*Friday,*
*11th March, 1898*

ABSTRACT OF THE PROCEEDINGS

OF THE

# Council of the Governor General of India,

# LAWS AND REGULATIONS

**Vol. XXXVII**

**Jan.-Dec., 1898**

# ABSTRACT OF THE PROCEEDINGS

OF

# THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA

ASSEMBLED FOR THE PURPOSE OF MAKING

# LAWS AND REGULATIONS

## 1898

## VOLUME XXXVII


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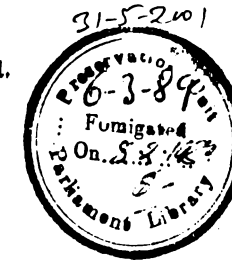


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*Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).*

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The Council met at Government House, Calcutta, on Friday the 11th March, 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 Sir J. Woodburn, 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 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, K.C.I.E., Maharaja Bahadur of Durbhanga.

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

The Hon'ble Allan Arthur.

## PROCEDURE.

His Excellency THE PRESIDENT said:—"The list of business before the Council to-day being exceptionally heavy, it may be convenient if I mention the manner in which I propose to deal with it.

"I propose that the Council should take the ordinary interval at 2 o'clock and at 6 o'clock. If I see no reasonable prospect of finishing the business to-day, I shall suggest to the Council that we should break up at the next convenient stage of the proceedings and resume at 11 o'clock to-morrow with the object of completing the consideration of the business on the paper."

## QUESTIONS AND ANSWERS.

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS asked:—

"1. Will Government be pleased to state if the Local Administration have been requested to enquire into the condition of the Central Provinces during the recent famine, and how far they have been able to withstand it?

"2. If so, will Government be pleased to obtain non-official local opinion in the matter and also so to conduct the enquiry as to enable it to ascertain whether the high percentage of 65 to 74 inclusive of cesses assessed in many places in the recent re-settlement of land-revenue in the Central Provinces had the effect of reducing very greatly the power of the malguzars to bear up against the effects of the calamity, and to render that aid to their tenants and others in the villages which even now the Government and the people expect from them and which in many places was offered and in many other places actually demanded and received from them?

"3. Will Government be pleased to state what has been the total increase in the land-revenue demand and in the cesses including patwari-cess under the operations of the new settlement undertaken since 1885?

"4. Will Government be pleased to state what has been the increased cost to the Administration from (1) increase of establishment, and (2) from increase of pay of existing establishment since 1885?

The Hon'ble SIR JOHN WOODBURN replied:—

"*Question 1.*—All Local Governments and Administrations, and amongst them the Administration of the Central Provinces, have been requested to include in their reports on the recent famine a full examination of the question whether the people have shown themselves better or worse able to meet famine than before. The local inquiries and inspections which formed a necessary feature of the operations for famine relief will, it is believed, furnish ample material for dealing with this question, and the Government of India do not propose to set any other enquiries on foot.

[*Sir John Woodburn; Sir James Westland.*] [11TH MARCH, 1898.]

"*Question 2.*—Any investigation into the possible connection between the effects of famine and the incidence of the land-revenue assessment would yield in the Central Provinces no results of value, as those of the districts recently resettled, in which the land-revenue assessments have always been highest in proportion to assets, are situated in the portion of the Provinces which was least affected by famine.

"*Question 3.*—Since the 1st October, 1885, the land-revenue demand of the Central Provinces has increased by Rs. 22,83,233, and the demand on account of cesses, including patwari-cess, has increased by Rs. 3,33,107, of which, however, Rs. 23,000 is merely nominal."

The Hon'ble SIR JAMES WESTLAND replied:—

"*Question 4.*—The total increase of cost from 1885-86 to 1896-97 has been from Rs. 43,42,000 to Rs. 54,53,000. It is quite impossible to say how much of this increase is due to additions of new appointments and how much to increase of pay in old ones. For example, if a clerkship on Rs. 40 is added to an establishment already consisting of two clerks on Rs. 30, it is pure matter of opinion whether the new clerkship is an entirely new one or is an increase of one of the old ones from Rs. 30 to Rs. 40."

## COURT-FEES ACT (1870) AMENDMENT BILL.

The Hon'ble SIR JOHN WOODBURN moved that he be substituted for Mr. Rivaz as a member of the Select Committee on the Bill to further amend the Court-fees Act, 1870.

The motion was put and agreed to.

## PETROLEUM ACT (1886) AMENDMENT BILL.

The Hon'ble SIR JOHN WOODBURN also moved that the Bill to further amend the Petroleum Act, 1886, be referred to a Select Committee consisting of the Hon'ble Mr. Chalmers, the Hon'ble Joy Gobind Law, the Hon'ble Mr. Nicholson, the Hon'ble Mr. Allan Arthur and the mover.

The motion was put and agreed to.

## INDIAN POST OFFICE BILL.

The Hon'ble SIR JAMES WESTLAND presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to the Post Office

in India. He said:—" The Select Committee have gone through a variety of suggestions made for the amendment of the Bill as it was first brought before the Council. The Report of the Committee will show that in the case of a very large number of these suggestions, effect has been given to them by altering the wording of the Bill. It is not necessary for me therefore to make any mention of the points on which we have accepted the suggestions, but I will, with the permission of the Council, notice a few points on which we have not accepted the suggestions made. The first of these is a difficulty which arises in connection with the definitions, namely, that the words 'Post Office' have two definitions according as Post Office is spelt with small letters or capital letters. There is a certain incongruity in this, but we have copied in this respect the English Consolidating Bill, and, as a matter of fact, there is no difficulty in distinguishing which of the two expressions is used wherever they occur: one refers to a particular building or place, and the other refers to the Department of the Post Office. The next point on which certain suggestions have been made is with regard to section 6, which defines the responsibility of the Post Office officials. Some persons, mostly, strange to say, officials, and not members of the mercantile community, have desired to fasten upon the Post Office officials a greater responsibility than the Bill originally provided. We have, however, in this respect adhered to the original Bill, and one good reason for doing so is that it defines the responsibility of Post Office officials in terms which as nearly as possible express the English law on the subject. The difficulty of making a Post Office official liable for mere negligence, that is to say, for doing something which, if he had taken better care, he would not have done, arises out of the circumstance that Post Office business has always to be done at enormous pressure. It does not suit the mercantile community to have to send their letters to the post office a few hours before they have to be despatched. The consequence is that both in the despatch of letters and in delivery of letters any extremely careful sorting of the letters is a practical impossibility. Of course it may be said, with reference to this, 'increase your establishments and you will have everything better done and more carefully performed'; but increase of establishments means increased expenditure upon them. It also means increase of space, and that also means increased expenditure. If we have to spend more than we do upon the Post Office, we cannot afford to continue to carry letters at a half-anna rate. Every person will, I think, admit that after all the Post Office, when they do make a mistake by mis-sending or mis-delivering a letter, do it only under extremely exceptional circumstances, and I am quite sure that the public will prefer to receive the present measure of service at half an anna to having a

more perfect service performed for them at a higher rate. Section 11 provides that, if an underpaid postal article is sent by post and the addressee is not found, and if thereafter it is returned to the sender, the sender shall be chargeable with the forward postage. It has been said that this charge is not at present made upon him, and that may be the case, but it is a charge that obviously ought to be made. If a person posts a letter which is understamped, he requires of the Post Office a service which is not paid for in advance. It is true we can recover this from the addressee when the letter is delivered, but, if the addressee is dead, the responsibility ought to rest upon the person who sends the letters and not upon the Post Office. The Post Office has performed a service for which it ought to be paid, and, if the sender has not paid, the responsibility seems to me to properly fall upon him as he can easily avoid the charge by properly prepaying his letter. A very large amount of violent language has been poured out upon section 20. The whole of this violent language is based upon a complete misunderstanding. It has been imagined that this section lays down that no newspaper or any other document containing any seditious article could be sent by post, and that a subsequent section, which refers back to it, provides a punishment for any person who thus posts a seditious article; but if reference be made to the wording it will be found that it is directed against the practice of putting seditious or libellous or scurrilous matter outside postal articles. A person if he desires to put anything outside his letter beyond the address of the person to whom the letter or article is to be sent does so at his own responsibility. If he adds scurrilous or offensive matter to the address, it is right that he should not be permitted to use the Post Office as the disseminator or conveyor of that scurrilous, defamatory or seditious matter. The kind of practice which is chiefly aimed at is this sort of thing. Some person desires to vent his spite upon a Native Chief, and instead of addressing him in respectful terms and by his proper designation as 'The Maharaja' of so and so, he addresses it to the 'Robber Chief' of so and so. Or a person addresses a letter to a lady, and embodies in the address some words which imply disgraceful conduct on the part of that lady. This is a thing which obviously ought not to be permitted, and in every Postal Law to which my attention has been drawn there are distinct provisions against it. We do not take any power to open Post Office packets or letters or newspapers in order to find whether there is any sedition inside of them; but we take power when libellous and seditious writing is stuck outside a letter, to prevent the Post Office being used for the conveyance of that letter. I trust with this explanation a large number of people, who have, as I say, poured out violent language upon this section,

will be satisfied that we are not attempting the great interference with their correspondence which they imagine. With reference to section 39 the Cawnpore Chamber of Commerce has suggested to us that we ought to provide in the law that, when a letter or article fails to be delivered, the fact should be notified by the issue of local lists. We have not provided for this in the law, but as a matter of fact the practice is carried out under the rules of the Post Office. All the law provides is that undelivered articles should be dealt with in such manner as the Governor General in Council may by rule direct. The reason why we are not able to adopt the suggestion of the Cawnpore Chamber of Commerce is this: if we were to take upon us the responsibility of publishing lists of undelivered articles at all the post offices in the country, the result would be a very large amount of perfectly useless labour thrown upon our officials, because the number of post offices where people would take the trouble to, or be able to, read such notices is extremely small. The practice of the Department—which practice will be continued—is to publish notices of the kind only at the principal post offices, that is, at those places where they will really serve some useful purpose. At a place like Cawnpore of course they will be published. We therefore fully accept, so far as the working of the Department is concerned, the suggestion of the Cawnpore Chamber of Commerce, but we do not embody it in the law, as we cannot embody it in the law without carrying it too far. Another point to which objection has been taken is section 47, which provides for the summary recovery of small sums, chiefly due from persons in respect of postage. The procedure is laid down that the amount should be recovered as if it were an arrear of land-revenue due from him. A section of an Act was quoted in the margin of this, but unfortunately it was quoted by a wrong year. The consequence is that officers in criticising this section have failed to observe that, under the law to which reference was made, when an officer of the Postal Department proceeds to recover the amount as if it were an arrear of land-revenue, he does not proceed to recover it himself, but sets the land-revenue authorities in motion. That is what was suggested to us in those criticisms as desirable, and the law as it stands, as I have explained, provides it. There is one other suggestion of the Cawnpore Chamber which I desire to take cognizance of. It is a suggestion not arising upon the Bill as before the Council, but arising generally in the administration of the Department. It is this, namely, that a letter which weighs over a tola, but less than a tola and a half, may bear a postage of 1½ annas instead of, according to the existing practice, two annas. Personally I have every sympathy with the suggestion of the Cawnpore Chamber of Commerce. I know that the last letter I happened to post just turned the scale

at one tola, and I was obliged to put an extra anna upon it. My feelings were exactly those described by the Cawnpore Chamber of Commerce, for I perceived that if I had only put the enclosure of the letter into another envelope, I should have sent both letter and enclosure for one and a half annas, but sending them together I was charged two. The suggestion of the Cawnpore Chamber of Commerce has been referred by me to the Director General of Post Offices for consideration, and the Chamber will no doubt be satisfied if I say that I have made that reference and cannot at present give any definite answer upon the point. With Your Excellency's permission I shall take up the Bill ten days or a fortnight hence with a view to its being passed before the session ends."

## PRESIDENCY SMALL CAUSE COURTS ACT (1882) AMENDMENT BILL.

The Hon'ble MR. CHALMERS moved for leave to introduce a Bill to further amend the Presidency Small Cause Courts Act, 1882. He said :—"The Bill which I am asking leave to introduce amends in two details the existing procedure of the Presidency Small Cause Courts Act. The first amendment which we propose is this. There is a difficulty at times in providing a substitute for the Chief Judge when he goes on leave. The Madras Government have called our attention to a difficulty which arose there, and we propose to provide that any person who is qualified to be appointed substantively a Chief Judge may be, during his absence, appointed to act. This is the first matter dealt with by the Bill. The second matter dealt with by the Bill is this. As Hon'ble Members are aware, the High Court has power to make rules of practice and procedure for the Small Cause Courts, and the Calcutta High Court has recently framed some rules with a view to accelerating the proceedings in the Calcutta Small Cause Court ; but the learned Judges who framed these rules have withheld them hitherto because they thought that in two respects they might be *ultra vires*. The rules propose that under certain limitations and conditions authority should be given for the Registrar to dispose of undefended cases and certain minor interlocutory matters. The learned Judges of the High Court doubted whether such a rule would come within the powers of regulating the procedure of the Court. At any rate it is better to remove that doubt and to declare expressly that the power to make rules includes the power to enable the High Court to authorise the Registrar, and in his absence the Deputy Registrar, to dispose of undefended cases and interlocutory matters."

The motion was put and agreed to.

The Hon'ble MR. CHALMERS introduced the Bill.

The Hon'ble MR. CHALMERS moved that the Bill and Statement f Objects and Reasons be published in the Gazette of India and in the Fort St. George Gazette, the Bombay Government Gazette and the Calcutta Gazette in English.

The motion was put and agreed to.

## CRIMINAL PROCEDURE BILL.

The Hon'ble MR. CHALMERS moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to Criminal Procedure be taken into consideration. He said :—"On this motion I do not propose to address the Council. There are a good many amendments down for consideration, and I have no doubt I shall have an opportunity of speaking on those amendments. I will only say at the present moment that the amendments do raise in many cases doubtful points—points on which the Select Committee themselves felt great doubts, and on which I am sure the Government will be very glad to have the consideration and decision of the Council at large."

The Hon'ble MR. CHITNAVIS said :—"My Lord, I think that, whatever be the view taken by any member of this Council of the Bill which is before us, there will be a general admission that the task undertaken by the Hon'ble the Legal Member and the Hon'ble Sir Henry Prinsep has been performed by them with great ability, and, although I am not prepared to subscribe to all that is embodied in the Bill, there is much in it in which I heartily concur.

"My Lord, the Criminal Procedure Code is a law of every-day reference. If an alteration of a few words here, a slight addition there, or an explanation or illustration in another place would add clearness to it, everyone ought to be grateful for such amendments. My own experience as an Honorary Magistrate in the province I have the honour to represent has forced upon me the conviction that some of the amendments which the Bill proposes to make are necessary, and that the smooth working of the law is likely to be much facilitated by greater plainness of language and the introduction of additional explanations.

"But the consideration of a measure of such length and importance requires a great deal more time and more special knowledge than I am able to bestow

on it. I would therefore leave the consideration of all verbal amendments and of all knotty and subtle points in the Bill to the Hon'ble Members learned in the law, and confine myself to some very brief observations upon two or three matters of general interest.

"As regards the proposal that offences under section 124A of the Penal Code should be triable by a District Magistrate or a specially empowered Magistrate of the first class, I should be failing in my duty were I to disguise the fact that it has produced something like consternation amongst all classes of Her Majesty's subjects in India. Personally speaking, I have the highest respect for those members of the Civil Service who fill the offices of Magistrates in this country. Still it will not be denied that, as a whole, they do not form so experienced and so skilled a body of Judges as the Sessions Judges and the Judges of the High Court. They have not that judicial habit of mind, acquired by a course of long and systematic training, which characterises the latter. Magistrates have no jurors and assessors to assist them in their deliberations, and offences under section 124A are of as highly technical character and often tax the best abilities and the nicest discrimination of a Judge and a jury. There is, therefore, much reason for apprehending that the new procedure, if sanctioned by the Legislature, will be attended with injurious results to the well-being of society, and will greatly imperil the safety of individuals criticising public matters.

"Moreover, it must be remembered that Magistrates are essentially executive officers and subordinate to executive authority. Public writers and speakers direct their criticism more often against the actions of the Executive than against the proceedings of the Legislature or the judiciary. It is therefore feared, not without reason, that it will be difficult for an executive officer to bring an unbiassed mind to the consideration of such cases. The supposed safeguard of the previous sanction of the Local Government will not be sufficient to ensure the confidence of the public.

"On the contrary, it is apprehended that the sanction given by Government will make it extremely difficult and delicate for a Magistrate, who in his executive capacity is subordinate to the Local Government, and at whose instance the prosecution would in many cases have been initiated, to acquit a prisoner and so shake the prestige of the prosecuting Government. Every trial for sedition is a trial of strength between the Government and the prisoner; and it would therefore seem to be an essential principle that such trials should be held in Courts independent of the Executive.

"I would therefore humbly suggest that all cases under section 124A of the Penal Code should continue to be triable by Courts of Sessions and High Courts as heretofore.

"My Lord, with regard to the power proposed to be given to a Magistrate to require security for good behaviour under section 108, for the dissemination of seditious or defamatory matter concerning a Judge, I would beg leave to observe that such a procedure would amount to a revival of the Vernacular Press Act in an apparently judicial garb, for the effect of it would be that all newspapers would be placed under executive control, which would not only lower the status of the Press, but even demoralize it by preventing the expression of honest and candid opinion on public questions. It would place the Press under the complete control of the very persons who, as the Calcutta Bar have pointed out, 'by virtue of their public position and the very wide powers they enjoy, are likely to be the objects of disapproval and often of strong criticism at the hands of the Press, and who, therefore, will be the most intolerant of such criticism and the most inclined to be prejudiced against the journals publishing such criticism.' That the actions of Magistrates will often be subjects of adverse criticism at the hands of the Press cannot be reasonably doubted; that the mind of a Magistrate may be prejudiced by local feelings and a thousand other causes, everyone, I believe, will admit. It is for Your Excellency's Council to consider whether the safety of individuals criticising public officials will not be jeopardised by placing them under the thumb of the very persons who are likely to be criticised, and whether the terrorism of the section will not be fatal to that independence on which the usefulness of the Press admittedly depends.

