal has pointed out, the outcome of a man's supposed right 'to have his grumble,' and cannot in fairness be considered seditious. It would be hard, my Lord, if the section 124A be enforced in cases like these. Then, again, do we not find almost daily men in high position—men of light and leading, men esteemed by society as highly intellectual and commanding the respect of nations—expressing regret to each other in words like these?—

'I did not mean what I said', or 'I am sorry my words hurt your feelings, but I never intended to hurt them; pray accept my sincere apology.'

"No one will deny, my Lord, that there is room for such things in this world even amongst the most highly-cultured and intellectual of men. If then a poor half-educated Indian editor in an unguarded moment or through want of sufficient foresight writes anything, from the natural meaning of which seditious intent might be presumed, would the law allow him no chance of escape? It will be answered perhaps that the Judges of the land would undoubtedly exercise their discretion in regulating the amount of punishment in such cases. But I leave the question entirely to Your Excellency's merciful consideration whether the ends of justice would not be more properly met by a lenient framing of the law and a vigorous administration of it where necessary, than by a rigorous legislation, leaving the accused to the doubtful mercies of a Criminal Judge.

"With these words, my Lord, I beg to support the amendment proposed by the Hon'ble the Maharaja of Durbhanga."

The Hon'ble SIR GRIFFITH EVANS said:—"I also oppose this amendment. The speech of the Hon'ble Mover was directed mainly to two points—first, that the word 'intentionally' should be inserted before the words 'excites or attempts to excite'; second, that an incitement to force should be necessary to constitute a crime under this section. As to the first point, it is to be observed that the word 'intentionally' is not in the old section which has been in force twenty-eight years without complaint as to its omission.

"The words defining the offence are 'excites or attempts to excite feelings of disaffection.' Now as to the first branch 'excites feelings of disaffection,' the indictment under this branch would have to be that the accused by certain words spoken or written had actually excited such feelings. But it is only possible to prove this in the case of an orator addressing inflammatory words to an assembly of people who show by their cries and acts that they are so excited as by going forth at once and committing acts of violence.

"I have never known any case in which a Judge was asked to convict on a written article under this head, still less one where there was a conviction. The reason is that it is impossible to prove that any such feelings were in fact excited by the writing. So that this first branch is inserted only to meet very exceptional cases.

"The key to the omission of the word 'intentionally' before the word 'excites' may possibly be found in the passage quoted from Sir Fitzjames Stephen by Cave, J., in the charge referred to by the Maharaja:—

'Even in those cases, however (*i.e.*, cases where criminal intent was an essential element), the introduction of the term "intent" occasionally led to a failure of justice or to the employment of something approaching a legal fiction in order to avoid it.'

"Sir Fitzjames Stephen goes on to observe that reckless indifference to probable consequences may be as bad as a distinct intention to produce those consequences, but that they are not the same, though the former is often punished as 'intentional' by means of the rule of law that a man must be taken to intend the natural consequences of his acts, which rule he terms 'an approach to a legal fiction.'

"It may well be that, for those rare cases where the speakers can be proved to have actually excited such feelings by their words, Sir Fitzjames Stephen and the Law Commissioners did not think it desirable to provide expressly for the presence of 'intention,' and so force the Courts to use what he terms a legal fiction, or else leave unpunished a grave offence.

"But with regard to the second branch (under which alone a writer has been or ever can be convicted)—'attempts to excite feelings of disaffection'—in this case the element of intention is sufficiently expressed in the word 'attempts.'

"To 'attempt' to produce a result is to try or endeavour to produce that result, and the tribunal must find as a fact by the perusal of the article and a consideration of such facts as may be before them whether the accused did 'attempt,' try or endeavour 'to excite hatred against the Government or disaffection.' If the tribunal does not find this, the man must be acquitted as it is for the 'attempt' he is tried. To insert the word 'intentionally' before 'attempts' seems wholly unnecessary, and would only tend to obscure the matter and introduce confusion as in the case of an ex-employé who attempted to wreck a train by placing an obstruction on the line and who was convicted of a minor offence, because his 'intention' was to get another employé into trouble and he was indifferent as to whether he wrecked the train or not so long as he gained his object.

"So too in the *explanations* we find the words 'without exciting or attempting to excite,' and here too the same comment holds. The mob orator

who, under the guise of expressing disapprobation, is proved to have actually excited the mob to rioting, will derive no comfort from the *explanations*. But the writer who expresses his disapprobation in strong terms is in no danger from the words 'without exciting,' for, as I have shown, it is practically impossible to legally prove that he actually excited natural contempt or disaffection in anybody by his writing.

"The words the writer has to look to are the words 'without attempting to excite.' He may express his disapprobation as strongly as he pleases so long as he does not 'attempt to excite natural contempt or disaffection against the Government as by law constituted in British India.' Whether what he writes is honest though severe criticism on the acts of the Government, or is an 'attempt' to excite hatred, contempt or disaffection, must be judged by the tribunal before which he is tried, and which tribunal must be credited with honesty of purpose and average common-sense.

"I have dealt with this point at length because much of the alarm created by the alteration of the section rests, I think, upon the mistaken idea that liberty of criticism is endangered by the word 'excites' in the section and 'without exciting' in the *explanation*.

"The *explanation* is not an *exception*, and is merely intended as an instance of what can be done without contravening the section and also for the purpose of emphasizing the fact that disapprobation is not disaffection. It has been said that a majority of the High Court of Calcutta desired that words should be inserted making intention the gist of the offence, but it was a majority of one, and the minority contains many names deserving of respect; and I err (if error there be) in company with this very weighty minority of the Judges in thinking that the proposed amendment is not necessary.

"As to the observations as to incitement to use force being necessary, they do not appear to be germane to this particular amendment, and as the Maharaja agrees with me, as I gather, that attempts to excite hatred against the Government ought to be punished, though not under this section, and as I have already expressed my opinion on this point, I need say no more about it now."

The Hon'ble RAI BAHADUR P. ANANDA CHARLU said:—"I strongly support this amendment. After the copious remarks contained in the Maharaja's excellent and exhaustive speech, I have little to add. I never understood till to-

day that the Hon'ble Mover wanted virtually to eliminate 'intention' from being the very essence of this offence. He said in his speech on the 21st December last—

'In England, words written or spoken with seditious *intent* constitute a criminal offence, and the intent is presumed from the natural meaning of the words themselves, without reference to the actual feelings of the person who used them.'

"By this utterance I thought that the Hon'ble Mover fully conceded that intent was the essence of the offence, but that he merely contended that the evidence of that intent was the *words alone* and nothing else. Inasmuch as it is abundantly clear by this time that the concessions and expositions of movers go for nothing, I only thought that what has been undisputed must be made to appear on the face of the section itself, and hence this and other similar amendments on my part. But I never dreamt that the Hon'ble Mover would ever take up the attitude he has taken up to-day. He now virtually says that he would not put into the section itself the word 'intentionally' or anything else which would in any way enlarge his views as to the evidence of intent. This is hardly a correct position to take. That there is another and sounder view to take as to what amounts to the evidence of intent is clear from the exposition of Cave, J., in the case against Burns and others. I meant to quote that passage, but as it is already cited by the Maharaja, I merely allude to it. It is for Judges and not for us or the Hon'ble Mover to lay down what should be regarded as evidence of intention. I would therefore so word the section as to leave it for Judges to choose between the Hon'ble Mover and Cave, J., on this point. It has been said, as I expected it to be said, that in the section, as it now exists in the Penal Code, there is no word 'intention,' and that we were content all these years. That Sir Griffiths Evans should also re-echo this and insist upon it is to me a surprise. I have only to point out in refutation of this special pleading that the word *disposition* fairly gives prominence to intention; for where else is disposition? It is surely not in the leg or the arm."

The Hon'ble PANDIT BISHAMBAR NATH said:—"The amendment is a reasonable one, and is not adequately met by the plea of limitation or efflux of time that has so often been urged by the Hon'ble the Legal Member. The Hon'ble the Maharaja Bahadur does not care to share with us the emoluments of our profession; nor does his modesty claim the much-coveted

designation of 'learned', but his presence here and the advocacy by him of the cause of the people in connection with this Bill indicate that he *merely* feels the responsibility that rests upon his shoulders."

The Hon'ble the MAHARAJA BAHADUR OF DURBHANGA said:—"I simply put forward these amendments in order to indicate the changes that are thought necessary by the non-official bodies whom I represent; at least I have tried my best to put their views in the form of these amendments. I have only done my duty. And it is for the Government to decide how far they are prepared to accept them."

The motion was put and negatived.

The Hon'ble RAI BAHADUR P. ANANDA CHARLU moved that in line 8 of section 124A of the Indian Penal Code as proposed to be substituted by clause 4 of the Bill as amended by the Select Committee, the words "and with the intention of exciting disaffection" be inserted after the word "India" and before the word "shall." He said:—"The observations which I made in supporting the Hon'ble Maharaja's amendment are the only reasons I have to give in supporting that which I now propose."

The motion was put and negatived.

The Hon'ble RAI BAHADUR P. ANANDA CHARLU moved that in the same section, in lines 8, 9 and 10, the words "with transportation for life or any shorter term to which fine may be added or" be omitted. He said:—"The reasons which support this amendment have already been mentioned in one or other of the speeches already made. They are by this time familiar enough to the Hon'ble Members. At this late hour I do not propose to repeat them. It is useless to repeat them if the remarks already made failed to convince. With these words I move the amendment."

The Hon'ble MR. CHALMERS said:—"I must oppose this amendment. I have already stated the grounds on which I oppose it. This is the old punishment which has been in force for nearly thirty years. There were a certain number of cases tried under the old section, and we find that in spite of my friend's fears very small punishments have been imposed. It is quite true that one Court imposed a sentence of transportation for life, but the High Court reduced the sentence to one, I think, of eighteen months' imprisonment. All these sentences

can come before the High Court in one way or another, and we have that guarantee that no sentence of improper severity would be allowed to stand. I have already pointed out that sedition is an offence of which the gravity greatly varies according to time, place and circumstance; that we must in exceptional cases retain the extreme punishment while we also provide for minor offences by a nominal punishment, and further, if jurisdiction is given to Magistrates, we provide effectively that in those cases a sentence of more than two years cannot be passed, and even that sentence will be liable to revision by the High Court.'

The motion was put and negatived.

The Hon'ble MR. SAYANI moved that in section 124A of the Indian Penal Code as proposed to be substituted by clause 4 of the Bill as amended by the Select Committee, before the word "imprisonment," in line 10, the word 'simple" be inserted. He said:—"A careful perusal of the section shows that there are three classes of punishments provided by the section according to the gravity or lightness of the offences. For the offences of the gravest kind the punishment provided is transportation for life or any shorter term, to which fine may be added. For offences of a moderate kind the punishment provided is imprisonment, to which fine may be added. For cases of a trivial nature the punishment provided is fine. It is reasonable, therefore, to assume that the imprisonment intended to be awarded is simple imprisonment, especially when it is remembered that the offence intended to be punished is a political offence. Now the word 'imprisonment' under the law means imprisonment of either description, both rigorous and simple, and hence I propose the amendment with a view that there may be no ambiguity in the matter and that the intention of the Legislature may be clearly expressed."

The Hon'ble MR. CHALMERS said:—"I must oppose the amendment, and I would suggest to the Council that they should retain the punishment which has been in force in India for thirty years. As regards my Hon'ble friend's last argument let me point out this. If a Court thought that a sentence, say, of eighteen months' hard labour would meet the case, you could not quash that sentence. I think the orders are that no sentence of transportation could be passed for less than seven years. Well, then, because the Court cannot give the man eighteen months' hard labour, they must sentence him to transportation for seven years. There is no alternative, and thus the result would be that the amendment would tend not to mitigate, but to increase, the sentence in severity."

1898.] [*Rai Bahadur P. Ananda Charlu; Maharaja Bahadur of Durbhanga; Mr. Chalmers.*]

The Hon'ble RAI BAHADUR P. ANANDA CHARLU said :—What I said on the amendment proposed just before applies to this. I support the amendment."

The motion was put and negatived.

The Hon'ble MAHARAJA BAHADUR OF DURBHANGA moved that for *explanations* 1, 2 and 3 to the same section the following *explanation* be substituted, namely :—

" *Explanation.*—Feelings of disaffection mean all feelings incompatible with a disposition to render obedience to the lawful authority of the Government established by law in British India, and to support the lawful authority thereof against unlawful attempts to subvert or resist that authority."