"My Lord, in the consideration of this question there is one important element which cannot be entirely overlooked, and that is the association of feelings. I confess it is a sentimental consideration at best, but it is very important nevertheless. The power conferred by the section has hitherto been used as a means of regulating the conduct of bad and desperate characters. But editors and managers of papers, however faulty and intemperate may their writings be, cannot be classed in that category. These men will feel greatly mortified and terribly humiliated when they come to know that, though respectable members of society, they may, for trivial offences, such as defamation and the like, which in no way affect the safety or the dignity of the State, be branded as *badmashes* or abandoned wretches whom society looks down upon with contempt. It is for Your Excellency's Council to consider whether such an apprehension is likely to impart a healthy tone to their writings.

"Whilst on this topic, I would, with Your Excellency's permission, advert for a moment to a first principle. In matters of inheritance, adoption, religious and social usage, and dealing between party and party, it was determined by an ancient statute that the laws of the Hindus should apply to the Hindus, and the laws of the Muhammadans to Muhammadans. But as regards crimes it was settled at a very early period that neither the Hindu nor the Muhammadan law could with justice be administered, and the criminal law of the country came to be administered according to English principles. So strict was the adherence to these principles that a Hindu was hanged for forgery, though the Court that passed the sentence knew that it would be abhorrent to the feelings of the Hindus. I think I speak the sense of all my educated countrymen when I say that the English criminal law is highly appreciated for its fairness, and the Indian criminal law, being framed on that pattern, is similarly appreciated. I do not see, my Lord, that any circumstances have arisen to justify a departure from the principle of the English law. In England security for good behaviour is demanded from vagabonds and men of desperate character, and I cannot imagine why in India a writer or speaker should be treated as a loafer merely because he is supposed to have slandered somebody.

"I therefore contend that men charged with defamation concerning a Judge or sedition should be dealt with according to no extraordinary procedure, but according to accepted principles, by tribunals above every suspicion of bias or incompetency. It has sometimes been contended that England is a free country with a homogenous population, in which subject and sovereign belong to the same race, and that, therefore, the same liberal principles of criminal jurisprudence that may be applicable to England will not suit India. Paradoxical as it may seem, I beg leave to submit that the conditions of India call for the recognition of even more liberal principles than those which prevail in England. The history of that country and the records of its State trials show how many have been the trials for treason, conspiracy and other offences of that kind, whereas in our country, under British rule, on the contrary, such cases may almost be counted on the fingers of one hand. I think it necessary also to point out that precisely because races and creeds, and therefore interests and prejudices, are so numerous and diversified in India, the difficulty of obtaining a fair trial is greater than would be the case in England. In England a prisoner is tried by a Judge and a jury of the same race and religion with him, who understand his language and appreciate his prejudices. The Judge is subordinate to no executive authority and is subject to no executive bias. There is no danger of the prestige of the Government being damaged by an acquittal. The situation here is very different, and I have not the heart to emphasize the

distinction by an elaborate reference to details. I can only state my conviction that in this country a person charged with an offence against Government stands in need of special safeguards of a legal character against a failure of justice.

"My Lord, I hope my remarks with regard to the procedure in the trial of offences under section 124A of the Penal Code and to the enlargement of the scope of section 108 of this Code will not be taken as evidence of sympathy with rebels and libellors or as a brief on behalf of their friends. I am afraid sometimes hardihood of statement is apt to be taken as evidence of sympathy with persons disloyally inclined. But I am aware and my own conscience is guarantee for such a statement that that feeling—I mean of disloyalty—does not exist anywhere *in an appreciable form* among a very large majority of Her Majesty's grateful Indian subjects, and I am sure it does not prevail *so largely* as to call for any exceptional procedure such as that laid down in the above sections of the Bill.

"With regard to the rest of the Bill, my observations must be brief.

"As regards sections 256 and 257, I am of opinion that the procedure in the trial of warrant-cases is likely to be rendered more cumbrous by the innovations introduced.

"As regards section 392, I think the law ought to be made clearer to the effect that boys under 14 should be punished with a light rattan on the hand.

"With regard to section 259 and sections 451, 456 and 457, I have two amendments to propose, and I will make whatever observations I have to make on them whilst proposing the amendments which are against my name.

"I think a provision which is likely to facilitate the ends of justice would be that when two or more accused persons have to be tried at the same time, and for the same offence and in the same Court, the Court should have the discretion to examine the accused together or separately as it thinks fit.

"With regard to the clauses 561, 562 and 563, those which relate to the release of first offenders, I feel confident that the operation of these sections would prove very wholesome. The power to release first offenders upon probation of good conduct is, I understand, very extensively made use of in England, and the carrying out of the same principle in this country is urgently needed both in the interest of the prisoners and of society. This I had the honour, my Lord, to point out to Your Excellency's Council in the course of my observations on the

Prisons Bill of 1894. I then observed that the trivial offender of tender years and yet undepraved morals, the honest and industrious citizen whom a momentary impulse of passion or violence of provocation had betrayed into the commission of an assault, the modest female whom the strength of temptation had impelled into a breach of trust or a petty theft, the young and artless who had been the dupes of the designing,—'the serious consequence of sending such offenders to prison and of allowing them to be contaminated by association with confirmed and hardened criminals, in whom the moral sense was altogether dead, would be at once apparent.' In the interest of justice and humanity, such culprits ought to be restored to society with warnings to amend their morals and to cultivate habits of honest industry. I therefore give my hearty support to these new provisions regarding the treatment of first offenders, which, while securing for the prisoner the element of punishment (for to a first offender the ignominy of standing as a felon in the dock is often a sufficient punishment) and of protection and reclamation, will act as a preventive against a prolific generation of crime.

"As regards section 565, requiring habitual offenders on release to give notice of their intended residence to the police, I may observe that I would have gladly welcomed the retention of the section as it was originally drafted, for I am of opinion that very strict police-supervision is necessary in the cases of habitual offenders. I am aware that, even after the recasting of the section by the Select Committee, it has been held by many that too much power has been left with the police—a power that will lend itself to abuse in their hands. I myself do not share these apprehensions. Having regard to the state of things in my own province, I welcome these provisions as most useful and necessary. That the framers of the law have been actuated by the very best intention will never be questioned. That surveillance ought to be exercised over habitual offenders, and that a system which has worked well in England, France and other continental countries should have a fair trial in this country, everyone will admit. Whether the rules laid down by the Local Governments will be worked with discrimination, or otherwise, by the police, is a different matter altogether, and one that rests entirely with the Executive. But the provision itself I consider a move in the right direction.

"My Lord, in conclusion, I would only be expressing the mind of many of my countrymen when I say that they gratefully appreciate the marked and in many respects satisfactory improvement which the Bill has undergone at the hands of the Select Committee."

The Hon'ble MAHARAJA BAHADUR OF DURBHANGA, with the special permission of the President, handed in a speech which he had prepared, but was unable, through indisposition, to deliver. It will be found at the end of these Proceedings (Appendix A).

The Hon'ble RAI BAHADUR P. ANANDA CHARLU said :—"This Bill contains a second batch of innovations as to the impolicy of which my conviction is just the same as what I avowed as to the first batch. But in closing the debate at the last meeting Your Lordship said that your Government would be satisfied with nothing less than what was given then. I hope that Your Lordship has not made up your mind to wind up to-day's debate also with a like decisive pronouncement. By and by and in dealing with the amendments of which Hon'ble Members have given notice, I shall endeavour to point out how the two cases are different and how certain of the arguments, insisted during the last debate on behalf of the Government, do themselves necessitate a departure in the present instance. In closing the debate on the last meeting of the Council, Your Lordship, in calm and dignified language, expressed the hope that when the Bill then on the eve of passing was given a fair trial, some of the feelings then excited might subside. Those were certainly reassuring words as regards the mode of trials in store for public men, and the grateful country has not been slow to value them highly. It will nevertheless be affectation on my part, if I say that, as yet, there have been any signs of such subsidence or any cause for it ; for how could there be any such, when that fair trial is yet to take place, to which Your Lordship looked forward as calculated to allay anxieties, which, with the profoundest respect for Your Lordship, I cannot bring myself to regard as unduly excited. For all that, I feel bound to declare my sincere conviction that, notwithstanding the undiminished continuance of the apprehensions then entertained, the ebbing of the tide of excitement will be begun and greatly accelerated, if only we accept certain of the amendments on the agenda paper. That we can well do so may be easily shown. In following that course we shall be doing only what we ought to. Take for an instance those relating to the new section 108. It must be in the recollection of us all that, when we dealt with the new sections 124A, etc., of the Penal Code, it was strongly urged upon us, on behalf of the Government, that the prior sanction by the Local Governments would prove an effectual safeguard against unfair or hasty action by freakish or high-handed magistracy or police. That guarantee the Government is bound to extend to this analogous case. Its presence told heavily in favour of the Government then.

Its absence ought, in logical and common fairness, tell in a like degree against the innovation now proposed. To leave the proposal at least without the modification which my friend Mr. Sayani has asked for, is tacitly and practically to let in that very state of things which Your Lordship rightly abhorred, *viz.*, an executive control of the freedom of utterance by public men. Subtlety and ingenuity apart, nothing short of a concession in this respect will get rid of a strong impression to that effect from the minds of men of common sense; for if the safeguard of a prior sanction of the Local Government was necessary as regards sections 124A, etc., the present is an *à fortiori* case for it. The most cogent reason for the acceptance of some such amendment has yet to be told. It is this. It is the Government who, acting in its full sense of responsibility, asks for the power given by this section. Upon that Government its subjects have a right to lay the entire burden of responsibility by entreating it to take the initiative in this as in other matters of gravity. Despite much that might be said to the contrary, it is by the establishment of mutual confidence between the Government and the people that the smooth working of any measure can be ensured, and, having regard to this inter-dependence, the people are clearly entitled to secure the intercession of their Government against the tendencies and possibilities of busy policemen and hasty Magistrates, smitten by what the Americans call 'cursedness,' or goaded by some real or fancied personal affront. Too much stress cannot be laid on the fact that the action of the Government in matters like this is expected to ensure an intense and judicious caution, while neither the inquisitorial meddlesomeness of the police nor the exercise of even the judicial function of the magistracy is subject to any such wholesome break-power. Quite as much and nothing less is necessarily implied by all those provisions which prescribe a prior sanction, and I think that I venture on no debatable or unsafe ground in asking that a like provision be made to control the operation of section 108 of this Code as well. Reserving my further remarks to be made as the amendments come up, I think I may say at this stage that I believe, and I hope I am right in believing, that we have met to-day in a spirit of restored kindliness and with a frame of mind not combative but prone to promote harmony; and I make bold to be sanguine that we shall proceed to consider this new sheaf of changes with a sympathetic regard for the not unjust fears felt all round and with a temper favourably disposed to make an offer of a fair measure of concessions to the public demand. Much of what I meant to add at this stage has already been well put by my friend Mr. Chitnavis. Without taking up time by repeating them, I shall conclude with saying that I heartily endorse almost all his remarks."

The Hon'ble MR. JAMES said:—"My Lord, greatly improved as the Code now is in many respects over the old, thanks to the Hon'ble Mr. Chalmers, the Hon'ble Sir Henry Prinsep and the arduous labours of the Select Committee,—the first offenders and habitual offenders sections are a distinct gain—still there remains an *amari aliquid* though quite different from that which my Hon'ble friend Mr. Ananda Charlu finds in it.

"My Lord, I regret the changes that have been made since the Bill was first published. Provisions introduced to strengthen the administration of the law and prevent innocent witnesses being put to serious inconvenience and enable swift justice to be done have been completely changed. The vigorous and masculine bantling which was conceived and brought to birth in the bracing air of the Himalayas has, in fact, suffered severely, as so many other babies do, since its transportation into the enervating air of Calcutta. This Council of Doctors will, I hope, administer, before we separate, a few strong tonics for restoring it to health. Curiously enough, my Lord, almost the last paper we received on the Bill confirms what I say. This has been sent us from the Secretary, Vakils' Association, Calcutta High Court, and expresses their gratitude to the members of the Select Committee for removing from the Bill as amended most of the objectionable matters in the Bill as originally framed. Now, my Lord, I have not a word to say against the vakils of Calcutta. They are, no doubt, a very intelligent body of men, who have expressed their opinion conscientiously accordingly to their lights and their interests. That opinion, in common with the opinion of any other of Her Majesty's Indian subjects, merits, and no doubt will receive from this Council, dispassionate consideration. Were this a highly technical Bill like the Transfer of Property Act for instance or the Negotiable Instruments Act, one could receive the vakils' comments with much respect. But in regard to a Bill to enable the Government and its officers to keep order and repress and punish crime amongst Baluchis and Pathans, Rajputs and Sikhs, Jats and Mahrattas, when the Select Committee weakens it and the Bengali vakil applauds it, my Lord, it sounds suspicious. '*Non tali auxilio et defensoribus istis tempus eget*,' which I may roughly translate for my friends who do not know Latin—the Calcutta vakils are not precisely the best advisers of Government in a matter of this kind.

"Another criticism, I venture to submit, is that the Code is far too long and contains a great amount of matter which is not required by 99 out of 100 of the persons who have to use it. What does a third class Magistrate or a constable in the Sind Desert or Baluchistan or the Anamalli Hills want to know of the procedure in Presidency Magistrates' Courts or in the High Court

for instance ? Next, I submit, that in an Empire with at least 23 different nations and languages, it is a mistake to lay down too iron a procedure for the prevention and punishment of crime. Some years ago, when the Under Secretary of State for India, Sir Mountstuart Grant-Duff, was speaking on the Act which enables Your Excellency's Government to make Regulations for certain parts of India, he said—

'There are certain districts in India which are scattered up and down, and which are not nearly up in point of civilisation to the ordinary level of Indian society, to which, in fact, the legislation, say, for example in Lower Bengal, is just about as applicable as the legislation which was good for Surrey, as Surrey is, in the year 1870, would have been to Lochabar on Strathspey in the year 1370.'

"And the same principle can, I submit, be extended more widely. Procedure is mostly a matter of pure local expediency, not of principle. There is no statute of procedure at all in England which is certainly a free country. You cannot of course avoid having one Code for all India in regard to some matters. Local Governments, for instance, cannot legislate so as to affect the jurisdiction of the High Courts. And there would be one particular danger in the Supreme Government letting too much power slip out of their hands, *viz.*, provisions might be extended to one province which could not be allowed to another, and trouble might arise from that. Still there are a good many minute details as to the arrest, taking security, bail, summonsing and examination of witnesses, which the Government of India might wash its hands of and leave to local Police Acts. The Code in its origin was only tentative. It began with 445 sections; 90 more were added in 1872 by Sir Fitzjames Stephen, and it is now 565 sections long. And you may think this Code will last; but its very expansion makes it only the more vulnerable. Since Lord Hobhouse and Mr. Whitley Stokes tried their hands on it in 1882, no less than 16 amending Acts, or on an average one a year, have had to be passed to fill up omissions and make the law clear; and so it will be with this Code. My Hon'ble friend on my left has written a magnificent portly volume full of rulings on previous Codes. Perhaps some one may think it will now shrink to more handy dimensions. Is it not plain that the more we add to the Code the greater the opportunity we give for divergent interpretations ? Take, for example, a sensible section of the first Code, to the effect that mere irregularity in procedure should not as such entitle a guilty person to be acquitted. Promptly the High Courts set to work to say of this and that irregularity that it was not an irregularity, but a breach of the law, and did vitiate the proceedings, and this Council long ago came to the stage

of making long catalogues of irregularities that do not vitiate proceedings, and now we are to solemnly enact (on account of one sapient Court's decision) that if a Magistrate in the hurry of signing his daily correspondence has initialled a warrant instead of signing his name in full, this warrant is not void. Could anything be more ridiculous? Each High Court, too, as the Council knows, is a law unto itself, and if Mr. Justice Rhadamanthus sitting in Bombay says 'black is black' we too often find Mr. Justice Minos sitting in Calcutta say 'No, black is white.' When this Bill becomes law, the lawyers will pounce upon it like a pack of hounds on a fox. They will tear it to shreds in no time, each one striving so far as he can, and as it suits his own views to put his own interpretation on what the Legislature must have meant. My Hon'ble friend's treatise will soon be double its present thickness. And the Hon'ble Mr. Chalmers or his successor will wearily and disheartened have to try and put the Code straight again. I well remember, my Lord, a speech by Sir Fitzjames Stephen, or perhaps Mr. Whitley Stokes, in which the superior merits of Codes over case-law were extolled. And, my Lord, if Government itself refrained from publishing the various decisions of the different High Courts, and if the Judges, as some of them do, refused to hear cases quoted and stuck to the plain provisions of the law, applying it to each case as it arose, Codes would be admirable things. But there are Judges who will not stick to the Code. Nothing pleases them better than to write reams of references, not merely to Indian, but to English, cases. And the Government publishes these, though expense precludes more than a small part of the magistracy having access to them. So you get back to case-law after all. My Lord, it is impossible for the Council, whatever its wisdom and capacity, to foresee every point that may arise in interpreting the Code. It is Sisyphus over again, and the more you amend, the more weapons you put into the hands of a narrow-minded section of the Bar which has not been nurtured in English air or on English traditions. They look not to the object of the law but fight about the meaning of the English language, while there are individuals who deliberately use the provisions of the Code to obstruct the administration of justice by way of showing their independence. You tie up your Judges and magistracy in a tightly tied tangle of codified red tape to prevent the misuse of arbitrary power in the theory of it, while you deliberately refrain from attempting to control the abuses of the Bar in your desire, as Englishmen, to give an accused every fair chance. However, I do not like to take up the time of the Council with further criticisms. We have got the Code, and all we can do is leave as few loopholes as possible for misinterpretation; and this, I believe, thanks to the labours of the Hon'ble Mr. Chalmers and the Members of the Select Committee,

has been done. Still I cannot help feeling that the Code should be much shorter and that the sooner much elaborate detail is cut out the better.

"One more remark I venture to make, my Lord, even at the risk of repeating myself. Let me invite attention to one portion of the letter sent to us by the Calcutta Bar in regard to one clause of the Bill:

'The Bar cannot regard the fact that the Governments of Bengal, the North-Western Provinces, Madras, Bombay and Burma and the majority of the authorities consulted approve the decision of the Allahabad High Court as sufficient to close the discussion on this point. The opinion of such purely executive bodies cannot be accepted as in any way conclusive on a legal question of this kind.'

"I have not mentioned this on account of the *ex cathedra* tone adopted, but I wish to express the hope and confidence that 'that purely executive body,' the Government of India, will in the future as in the past consult and act upon the practical opinions of the Local Governments rather than upon the views of legal theorists when passing an important Bill of this kind; for a great deal of the peace of the country depends upon it."