He said :—" The chief reason why I move this amendment is that I find there is a strong feeling existing that the word 'disaffection' has not been properly defined, and of all the suggestions made to us by different bodies this seems to be about the best definition. Nobody can say that this suggestion was made with any disloyal motive. The name of the European and Anglo-Indian Defence Association is a sufficient guarantee that it is not submitted with a disloyal motive."

The Hon'ble MR. CHALMERS said :—" I regret to say I must oppose this amendment. What it practically comes to is this—it is a point which has been discussed again and again. It is a question whether sedition is to be defined to mean stirring up hatred or enmity against the Government, or whether it is to be defined to mean stirring up hatred under such circumstances as involve an appeal to force or violence. It is putting that old question again in different words. Having regard to the conditions we have to deal with in India, I must oppose that idea altogether. We must stop sedition at an earlier stage. What we want to do is to have the power to stop people who promote feelings of discontent throughout the population, who do not themselves suggest a resort to violence, but who employ themselves in breeding feelings of discontent trusting to somebody else to set fire to the train and start the explosion. It is wholly immaterial whether a writer himself advocates violence or not. For myself I have a greater feeling of respect for the man who honestly preaches violence than for the man who simply sows the seeds of discontent waiting for somebody else to gather the crop, he himself keeping out of the way. For the reasons which I have already given I must oppose this amendment."

The Hon'ble SIR GRIFFITH EVANS said:—"I, too, oppose this amendment on somewhat different grounds from those of the Hon'ble Mr. Chalmers. What this amendment means is really this: in the old section as it stood the crime was an attempt to excite feelings of disaffection. No definition of disaffection was given; it was deliberately left out, but an explanation was given which said that disapprobation of the measures of Government, such disapprobation as is compatible with a disposition to obey and support the Government, is not disaffection. Now this explanation points out that disapprobation is not disaffection, but that even to disapprobation there are certain limits, and that the disapprobation which you may lawfully seek to excite is limited by this—it must be such disapprobation as is compatible not only with a disposition to render obedience but with a disposition to support lawful authority. Now this is, as I understand it, loyalty. It must be a disposition not only to render obedience to the Government, but to come to the assistance of the Government in any invasion or attack or any attempts to subvert it. A disposition to support means active loyalty. Disposition to support means readiness to support. Now it is proposed to make this (instead of being, as it is in the section, a limit to disapprobation) an exhaustive definition of the word 'disaffection.' I would point out to this Council that only the other day the *Statesman*, which is certainly not in favour of this Bill, pointed out that this definition is defective. The feelings sought to be excited might be compatible at the present moment with rendering obedience to the Government and even coming to the support of it, if the Government was so irresistibly strong that it was known that any other course would be dangerous, and yet if the feelings sought to be excited were such as tended to weaken the tendency or disposition to support the Government and render obedience, that might be a grave offence and yet would not come within this definition. A great deal of argument is capable of being raised with regard to what feelings are compatible with a disposition to obedience and a disposition to support. Instead of putting to the jury or to the Judge the question, did the accused try to make the people hate the Government or not, we are asked to put the question whether the feelings of hate he has endeavoured to instil are such as are incompatible with a disposition to render lawful obedience. To illustrate the difficulty I will read to the Council the words of a very celebrated man, Ram Mohun Roy, in a petition made by him and other Hindu inhabitants of Calcutta against Press restrictions which existed in 1823. The petition has been published in one of the Calcutta

papers *Reis and Rayet*, and I take it from there. This is the third paragraph:—

'The greater part of Hindustan having been for several centuries subject to Muhamadan rule, the civil and religious rights of its original inhabitants were constantly trampled upon; and, from the habitual oppression of the conquerors, a great body of their subjects in the Southern Peninsula (Dukhin), afterwards called Marhattahs, and another body in the western parts, now styled Sikhs, were at last driven to revolt, and, when the Mussulman power became feeble, they ultimately succeeded in establishing their independence; but the natives of Bengal, wanting vigour of body, and averse to active exertion, remained during the whole period of the Muhammadan conquest faithful to the existing Government, although their property was often plundered, their religion insulted, and their blood wantonly shed.'

"So according to this it is possible for the people to be convinced that their blood is wantonly shed, that their religion is trampled on and their property plundered, and this state of mind may be consistent with faithfulness to the Government so long as they think the Government is too strong for them.

"Then he goes on—

'Divine Providence at last, in its abundant mercy, stirred up the English nation to break the yoke of those tyrants, and to receive the oppressed natives of Bengal under its protection.'

"Are we prepared to have the people imbued with such feelings that they will thank God for their deliverance from the British Raj?

"I think it is safer not to attempt to define disaffection as Sir Fitzjames Stephen also thought, though perhaps it might be difficult to find a better definition than this if it were not for the use that is sought to be made of the words 'compatible, etc.,' which were in the old *explanation*. It is said that they amounted to a *quasi* definition in that they had been authoritatively interpreted by Sir Fitzjames Stephen in his speech as meaning that nothing was an offence under this except an incitment to violence, and that the Courts had gone wrong in deciding otherwise. This to my mind is the only reason for altering the section. But in fact there is no allusion to force in these words: on the contrary, they seem to say in plain English that disapprobation may pass into disaffection when it becomes incompatible with a disposition or readiness and willingness to obey and support the Government, that is incompatible with an actual loyal frame of mind. But for the persistent claim to have these words construed by Sir Fitzjames Stephen's speech into something which they do not mean in plain English, I see no reason for altering the old

section, which as interpreted by the Allahabad High Court to mean practically the same as the present section is intended to mean. As I have already said, I would not myself have altered the old section, but if it is to be altered it should be so altered as not to give any ground for the contention that incitement to force is necessary to constitute an offence under the section. As to the state of things in England, I have dealt with it in my previous observations."

The motion was put and negatived.

The Hon'ble RAI BAHADUR P. ANANDA CHARLU moved that the following provisos be added to the proposed new section 124A, namely :—

"Provided that no one shall be deemed to have committed an offence under this section by reason only that he has attempted in good faith—

(*a*) to show that Her Majesty has been misled or mistaken in her measures or policy : or

(*b*) to point out errors or defects in the Government established by law in British India with a view to reformation of such alleged errors or defects by lawful means : or

(*c*) to point out, in order to their removal by lawful means, matters which are producing or have a tendency to produce disaffection in Her Majesty's subjects : or

(*d*) to incite Her Majesty's subjects to attempt to procure by lawful means the alteration of any matter by law established : or

(*e*) to express disapprobation of the administrative or other action of the Government."