The Hon'ble SIR HENRY PRINSEP said:—"I wish to say a few words with reference to the speeches made by the Hon'ble Members of this Council who preceded me. It seems to me that the remarks we have been listening to are hardly applicable to a motion to consider the Report of the Select Committee on the Bill. They would seem to me to be more appropriate when either the Bill is introduced or when the motion was put that the Bill be passed, and I am trembling to think what may overtake us when that stage may be reached."

The Hon'ble BABU JOY GOBIND LAW said:—"My Lord, in considering the Bill as a whole, there is one fact which stands out conspicuously, and that is, that it embodies to a great extent the suggestions of the executive officers of the Government, and very little the recommendations of the non-official communities. Naturally those who are charged with the administration of a district or division and are responsible for its peace would wish to be possessed of as much power as possible, but the question arises whether those who are governed would view it in the same light, and from the number of amendments on the notice-paper it is apparent that this is not the case. Now I do not wish to be misunderstood. I am far from suggesting that the governing classes wish to have powers for the purpose of misusing them; on the contrary, I willingly give them credit for the best intentions; but, my Lord, so long as human nature is what it is, there will always be some danger of misuse, not

intentional misuse, but sometimes misuse with the best motives. Therefore, my Lord, it is absolutely necessary that safeguards should be provided. Now, the revisional power of the High Courts is one of these safeguards, but it is now intended to take it away to a certain extent. Look at clause 108, empowering Magistrates to require persons to show cause why they should not be bound down for good behaviour. Now, this appears to me to be going behind the substantive law which was passed the other day. What we are saying to the person concerned is in effect something like this: 'you are charged with such and such an offence; we are not going to put you on your trial and have you convicted, but we order that you find surety, and, if you fail to do so, you must go to jail'; and this notwithstanding the fact that the person has never been put on his trial. Now these are a few of the instances which await consideration, and in considering them I have no doubt the Council will look at the clauses of the Bill, not only from the point of view of the administrator and the executive officer, but also from that of those who will be affected by them. It is also to be remembered that the Council is not legislating in view of an emergency."

The Hon'ble PANDIT BISHAMBAR NATH said:—"Taking a lesson from the laconic speech by the Hon'ble Sir Henry Prinsep, just delivered, I should like, on this occasion, to be as brief as I possibly can. On the whole, I am entirely in favour of the second reading of the Bill, so to say I could not be otherwise. I must at least be loyal to my own position. I sat on the Select Committee and shared in the protracted discussion that we had there from day to day. Of course, I have to move and support certain amendments, which I propose to maintain. Beyond that, I think, I have not much to say against the Bill, or its general arrangement. No such measure, I presume, can be ideally perfect, and that observation would equally apply to the proposed legislation."

The Hon'ble MR. SAYANI said:—"My Lord, I beg leave to make a few observations upon the Bill before the Council. It is a Bill consisting of 565 sections, besides 5 schedules. It is mainly a Consolidation Bill, with the exception of two important amendments. To consider the Bill properly the Select Committee would have had to go through the whole of the mass of literature in the shape of both criticisms and suggestions, as also through various judicial decisions. This part of the work was performed by the Hon'ble Sir Henry Prinsep. Owing to this fact, as also to the great industry and the deep insight and experience which he brought to bear upon the Bill, and the great care and impartiality, as also the lucidity and brevity, with which he placed the pith of the whole of the aforesaid criticisms and suggestions and the decisions

before the Select Committee, the work of the Select Committee was much lightened. Without the aforesaid aid the Select Committee would have found the task entrusted to it a most laborious one, and would in all probability have not been able to place its Report before the Council in time to allow of its consideration during the current session. For the valuable aid thus rendered the Select Committee owes its acknowledgments to the Hon'ble Sir Henry Prinsep, and as one of the members of that Committee I avail myself of this opportunity and beg publicly to tender to him my grateful thanks.

"Referring to the Bill generally, it may be observed that, in the form in which it went to the Select Committee, its general tendency was towards enhancing the powers of the police and of the magistracy and restricting the remedies of the accused; that tendency has to some extent been modified, but the Bill, even in its present form, is not what it ought to be; further modification is desirable, but almost impossible, as it is very difficult to get a Bill materially altered in Council, after it has emerged from the Select Committee.

"As to the two amendments hereinbefore referred to, notice had been given of them in the Council on the 21st December last. They form a part of the intended legislation announced on that date. The portion relating to the Penal Code has already become law. The portion relating to the Criminal Procedure Code Bill was placed before the Select Committee, and has been considerably modified by it. My opinion regarding these latter amendments is the same as I expressed regarding the former at the last sitting of the Council. I humbly think these amendments, even in their modified form, ought not to be passed.

"It was stated that the amendments were intended 'to supplement the substantive law by providing a prompt and workable procedure.' *Primâ facie*, I admit, it is a good intention, provided the substantive law which is intended to be supplemented has been generally approved of and is such as has to be daily applied in the ordinary course of the administration of justice. Neither of these conditions, I submit, is present in the case of the substantive law which is intended to be now supplemented. Indeed, the substantive law evoked considerable opposition, instead of approval, and in its former form had generally been allowed to remain a dead-letter, and circumstances have not arisen to put it now in constant force. In ordinary times such law is, by a consensus of opinion, hardly resorted to, even in countries where the rulers and the ruled belong to the same community and speak the same language and the ruled are adequately represented in the Councils of the rulers. There is the greater reason, therefore, why such law should not be resorted to in a country like India, under the British rule, inasmuch as the rulers and the ruled are of different communities, speak different

languages, and the ruled cannot effectually bring their views and sentiments, even on important questions, to the notice of the rulers, and as a necessary consequence freedom of speech and writing are indispensable to avoid misunderstanding, and form a useful medium of conveying the real sentiments of the ruled regarding the measures, the actions and the policy of Government, and contribute to successful administration; for in every country the administration is rendered successful only so far as the acts and the measures of Government approximate to the genuine requirements of the subjects, and the more the administrative and the legislative machinery of Government is in touch with popular thought and feeling, the better it is for the Government as well as for the subjects. The so-called 'prompt and workable procedure' hereinbefore referred to and intended to 'supplement the substantive law,' will simply tend to prevent the expression of the real sentiments of the people, and thus, instead of doing any good to either the rulers or the ruled, contribute to render still more wide the wide enough gulf already existing between them.

"It has been contended on behalf of Government, 'How much license of speech can be safely allowed is a question of time and place,' that 'Language may be tolerated in England which is unsafe to tolerate in India, because in India it is apt to be transformed into action instead of passing off as harmless gas,' that '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.' Further, it has been suggested '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 the political common-sense with which the rights of free discussion will be used.' At the same time it is also admitted that '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, 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,' that 'contentment and good-will can only be produced by just and beneficent government and not by repressive legislation.' In fact, no Government ought to check or retard the educational or political advancement of the people under its charge, for to do so can in the long run only tend to the

prejudice of both the Government and the people. The law is but the mirror reflecting the spirit of Government, and the expression of public criticism can only follow general modes of thought, habits of life, and form of language. It is true there has lately been a considerable progress in education, and the English language and Western thought have been to some extent adopted in this country. But the Indian people, as a whole, are slow, and Government has to be watchful that legislation does not press too heavily on the tender plant of liberty and of civilisation which has been sown by itself.

"I shall now refer to the new amendments. One of them is the new section 108. In order to ascertain how it will affect the people, it will be sufficient to express what the section really is in its full details. The section runs :—

'Whenever a Chief Presidency or District Magistrate or a Presidency Magistrate or Magistrate of the first class specially empowered by the Local Government in this behalf has information that there is within the limits of his jurisdiction any person who within or without such limits, either orally or in writing, disseminates or attempts to disseminate or *in anywise abets* the dissemination of—

(*a*) any seditious matter, that is to say, any matter the publication of which is punishable under section 124A of the Indian Penal Code, or

(*b*) any matter the publication of which is punishable under section 153A of the Indian Penal Code, or

(*c*) any matter concerning a Judge which amounts to criminal intimidation or defamation under the Indian Penal Code,

such Magistrate may (in manner hereinafter provided) require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.'

"Section 124A of the Indian Penal Code provides—

'Whoever by words, either spoken or written, or by signs, or by visible representation, *or otherwise*, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection, towards, Her Majesty or the Government established by law in British India, shall be punished.'

"Section 153A of the Indian Penal Code provides—

'Whoever by words, either spoken or written, or by signs, or by visible representations, *or otherwise*, promotes or attempts to promote feelings of enmity or hatred between different classes of Her Majesty's subjects, shall be punished.

"The word 'Judge' under the Indian Penal Code denotes not only every person who is officially designated as a Judge, but also every person who is em-

powered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.'

"A person is said to commit criminal intimidation when he—

'threatens another with any injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act, which that person is legally entitled to do as the means of avoiding execution of such threat.'

"A person is said to defame who—

'by words, either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person.

'A person abets the doing of a thing who instigates any person to do that thing, or engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing, or intentionally aids, by any act or illegal omission, the doing of that thing.'

"It is obvious from the above statement of the section that the section in its full development is so wide and so far-reaching as to be capable of being easily made applicable to any person, however well-meaning, honest or inoffensive such person may be. Any person may become liable to be taken up under the section. The section, therefore, will be a standing menace to all persons, as it is impossible in human nature to remain absolutely silent or perfectly passive. What is more, it will press more heavily on good persons, who will always be afraid of coming under the law, whilst reckless persons will become more reckless than before, as both careful and careless persons will be alike liable to fall under the law. When law is too severe, the people are likely to become more reckless.

"But, as if this is not sufficiently bad, the information to put the Magistrate in motion need not be in writing, much less upon oath or solemn affirmation; nay, further, the informant need not be a respectable or a reliable person. He may be an unworthy, unreliable or even disreputable person; and yet on his information, which may be good, bad or indifferent, a Magistrate may proceed. Further,

under certain circumstances the word 'may' has to be construed as 'shall,' and the Magistrate under those circumstances shall be bound to proceed.

"Again, no previous Government sanction is necessary for initiating such proceedings. The Magistrate is free to proceed against any person at his own will, and practically upon his own motion, provided such person happens to be personally within his jurisdiction; and it does not matter at all whether such person is alleged to commit the act or to abet the act within or without the jurisdiction of such Magistrate.

"Again, the person proceeded against is not entitled to know who the informant is, and he has no means of proceeding against the informant even if such information is deliberately and maliciously false, inasmuch as the information is not on oath or affirmation. He has no opportunity of cross-examining the informant in order to show to the Magistrate that there cannot be any foundation for the information or that the informant is not worthy of credit. In fact, the person proceeded against is in the position of a person who is suddenly stabbed in the dark and is to be treated as a criminal, and his reputation and his position in society are liable to be taken away from him without giving him a proper chance of establishing his innocence or defending his character.

"Now, when such person informed against is brought before the Magistrate, he has to show cause under the section why he should not be ordered to execute a bond with or without sureties for his good behaviour. In other words, the information which, as has been already above pointed out, may not be worth credence at all, is to be taken as a *primâ facie* case against him, and he is to be put on his defence. He has to show cause why he should not be bound over, or, in other words, to prove that the information against him is not true. The principle of English law is that every man is to be presumed to be innocent unless and until he is proved to be guilty. But this section makes a diametrically opposite presumption, namely, that all persons informed against are to be presumed to be guilty. What cause can such person show? It is generally difficult, sometimes impossible, to prove a negative. The only thing a person under these circumstances can possibly do is to state that the information is false and that he is a respectable person; and he may call a few persons to state that they know him and believe him to be a respectable person. Thus the inquiry provided for under section 117 as to the truth of the information and the injunction to take such further evidence as may appear necessary are almost futile. In almost all such cases the inquiry must end against the informed person, as the Magistrate may not be satisfied.

"Now, if the Magistrate is not satisfied, he can make an order on the 'informed' person to execute a bond for good behaviour for a period not exceeding one year and also that he should give sureties. In fact, the person is to be treated as a vagrant or a suspected person (see section 109), or as if he were 'by habit a robber, house-breaker or thief or by habit a receiver of stolen property, knowing the same to have been stolen, or habitually protecting or harbouring thieves or aiding in the concealment or disposal of stolen property or habitually committing mischief, extortion or cheating or attempting to do so,' the only difference between the latter and the person informed against under section 108 being (1) that the person informed against is to be called upon to give security for a period up to one year whilst the habitual offender is to be called upon to give security for a period up to three years, and (2) that the person informed against *may* be called upon to give sureties whilst the habitual offender must be called upon to give sureties (see section 110).

"Now, supposing the person informed against is ordered to give sureties and he is not able to give sureties—which is not at all improbable, having regard to the fact that he will be considered as a person obnoxious to the authorities—then 'he shall be committed to prison' (see section 123), and such imprisonment may be rigorous or simple (see section 123, clause 5), that is, the person may be punished with rigorous imprisonment which may extend to one year.

"From the above statement of the effect of section 108 and the manner in which it is liable to operate, the following conclusions, it is humbly submitted, may reasonably be drawn:—

(*a*) that it is an impolitic section, inasmuch as it is contrary to the ordinary principles of the administration of justice and goes far beyond the limits usually observed in such matters;

(*b*) that it is an unfair section, inasmuch as it is contrary to the principles of English law, and to justice, equity and good conscience;

(*c*) that it is an unjust section, inasmuch as it is inconsistent with the other parts of the Indian criminal law and procedure;

(*d*) that it is a demoralising section, inasmuch as it is calculated to silence careful people and to make careless people more careless still, or, in other words, to stop good people from expressing their honest opinions and to make bad people worse; it will prevent

people whose opinion is worth listening to from speaking out, and tend to increase the volume of mischievous sound;

(*e*) that it will put too much power in the hands of the police and the magistracy;

(*f*) that it is calculated to create and to increase unrest, although the ostensible object of the section is to diminish and remove such unrest, as it is a matter of political danger;

(*g*) that it is calculated to encourage bad people, who will be enabled by means of the section to feed upon innocent people by keeping them in fear of being falsely informed against, and thus create the disturbance of public tranquillity, to diminish and remove which disturbance it is to be enacted;

(*h*) that it is calculated to prejudice Government, as it will unjustly tend to diminish its popularity.

"For the reasons hereinbefore stated the best course would be to drop the section altogether. If, however, Government has made up its mind to enact the section, and cannot see its way to abandon it, then, it is humbly submitted, Government will be pleased to allow the section to be modified so as to render it less liable to the objections above enumerated. It is the principle of the English law that it is better that nine guilty persons should escape rather than that one innocent person should suffer. English love of justice and fair play is proverbial. It was only the other day that an eminent English Judge is reported to have publicly stated in England—

'In the struggle now going on among the nations to secure the largest share of the commerce of the world, their best hope of securing their share consisted, not so much in any appeal to force but in the fact that wherever the English commercial community went, they carried with them that sense of justice which recommended English commerce and Englishmen of commerce to every one with whom they dealt.'

"There was very recently a unanimous chorus of hostile criticism in the Anglo-Indian Press in Calcutta and in other places in India, as also in the Press in England, against the new Sedition Act. Was it because the Anglo-Indian Press or the Anglo-Indian community or Englishmen at home were afraid that the new Act would be put in force against them or any of them? No. It was their sense of justice, their sense of fair play, and not fear, that prompted them freely and fearlessly to express their disapprobation against the measure. Even Her Majesty's Principal Secretary of State for India is reported to have said that

repression was not intended, and the Government had no desire to coerce the Native Press, which requires guidance and not restraint. The section, therefore, ought to be hemmed in by providing that it shall not be put into force against any person without the previous sanction of the Local Government, that the orders thereunder made shall be subject to appeal, that the information upon which a Magistrate may act shall be on oath or solemn affirmation, that the whole of such information, together with the name and address of the informant, shall be communicated to the person informed against, that no surety shall be required, and that the period for which the bond may be called for shall be a very limited one, and that the imprisonment in default shall be simple.

"History teaches us that empires are best maintained by justice and mercy, which are their most permanent foundations, as they produce love and confidence on the part of the people.

"The people of India are extremely loyal and law-abiding, and the generosity of Government will only make it more popular and stronger, and its mercy, justice, judgment and sympathy will become more prominent; for clemency, though it may at moments seem to be weakness, is in reality only another form of prudence, and, whatever may be the faults of the Indian people, ingratitude is not one of them.

"Coming now to the change proposed to be made in Schedule II, column 8 section 124A, the observations made regarding section 108 are also applicable to this proposal. The pleas put forward are (1) that it is advisable to provide a simple and easy method of trying trivial offences and trival offenders, and (2) the publication and notoriety consequent on solemn proceedings which defeat their own object should be avoided. If the latter argument is pursued to its logical consequences, it may even be concluded that even a summary trial before a Magistrate is inadvisable, as though it is summary yet it must result in some publication and notoriety. As to the former argument, the nature of the offence is such that the accused must necessarily have a formal trial, inasmuch as the administration of law has to be carried on upon the rules of justice, equity and good conscience, and the offences of the nature covered by section 124A must be tried with all the formality and safeguards hitherto observed. Trial of political offences ought not to be easily resorted to and ought not to be easily resortable. A great, strong, just and sympathetic Government ought not to be easily aroused to stoop to notice slight ebullitions of temper on the part of its subjects, for a frequent resort to a law of this nature, instead of raising the prestige of Government, will only tend to lower it. Trivial offenders and trivial offences ought to be left severely alone.

"Again, if the proposed change is made, an Indian accused will be tried by a Magistrate without jury and will be liable to be sentenced to rigorous imprisonment which may extend to two years. On the other hand, if the accused happens to be an European, he can only be tried by jury and sentenced up to six months. Thus the mode of trial and the amount of punishment will both be different in the two cases. That this tendency to differentiate the trials of the European and the Native subjects is neither fair nor politic will, I hope, be admitted on all hands.

"I will now proceed to notice some of the proposed changes in the Bill, treated as a Consolidation Bill.

"*Sections 162 and 172.*—These sections as originally drafted were highly objectionable, inasmuch as they were calculated to prevent informations given to the police from being reduced to writing, and, if reduced to writing, from being signed, and in either case from being used by or on behalf of the accused in order to enable them to contradict the informants or the police. The sections were in fact entirely in favour of the police and its informants and against the accused. The old law took cognizance of the fact that in a considerable number of cases the evidence afforded by the history of a prosecution as gleaned from the information given to the police from time to time was very useful in coming to a correct conclusion, and that it was by a reference to this information that many innocent persons had been enabled to regain their freedom, and the novel change sought to be introduced naturally attracted public attention. The new sections were accordingly considered and reconsidered, were to a certain extent modified, and ultimately assumed their present form. They are still materially different from the existing law on the subject. To understand the matter fully it should be remembered that usually some person goes to the police and tenders information, or the police ask for information of some person. Upon information thus obtained the police initiates proceedings and evidence accumulates, and it frequently happens that the case at a later stage either assumes an exaggerated form or changes colour or is otherwise materially affected. The accused or those who appear for him naturally want to see on what basis the case was first initiated, and whether it has since changed, and if so how, so as to be in a position to contradict the police and its informants and thus show conclusively why the Court should not attach undue weight either to the first information or to the subsequent additions or changes or otherwise, as the case may be. It was objected, however, that the information formed a part of the prosecutor's brief, that usually information was not correctly written down, as the police were so over-worked as not to be able to do so. It was even contended that, if the information was required to be used, it should be 'proved' by the accused before it could be used.

The above objections and contention have only to be stated to carry their own refutation, and it is to be hoped that the present law will be allowed to remain in the interests of justice and of fair play, inasmuch as it is both unjust and unfair that persons should be allowed to come forward to attack the innocence and the character of fellow human beings, and yet be shielded from being shown up in their true colour or from being exposed for telling untrue or incorrect tales and fabricating false evidence.

"*Section 275.*—The Council is aware that, under the present law, on the Original Criminal side of the High Courts, all offences are tried by a jury; that before the Court of Session in the mufussal in some districts, certain offences are tried by a jury. The difference in constitution between the High Court jury and the Sessions Court jury is that in the mufassal the majority of the jury should, at the option of the accused, practically consist of his own countrymen. A question regarding this difference was raised in Select Committee, and the answer given was that it was a very large question which had been recently gone into, and it was not intended to re-open it for some time. *Primâ facie*, there seems to be no reason why the system should not be assimilated.

"*Section 439, clause* (*5*).—This clause is unnecessarily harsh and will, it is hoped, be allowed to be omitted.

"*Section 526, clause* (*8*).—It is submitted that the trial should not proceed beyond the stage at which the accused is called on for his defence. To do otherwise would be to defeat the very object of the section, for it would be giving the right with the one hand and taking it away with the other. What is the use of allowing a person to apply for a transfer if the Court against which the application is to be made is to be allowed to go on with the trial to the end?

"In conclusion, I beg to say that, having regard to the bulk of the Bill and its importance, it is satisfactory to note that the sections really objected to are few, and that, but for the two amendments and a very few of the consolidation sections, there would have been no very hostile criticism. This fact shows how careful and assiduous my Hon'ble friend the Legal Member has been over the Bill; and having regard to the fact that my Hon'ble friend has been lately exposed to such a large and voluminous amount of unfavourable criticism, I think it is my duty to express my admiration for the mastery of law, great assiduity and concentration of attention which the Hon'ble Member has brought to bear upon his work."

The Hon'ble SIR JOHN WOODBURN said :—"I am sure that the Council have listened with interest to the general observations addressed to it on the subject of the Criminal Procedure Code, but, so far as the speeches have concerned specific sections of the Code, I think that the Council will agree with my Hon'ble friend Sir Henry Prinsep that the discussion upon those particular sections had better be taken when we reach the sections concerned."

The Hon'ble MR. CHALMERS said :—"Various points have been raised in the course of the discussion on the motion that the Bill be taken into consideration. For the most part I think these points would have been more conveniently discussed when we came to consider the particular clauses. In fact, the discussion has turned rather on particular provisions than on general principles. But one or two questions of general principles have been raised, and perhaps at this stage I may say a few words in reply. My friend Mr. James has certainly raised some general questions about the form of this Code, and I think that taking his speech as a whole we may say that he has damned it with faint praise. Well, to a great extent I agree with him, but he must be aware that there are limitations under which we undertook to do this Code. As I said before, it is a consolidation Bill. What we are doing is on the whole useful work. We are reducing sixteen Acts into one, and the Committee, for whose labours I am exceedingly obliged, have done all they can in revising these sixteen Acts now consolidated into one to remove doubtful points—points of doubt and difficulty—which have arisen on the construction of those Acts. I quite agree—and I am sure that all the members of the Select Committee will agree with me—that though we worked hard and assiduously, we do not regard our labours as final. In a Code of this sort there will always be defects, in a Code of this complexity fresh points will always arise, and no doubt as they arise they will have to be met by fresh legislation. In a matter of this kind you cannot have finality, and a man who would talk about finality in legislation of this kind would be about as wise as a man who would talk about finality in boots and shoes. Legislation in course of time wears out. Legislation in matters of procedure has to be adapted from time to time to the varying wants of the people to whom it is to be applied, and of course there are always circumstances which cannot be foreseen and which when they arise result in conflicting decisions of the High Courts which the Legislature has eventually to remove. I quite agree with my friend Mr. James that the old Code of 1861, which I am sorry to say we are both of us old enough to remember, was a shorter, and I venture to think a better, Code than the present ; but it would create the greatest possible confusion if we attempted to get rid of the Code which has now been in force for fifteen years and to substitute a new and even a better Code.

That is a task which the Government of India are certainly not prepared to undertake. Looking at this Code as an English lawyer, I must say I am struck by its complexity, its cumbrousness, its over-minuteness, its attempt, which must be futile, to regulate every case that can possibly arise; but I am assured by those who know India better than I do that people in India like to have every movement and action of their lives regulated by law, and that this Code, though it would be utterly and absolutely unsuited to England, where matters are left to the discretion and practice of the Courts, is nevertheless required and necessary in India. At any rate in the present Bill we propose simply to consolidate and as far as we can to clear up difficulties in the existing law and to go very little further. Well, now I come to some general remarks made by my friend Mr. Sayani. He has given us a very careful and a very able criticism on certain details of the Bill, and when we come to those details we shall be able no doubt to consider them; but there were one or two general observations of his to which I must say I take exception. He says that in this legislation against sedition we are preventing people from expressing their real sentiments. Well, I am sorry to hear that, because all we are dealing with and all we are endeavouring to prevent are offences against the law of the land, and I hope he does not mean that people cannot express their real sentiments without offending against the law. To quote again his words that 'good people cannot express their honest opinions' without contravening and disobeying the general law of the land. What is it that the Penal Code makes punishable? It makes sedition punishable, and it makes the offence of stirring up class hatred punishable. I really hope that when people express feelings which are seditious, or that when people are trying to stir up hatred of class against class, they are not expressing the real sentiments of the Indian people, and I do not think they are. Fair criticism we do not touch, honest criticism we do not touch; we are glad to have it, and it seems to me that there is ample scope for writing, and that a good man can honestly express his thoughts, without raising class hatred and without stirring up hatred against the Government established by law in British India. I have before me, I am sorry to say, some very recent extracts from the Native Press which certainly, reading between the lines, appear to me to be attacking the measures of the Government for dealing with the plague in Bombay and which endeavour to stir up the people against the plague precautions—precautions in which the officers of Government are risking their lives to save the people. And what is the result? We have seen it in to-day's papers which give us the details of the sanguinary riots at Bombay. Are the Government right or are the Government wrong to make an effort to check writings and speeches which so quickly bear such evil fruit?"

His Excellency THE PRESIDENT said :—"I only wish to say a word on a point of order. If I had understood the Hon'ble Sir Henry Prinsep to make a distinct appeal to me, of course I would have given a decision at the moment ; but as the question has been mooted I think it right to say that I do not think that any discussion which has taken place on this occasion has been out of order. It has always been the practice, and I think a convenient practice, of this Council that on a motion for taking into consideration the Report of a Select Committee full opportunity should be given for the discussion of the general principles of the measure. That is in accordance with Parliamentary practice, either on a motion for going into Committee on a Bill, which is practically what the Council are going to do now, or when after Committee the Bill is reported to the House ; and I think that in many ways the particular motion which we are now considering is a perfectly proper and convenient stage at which to take a general discussion on the principles of the measure. Of course I can quite see that it is inconvenient that Hon'ble Members should take the opportunity of a general debate to enter into the discussions of the particular clauses which are going to be moved hereafter, but that is a point for their own consideration having regard to the convenience of their colleagues in the Council, and I did not see anything which occurred to-day on which I thought it proper to interfere."

The motion was put and agreed to.

The Hon'ble PANDIT SURAJ KAUL moved that in clause 10, sub-clause (*2*), of the Bill as amended by the Select Committee, for the words "for a period not exceeding six months" the words "for such period as the Local Government may consider necessary" be substituted. He said :—"My Lord, in moving the first amendment that stands in my name, I would wish to say that the Bill as now presented to the Council is the result of very careful and prolonged consideration by the Select Committee, and while I approve generally of its provisions I think that amendment on two points is called for.

"In section 10 (*2*) the period for which a Local Government may appoint Additional District Magistrates has been limited to six months, on expiry of which the appointment will cease, although in some places extensions will be absolutely necessary.

"Fresh appointments can no doubt be made under the provisions of the section, but this will give rise to unnecessary correspondence and at times probably cause inconvenience. The Government of the Punjab have in their opinion on

the Bill pointed out that the proposed sub-section will not meet the difficulty felt in the Province to which I belong, and there seems to be no reason why any period should be fixed.

"The matter is one entirely for the Local Governments, and, if appointment were left to their discretion, all cases, whatever the necessary time may be, *i.e.* more or less than six months, would be met. If the Local Governments are granted power to make such appointments for six months, they can unobjectionably be given the power to make appointments for more than that period when this is found to be absolutely necessary.

"With these remarks I commend the motion to the Council."

The Hon'ble MR. CHALMERS said :—"I am sorry to say I cannot ask th Council to accept my friend's amendment, and I will shortly tell him the reasons The section gives a new power. It enables a Magistrate of the first class to be appointed as Additional District Magistrate for a period not exceeding six months. My friend wishes to cut out the six months, but clearly it is not advisable that in ordinary cases there should be two kings of Brentford. We do not want two District Magistrates except under special emergencies. Of course, say in the case of famine, plague or any sudden calamity, when the District Magistrate's whole time is taken up in dealing with that calamity, it is desirable that somebody else should be able to carry on his ordinary routine work, but we think that the period of six months is a full period to be allowed for this particular appointment, and of course in any case of urgency a fresh appointment could be made, but we think that ordinarily the appointment ought not to be made for more than six months and that the Local Government ought to appoint a Magistrate expressly if they wish to have an Additional Magistrate after the six months have expired."

The Hon'ble MR. JAMES said :—"I have no intention of voting for my Hon'ble friend's amendment, as it is not accepted by the Government of India, but I may say that it would be certainly an advantage in some parts of India to have the power. For instance, when the present district of the Upper Sind frontier is joined to the District of Shikarpur, in accordance with a scheme that has been sanctioned by the Secretary of State, it will probably be very desirable to give the powers of a District Magistrate to the first Assistant Collector at Jacobabad, so as to alter our relations with the Baluch tribes as little as possible. Similar arrangements have been made in the Bombay Presidency before. The Hon'ble Sir Arthur Trevor will recollect that in the Panch Mahals the first

Assistant Collector was invested with the full powers of a District Magistrate. As my Hon'ble friend Mr. Chalmers says that the Government is not prepared to accept the amendment I do not wish to press it, but I simply make the remark that it might be a convenience in the Punjab and in other places as well."

The Hon'ble MR. STEVENS said:—"My Lord, since this amendment seems to have been suggested by the letter from the Bengal Government which was issued under my authority, I think it as well to say that I am satisfied with the provision in the Bill. As this is an exceptional power, I think it well that it should be given in such a way that the matter should not escape attention. The Bill as originally framed allowed a term of three months only, but this has been increased by the Select Committee to six months."

His Honour THE LIEUTENANT-GOVERNOR said:—"I agree with the remarks made by the Hon'ble Mr. Stevens."

The motion was put and negatived.

His Honour THE LIEUTENANT-GOVERNOR moved that to clause 18 of the Bill as amended by the Select Committee the following sub-clause be added, namely:—

> "(2) The powers of a Presidency Magistrate under this Code shall be exercised by the Chief Presidency Magistrate, or by a salaried Presidency Magistrate, or by any other Presidency Magistrate empowered by the Local Government to sit singly, or by any Bench of Presidency Magistrates."

He said:—"I desire to submit, for the consideration of the Council, certain amendments designed to make clear and improve the position of Presidency Magistrates as left by the Select Committee. I am strongly opposed to any unnecessary interference with the existing jurisdiction of the Presidency Magistrates. I do not propose to take up the time of the Council by a detailed account of the origin and the history of these Courts. They are in fact a survival of English law. Under Act XIII of 1856, the powers of the old Police Magistrates (now the Stipendiary Magistrates) were defined. They might try summarily all cases which they were competent to dispose of finally. They could in offences against property sentence up to six months without appeal when the value of the property did not exceed Rs. 50. In offences against the person they could deal with all which were not felonies, sentencing without appeal up to four months. In all other cases they committed to the Supreme Court. No procedure was laid down for their guidance. By the Presidency Magistrates Act of 1877, a

procedure was laid down and their powers were raised to those held by first class Magistrates in the mufassal, but no appeal was given from sentences of imprisonment up to six months or fine up to Rs. 200. These provisions were reproduced in the Code as it now stands. No complaint has, so far as I am aware, ever been made regarding this final jurisdiction of the Presidency Magistrates. The High Court has in its revisionary jurisdiction ample power of setting right any mistakes made, but in fact the interference of the High Court is seldom invoked.

"In one respect, however, there has been a departure in Calcutta from the intention of the Legislature when passing the Presidency Magistrates Act. It seems clear that the intention was that the Magistrates should be stipendiaries and trained officers. The wording of the Act of 1877 permitted the appointments of non-Stipendiary Magistrates, and large advantage has been taken of that by the Local Government to appoint Honorary Magistrates who may be gentlemen without any legal training, and who may exercise, sitting singly or in Benches, the full powers of the Stipendiary Magistrates.

"Now I think it certainly desirable that such powers should only be exercised by persons duly qualified. I think they may be safely exercised by any Stipendiary Magistrate and by those among the Honorary Magistrates whom the Government may deem qualified by experience or training to exercise a co-ordinate jurisdiction. I am also willing to allow them to be exercised by Benches of Honorary Magistrates, because we can by rule regulate the composition of these Benches, and in the plurality of Judges there will probably be wisdom. But beyond this I would not go. The Government is much indebted to the gentlemen who give up their time to the work of the magistracy, and of the services of many of these we shall be glad to avail ourselves as heretofore, but there is no doubt that some gentlemen are 'honorary' not merely in the sense that they are unpaid, but as having been appointed solely *honoris causa*, and they must till they gain experience sit with other Magistrates. I do not think it necessary to complicate work in Calcutta and increase the appellate work of either the Chief Presidency Magistrate or the High Court by giving second or third-class powers to individual Honorary Magistrates. I move therefore the amendments standing in my name. That to section 18 gives effect to the foregoing proposals. That to section 21 empowers the Local Government to settle the subordination of the Presidency Magistrate to the Chief Presidency Magistrate—a matter which is not sufficiently met by the

power to make rules. In section 411 I propose to restore to the Presidency Magistrates their existing powers."

The Hon'ble MR. CHALMERS said:—"I think the Government may accept the amendment proposed by His Honour the Lieutenant-Governor. The gist of the matter is this. The Madras Government on two occasions proposed to us that Presidency Magistrates should be made subordinate to the Chief Presidency Magistrate in the same manner as Magistrates in the mufassal are subordinate to the District Magistrate, and that on the whole seems to be a right principle. My Hon'ble friend Mr. Sayani informs me that in Bombay the Presidency Magistrates are subordinate to the Chief Presidency Magistrate, and that he exercises powers over them somewhat like those which a Chief Justice exercises over the Judges of the High Court. The question is really a Bengal question. It is only in Bengal that you have Honorary Presidency Magistrates. No doubt the Code contemplated Stipendiary Presidency Magistrates, but the system of appointing Honorary Magistrates has grown up in Calcutta, and in Calcutta alone, and it is therefore a Bengal question. No doubt their position hitherto has been somewhat indefinite, and instead of enacting simply that the Presidency Magistrates should be subordinate to the Chief Presidency Magistrate it is better to put the matter into the hands of the Local Government, who in dealing with the question will have regard to existing practice and to existing susceptibilities also."

The Hon'ble SIR HENRY PRINSEP said:—"I do not offer any objection at all to the principle laid down by His Honour the Lieutenant-Governor in regard to the amendment of clause 18, but it seems to me, and I would offer this for consideration by him, whether the terms of the amendment are correct. He proposes that the powers of a Presidency Magistrate shall be exercised by any other Presidency Magistrate empowered by the Local Government to sit singly or by a Bench of Presidency Magistrates. Now, from the terms of the law I am inclined to think that every Presidency Magistrate is empowered to sit singly, and therefore if there is to be any crippling of jurisdiction I submit for consideration whether it ought not to be that a Magistrate should be declared to be competent to sit only on the Bench rather than he should be empowered to sit singly. I would draw attention to section 20 of the Bill and I would also offer for consideration this: that there is no power given to the Local Government to confer this authority on any Bench or any Presidency Magistrate. Something should be added to the law enabling the Local Government to give such power. It says here 'any other Presidency Magistrate empowered by the Local Government,' but the Local Government should be empowered to confer this authority."

His Honour THE LIEUTENANT-GOVERNOR said:—"As regards the wording of the amendment I placed myself in the hands of the Legislative Department, and I feel pretty certain that they have covered the point to which the Hon'ble Sir Henry Prinsep refers. The provisions of the section appear to me perfectly clear."

The Hon'ble MR. STEVENS said:—"My Lord, I only wish to say that I took occasion, while the Select Committee were sitting, to look informally (by the courtesy of the Chief Magistrate) into the working of the system in Calcutta. And as a result of that informal examination I concur generally in the proposals of His Honour the Lieutenant-Governor."