He said :—" In moving this amendment I must say that I attach very great importance to it. I admit that the Hon'ble Mover's explanations cover the whole ground covered by the proviso and the several branches of the proviso I propose to substitute. But mere abstract and aphoristic propositions are not as good guides to the lay mind as are concrete and illustrative indications of the several directions in which criticism is allowable. Let me point out that when Mr. Stephen drew up his Draft Code for the English public—a public far better educated and which spoke the same language as the language of the Code as its mother tongue—such concrete and illustrative provisos were put in in his section 102 of that Code as needful. To Indians such a help is far more necessary. The several branches of the proviso I suggest have, besides, another decided advantage. They utilise and actually incorporate the very words and statements

in which eminent Judges explained in what directions and for what purposes criticism was allowable. This is a safeguard which the Indian public rightly expect at the hands of their Legislature. I can conceive of no reasonable objection to this plain and elucidatory course commanding acceptance."

The Hon'ble MR. CHALMERS said:—"I must oppose this amendment. I need only say a word or two. I think it is covered by the existing *explanations*. These *explanations*, as I think my Hon'ble friend has pointed out, are taken mainly from the Report of the Criminal Code Commission, or at least they correspond with that, and they relate rather to the original words of the Criminal Code Commission than to the words used here. I think, however, that our two *explanations* cover all the ground required. They cover the measures of Government which it is proposed to reverse; they cover also the measures of Government which it is proposed not to reverse but merely to criticise. I think these two clauses sum up all the criticism that can be required."

His Honour THE LIEUTENANT-GOVERNOR said:—"The proposal is that these provisos should be *added* to the new section 124A, and I think with my Hon'ble friend Mr. Chalmers that that is quite unnecessary, and that the *explanations* as they now stand do practically cover everything that is required. I should not have been sorry to have seen the *explanations* themselves drafted on the lines of these provisos, but, as that has not been thought desirable, I really do not think it necessary to add them as provisos to the present *explanations*."

The motion was put and negatived.

The Hon'ble RAI BAHADUR P. ANANDA CHARLU also moved that in *explanation* 1 to the new section 124A of the Indian Penal Code as proposed to be substituted by clause 4 of the Bill as amended by the Select Committee, the word "means" be substituted for the word "includes" in line 2 thereof. He said:—"I lay considerable stress on this amendment. Now that we have the most comprehensive words 'all feelings of enmity' in *explanation* 1, what is the ground left uncovered? Why have a further loophole? Outside the area covered by the phrase 'all feelings of enmity' there can only be either friendliness or apathy. Are these or any part of these ever meant to be viewed as disaffection? If there is any other tangible and

intelligible state of mind which should be penalised, and which we can realise and formulate, by all means let us have it now and have done with it by being put into the section once for all, and by closing the door for speculation once for all, so far as it may lie in us. If we can think of none such, let us substitute 'means' for 'includes.' Otherwise we shall some day be told by some sapient Judge that even the word 'wilful,' which we have deliberately dispensed with, is involved in the section, and then our Select Committee's reports, our expositions in the Council and even the unmistakeable assurances of the Hon'ble Mover will be absolutely of no avail."

The Hon'ble MR. CHALMERS said :—" I must oppose this amendment. I do not think it would be safe to allow it. 'Disaffection' is a term which has been interpreted and interpreted frequently by the Courts in India. What we want to do in this *explanation* is to call attention to the two most obvious states of feeling which we include under the term, but I do not know that we want to exclude all others. As the *explanation* originally ran it included the term 'ill-will.' The Committee cut out the term 'ill-will,' and I think my friend will agree with me that the reason we cut it out was this. We thought 'ill-will' was too wide a term. It includes certain classes of feelings of ill-will which may be quite compatible with loyalty. It includes also of course feelings which are identical with disloyalty. It was a bad term to use because it covered too wide a field. But I do not feel inclined to cut down the discretion of the Courts as regards the term 'disaffection.' Let me refer to what has been said already by Mr. Justice Strachey, whose judgment has been approved by the Privy Council. We did not want to go so far as to affirm every word that he used, but on the other hand we did not want to fetter the discretion of the Courts. Sir John Edge in his definition of 'disaffection' defines it as including all feelings of dislike or ill-will. I am not inclined to put those words into the section, but on the other hand that is the present law at the present moment. According to Sir John Edge, disaffection as used in the old section includes not only hatred and enmity but all feelings of dislike or ill-will. That is too much to put into the Act, but on the other hand we do not intend to fetter unnecessarily the discretion of the Courts in construing the old term."

The motion was put and negatived.

The Hon'ble RAI BAHADUR P. ANANDA CHARLU moved that in the same *explanation* to the same section the words "which is likely to alienate persons from their allegiance to Her Majesty or to the Government established

by law in British India" be inserted after the word "enmity" in line 3 thereof. He said :—"My reasons for the amendment must be perfectly clear by this time. If they are not, I can never hope to make them any more clear. I propose the amendment with these words."

The Hon'ble MR. CHALMERS said :—"I would only say again that I do not feel inclined to fetter the discretion of the Courts. It is always hard to foresee what circumstances may arise, and I do not feel inclined beforehand to fetter the discretion of the Courts."

The motion was put and negatived.

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS moved that in *explanation* 2 to section 124A of the Indian Penal Code as proposed to be substituted by clause 4 of the Bill as amended by the Select Committee, the words "with a view to obtain their alteration by lawful means" be omitted. He said :—"No accused person will be able to plead this *explanation* in defence, unless he can show that he had a view to obtain by lawful means the alteration of the measure he disapproved. This, in my humble judgment, is not a proper limitation of the right to express comments of disapproval, for no reason is apparent why men should be restrained from making comments otherwise than with a view to obtain an alteration of a measure. It is easy to conceive measures whose alteration is not possible, or at any rate not practicable. There is no reason, so far as I can see, why one should not be at liberty to make comments of disapproval on such measures. Indeed, on general principles, it would seem that a critic who merely condemns a measure without any particular view is not so actively discontented, nor so likely to form a centre of disturbance, as one who seeks to obtain an alteration of a measure. I should be certainly ready to proscribe the adoption or even the contemplation of unlawful means for the alteration of a measure, but I would not make the contemplation of lawful means of alteration compulsory for the loyal critic.