The Hon'ble MR. CHALMERS said:—"I would only say this in answer to my Hon'ble friend Sir Henry Prinsep. His Honour the Lieutenant-Governor sent in this clause. We looked at it and thought it sufficient and left it unaltered, and I do not myself see that any one can misunderstand it. It would seem to me to be a very strange and curious interpretation that would lead to misunderstanding these plain words. It is quite true that the clause does not say that the Local Government may empower the Presidency Magistrates to sit singly, but it says a 'Presidency Magistrate empowered by the Local Government to sit singly.' That amendment is proposed by the Lieutenant-Governor and will precede section 20. I do not know I am sure whether the English rule of construction applies to the Indian statutes, but it is a very clear rule of construction in England that wherever a statute gives a power or states a rule every incidental power for carrying it out is implied and understood. I do not know whether that is a principle which is accepted in India or not."

The motion was put and agreed to.

His Honour THE LIEUTENANT-GOVERNOR also moved that to clause 21 of the Bill as amended by the Select Committee the following sub-clause be added, namely:—

"(2) The Local Government may, for the purposes of this Code, declare what Presidency Magistrates are subordinate to the Chief Presidency Magistrate, and may define the extent of their subordination."

The motion was put and agreed to.

The Hon'ble MR. CHALMERS moved that in clause 35, sub-clause (*3*), of the Bill as amended by the Select Committee, the words "confirmation or" in line 1, be omitted. He said:—"These words were left in by mistake in section

35. They are consequential on the amendment which the Committee made in section 31."

The motion was put and agreed to.

The Hon'ble MR. JAMES moved that the following be added to clause 55, sub-clause (*f*), of the Bill as amended by the Select Committee, namely:—

"(*d*) any person who is so desperate and dangerous as to render his being at large without security hazardous to the community."

He said:—" I should like to be permitted to make this amendment on behalf of the Government I represent. It is not for that reason only, but because in Bombay we have had so much disorder and conflict with the law that I feel bound to bring forward this amendment.

" The expression was in the law once. It was taken out in 1882, proposed in the Bill as introduced to be replaced, but was struck out by the Select Committee. I would put it back again.

" What I say is this: if the Bombay Government say that they want an officer in charge of a police-station to be empowered to arrest a person who is so desperate and dangerous as to render his being at large without security hazardous to the community, give them that power."

The Hon'ble MR. CHALMERS said:—" This no doubt is an amendment for consideration by the Council, but my friend Mr. James is absolutely wrong in his facts. These words have not been taken out by the Select Committee. I quite agree that similar words were taken out in section 110, but they were not taken out of section 55 and they never were in section 55. They may have been in the previous Codes, but I have no doubt Sir Henry Prinsep will be able to tell us that. It is a matter no doubt for the Council to decide, but looking at it personally I think this is a dangerous power to entrust the police with to enable a policeman to arrest without warrant a person who he considers to be desperate and dangerous. That is a very extensive power, because a person whom a policeman thinks to be desperate and dangerous a Magistrate might not think desperate and dangerous. It is a very different thing entrusting the power to a Magistrate and to a policeman. Personally I am against the amendment, but I quite agree it is a question for the Council to decide."

The Hon'ble MR. JAMES:—" I ought to have said the words were in the older section 110 and not in section 55."

[*Sir Henry Prinsep; Mr. Sayani; Sir John Woodburn; the Lieutenant-Governor; Mr. James; Sir Griffith Evans; the President.*] [11TH MARCH,

The Hon'ble SIR HENRY PRINSEP said :—" I beg to confirm what has fallen from the Hon'ble Member in charge of this Bill. The words which were considered by us in the Select Committee seemed to be a very dangerous power to confer on a policeman, for it would enable him practically to put under arrest any person who made himself in any way objectionable by declaring him to be a dangerous person. We considered in the Select Committee whether these words should be retained in the section which enables a Magistrate to make an inquiry for the purpose of taking security for good behaviour. Similar words appeared in the Code of 1872, but they were taken out of the Code of 1882 because they were considered to be too vague by the Select Committee in the preparation of this Bill. My Hon'ble friend on the right (Mr. James) is perfectly correct in saying that these words re-appeared, but in the Select Committee the question was again considered, and it will be observed from the Report of the Select Committee that though the words here were struck out there was a fresh sub-clause introduced which would practically restore their effect."

The Hon'ble MR. SAYANI said :—" I also beg to say that I am against the proposed amendment."

The Hon'ble SIR JOHN WOODBURN said :—" As regards the section now under discussion I am at one with the Legal Member. When the Council comes to consider the motion to introduce similar words which governs the action of Magistrates I shall have something more to say."

His Honour THE LIEUTENANT-GOVERNOR said :—" My position is precisely the same as that of my Hon'ble friend Sir John Woodburn. I think such powers can hardly be intrusted to the police, but I shall be glad to see them restored to the Magistrate."

The Hon'ble MR. JAMES :—" I beg to withdraw the amendment."

The amendment was accordingly withdrawn.

The Hon'ble SIR GRIFFITH EVANS said :—" My Lord, may I ask leave to move an amendment which is not on the list of business and fits in between motions 12 and 13 on the list. I regret very much that three of my amendments came in late, but in the press of work I was not able to get them in by the prescribed hour, but I hope the Council will allow me to put the amendment now."

His Excellency THE PRESIDENT said :—" I would only mention that any Member may object to the moving of this amendment as no previous notice has been given of it; but as I understand no Member objects, I shall allow the amendment to be put."

The Hon'ble SIR GRIFFITH EVANS then moved that for sub-clause (2) of clause 107 of the Bill as amended by the Select Committee the following be substituted, namely :—

"(2) Proceedings shall not be taken under this section unless the person informed against is within the local limits of such Magistrate's jurisdiction."

He said :—"I may shortly explain what are the reasons for this amendment. Under the old section 107 the words were somewhat vague and there was considerable doubt whether a Magistrate, when he had information that any person was likely to commit a breach of the peace or disturb the public tranquillity or do a wrongful act that might occasion a breach of the peace within his jurisdiction, would have power to summon that person from another jurisdiction into his jurisdiction in order to show cause why he should not be bound down to keep the peace. The matter came before various Courts. It came before the Court of Allahabad and it came before the Court in Calcutta. Two leading cases on it are to be found, one in Law Reports 6 Allahabad and the other in Law Reports 12 Calcutta Series.

"The Courts were of opinion that the words were ambiguous, but that they ought to construe them with reference to the fact that the jurisdiction was local and also with reference to convenience, and they pointed out the very great inconvenience that would arise from construing them as enabling a Magistrate to summon a man from the utmost ends of the earth. This is a very large country, not a small country like England, and the power that would have been given under the other interpretation which was negatived by all the Courts and which is now given by the amendment which has been introduced in the Select Committee is the power to summon anybody all over India for the purpose of giving security. For instance, my friend the Hon'ble Joy Gobind Law has got large properties up in the east of Bengal; a riot occurs there: he may be summoned there and, as we know by the decided cases, he may be made to go there, and when he gets there he will find probably that there is nothing against him. If a Magistrate thinks that a zamindar is at the bottom of the disturbance, though there be no evidence against him, he may put him to the disagreeable task of wandering about from place to place, and when he gets there he will then not bind him down at all. I have not seen a case in which it was found that a zamindar when bound down under such circumstances was not let off in revision. In the meantime he has travelled about all over the place. I take an extreme case, the Punjab, the North-Western Provinces and Eastern Bengal, in fact wherever he has any property at all and wherever a row takes place on that property and the policeman thinks it would be a good thing to bind down

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the zamindar and says there is reason to believe he is at the bottom of it. This is no fanciful grievance. It is what took place very often. Take the case of *Dino Bundo Mullick* reported in 12 Calcutta Series. The man was an old man living here in Calcutta. He happened to have acquired a piece of property up at a place called Bongong. He had never been there; he had never seen the place; there was a row between some villagers with regard to the crops and boundaries and various other things; so the policeman in the ordinary course thought it would be a good thing to bind down the zamindar. In that case I think it was the Deputy Magistrate who issued the summons. The man sent up a medical certificate, but the Deputy Magistrate was not satisfied with the medical certificate and he sent down a warrant to apprehend him here in Calcutta, and bring him to Bongong. It was objected to first of all that there was nothing in the information to show that this man had really done anything or was going to do anything. It was objected that the Magistrate ought to have dispensed with his personal attendance under section 116—but that was not the object, the object was pressure, and he exercised pressure on this man and tried to put him to the inconvenience of this long journey. This was the doing of a Deputy Magistrate and this is provided for in sub-section (*2*) where it says that power to summon people from all over the place is confined to District Magistrates and Chief Presidency Magistrates. But the other case in Allahabad was the District Magistrate, and whom did he summon? The Dewan Joy Prokash of the Dumraon Raj, a most respectable and peaceable old gentleman. He had nothing whatever to do with the matter except this. The Dumraon Raj had acquired a piece of property in the Hazipore district and in due course of time the servants were going to sow crops. Somebody else objected to their sowing the crops and accordingly a policeman said there was to be a row and the zamindar was at the bottom of it, and as they could not very well take the Raja of Dumraon himself up there they considered they would bind down the Dewan, and accordingly they summoned him to appear and bound him down in the sum of Rs. 35,000. It was urged that they had no jurisdiction to do so. It was pointed out that there was no evidence whatever to show that he was going to do anything wrong, nor was there any evidence to show that the servants of the Raja were going to do anything wrong, but only that somebody else was going to object and that there was going to be a row. There are a great many other cases, but it was decided that they had no jurisdiction to do this, otherwise so far as we could see the thing would be going on as before, but when the Courts both in Allahabad and Calcutta finally decided the question by a Full Bench they decided on the ground of the true

construction of the statute and on the ground of convenience that there was no such power existing then. Now it is proposed to give this power and I understand that the justification for it is that in certain cases there are persons who are living near the borders of one district and are creating a riot in the other. With regard to that the proper course has been pointed out by my Hon'ble friend Sir Henry Prinsep in another case in 11 Calcutta Series. The thing is simple: all you have to do is to send information to the other district, and if it is an adjoining district the difficulty will not be very great as to witnesses, and it is as I understand with regard to those cases where the supposed offender is living near the borders of the district and stirring up strife over the border—it is for them—that you want large powers. It is said that it was found impossible to provide for these people who live near the borders without giving this very wide power, but I venture to think power could be given to summon a man, say, twenty miles over the border. If a man lives within ten or twenty miles I think the power should be given; but what is objected to, and what I have seen myself, is making people travel a very long journey with no object. It may be thought I am suggesting something which does not happen, but I know that in a number of cases there has been a very strong tendency on the part of Magistrates to use this section in order to put pressure, though there were nothing worthy of the name of evidence before him. What is certain is that he is the zamindar, and the policeman thinks and the Magistrate very often also thinks that being a zamindar his servants would not do an act if he did not encourage them to do something of that kind. I think an additional burden is cast upon proprietors if they are liable to be trotted all over India whenever there is a row in a zamindari. I do not object to their being bound down in the district where they reside if any case is made against them, but I do object to their being trotted about all over India to answer an information which in nine cases out of ten has no substance in it on a process which never ought to have been issued.

The Hon'ble MR. CHALMERS said:—"This amendment is no doubt a matter which is deserving of the careful and candid consideration of the Council. It is a matter on which personally I can form very little opinion; it is one of those matters which you have to deal with in India; but what I would like to say is this that the matter was very carefully and exhaustively discussed in Select Committee by gentlemen who had ample knowledge of India, and the Select Committee came to the opinion that it was necessary to provide that people who lived outside the district and who were creating a disturbance in the district should be capable of being summoned at once to answer for their conduct. It was mentioned in the Committee that very often these rows were got up by

people who carefully kept themselves outside the district. Well the Committee did consider the very suggestion which my Hon'ble friend Sir Griffith Evans has made. They considered whether it would be possible to determine any limit of area within which this process should be issued outside the district, and they came to the conclusion that it was not possible to fix any limit. They thought that the best way of dealing with the difficulty was to meet it in another way and to provide that only the District Magistrate should have the power to issue process to people outside his district. They thought that by putting in this proviso to sub-section (*2*) they would call attention to the fact that these powers should be exercised with care and caution and of course they are subject to revision.

"It is quite possible that one or two hard cases may have arisen in the past; it is quite possible, though I hope it is not likely, that hard cases may arise in the future, but then there are two ways of dealing with this without cutting down the legal power. In the first place, the High Court can revise the order, and in doing this they can lay down general principles of discretion on which Magistrates are to act, but which we can scarcely embody in the Code itself; and, in the second place, the Local Government can also by circulars lay down rules for the guidance of Magistrates in exercising a jurisdiction of this kind. I cannot help thinking that the fact that the Code by its provisions says that this jurisdiction is only to be exercised by special Magistrates under special precautions will prevent the power being abused. However, it is a matter for the Council; it is a matter purely for Members of ripe Indian experience and not for me."

The Hon'ble SIR HENRY PRINSEP said:—"I can confirm what has fallen from the Hon'ble Member in charge of the Bill as to what took place in the Select Committee. Personally I was in favour of the amendment of the Hon'ble Sir Griffith Evans, but on reconsideration I have felt difficulties which might possibly arise and I consented to the modification of the clause as made by the Select Committee which seemed to me to be perfectly safeguarded against any possible mischief. I would wish in connection with this subject to draw the attention of the Council to an analogous provision in respect to the trial of offences. The law provides that when a person is accused of the commission of any offence by reason of anything which has been done or of any consequences which have ensued, the offence may be inquired into or tried by a Court within the local limits of whose jurisdiction anything has been done or such consequence has ensued, and if Chapter XV of the Code of Criminal Procedure relating to cognate matters be considered, it will be found that somewhat the same principle has been observed in respect of offences committed by other persons and in relation to which some particular person not within the jurisdiction is concerned. Therefore it seems to

me that, if a person who is not resident within the jurisdiction abets or is found by the Magistrate to have abetted the apprehended breach of the peace out of the jurisdiction, he will be properly amenable to the jurisdiction. I am perfectly well aware that bogus cases may be got up for the purpose of annoying zamindars, but it is possible to get up bogus cases of every description, and there is no more reason to suppose that bogus cases of this character will arise than cases of other descriptions."

The Hon'ble MR. STEVENS said :—" My Lord, this sub-clause was framed to meet the case in which a person in one district is endeavouring to disturb the peace in another. If the amendment be carried the guilty principal has merely to remain in one district while he foments disturbances in another. The only course would be to move that Magistrate who is not interested in the preservation of the peace (since the dispute is not in his district) to bind down this principal. Such a course would involve much delay, not only in initiating the proceedings, but in conducting them. Evidence of the expected breach of the peace would have to be taken to the second district, probably much to the detriment of the necessary proceedings in the first. The proviso contains an important safeguard, since no junior or subordinate officer would be in a position to take action unless both the person informed against and the place where the breach of the peace is apprehended are within the limits of his local jurisdiction.

" It is only the senior executive officer of the district who could exercise the powers in question; and it is only in exceptional cases that they would be required. In the instances described by the Hon'ble Sir Griffith Evans there was nothing against the gentlemen and there were not grounds for proceedings being taken against them in any district whatever.

" But if we take the case of a principal in an adjoining district, who is really instigating riots, I think it must be admitted that he ought to be bound down. The case of a man being dragged from one end of India to another is, I venture to think, one eminently unlikely to occur in real practice."

The Hon'ble BABU JOY GOBIND LAW said :—" I am afraid this would be rather a dangerous power to give the police. I can quite believe my friend the Hon'ble Sir Griffith Evans stating that Magistrates may sometimes think it would be a good thing to call a zamindar to account, whether he was concerned in the matter or not, or whether there was reliable evidence or not, and that by merely summoning him the disturbance would be put an end to by him somehow, either by concessions or by something else or by spending money. Therefore I am quite of the Hon'ble Sir Griffith Evans' opinion in thinking that it would be rather dangerous for a zamindar to be in such a position. As regards bogus

cases, it is true they are likely to turn up anywhere, but in this particular case it would entail an amount of hardship which would not occur in other cases, where one has to defend himself at his place of abode."

The Hon'ble SIR JOHN WOODBURN said:—"With reference to what has fallen from the Hon'ble Sir Griffith Evans I am bound to say that no such cases as he has mentioned have occurred to my knowledge in Upper India, and, unless His Honour the Lieutenant-Governor wishes to press the amendment, I think for the reasons which have been given by the Legal Member and the Hon'ble Mr. Stevens that I should support the Select Committee."

His Honour THE LIEUTENANT-GOVERNOR said:—"So far from desiring to press the amendment I would call attention to the fact that the Government of Bengal submitted to the Select Committee reports which showed that both Judges and Magistrates in large numbers approved of the extension of the authority of the Magistrate to persons outside his jurisdiction who might be concerned in acts likely to cause a breach of the peace within his jurisdiction. The existing judicial rulings suggest in fact an inconsistency in the Code. It would seem obvious and reasonable that when power is given to Magistrates to proceed against residents of their districts for conduct affecting the peace in other districts, they should also be empowered to proceed against residents of other districts for conduct affecting the peace in their own districts. The latter power is indeed more necessary than the former, for the Magistrates are more concerned in, and more responsible for, their own districts, and should have full power to act against disturbers of the peace wherever found. Such persons are really abettors of offences who, under the law, may be prosecuted within the district where the offence was committed though not resident there.

"I think myself that the criticisms of this section illustrate one of the points to which attention has been already drawn, namely, the attempt made in the Code to provide for every contingency that may arise. We are legislating for Magistrates of ordinary common-sense, and not for men like the exceptionally stupid Deputy Magistrate who dragged that unfortunate man down from Calcutta to Bongong. We must assume that Magistrates will do their duty in a reasonable way, and although it is quite true that this section may be employed in the case of a zamindar yet that is only one case out of many. In a disturbance of the peace we know practically that we have to deal with people occasionally who keep themselves behind the scenes, and if a Magistrate gets information that is good enough to satisfy him that there is such a person behind the scenes, then I say he should be able to get at him whoever he is."

The Hon'ble SIR GRIFFITH EVANS said :—" The Hon'ble Mr. Chalmers replies that there is the power of revision. The answer is the same as in the case of sentence of whipping. The whipping comes first and the revision afterwards. In this case the man has gone his journey, and been trotted about there, and in all probability there is no conviction at all because there is no case. The power of revision does not in the smallest degree meet the evil that I am complaining of. My Hon'ble friend Sir Henry Prinsep has said that it is nothing worse than happens to them in an ordinary criminal case when a false charge is brought against them. Yes, but it is a false charge of some definite act generally upon oath. Somebody has got to make the charge and they can prosecute that man for perjury or sue him for malicious prosecution, and that man has got to think twice before he makes the charge, but here it is merely that the Magistrate is informed and what is the nature of the information. I have seen it any number of times ; a policeman says there is a *chur* there, and there are two powerful zamindars, and very likely there will be a disturbance when the crops come to be reaped, and I think they ought to be bound down to keep the peace as I think they are at the bottom of it. That is exactly what happened in the case I have mentioned in the North-West. If there have been no such cases in Upper India it is probably because the Allahabad Court has ruled that there is no jurisdiction to make such orders. The matter is before the Council now and it is for the Council to consider. It may be that this debate and the reference of what has been laid down in the various Courts as regards convenience may do something to prevent the same abuse growing up again. Otherwise as far as one can see it is only too likely to do so."

The Council divided :—

| *Ayes—6.* | *Noes—14.* |
|---|---|
| The Hon'ble Allan Arthur. | The Hon'ble Rai Bahadur Pandit Suraj Kaul. |
| The Hon'ble Gangadhar Rao Madhav Chitnavis. | The Hon'ble F. A. Nicholson. |
| The Hon'ble Maharaja Bahadur of Durbhanga. | 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 Rai Bahadur Ananda Charlu. | The Hon'ble Sir H T. Prinsep. |
| The Hon'ble Joy Gobind Law. | The Hon'ble C. C. Stevens. |
| | The Hon'ble Pandit Bishambar Nath. |
| | The Hon'ble Rahimtula Muhammad Sayani. |
| | 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. Woodburn. |
| | The Hon'ble Sir J. Westland. |
| | His Honour the Lieutenant-Governor of Bengal. |

So the motion was negatived.

The Hon'ble MR. SAYANI moved that in clause 108 of the Bill as amended by the Select Committee between the word "information" and the word "that", in line 8, the words "on oath or solemn affirmation" be inserted. He said :—"The effect of this amendment, if accepted by the Council, will be that the information will be such as will, if necessary, give to the accused the power of knowing who his informant is and the power of cross-examining the informant, and there will be some material before the Magistrate on which proceedings may fairly be taken. If these words are not inserted, then the Magistrate can act on any information, whether written or oral or in any other shape or form. I have already given my reasons for proposing this amendment, and I hope it will prove acceptable to the Council. I wish, however, to say one thing—that the order in which I sent in my amendments was that the amendment proposing that clause 108 of the Bill be omitted was placed first. Of course there must be good reasons why this present amendment No. 13 has been put in first in the agenda paper."

His Excellency THE PRESIDENT :—"May I interrupt the Hon'ble Member to explain that it was done under my orders. According to the Parliamentary rule the proper course is to amend a clause and then if it is desired to omit it to make the motion for omission."

The Hon'ble MR. SAYANI :—"I only referred to this fact for this reason that if that amendment had been put first and carried, the amendments purporting simply to modify the section would have been rendered nugatory and we should not have had to take up the time of the Council in dealing with them."

His Excellency THE PRESIDENT :—"Quite so : but according to Parliamentary rule if the amendment had not been carried and the clause had been carried, my Hon'ble friend would not have been able to move the amendment."

The Hon'ble MR. CHALMERS :—"This is an amendment which I must oppose, and not as Chairman of the Select Committee but speaking as a member of the Government. The Hon'ble Member desires to introduce certain words of which he has given notice, but the section as it stands is uniform with sections 107, 109 and 110. We intend to keep the procedure uniform. There is no reason to put in those words when they are not in sections 107, 109 and 110, and the Government desire to stand by this clause as they have drafted it in this respect."

The Hon'ble MR. CHARLU :—"I very strongly support the amendm ent. Of course the Hon'ble Member in charge of the Bill spoke as a member of

the Government, but I speak on behalf of everybody else. Perhaps I am not altogether right in saying so. Let me correct myself and say that I speak on behalf of the Government as well as everybody else.

The Government itself would like in the interests of its subjects to protect every subject to this extent, that he should not be annoyed or vexed without a sufficient foundation, and it strikes me that the suggestions made by my Hon'ble friend would alone afford a proper foundation for the protection of the person."

The Hon'ble PANDIT BISHAMBAR NATH:—"I cordially support the amendment, but on the principle that something is better than nothing, as I should prefer to get as much as I can in that direction—I mean in the direction of bettering the position of the people for whom I advocate, and of those who might come under the operation of the proposed law."

His Honour THE LIEUTENANT-GOVERNOR:—"I only wish to remark with reference to this amendment that it is based mainly on the fact that the gentlemen who moved and supported it have got what I may call newspapers on the brain. They view everything from the point of view of the native editor and its possible effect upon him. This section is not specially directed against newspaper editors, but against the class of wandering preachers of sedition in Upper India and elsewhere, who have to be dealt with promptly and summarily, and with whom the Magistrate has to deal as he would with any other description of budmash. There are amendments on the paper which I think will sufficiently safeguard the position of newspaper editors, and I shall be quite content if the section is amended as proposed. As regards this particular amendment I see no reason why it should be placed on quite different lines from those on which the corresponding sections are placed."

The Hon'ble MR. SAYANI:—"I am sorry, my Lord, that the reason given by my Hon'ble friend the Legal Member for retaining section 108 in its present form and not allowing the amendment which I propose to insert is that there are other sections in the Code, section 107 and others, which also do not provide that the information should be on oath or solemn affirmation. It may or may not be that the other clauses are perfect. But whenever an amendment or a proposal has to be considered I humbly venture to think that the only considerations to be taken into account are whether such amendment or proposal is good or bad, and whether there are good reasons for it or not. I submit that I have already stated reasons which are good, and that the reason that the other sections do not contain these words and that therefore this section should not contain them is, I submit, not a good reason.

Then, as to His Honour the Lieutenant-Governor's remarks that probably I have on my brain the newspapers, I may say this that I have nothing to do with the newspapers; I am not the proprietor, editor, publisher or printer of any paper; I am simply what all of us are, namely, a reader. Then, as to the remark that probably the Hon'ble Sir Griffith Evans' amendment will put it all right, I submit that that amendment is not at present before the Council, that the reasons I have given for the amendment I now propose are good reasons, and that the amendment should be accepted."

The motion was put and negatived.

The Hon'ble PANDIT SURAJ KAUL moved that in clause 108 of the Bill as amended by the Select Committee, after the words "such Magistrate", in line 24, the words "after he has fully satisfied himself as to the truth of such information" be inserted. He said:—"My Lord, sections 124A and 153A having been inserted in the Indian Penal Code, the Select Committee found it necessary to frame section 108 of the Criminal Procedure Code as it stands in the Bill as amended, but the insertion of the words I have proposed would, in my opinion, have removed all apprehension as to unnecessary trouble and difficulty being caused to persons who are the objects of enmity or ill-will and against whom false information may be laid.

"No doubt section 112 proceeds on the assumption that due enquiry will have been made by a Magistrate before any action is taken; but having regard to the fact that section 108 is new and to the discussions that have recently taken place on the sedition sections of the Indian Penal Code, it would be an advantage to make the duty of the Magistrate quite clear and to let it be distinctly understood that he is required to satisfy himself as to the truth of information received, before the person accused is required to show cause why he should not be required to execute a bond.

"There are in India certain persons who, owing to differences in caste and creed and consequent enmity or ill-will, would not hesitate to endeavour to bring disgrace on or cause harm to others and thus seek to injure innocent persons. The words I have suggested would be a valuable safeguard, and I hope that the amendment I have proposed will be acceptable to the Council."

The Hon'ble MR. CHALMERS:—"I must oppose this amendment. I quite sympathise with the Hon'ble Member's intentions in moving it, but if we inserted these words in this section I think we should have to insert similar words in nearly every section of the Code. No Magistrate ought to act, or would

act, without due consideration and without what he considered to be proper and solid information. That must be left to the discretion of the Magistrate."

The Hon'ble MR. CHITNAVIS said :—"My Lord, I beg to support the amendment. As a native of India, having personal knowledge of th many animosities and jealousies that exist among the several castes and classes that inhabit this vast Empire, I think the reasons given by my Hon'ble friend Pandit Suraj Kaul in support of his amendment are convincing."

The Hon'ble PANDIT BISHAMBAR NATH :—"I am in support of the amendment. The insertion of similar words in other parts of the Criminal Procedure Bill will not, I submit, destroy the symmetry of the Code. If the insertion of those words can take the sting out of the section, which is open to serious objection, I think, the words that have been suggested to be used in the clause ought to be inserted there."

The motion was put and negatived.

The Hon'ble MR. SAYANI moved that in clause 108 of the Bill as amended by the Select Committee, between the word "may" and the word "in", in line 24, the words "with the sanction of the Local Government" be inserted; that the words "with or", in line 27, be omitted; that for the words "one year", in line 29, the words "three months" be substituted. He said :—"I have already stated my reasons for these amendments and will now leave them to the Council to deal with them as they please."

The Hon'ble MR. CHALMERS :—"I am afraid I must oppose these amendments on behalf of the Government. As regards the first amendment my Hon'ble friend proposes that proceedings under this section should only be instituted with the sanction of the Local Government. Well, we are prepared to meet him half way there. My Hon'ble friend Sir Griffith Evans has formulated an amendment which after careful consideration we shall be prepared to accept, but that amendment provides that in the case of registered publications where you have a registered proprietor, the person who has a permanent address, that then the sanction of the Local Government or the Government of India shall be required before proceedings are instituted. That certainly is quite as far as we can go. As my Hon'ble friend the Lieutenant-Governor has pointed out, this clause is not aimed specifically at writers or editors; it is aimed at seditious people. You have people preaching sedition who are here to-day and gone to-morrow. The Magistrate must be empowered in these cases to act promptly. Even in the case of newspaper sedition it may occasionally be inconvenient that

very prompt action should not be taken. But on the whole we think that where we have a responsible person with a registered address that there we can put up with some delay and that the matter may be left until the sanction of Government can be obtained. As regards my friend's second amendment he proposes to reduce the period for which security is taken from one year to three months. That I think would render the section almost nugatory. I do not see the object of it. He is afraid of people being needlessly harassed ; they will be equally harassed by a proceeding to bind them down for three months as they would be harassed by a proceeding to bind them over for one year. I think on the other hand when proceedings are taken, and taken justifiably, it is well that they should be bound over for a substantial period. As a matter of fact, I think this section will require to be very little used. The knowledge that this section is embodied in the Code, the knowledge that this power exists, will, I think, in most cases suffice to bring people to their bearings."

The Hon'ble MR. CHARLU :—"I support the amendment and I consider the reason given for opposing it as not sufficient. It is said that the section aims at those roving men who have no place of abode and who are here, there and everywhere, doing mischief by exciting the mob by inflammatory utterances. But the words of the section go far beyond. They cover even men who can be as readily spotted or got at as the printer and proprietor of a newspaper. The reason assigned is, therefore, utterly insufficient. To be consistent with it, or rather to provide for the precise case which alone will justify the section, the words in the section must be considerably modified, so as to confine it to the roving mischief-makers referred to."

The Hon'ble PANDIT BISHAMBAR NATH :—"I beg to support the amendment."

The motion was put and negatived.

The Hon'ble PANDIT BISHAMBAR NATH moved that clause 108 of the Bill be omitted. He said :—"The large number of amendments, I believe about 67, which are on to-day's list of business, in connection with the Criminal Procedure Bill, of which some have already been disposed of satisfactorily, clearly indicates that the Bill is still susceptible of emendation and improvement in many respects.

"The bitter experience I have had unfortunately of the fate that attended the several amendments which were moved on the memorable 18th February last, and negatived successively, with the exception of a single one, dissuades

me, I confess, from pressing the amendment that stands against my name. I feel, however, I am bound to move the amendment, and in doing so I should like to offer a few observations besides those which I have made in my note of dissent appended to the Report of the Select Committee. With due deference to the observations that have fallen from the Hon'ble the Lieutenant-Governor of Bengal, and the Hon'ble the Legal Member, that the clause is not meant to operate against newspaper writers, I submit, there is nothing in its language to warrant absolutely the accuracy of that observation.

"As section 124A has been amended and a new offence created and embodied in section 153A in the Indian Penal Code, it is not only not necessary but extremely undesirable to insert clause 108 as proposed and settled by the Select Committee.

"It has been observed that the amended provisions of the substantive law, as laid down in the Indian Penal Code, are of a *punitive* character; while those proposed to be embodied in clause 108 of the Criminal Procedure Bill are simply *preventive* in their nature. I regret I find myself unable to share that view. To my mind, the clause, if allowed to stand, will provide a new punishment in a different shape for substantially the same offences which are penalised in a graver form by sections 124A and 153A, and by the clauses relating to defamation and criminal intimidation—a punishment which will, in its practical operation, impose a far severer restraint upon the freedom of speech and of the Press, than even the amended and other provisions of the Penal Code do. Clause 108 penalises virtually in a preventive form the acts made punishable by the sections to which it refers, taking away the salutary safeguards with which prosecutions under those sections are hedged in.

"In my opinion, it would be equally unnecessary and extremely rigorous to insert clause 108 in the Criminal Procedure Bill, when the provisions of the Indian Penal Code have been made rather effective by amending section 124A and enacting section 153A.

"It is obvious that under the clause in question (108), as soon as a person is found to be disseminating or attempting to disseminate in any wise, or attempting the dissemination of any seditious matter, etc., he becomes virtually, at that moment, liable to the punishment prescribed by section 124A or section 153A, for exciting feelings of contempt, hatred or enmity, as the case may be. The proper course to adopt, in such a case, would be to proceed against the supposed offender, and, if he is convicted, the Court convicting him may, if it thinks fit, call upon him to execute a bond for his good behaviour, after the term of his sentence is over, for such period as it may seem fit to it.

"The Select Committee has considered it desirable not to give District Magistrates power to initiate prosecutions for offences under section 124A or section 153A, unless the sanction of the Local Government has been previously obtained. Such a conviction precedent does not, however, attach to the initiation of proceedings under the clause in question, and the result is that it places speakers and journalists completely under the control of executive officers, who would presumably be most intolerant of adverse criticism. It is, therefore, not safe to entrust such officers with so wide powers, when we remember that such powers are never entrusted to Magistrates, even in England.

"The Hon'ble the Legal Member has on another occasion observed that it was considered undesirable to revive the Vernacular Press Act, but the insertion of the proposed clause will virtually mean the revival of that retrogressive and obnoxious legislation with an extended scope, as it will bring under its operation, not only journalists, but also public speakers. It has also been remarked that critics of the better type will not find themselves hampered in criticizing through the Press, public or administrative measures, if they do so moderately and temperately. But remembering how wide a definition has been given to sedition, and bearing also in mind what is unfortunately a fact, that animadversion upon measures of Government, even in a subdued tone, does in many instances prove disagreeable to those whose acts are criticized, it cannot be said that there is no reason to apprehend that the vesting of such powers, as are proposed to be conferred by clause 108, on Magistrates, who, being ordinarily executive officers, would naturally attach too much importance to their ideas of preserving order, will place an undesirably severe restraint upon the liberty of speech and of the Press.

"This, in my opinion, would be deplorable, for it is necessary for the good administration of the country that the Government should be kept informed of what the people think honestly of its laws and measures, though their views may sometimes be found expressed not in discreet or guarded language.

"As to sub-section (*c*), the recommendation by the Calcutta Bar that the course proposed by them should be adopted, and the sub-section itself abandoned, is an acceptable one.

"For these reasons, amongst others, I would suggest that clause 108, as settled by the Select Committee, should be omitted altogether."

The Hon'ble MR. CHALMERS:—"I must oppose this amendment on behalf of the Government. On previous occasions I have explained the scope of this

clause and our intentions with respect to it. Now I find this clause, curiously enough, is attacked from opposite quarters. My friend Mr. Chitnavis in his opening speech first of all commended our procedure for binding over first offenders instead of sentencing them, and now when we propose to apply a similar procedure to people who commit Press offences he raises objections to it. He says in the case of an ordinary first offender, 'well, it is a good thing that a trivial offence should be dealt with not by punishment, but by simply binding the man over.' Why then does he object to a similar procedure being applied to Press offences. I think this is very necessary, and for this reason;—that there is a very great deal of mischievous writing in this country which is written irresponsibly. Addressed to and circulated among ignorant, credulous and foolish people, it may do an infinity of harm. It may produce effects far beyond what is intended by the writer, but the writer himself is simply a foolish, silly person who writes irresponsibly; who, if I may use a phrase used on the last occasion, is a person who smokes in a powder magazine. Well, in those cases, although the writing may be exceedingly mischievous in its effects, we desire not to punish the writer but to warn the writer, and we have devised a procedure which will call his attention to the fact that he must not smoke in a powder magazine. There are one or two other remarks that have been made which I should very much like to notice. There is the assumption running through all the criticisms on this clause that it is to be used against people who criticise Government or who, as my friend Pandit Bishambar Nath says, write or speak things which are disagreeable to Government. I wonder where he gets that from. It is not in the clause; the criminal law forbids the offence of exciting disaffection against the Government; it forbids the offence of raising up class hatred under certain specific conditions; it forbids the offence of criminal intimidation; and it forbids the offence of defamation. This section can only be used, not against people who say disagreeable things and who criticise the Government, whether fairly or unfairly, but only against people who have committed offences against the law of the land. It is in this respect that this section differs wholly and absolutely from the old Press law. For instance, under the Act of 1878 the Press was subject to license. I have no doubt that the Government of the day used the power moderately and wisely, but they had power to control and license the Press, and if they had chosen to make a foolish use of the Act, they could have prohibited writing which had absolutely nothing to do with sedition. I suppose if you have a law under which the Press is licensed and the action of Government cannot be supervised, it would be possible to withdraw the license because the editor had, say, red hair or for any other reason you like. We have deliberately eschewed a Press law. We have said we do not want to license the Press. We have said we desire to

have a free Press, free to publish everything that is not contrary to the law. It is only if and when the Press chooses with its eyes open or anybody else chooses with his eyes open to offend against the ordinary law of the land that he can be proceeded against under this section or any other section of the Code."

The Hon'ble MR. SAYANI :—"I also am in favour of the amendment, as I gave notice of a similar amendment. I am very glad to hear from the Hon'ble Mr. Chalmers that it is not the intention of the Government to make use of this section against any but those who actually and undoubtedly offend against the law."