"Then, again, *explanation* 3 allows comments on all actions of the Government, even if these comments be made without any particular desire of obtaining alteration of the actions by lawful means. Thus there is no reason apparent why the condition described in the words proposed to be omitted should be insisted on in the case of measures any more than in the case of actions of the Government.

"My Lord, my Hon'ble friend Mr. Sayani has so ably discussed the question that I will not add anything to what he has said."

The Hon'ble MR. CHALMERS said:—"I must certainly oppose this amendment. We do not wish to allow criticisms suggesting the alteration of measures of Government by unlawful means. I do not think my Hon'ble friend Mr. Chitnavis wants that done. I think what he really means is covered by the *explanation*."

The motion was put and negatived.

The Hon'ble RAI BAHADUR P. ANANDA CHARLU moved that in *explanations* 2 and 3 to the same section, the words "without exciting or attempting to excite hatred, contempt or disaffection" be omitted. He said:—"In my opinion to retain these words would practically destroy the whole right.

"In that charming novel of Goldsmith's, which every one has read in his school-boy days, *The Vicar of Wakefield*, it is humourously stated that Mrs Primrose sent out her children on market days, with a guinea in the pocket of each, but with strict injunctions not to change or spend it. I am involuntarily reminded of this in reading *explanations* 2 and 3. They practically hold out a gift with the left hand and snatch it away with the right hand. The set of words I ask to be scored out and the rest of the *explanations* seem to me to mutually destroy each other, and, like the famous Kilkenny cats, leave nothing behind. We have had to discuss a good deal as to what is and what is not the English law of sedition. But there can be no dispute about this, that the incubus, imposed by the words I complain of, is surely *not* English law. Here at any rate India does not get the English commodity. Carefully examined, these *explanations* might well be erased and none will be the worse for it. The section says 'create hatred, create contempt or create disaffection, and you go to jail.' The necessary implication of this, *without more*, is the negation 'don't create hatred, don't create contempt, don't create disaffection, and you can walk the earth without let or hindrance.' To this necessary implication what do the so-called *explanations* add? How do they *improve* the position one single whit? I must own that I am too blunt to notice any difference between their presence and their complete omission. The peculiar nervousness and, I may add, the singularly lingual puritanism, a penchant for which they betray, is

at once somewhat ludicrous and somewhat saddening. It looks as if the official skin has suddenly become over-sensitised and that it can no longer bear to say to the public speaker or writer (as Mr. Stephen said nearly twenty years ago) 'nothing could be farther from the wish of the Government than to check in the least degree any criticism of their measures, *however severe and hostile*, nay however *disingenuous*, *unfair or ill-informed* it might be.' That attitude showed sturdy strength and an innate consciousness of being right and of being sure therefore to be rightly judged in the long run. Consistently with the policy conveyed in those words of Mr. Stephen the *explanation* to section 124A was *not* clogged with such unhappy terms as *without hatred* or *contempt*, which were quite as familiar to him as to us and quite as much before him as before us. Not even the word *disaffection* which appears in the section was repeated in the *explanation* out of any impatience of adverse criticism; whereas the present policy seems to be to bear with *fair* critics and nothing else. That word *fair* is beautifully vague and a slippery customer to rely on. What is fair according to the good intentions and the unavoidably meagre data before the public speaker or writer may often not be such in the eyes of one with larger materials. This is therefore a supremely uncertain standard to go by. No doubt we are also told that 'candid and honest' criticism will be tolerated; but, when one is candid or honest, one cannot help speaking as one *feels*, as, for instance, His Honour Sir Alexander Mackenzie has shown us by his trenchant and unpalatable speech of to-day. As I said in connection with the first amendment, if a critic is candid and honest, he must drive his arguments to their utmost logical consequences. In the degree he does this, in that same degree must he produce either hatred or contempt or both, as His Honour's speech is bound to do. Is this to be shunned? And yet it must be shunned *if* criticism is to be 'without exciting hatred or contempt or disaffection.' It has been well said by Fitzgerald, J., that even the mere statement of a grievance must produce discontent, but that no jury ought to convict if there was a *bonâ fide* grievance. The Indian unfortunates are put down to be unfit to have this guarantee. How else is this liberty safeguarded in the *explanations*? Are the words 'without exciting hatred, contempt or disaffection' the grim safeguard? Again, eminent Judges have concurred in freely conceding that something must be allowed for *feelings*, chiefly when *those* criticise whose own interests and the interests of whose kith and kin or fellow-countrymen are concerned. These must unavoidably inspire strong language, inasmuch as the persons, that write or speak thus, mix with the aggrieved and share their sorrows as well as joys. As a

necessary result of this, they become imbued with the precise feelings of those sufferers and reflect them in their own utterances, unlike arm-chair politicians. Most public writers resort to the vocation partly as a means of honourable livelihood, but mainly because they are actuated, in common with public men in other pursuits, by an honest desire to serve their countrymen not only by voicing their views, but also to guide and educate them and, if necessary, to awaken them to their rights and privileges of which they may be oblivious or ignorant or towards which they may be apathetic or too lazy to work. In doing all this they are engaged in neither a pastime nor in a luxury merely. They fulfil a duty no less to the Government than to the people—the duty, in the language of Best, J., of setting the Government in motion *for* the people and not setting the people in motion *against* the Government. It will be doing them grievous wrong to put them down for men who, with a set purpose, embark on any task of villifying and misrepresenting the Government or its measures, or its acts of commission and omission. In this view, to say that they answer to a safety-valve, as is the wont to speak of them, is to put their usefulness at the lowest minimum. I prefer to regard them to be nothing less than the mouth-piece of the people collectively. To demoralise and practically emasculate them by a show of uncertain and undefined dangers, as this Bill seems to do, is to muzzle people's mouths and to forego a useful auxiliary, which, with all its faults, the governing classes here can ill spare, in getting at the minds of the people—be it for correction, conciliation or compliance. Add to this, that by mental constitution or by early training or by long habit, some men are sarcastic in the way they express themselves. There are others who have the habit of using a sledge-hammer style in giving vent to their feelings and convictions. There are others again whose blunt honesty makes them prone to call a spade a spade. These classes are in our midst as among other peoples, but they are nevertheless loyal to the backbone, however intolerable they might be for men of irascible temper, weak nerves or thin skin. To rouse callous men is often the aim of strong writing. Having regard to all these considerations, one may fairly hold that what has been addressed to the jury by an eminent modern Judge may well be taken for an apostrophe to Legislatures in India, *i.e.*, 'you should recollect that to the public political articles great latitude is given. Dealing as they do with the affairs of the day, such articles, if written in a fair spirit and *bonâ fides*, often result in the production of great public good. Therefore I advise and recommend you to deal with these publications in a spirit of freedom and not to view them with an eye of narrow criticism. You should not look merely