The Hon'ble SIR JOHN WOODBURN said :—"My friend, the Hon'ble Mr. Chitnavis, in the most interesting and skilful speech with which he opened the discussion on this Bill to-day, spoke of disaffection being nowhere now visible in an appreciable form. This is an important variation from the expressions which were used at the last meeting of Council, when the existence of disloyalty in India was altogether denied. My Lord, I sympathise with the feeling which dictated these expressions. We are all of us unwilling to admit that such a thing as disloyalty can exist in India. But the facts are against us. The Courts of justice in India in a series of recent cases have found that disloyalty does exist, and that it has to be punished. We cannot shut our eyes to what has been so plainly presented to us or pretend that there is peace when there is not peace. I should be sorry to believe that sedition was widespread or frequent, and I am satisfied myself that it is neither. The assurances which have been given us by Members of this Council who have the best means of judging, I frankly accept as evidence that the sedition of which we have had proof is confined to a limited circle. And I am further quite ready to believe that what the Courts have found to be sedition sometimes began without actual disloyalty, but grew out of unrestrained indulgence in intemperate language. It is for this, among other reasons, that I support a measure the aim of which, as Mr. Chalmers truly said, is prevention rather than punishment. In the interests of good government it is always better that crime should be prevented than that it should be allowed to come to a head, however exemplary and effective the subsequent punishment may be. The lamentable riots, which were yesterday reported from Bombay, furnish fresh proof of the suddenness and fierceness with which passions may be roused in this country in an ignorant mob and of the imperative necessity of arming the executive with all the powers of prevention which possible forewarning may render it expedient to use.

"I am myself perfectly willing that even this preventive jurisdiction shall be exercised only under the express authority and sanction of Government. This will give assurance that it will be exercised with moderation and prudence; but that provision should exist for the use of preventive measures, when occasion requires, is the opinion of every responsible Government in India and of every High Court without exception. The only dissentients in the High Courts were Justices Ghose and Banerjee, Judges of a soberness and soundness of judgment which must always carry weight, and even they accepted the measure now before Council with the proviso which will be agreed to to-day. I can add nothing to this unanimous opinion of all that is responsible for the peace and order of India.

"I said just now that the Hon'ble Mr. Chitnavis had described disloyalty in India as hardly appreciable. In quite recent issues of respectable Native papers it has been loudly asserted that disloyalty does not exist. On this matter I should like to say one word as to the effect produced in England by this language. The interest in India has never been so keen and so universal as it is in England now. Sympathy has been roused by the unprecedented calamities which simultaneously befel this unfortunate country last year. But an active organization had, I understand, been made to circulate in England the argument that the utterances of Mr. Tilak were not sedition. Now the ordinary Briton is a simple man who pins his faith on facts when he can get them. He asked himself, What is this? The Queen's Privy Council presided over by Her Majesty's Lord Chancellor has held that Mr. Tilak was guilty of sedition. Is it the case that the Indians who profess to be men of leading and the representatives of enlightenment in their country think and hold that disloyalty is their privilege? Is it for this that the British Government has patiently persisted in its policy of education, and has from step to step advanced them in the administration of the country?

"I do not like to speak of the dark resentment which the attitude I speak of roused in the minds of people in England. It is a result which every friend of India and of the Indians must deplore, the more so that this has happened at the very moment when the English race had been drawn to the Indian with cords of the strongest sympathy and regard. England had expended herself in such an effort of sorrowful and open-handed charity as she had never made for her own suffering poor. And at this very moment came from enlightened Indians the insistence of their deliberate association with disloyalty and sedition. I cannot sufficiently regret and deplore it. The endeavours of

those who seek to establish and spread a hearty concord and co-operation have been sorely thwarted.

"The feeling will pass away with the generous forgetfulness which I think I may say is the characteristic of the English race. But I am sorry that a line should have been taken which gave birth to, and keeps alive, the distrust that has been so grievously provoked."

The motion was put and negatived.

The Hon'ble PANDIT BISHAMBAR NATH moved that the following be added at the end of clause 108 of the Bill as amended by the Select Committee, namely :—

"No proceedings under this section shall be instituted without obtaining the previous sanction of the Local Government as provided by section 196 of this Code."

He said :—"For the reasons submitted in my note of dissent, I beg to propose that no proceedings under clause 108 should be instituted without obtaining the previous sanction of the Local Government as provided by section 196 of the Criminal Procedure Bill.

"The gravity of the penalty imposed upon a person required to be bound down demands that the preventive action provided for by the clause in question should be made subject to the sanction of the Local Government. Such a person must undergo a severe punishment in the event of his inability to furnish the requisite security, and when he is once bound down, he suffers in his trade and business and particularly in his dealings with executive officers, who would stigmatise him as a felon."

The Hon'ble MR. CHALMERS :—"I must oppose this amendment, but I must say at the same time we can go a long way to meet the Hon'ble Pandit's suggestions. The next amendment is an amendment which we shall be prepared to accept. That will go a long way towards meeting what my Hon'ble friend has just proposed. The reason we cannot accept his amendment can be very shortly stated. As I have already said, we have not only to deal with newspapers or writers of books or people of that kind, but we have to deal, especially in Northern India, with people who preach sedition, and who are perhaps exciting people by their preaching on plague operations and other matters causing unusual unrest to prevail. It is clear that the Magistrate in such a case must act promptly, but prompt as his action ought to be, let me point out this : all that the section empowers him to do is to call on the person against whom he proceeds

to show cause why he should not be bound over to keep the peace and be of good behaviour. The section does not enable the Magistrate to do anything in the absence of and without hearing the person who is called upon to show cause. It merely provides that he may call upon the person to show cause, and after hearing what he has to say may, if necessary, bind him over ; but no man will be harassed without having a full opportunity of being heard and stating his case and of having it considered by a very responsible officer. We have confined these powers to District Magistrates, Chief Presidency Magistrates and to specially empowered Magistrates of the first class."

His Honour THE LIEUTENANT-GOVERNOR :—" I have considerable sympathy with the motion the Hon'ble Pandit Bishambar Nath has brought forward, but I think that, as far as the law is concerned, it will be quite sufficient if the Council accept the amendment which will be moved presently by my friend Sir Griffith Evans. In the case of Bengal, however, I should be quite prepared, myself acting as the head of the Local Government, to issue executive instructions that Magistrates taking proceedings under this section should report their proceedings to the Government, and the Government would naturally exercise their power of revision and stop proceedings in cases where these seemed to have been needlessly instituted. There can be no doubt, however, that in the greater part of Upper India and in other parts of the country it is desirable that the Magistrate should have an unfettered hand."

The motion was put and negatived.

The Hon'ble SIR GRIFFITH EVANS moved that the following be added to clause 108 of the Bill as amended by the Select Committee, namely :—

> " No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, or printed or published in conformity with, the rules laid down in the Press and Registration of Books Act, 1867, except by the order or under the authority of the Governor General in Council or the Local Government or some officer empowered by the Governor General in Council in this behalf."

He said :—" The last words of the amendment are taken from section 196. The effect, roughly speaking, is to require the same sanction of Government when proceedings are instituted under section 108 against the Press as is required in all cases of a prosecution under section 124A. The result will be that Magistrates will be able to take proceedings without Government sanction in all other cases, but will require Government sanction before taking proceedings in respect of a newspaper article. It may be asked why this distinction should be made between oral

and written sedition. One reason is that oral incitements to a mob of ignorant people are apt to lead to immediate disturbances and may require immediate action without waiting for sanction. Another is that many seditious preachers are migratory and must be caught at once if they are to be stopped, whereas newspaper editors and publishers have a fixed address and a fixed occupation and can be found at any time. But the main reason is a different one. A portion of the Vernacular Press has been allowed to drift into a very lamentable condition for many years, and the curb which it is proposed to put upon them by this section will have to be applied with great discretion and judgment. I mean no disrespect to the Magistrates in India when I say that I do not think this power can safely be entrusted to them. Able and conscientious as they are, the comparatively isolated lives that they lead in the several districts are not favourable to the wide outlook and sense of proportion which are necessary to deal effectively with this evil. Many of them are also too young. It is, I think, essential that this power should be exercised by persons of the ripest judgment, living in a serener atmosphere, away from local feeling and excitement. In fact, I do not think that any one but the Government ought to use this power with any prospect of the good results which are intended.

"As however the statement has been re-iterated to-day that there is no sedition or no 'appreciable sedition' in India, I desire to make it clear that it is from no sympathy with the view that I move this amendment. I will not waste time in the barren discussion of whether sedition is the right word to describe what does exist. But I have since the last meeting of the Council waded through a large mass of authorised translations of extracts from the Vernacular Press for the year 1897, and this is what I find. I find statements that the Government are not willing to spare one cowrie from their coffers to save the lives of the famine-stricken people; that they have always plenty of money, but they will not spare one cowrie, which is really shameful; that the people were dying of famine, and the Indian Government were continuing their wicked policy of draining the resources of India and deliberately concealing from the English people and the Queen the fact that the people of India were dying. On the top of this one finds a further statement that they will not apply, to relieve the people, even the money which the liberal English people had subscribed. I find it is said that the people who came out here to rule India were not of the respectable classes, but were a low order of persons who had no regard for the interests of the people they came to govern, and that the English fattened like swine upon the produce of the country and insulted the inhabitants. One finds it stated that the Viceroy had come out here for no other purpose than to wander in the cool

heights of Simla, with a pomp and state which he could never have enjoyed in his own country. It would have made one smile if it were not for the sadness of the thing, to find so strange a portrait. One finds that the English people are callous to the sufferings of others, that they are unmoved by the misery and death of the natives by famine, but that, when it came to the plague, they feared that they themselves should die, and that thereupon they made rules by which whole villages should be burnt because they were afraid to die themselves. This is the kind of thing which everybody can read for himself and call by any name he pleases except honest criticism. The task of Government is very difficult with regard to the plague. It is how to save the people and the country from the fearful scourge, while interfering as little as possible with their religious and social prejudices, but this task becomes well nigh impossible if the people are taught that the Government and the officials do not care whether the people die or not, but are only anxious to save their own lives. I will give the Council the exact words of one of these loyal people :—

'A lasting blot of infamy will fasten itself on the white race for the crores of Indians who have died of famine.'

But according to some of my hon' ble friends, this cannot be seditious, for we have this remark :—

'Half-starved, bound hand and foot, is it likely we should rebel against the powerful British Government?'

Next we have :—

'The old vigour of England and the respect for justice is gone. There is no longer safety, and people tremble for their lives, honour and property.'

"This is the kind of thing they have been teaching the people while the famine officials have been spending their lives and health in endeavouring to cope with it, while the plague officials have been braving the plague and making unparalleled exertions in order to save the lives of the people. The evil is great and is so deep-rooted that it will require wisdom as well as firmness to deal with it. Any indiscreet action would recoil on the Government. When it is found that the manufacture and sale of this kind of poison is prohibited and no longer yields a safe livelihood, I hope the tone of malignant perversity may be abandoned and something more like honest cricitism may take its place. But it will take time. But as regards oral incitements or anonymous leaflets which may create intense excitement, prompt measures were absolutely indispensable. With regard to

having sworn information, I would refer the Council to section 190. Under that section, the Magistrate may take cognizance of an offence on receiving a complaint or a police report or on his own knowledge or suspicion. Now, there was no reason whatever with regard to these offences why any further safeguard should be necessary. It has been said that in certain cases, even as regards these newspapers that they might be issuing an inflammatory article at a moment when plague operations were going on or when a cow-killing riot was imminent, they might create a breach of the peace and it might be desirable to deal with them promptly, but notwithstanding that considering that they are people with a registered address who can always be found and considering that the Magistrate might give them intimation that if they did repeat the offence this section or some other effective section would be put in force against them, I thought that on the whole it would be a wiser and more statesmanlike course to enact that in no case should proceedings be taken against the Press except under the orders of Government. As regards the information against the Press, it must consist mainly, if not entirely, of an article from the paper. There will be no conflicting oral evidence, and when they apply to the High Court for revision, they will be very nearly as well off as if there were an appeal. Revision, and not appeal, has always been the remedy under the other security sections. With the safeguard given by the amendment, I hope that much of the alarm caused by this section will abate, and that it may to some extent realise the hopes and expectations of its framers as a preventive section in dealing with a great and growing evil."

The Hon'ble MR. CHALMERS:—"On behalf of the Government I think I may accept this amendment. In our original scheme we proposed that this procedure of binding people over not to commit further offences should be left to the discretion of ordinary Courts to be worked in the ordinary way. There is a great deal to be said for our original idea, but if the public think that they would have increased protection by the Government taking upon themselves the responsibility of deciding whether the proceedings should be instituted or not in the case of written publications, I am willing to accept that responsibility and to accept this amendment."

The Hon'ble MR. SAYANI:—"I am in favour of the amendment because it goes to a certain extent to realise the same object as I intended to realise by my amendment, but I am sorry to say that I do not agree with the reasons which have been given for it by the hon'ble mover of the amendment. It is said that in the particular case of these articles Government should take the responsibility of considering the matter and give the sanction, as the evil

has become so great that wiser heads are required to give the sanction. I should have thought that if the evil produced by the writings is greater, as stated by the hon'ble mover of the amendment, than the evils produced by oral speeches, then those who commit offences by their writings ought to be more summarily dealt with than those who commit offences as oral speakers. Then again it would strike anybody that when oral speeches are made, the effect is momentary; it passes off like gas; but in the case of written matter the effect is greater and more permanent. However, as I said, I am prepared to support the amendment, not for the reasons which have been given, but because the amendment to a certain extent goes to realise the object I had in view."

The Hon'ble SIR GRIFFITH EVANS:—"I wish to reply very shortly to what the Hon'ble Mr. Sayani has said. He has entirely misunderstood what I said as to oral and written sedition. I did not mean to say for one moment that the evil was of the same character. The evil that is caused by the Press is an evil mainly of the future. It is not that there is any particular danger at the present moment, but as I said before, it is this: that if the minds of the people are poisoned with this continual writing, when the time of trouble comes, then we shall find that the cumulative effect for years has been to cause the white race to be regarded as some sort of foreign devils, as in China, and the tendency would be to get rid of them root and branch. When the time of trouble came instead of being, as it was in the Mutiny, a trouble between Government and its sepoys, the mob would turn on the hated race and the hated Government; but this is a matter for the future, and we can take time over it. But with regard to ora incitements—take the case of the outbreaks in Upper India and in Bombay. You may have an immediate riot, an immediate outbreak: you may have a cow-killing riot or you may have a riot like there was at Bombay yesterday in which they turned on the Europeans in this very momentary excitement which Mr. Sayani speaks of as being gas, but which resembles the gas of fire damp in a coal mine. It may be true that the evil of such outbreaks is not so great in the end as the gradual poisoning of the mind of a nation, but the evil that is done by a portion of the Press is an evil which we can afford to deal with more at our leisure."

The motion was put and agreed to.

The Hon'ble MR. JAMES moved that in clause 109 (*a*) of the Bill as amended by the Select Committee the word "cognizable", in lines 6 and 7, be omitted. He said:—"My Lord, for thirty-six years it has been the law of the land that if any person is found concealing himself, and there is reason to believe he is

doing so in order to commit any offence, the Magistrate can order him to find security for good behaviour. The Bill as introduced in Simla introduced the word 'cognizable', thus striking out one half of the offence. No reason was given for this in the Objects and Reasons, nor has the Select Committee stated why it is necessary to change the law. Now the Bombay Government, which has had a good deal of trouble for months and years past, request that the law may be left as it is. They state: 'There seems no adequate reason for the restriction, which, it is feared, might prove inconvenient in cases of disturbance of the public tranquillity.' If the word 'cognizable' is left in, it means that a person coming into a Magistrate's district with the intention of committing any offence against the State, waging war for instance, rebellion or forgery, he cannot be arrested. I should therefore like to see the law left as it is."

The Hon'ble MR. CHALMERS:—"This is purely a matter for the Council to decide. It is quite true that the word 'cognizable' was inserted in the revision of the Bill in Simla because my Hon'ble friend Sir Henry Prinsep and myself, when looking through the schedule of cognizable and non-cognizable offences, thought that these proceedings were appropriate only to cognizable offences. The question was re-considered in Select Committee, and the Select Committee came to the same conclusion. However, it is a matter for the Council and I daresay Sir Henry Prinsep will be able to give good reasons for the course which we took."

The Hon'ble SIR HENRY PRINSEP:—"The introduction of the word 'cognizable' before 'offence' instead of allowing the law to express itself in regard to any offence was, I believe, done at my suggestion. The first object that I had in view was to make it correspond with section 55. The Hon'ble Member who has proposed this amendment expressed great anxiety to make section 55 correspond in respect to words that he proposed to introduce into section 110. It seems to me that the same principle applies in making it correspond with section 109 if the words to which it applies are the same in both sections. My reasons for the terms of this section as expressed in the Bill and as now objected to are the following. In the first place, the law in the Codes of 1861 and 1872 was not as is expressed in the law of 1882, and I can find no reasons why the law in 1882 was expressed in the way that it was, so as to give power to a Magistrate to demand security for good behaviour in the case of a person taking precautions to conceal his presence with a view to committing any offence. It seems to me the law is quite sufficiently expressed if it relates only to cognizable offences, and I am inclined to think that in expressing it in the Code of 1882 there is an oversight in so far as it did not in this respect make that section correspond

with section 55. Now my Hon'ble friend has been so good as to refer to the recommendations of the Government of Bombay in which His Excellency in Council was disposed to omit the proposed insertion of the word 'cognizable.' If you refer to all the offences set out in the schedule relating to public tranquillity, you will find they are all cognizable offences, and therefore I cannot understand the exact reason which the Government of Bombay assigns. I would refer to Schedule II of the Code commencing at section 143, and the Council will see in the second column there, that in respect to every one of those offences the police may arrest without warrant. So far therefore it seems to me that the Government of Bombay has no reasonable ground for its objection. The hon'ble mover of this amendment refers to the offence of forgery. No doubt, that is a non-cognizable offence, but I cannot conceive any Magistrate should have power to take security for good behaviour from a person who has taken precautions to conceal his presence within the limits of the Magistrate with the view to commit forgery. I have been careful to examine the schedule of the Code of Criminal Procedure so as to ascertain the class of cases which are cognizable and which are not cognizable, and Members of the Council will find, if they wish to criticise or verify my statement, that all offences relating to property, such as house-breaking or theft, are cognizable offences. So far, therefore, it appears to me there is no reason why the Bill should not remain in its present form."