to a strong word or a strong phrase, but to the whole article. You should recollect that *you are the guardians of the liberty of the Press, and that whilst you will check its abuse you will preserve its freedom.*' Viewing ourselves as thus addressed, I cannot help declaring, as my clear and honest opinion, that the words 'without exciting hatred or contempt,' while verging on mere literary prudery, will amount to a virtual withdrawal of the gift, and that, without settling the law, either for the lawyer or for the layman, they will only *unsettle* men's minds—fraught with this further and *real* danger that what is forbidden to be openly said will surreptitiously and through subterranean means pass from mouth to mouth and from ear to ear until the *imaginary danger of to-day* becomes a *real* one under those unwholesome conditions which are bound to grow up if human nature will not be quelled, as it cannot be, by the statute and its pains and penalties. This dreadfully evil consummation it is the stern duty of us all to beware of."

The Hon'ble MR. CHALMERS said:—"I must oppose this amendment. I oppose it on this simple ground. These *explanations* to the section are *explanations*, not *exceptions*. An *explanation* can add nothing to and take nothing from the law. If we were going to derogate from the law in any way, we should put in an *exception*, not an *explanation*. To make that clear we have put in an *explanation* to show that we in no way derogate from the power given by the section; and, as regards the gist of my Hon'ble friend's speech on this amendment, all I can say is what I have said many times before. A man who is really loyal at heart and in intention need have no difficulty in expressing himself in language which nobody could conceive to be likely to create disaffection. It seems to be assumed that nobody can speak or write or think anything except matter that is to bring the Government into hatred and contempt. It seems to me that there are plenty of subjects left both for writing and speaking upon which writers and speakers can enlarge on without exciting disaffection against the Government."

The Hon'ble SIR GRIFFITH EVANS said:—"I too oppose this amendment. I have already stated my views as to the meaning and scope of the *explanation*. I contend that in the case of a journalist you must cut out the word 'exciting' and then the language will read 'expressing disapprobation thereof but without attempting to excite hatred or contempt.' The only charge you can make against a journalist is attempting to excite. Mr. Justice Cave

said to the jury, as every Judge would say, 'You have got to look at these words and surrounding circumstances fairly and say what the accused was attempting or trying to do by these words.' In the case of honest criticism the very nature of the article itself should rebut any likelihood that the writer was attempting to excite disaffection. The question is not whether some of the strong words might create a feeling of irritation, but what was the writer attempting or trying to do by the article taken as a whole and judged fairly."

The motion was put and negatived.

The Hon'ble MR. SAYANI moved that in section 153A as proposed to be inserted in the Indian Penal Code by clause 5 of the Bill as amended by the Select Committee, after the word "subjects," in line 6, the words "tending to the disturbance of public tranquillity" be inserted. He said:—"They are the words suggested by Sir Griffith Evans in his dissent to the Report, and, as the pith of the section is that public tranquillity should not be disturbed, these words should be inserted here so as not to include in them conduct other than that which is tending to the disturbance of public tranquillity."

The Hon'ble MR. CHALMERS said:—"I must oppose this amendment, because we are going to accept another amendment which proceeds on somewhat different lines. I quite agree with the Hon'ble Mr. Sayani that the reason why it is an offence to stir up class hatred is that such conduct tends to disturb the public tranquillity, but I doubt if this is any proper part of the definition itself. It seems to me that it is rather the cause of the definition than any necessary part of the definition. Take the case of the crime of theft. Theft is an offence because it is an attack upon private property, and because it has a tendency to disturb the right of private property, but we do not insert this in a definition of theft. So it seems to me here that we do not require to insert in this section the motive for making it an offence, namely, the tendency to disturb the public tranquillity. I quite agree that if this section 153A were going to be enacted as a separate Act it would be quite proper to put in the preamble, 'whereas the attempt to stir up class hatred between the different classes of Her Majesty's subjects tends to disturb the public tranquillity, be it therefore enacted, etc., etc.,' and then put in the offence and punishment. But I think that in the section itself it would be out of place, and therefore I oppose the amendment at the present moment."

The Hon'ble PANDIT BISHAMBAR NATH said:—"I am grievously disappointed to notice that so many amendments have already proved ineffectual. As regards section 153A, it is obvious that it creates and defines a new offence. There are so many different classes of Her Majesty's subjects in this country that 'feelings of hatred and enmity' are likely to be excited occasionally amongst them in relation to polemical discussion or controversies of a religious or social nature. The least exhibition of temper by one party might now incite the other to avail himself of the scope of this section, so that people, instead of living otherwise in peace and harmony, would find themselves subjected to molestation and harassment, tending to mutual dissensions and disturbance of the public tranquillity.

"With respect to the words used in the section, they are evidently taken from article 93 of Stephen's *Digest of the Criminal Law*; and it appears from a note appended to that article that they were really intended to meet a different class of cases, such as those of Mest and Meritens tried in 1881 and 1884. Multiplication and creation of offences might be supposed to improve the symmetry of a Penal Code from an academical point of view; they cannot, I venture to say, tend to promote or preserve feelings of accord and peace in a society fettered with so cumbrous a Code as attempts to define every shade of an omission or a commission."

The motion was put and negatived.

The Hon'ble SIR GRIFFITH EVANS moved that the following be added to section 153A as proposed to be inserted in the Indian Penal Code by clause 5 of the Bill as amended by the Select Committee, namely:—

"*Explanation.*—It does not amount to an offence within the meaning of this section to point out, without malicious intention and with an honest view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different classes of Her Majesty's subjects."

He said:—"The necessity for section 153A is very clear, and I regret that there is such misapprehension about it. It seems to have been attacked by many people on the ground that it gives everybody a roving commission to go and attack his neighbour.

"But the power to prosecute is given to Government, and to Government alone. From its constitution Government is, like Gallio, careless of these things

save so far as they tend to endanger public tranquillity, and therefore there is little danger of unnecessary interference under this section.

"But I do not approve of making things offences under the law which ought not to be offences and then trusting to the discretion of the Government not to prosecute. I had myself suggested an amendment—the one just moved by Mr. Sayani—which I think a good one. But finding that the present amendment (being practically what was suggested in the letter of the Government of Bengal) would in some respects cover more ground and would have the support of His Honour the Lieutenant-Governor, I concluded to drop my suggestion and put forward this amendment instead. It will, I think, improve the section and relieve the minds of many."

The Hon'ble MR. CHALMERS said:—"On behalf of the Government I accept this amendment. I think it is an improvement to the section."

The motion was put and agreed to.

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS moved that the new section 153A as proposed to be added to the Indian Penal Code by clause 5 of the Bill as amended by the Select Committee be omitted. He said:—"My Lord, in proposing my amendment, I beg to remark that I am glad that the amendment of the Hon'ble Sir Griffith Evans has found favour with Your Excellency's Council, for it has to a large extent taken away the sting and the danger of the clause. But I am in favour of its elimination altogether.

"The question is whether the new provision is really much needed, or whether it would in any way benefit those for whom it is intended. The Hon'ble Mover of the Bill has been pleased to concede that under British rule our Hindu and Muhammadan fellow-subjects live together for the most part in peace and amity, but he says that recent agitations have necessitated the measure. But is this the case? Have not the recent agitations been the result of individual villanies rather than of any general racial feeling? If unhappily in the years which immediately preceded Your Excellency's rule there were some such disturbances as the Bill seeks to provide against, there has in Your Excellency's time been no recurrence of them. Moreover, they were due to sudden out-

bursts of religious passion and prejudices against which no penal laws are likely to be of much avail.

"Again, it may, I think, be reasonably doubted whether, in cases where the relations between different classes are really strained, there is not some danger that a provision like that proposed will tend to widen the gulf. Mischief-loving people will be only too ready to use the law as a weapon against their antagonists, and social hatred may thus be perpetuated and intensified instead of being quenched. Again, it is a provision which seems especially likely to lend itself to abuse in the hands of an over-zealous police-official, Hindu or Muhammadan, the more so because the wording of the law admits of a very wide interpretation. It is difficult to imagine what might and what might not be regarded as promoting feelings of enmity and hatred between different classes of Her Majesty's subjects.

"My Lord, every loyal subject of Her Majesty will fully appreciate the benevolent spirit which pervades the proposed addition to section 153, but I would humbly submit that the wording of the provision makes the scope of the section too wide for this work-day world, where so long as different races, each with its own ideas and prejudices, continue to dwell side by side, expressions liable to excite some measure of enmity or hatred are sure to be exchanged, and no Government can ever hope to prevent them by force of legislation. Let me not be misunderstood. I do not contend, my Lord, that it is desirable or right that such feelings should exist or that they should find vent in words or any visible representations; but I hold that most unavoidably they will exist and find expression, and the proposed law, instead of removing the evil, is only too likely to aggravate it.

"It seems to me that in attempting to regulate the expression of feeling between class and class, except so far as it may be likely to endanger the public tranquillity or lead to the commission of offences, the Government will be undertaking a task at once fraught with embarrassment to itself and likely to encourage litigation of a most mischievous description. So far, however, as the object in view is the preservation of the public peace, I beg leave to submit that the Police Act and sections 295 to 298 of the Penal Code already contain clauses sufficiently comprehensive to meet all kinds of class antagonism by which the public tranquillity may be threatened; while, as far as other offences are concerned, all practical requirements of section 153A have, in my humble opinion, been adequately met by the proposed new clause (*c*) of section 505.

"It is on these grounds I respectfully ask the Council to eliminate the new section 153A from the Penal Code."

The Hon'ble MR. CHALMERS said:—"I must oppose this amendment. I think the Government of India look upon the section as one of the most important in the Bill—the section they look upon especially to prevent bloodshed in race conflicts—bloodshed which has so often taken place in the past."

The Hon'ble RAI BAHADUR P. ANANDA CHARLU said:—"The Hon'ble Mr. Chitnavis has stated his reasons quite fully. In supporting the amendment I am quite content to stand by what I put down in my minute of dissent."

The motion was put and negatived.

The Hon'ble RAI BAHADUR P. ANANDA CHARLU moved that the words "or which is likely to cause" in lines 1 and 2 of clauses (*a*) and (*b*) of the new section 505 of the Indian Penal Code as proposed to be substituted by clause 6 of the Bill as amended by the Select Committee be omitted. He said:—"There is the word 'intent' in the section already. What is the likely result is the evidence of such intent. Then why these additional words? These may be regarded as meant to indicate something not amounting to 'intent' and yet we mean nothing of the sort. Why retain this cause for possible perplexity?"

The Hon'ble MR. CHALMERS said:—"I am sorry to say that I must oppose this amendment. We have drawn a distinction between 'reports likely or intended to cause,' and for this reason. We propose to allow a man to show contrary to the ordinary rule that he did not intend a likely consequence. Ordinarily a man is deemed to intend the likely consequences of his acts. That is the ordinary presumption of law. If a man voluntarily does an act, he is deemed to intend to produce a result which is the likely and probable consequence of his conduct. But here we intend to allow a man to show that his actual intention was innocent. I certainly cannot consent to let the words 'which is likely' go out, because that is the gist of the offence."

The Hon'ble SIR GRIFFITH EVANS said:—"I also oppose the amendment. The Council will observe that in the passage which was read by the Hon'ble Maharaja of Durbhanga from Mr. Justice Cave's judgment it is pointed out that it is a good working rule to take it that a man intends the consequences of his

act, but there is another part read from Sir Fitzjames Stephen which said this: that it is more or less a legal fiction, because if you put in the word 'intent,' and then arrive at the intent only by the likelihood, you will be arriving at the intent very often when no real intention exists. He contends it would be more logical to treat them as different offences, and as a matter of fact there is a difference in the culpability here, and it would make a great deal of difference in the sentence awarded, where the accused had done this with intent to cause, or had done it merely carelessly. If he had done it carelessly, he would get a less punishment no doubt, and also, as has been pointed out by my learned friend the Hon'ble Mr. Chalmers, he would be at liberty to prove under the *explanation* if he had not a real intent to cause; he would be allowed to shew two things, first, that he had reason to believe it true, and, secondly, that he had not intended anything of the kind although the fact that it was likely to cause would raise a presumption against him that he intended it, but he is allowed to rebut that presumption; and that is the thing that is complained of, because we have thrown the onus on him. They say such a thing has never been done—we have thrown the onus on the man to rebut the intention, and that such a thing has never been done. My answer is that the passage from Mr. Justice Cave explains the matter: 'It is a good working rule that a man should be taken to intend the natural consequences of his act, and that from that the intention should be inferred, but the intention may be rebutted by the surrounding circumstances.' That means, as I understand, that the onus is thrown on the accused and a *prima facie* case for his conviction established where intention must be proved by showing that the result was the natural and probable consequence of his act, or in other words that his act 'was likely to cause,' but that this presumption might be rebutted and it might be shown he did not intend. The result is, if intent is established he is punished whether he had or had not reason to believe it to be true, because it was a criminal intent ; but if he had good reason to believe it to be true and the presumption of criminal intent arising from the likelihood be rebutted, he is not punished."

The motion was put and negatived.

The Hon'ble RAI BAHADUR P. ANANDA CHARLU moved that in the same section, clause (*b*), the words "whereby any person may be induced" be omitted and the words "and thereby to induce any person" be substituted in lines 3 and 4 thereof. He said:—"As intent is stated as the basis of the offence, I wish it to extend to the inducement of an offence by some one else. A series of

intermediate agencies or occurrences or any of them may be the cause of some one ultimately committing an offence. Either that person or the eventuality of that or any other person committing an offence may be utterly out of the contemplation of the original speaker or writer. Cases analogous to the well-known Squib case may be easily imagined to occur in plenty. Such results are undesirable, and, I believe, are not desired to fall under this clause. One may be mentioned. Suppose in a crowded place some one picks the pocket of another and is fleeing; the person robbed sets up the cry 'thief, thief;' others as well take up the cry and run as the thief himself, but really in pursuit of the thief in order to catch him. Some one, with whip in hand, hears the cry and finds a man running past; he takes him for the thief, and gives the latter a cut and restrains his further progress. This latter happens not to be the thief himself. On him the holder of the whip has committed the offences of assault and wrongful restraint. Is the originator of the cry or those that echoed it to be liable for the offences so committed? How is any of these latter in particular to spot the person whose cry he took up? How is he to discharge the onus cast on him to prove that he had made enquiries and found reasonable grounds for what he has done? The changes, which I complain of, merely amount to transferring 'the unworkable' to the shoulders of the accused from those of the prosecutor or the police. This is nothing short of being most outrageous."

The Hon'ble MR. CHALMERS said:—"I must oppose this amendment. As far as I can understand my Hon'ble friend's point, it is this. He wants to substitute the intention of the wrong-doer for the consequence of his acts. There again I must object. I think the point is that he intends to cause fear or alarm to the public, whereby as a matter of fact people may be induced to commit an offence, and it is not necessary that he should contemplate the commission of the offence. It is a question not of the likelihood of his intention, but of the probable consequence of his act."

The Hon'ble PANDIT BISHAMBAR NATH said:—"As regards the new section 505, it appears to be extremely harsh in its scope. It relieves the prosecution of having to establish the offence so far as proving that the statement, rumour or report was false, and throws the onus on the accused to prove that the statement, rumour or report was true. It is for the prosecution to establish the guilt of the accused and not for the accused to prove his own inno-

cence. As has been rightly observed by some one, the time has not yet come in India for punishing a person for telling the truth."

The motion was put and negatived.

The Hon'ble MR. CHALMERS moved that the Bill, as amended, be passed.

His Excellency THE PRESIDENT said :—"Before this Bill passes, there is one point to which I desire very briefly to refer.

"When I spoke in this Council in December, I submitted the proposition that in this legislation the Government hoped to attain an object which the vast majority of their fellow-subjects would consider a desirable object. I have been immensely strengthened in that belief by what has happened since then. Our proposals have met with a considerable amount of criticism—some reasonable, some unreasonable; some hostile, and a few friendly criticisms; but throughout the whole—I think I may say outside as well as inside this Chamber—there has run the admission that the British Government must be maintained, and that any attempts to subvert it must be prevented. That has been throughout our sole object; and I am glad to find myself in accord with so many of our severest critics. That there is a difference between us I admit; but what is the nature of that difference? I have paid careful attention to what has been said and written on this subject, and it seems to me that it all turns on a difference of opinion as to the precise meaning of certain expressions, or even words. Let any one study the proceedings in this Council to-day, and he will find that this is of the essence of the discussions on which we have been engaged for a good eight hours. Now the Government cannot be accused of having taken up an impracticable and domineering attitude even in the matter of wording. They have willingly accepted any modifications which have been proposed, either in the Select Committee, or here in Council, wherever they could do so consistently with the attainment of their purpose, and have listened, I am sure every one will admit, with patience to all representations made to them. But, after all, with the Government must remain the responsibility for the proper framing of the law. They have the right and they have the power of inviting, and they have invited, the most capable men, both in India and in England, to advise them, and they cannot wantonly, or with a light heart, reject even in the matter of drafting the advice so received. Perhaps I ought not to say in the presence of my Hon'ble colleague 'even in the matter of drafting'; for I know that he maintains, and I fully agree with him,

that drafting is a most important subject, and that is the reason why we have felt ourselves obliged beyond a certain point to resist alteration in the form of our proposals.

"We are all, as I have said, at one in the desire to put down sedition which is aimed against the Government of the Queen-Empress. We differ not so much about the precise form of the powers to be taken, or the means to be employed, as about the language in which the law is to be expressed.

"All that we, the Government, can say is that we desire the powers necessary to put down sedition. We ask for nothing more, but we can be satisfied with nothing less. We do not desire to have a law which bears oppressively on one particular section of the community. Only partial justice is done to us when it is said that we have abstained from proposing an enactment aimed at the Vernacular Press, because as a matter of fact our legislation is not a Press Act at all. It lays down certain rules of conduct, by observing which any member of the community can keep within the law, rules which are applicable to all and show favour to none.

"I cannot but hope that when these things are calmly and dispassionately considered—on the one hand, the supreme and admitted importance of the object; on the other, the necessity that the Government should accept the full responsibility for the form of the law in a matter of this kind—that the Bill which is now about to pass will be given a fair trial, and that some of the feelings which I think have been unduly excited may subside."

The motion was put and agreed to.

The Council adjourned to Friday, the 4th March, 1898.

CALCUTTA;
The 25th February, 1898.

J. M. MACPHERSON,
Secretary to the Government of India,
Legislative Department.

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