The Hon'ble SIR ARTHUR TREVOR :—"I support the amendment for the reason that it is hardly possible for a Magistrate to know beforehand the precise offence which a man lurking within his jurisdiction is contemplating, and that, if he has no power to act unless he has reason to believe that the offence contemplated is cognizable, he will not be able to act at all."

The Hon'ble SIR JAMES WESTLAND :—"I agree with the Hon'ble Sir Arthur Trevor in supporting the amendment. It seems to me that there would be great difficulty if you allowed a person who was brought up before a Magistrate under this section to plead that the offence he was intending to commit was not a cognizable offence, but was really sedition or waging war against the Queen. As the section stands, he would be actually entitled, on such a plea, to be discharged."

His Honour THE LIEUTENANT-GOVERNOR :—"I have gone through the schedule, and I have not been able to trace any offence on which these proceedings ought to be taken that is not a cognizable offence with the exception of offences

against the State. It certainly appears an oversight that State offences should be allowed to be plotted with impunity, and on that ground, and on the ground that there is really no necessity to make any alteration in the law, I should be inclined to leave the law as it stands now, and as it stood in the Code of 1882."

The motion was put and agreed to.

The Hon'ble MR. JAMES moved that in clause 110 (*d*) of the Bill as amended by the Select Committee, after the words "or cheating" the words "or counterfeiting coin or stamps" be inserted. He said:—"This is another recommendation of the Bombay Government. A Magistrate of certain high rank and jurisdiction may now call upon a person living within his jurisdiction, and who by repute or by habit is known to be a robber or to commit various offences, to give security for his good behaviour. The Bombay Government suggest that to the offences for which the Magistrate should take such action should be added the words 'counterfeiting coin or stamps or forgery.' I have omitted the word 'forgery,' but it appears to me that the offence of counterfeiting coin or stamps should certainly be added. For this reason, I will give the Council an example. In the town of Poona there has been for years a gang of forgers, many of whom have been sent to the Andamans in my time, and I am also aware that in other places which I will not mention here gangs of coiners exist. It is perfectly obvious that if one of the Dowray gang, as the Poona gang is called, or one of the goldsmiths from these other places, were to come into a District Magistrate's jurisdiction, if the police were worth their salt, they would tell him that so and so had come and the Magistrate would have that man up at once. If he could show that he had arrived for some really harmless purpose, a marriage, say, or a festival, the Magistrate would probably hold his hand. But if he had taken quarters and settled down, it would be absolutely necessary to take some security from him that he was not going to form a gang in his place of new residence and commit the crime of forging coin or stamps. These offences are very dangerous ones in the interests of the State and especially of the poorer classes, and, as the Bombay Government recommend the addition, I hope that the Council will see no harm in its being adopted."

The Hon'ble MR. CHALMERS:—"I see no objection whatever. If the man is an habitual coiner, I do not see why he should receive any better treatment than a habitual receiver of stolen goods. I have no doubt my Hon'ble friend Sir James Westland will have something to say on the subject of the amendment and the counterfeiting of coin and stamps."

1898.] [*Sir Henry Prinsep; Sir James Westland; the Lieutenant-Governor; Mr. James; Mr. Chalmers.*]

The Hon'ble SIR HENRY PRINSEP:—"In moving this amendment my Hon'ble friend has not correctly stated what was stated by the Government of Bombay on this subject. Their letter runs thus:—

'I am to suggest for the consideration of the Government of India whether counterfeiters of coin and forgers of currency notes should not be included in section 110 (*a*).'

"No reason was given with this suggestion, and therefore the Select Committee thought the proposed addition to section 110 was unnecessary."

The Hon'ble SIR JAMES WESTLAND:—"In answer to the appeal of my Hon'ble friend Mr. Chalmers, I desire to say that I support this amendment. I should be very glad to see the offence of counterfeiting coin and stamps inserted with the other habitual offences under this section. There is one peculiarity about coin counterfeiters in India which does not attach to other offences, and that is, that when a man becomes a coiner, he practically becomes so for his life. The same is the case in England. A man who is a coiner and is known to have been such has to be watched during his life. It is that class of man against whom this section is directed, and therefore this particular class of offence is one that ought to be included."

His Honour THE LIEUTENANT-GOVERNOR:—"I quite agree, and I would suggest adding the words 'currency notes' unless this is included in the word 'coining.'"

The Hon'ble SIR JAMES WESTLAND:—"The case is exactly the same with regard to counterfeiting currency notes. This offence is also committed by regular gangs and habitually by the same people in various places."

His Honour THE LIEUTENANT-GOVERNOR:—"Perhaps Mr. James would accept the proposal to include the words 'currency notes.'"

The Hon'ble MR. JAMES:—"I shall be glad to accept Your Honour's suggestion."

The Hon'ble MR. CHALMERS:—"I am not sure whether the additional words will refer to any section of the Penal Code or not. I quite agree in the principle, but I should like to consider the point with reference to the language of the Penal Code. I think no difficulty would arise. The Magistrate has only to satisfy himself under this section that a man commits the act in question. He has not to deal with it under any particular section. All he has to do is to satisfy himself that a man is by habit and repute a coiner and counterfeiter of forged stamps or notes.

I do not think any difficulty will arise by accepting the words suggested by His Honour the Lieutenant-Governor."

The motion was put and agreed to.

The Hon'ble MR. JAMES moved that the following be added to clause 110 (*d*) of the Bill as amended by the Select Committee, namely :—

"(*f*) any person who is so desperate and dangerous as to render his being at large without security hazardous to the community."

He said :—" I have already said something on the amendment I proposed to clause 55 of the Bill. This Council has decided that the words are too vague to allow an officer in charge of a police-station to judge whether a man is desperate and dangerous or not, and arrest him *suo motu*. I venture, however, for the reasons I gave before, to suggest that the words which were in the former law 'desperate and dangerous' be re-inserted. I have heard it argued that the words are vague. At any rate, they existed in the law up till 1882, and the Government itself suggested their re-insertion in the law. The Select Committee have struck them out. I submit that the old law was better, and that a person answering to the description ought to have his security taken. Some may say that their experience has not brought them into contact with such a person, others that the classes already included in the clause, robbers, house-breakers, thieves and the like, embrace every known class of desperate and dangerous persons. No doubt, there may be tracts where this kind of person is unknown, but I have in my mind one, at any rate, a villainous so-called Sirdar, a subject of the Khan of Khelat, who is an habitual firebrand in his own country and comes across the border to bully Sindhis in the hills, far away from any police or Government aid. Then I can think of a dismissed Arab Jemadar from the Hyderabad State, finding his way into Khandesh, and terrifying and extracting contributions from the ryots. In the happy tracts where such villains are unknown, the law will be a dead-letter. Where they are found, the law is necessary for the protection of the public."

The Hon'ble MR. CHALMERS :—" I think this is purely a matter for the Council to decide. As the Bill was originally drafted in Simla, the words which my Hon'ble friend Mr. James wishes to insert were inserted, but in Select Committee we had a long discussion on the subject, and the question was raised that these words were too vague, that they did not denote any offence known to the law; that you could not point to a man having committed any offence, and it was a matter not of fact, but of opinion, whether a man was so desperate and dangerous as to render his being at large

without security hazardous to the community. It was clearly a matter of opinion. The view taken by the Select Committee was that the power was a desirable one, but was too vaguely worded. They therefore inserted the words of sub-clause (*f*). They inserted in place of the old words the words 'habitually commits or attempts to commit, or abets the commission of, offences involving a breach of the peace.' That narrows down the description of a person to be proceeded against to a person who is actually a criminal. But, as pointed out, the words which my friend Mr. James wishes to re-insert were law for a very long time, and I am not aware that there was any very substantial ground for cutting them out of the Code of 1882. It is purely a question for the Council."

The Hon'ble SIR JOHN WOODBURN :—" I support this amendment. As my friend the Hon'ble Mr. James has pointed out, the words which he wishes to introduce were in the Code of 1872 and were omitted from the Code of 1882 for no very particular reason. The matter came under discussion later, when the whole subject of legislation in regard to habitual offenders came before the Government of India. On that legislation every Local Government in India was consulted, and the conclusion which Lord Lansdowne's Government came to in 1892 on the advice of the Provincial Governments was that the words in the Code of 1872 ought to be restored. Accordingly, when legislation in regard to habitual offenders was incorporated in the revision of the Criminal Procedure Code, part of the decision was that these words should be restored in the Criminal Procedure Code. On that decision every Local Government and High Court has again been consulted, and without exception they have supported the inclusion of these words, and I think that in view of the reasons which have been given by responsible Local Governments it would be expedient to accept my Hon'ble friend Mr. James' amendment and restore these words."

His Honour THE LIEUTENANT-GOVERNOR :—" I am entirely of that opinion so far as Bengal is concerned. It would enable the Magistrates of this Province to deal with cattle-poisoners, incendiaries who cause enormous loss and suffering to the people in Eastern Bengal, where arson is commonly resorted to for purposes of revenge and hired assassins and bullies who are a terror to the villagers in some districts, probably in Backergunge. These people are quite well known and should be under control."

The motion was put and agreed to.

The Hon'ble MR. JAMES moved that in clause 144, sub-clause (*l*), of the Bill as amended by the Select Committee, between the words " danger to human life, health or safety " and " or a riot or an affray " the words " or

a disturbance of the public tranquillity " be inserted. He said :—" This is another recommendation of the Government of Bombay. They desire to insert in clause 144, sub-clause (*1*), which enacts that a Magistrate may by a written order direct a person to take such order with property under his management as may prevent obstruction, annoyance or injury or danger to human life, or health or safety, the words ' or a disturbance of the public tranquillity.' It can hardly be disputed that in a country like India the Magistrate ought to have power to prevent a disturbance of the public tranquillity. For instance, we may take a town in the Dekkhan, where there has been considerable friction between the two principal classes of the community, the Hindus and the Muhammadans. One class determines to do something abhorrent to the religious prejudices of another; it may be to introduce for the first time the playing of music before a mosque while the Muhammadans are at prayers: it may be that the Muhammadans wish to take through the street where Brahmins and Bunniahs live a goat for the purpose of sacrifice.

" Now the Magistrate may say : ' The information at my disposal and the arrangements I have made are so good that I cannot honestly say that I fear a riot, but what I do fear is a great public ferment which may lead to bitterness of feeling and assaults, and I can safely say that the public tranquillity is disturbed.' That, my Lord, is the sum and substance of the amendment, and I venture to think that this Council may accept it."

The Hon'ble MR. CHALMERS :—" I see no objection to the insertion of the words. They are words that fit in with the others."

The Hon'ble MR. NICHOLSON said :—" Section 107 of the Code has been expressly amended, both in the original Bill and in the Bill as altered in Select Committee, so as to include the case of ' disturbances of the public tranquillity ' not amounting to actual breaches of the peace. I would insert the proposed words in this section also. If it is necessary, as a preventive measure, to bind over persons likely to disturb the public tranquillity, it is equally necessary that the Magistrate should have power to issue these temporary prohibitive orders in like cases."

The motion was put and agreed to.

The Hon'ble RAI BAHADUR ANANDA CHARLU moved that in clause 145, sub-clause (*1*), of the Bill as amended by the Select Committee, between the word " person " and the words " or by pleader ", in line 13, the words " or by an agent " be inserted.

The Hon'ble MR. CHALMERS :—"I think my Hon'ble friend, if he looks at the definition of 'pleader', will find that it covers all that he requires. A pleader is defined to be a pleader authorized under any law for the time being in force to practise in any Court, and includes (1) an advocate, a vakil and an attorney of a High Court so authorised, and (2) any mukhtar or other person appointed with the permission of the Court to act in such proceeding. I think, if a man wishes to employ a person who is not an accredited lawyer, he ought only to employ a person whom the Court admits to be a proper person to represent him, and that the Court ought to have at any rate a control over the matter. It is a simple point upon which others may be able to give a better opinion than I can."

The Hon'ble RAI BAHADUR ANANDA CHARLU :—"Until we come to the end of the definition of pleader up to the word 'mukhtar,' there are certain persons who in some sense or another practise as pleaders. Then we have here 'or other person appointed with the permission of the Court to act'. Practically the section confines itself to pleaders. The case may not be one where one must necessarily appoint a pleader, for if later on it becomes necessary for the pleader to be engaged it will of course be done; but why compel him in the first instance to appoint a pleader? As to taking the permission of the Court with reference to any other person than a pleader, it would prove a hardship. When is he to take the permission? Is it beforehand and how? If on the day fixed for the appearance, either the party must also come or run the risk of his proposed agent being rejected."

His Excellency THE PRESIDENT :—"I do not think he is compelled to appoint a pleader. He has three alternatives: he can appear himself; he can appoint a pleader; or he can appoint anybody else whom the Court will allow him to appoint."

The Hon'ble MR. CHALMERS :—"The words used are similar to the words in the County Court Act at home. In County Court proceedings even a man's wife sometimes appears for him. It is exactly a similar case here."

His Excellency THE PRESIDENT :—"Does the Hon'ble Member press his amendment?"

The Hon'ble RAI BAHADUR ANANDA CHARLU :—"No, my Lord."

The motion was accordingly withdrawn.

The Hon'ble MR. STEVENS moved that to clause 145, sub-clause (*3*) of the Bill as amended by the Select Committee, the words "upon such person or persons as the Magistrate may direct and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute," be added. He said:—"My Lord, there is a diversity of opinions as to whether a Magistrate acting under section 145 has power to consider the claims of a party who had not been included in his preliminary order. I confess that I myself am disposed to agree with those who think that the Magistrate has this power. At any rate it appears perfectly clear that he ought to have it. The case is not that one of a mere civil dispute between certain parties, but of the prevention of a breach of the peace in respect of certain land, and obviously all conflicting claims likely to lead to disturbances should be considered, whether they were brought to the Magistrate's notice in the first instance, or became apparent in the course of the proceedings.

"The object of my amendment is to provide for the publication of a copy of the Magistrate's order in a conspicuous place, and to permit the service of a copy on such person or persons as he may think fit. I hope that this will make it quite clear that the Magistrate may add parties not originally known by him to be concerned."

The Hon'ble MR. CHALMERS:—"I imagine nobody will object to this amendment. It is simply a provision for giving more notice to the parties interested. The contentious amendment comes afterwards."

The motion was put and agreed to.

The Hon'ble MR. STEVENS also moved that in sub-clause (*4*) of the same clause of the Bill as amended by the Select Committee, for the words "date of the order before mentioned", in the second last line, the words "the time when the dispute arose" be substituted and that the proviso thereto be omitted. He said:—"My Lord, the amendment which I have to move relates to a matter of importance, and I fear that I shall trespass on the patience of the Council, though I shall endeavour to keep within the limits of what is necessary.

"Since there are probably Hon'ble Members who have not had practical experience of the working of section 145, I think it will be better for me to explain briefly the point at issue before I proceed to discuss it.

"Under the law now in force, as it has been interpreted by the High Court, whenever a District or Sub-Divisional Magistrate, or Magistrate of the first class

is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any tangible immoveable property or the boundaries thereof, he makes an order in writing shewing the grounds on which he is satisfied, and requiring the parties to the dispute to attend his Court within a specified time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute. The Magistrate then without reference to title peruses the statements, hears the parties, receives the evidence which they produce, takes such further evidence as he thinks necessary, and, if possible, decides whether any and which of the parties is then in possession of the subject of dispute. 'Then' has been interpreted to mean 'at the date on which the Magistrate passed his preliminary order.'

"This interpretation has been embodied in the Bill now before the Council. For 'is then in such possession' has been substituted 'was at the date of the order before mentioned in such possession.'

"My Lord, this chapter of the Procedure Code is of great importance in Bengal, especially in the Eastern tracts which form the delta of the great rivers Ganges and Brahmaputra. It is difficult for any one, who has not had practical experience, to realize the rapidity and extent of the changes caused by diluvion and alluvion every year. Such changes take place by the square mile, and it may well be imagined that questions arise of much intricacy and difficulty as to whether new lands are an accretion to this estate or to that, or form part of an island, or are a re-formation on the site of a submerged estate. Such questions have an immediate and powerful interest for the turbulent and pugnacious inhabitants of the neighbourhood, who rush to seize possession, and do not refrain from using the most violent means.

"It is said that 'possession is nine points of the law;' in no country is this maxim better understood and more generally adopted as a motto than in Bengal. The man in possession is the defendant in a civil suit, and the defence is notoriously much stronger than the attack.

"Just as in the old days of seafights between sailing ships the combatants used to manœuvre for the 'weather-gauge,' so now two claimants of rights in lands manœuvre for possession, each endeavouring to contrive that the enemy shall fight at a disadvantage.

"Now it is obvious that, between the time when the police begin to make enquiries into a dispute regarding land and the date of the Magistrate's order, there is an appreciable interval of time, during which it is possible to have a struggle for actual possession; and it has been proved by experience that this period is utilized for the purpose. The law, then, as it stands, and the draft now before us (without the proviso) invite breaches of the peace, and offer the maintenance of possession as the prize of the successful use of force.

"Considering that this is a most serious practical defect, the Bengal Government, in Mr. Bolton's report (which was written under my instructions and on my responsibility), urged that the date adopted in the clause should be reconsidered, and recommended that the date should be that on which the dispute began on the land or water, in respect of which there is contention. I pressed this view on the Select Committee with the result that the evil which I have described was recognized by the majority, and the proviso in the Bill, as presented to the Council with the Report, was added. This lays down that, if it appears to the Magistrate that any party has, within two months next before the date of such order, been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date. Unless lawlessness is to be encouraged and possession is to be awarded to the strongest and the least scrupulous, I think that this proviso is a most important improvement, if we are to retain the words 'was at the date of the order before mentioned.' There are, however, two objections which are of some weight, though I cannot agree with the Hon'ble Sir Henry Prinsep in regarding them as paramount. The first is that the parties ought to know from the first the exact case which they have to meet. As Sir Henry Prinsep says in a brief note which he has been so kind as to send me: 'As it is now proposed, the Magistrate's order would be as a snap shot on evidence which the other party could have no opportunity to meet.' To this objection there appear to me to be two answers. First, the proviso would be well known to be a part of the law, and there would be little difficulty in a party's coming prepared with evidence that he had held peaceful possession for two months before the Magistrate's preliminary order. Next, the Magistrate will be empowered by the law to take such further evidence (if any) as he thinks necessary. To this Sir Henry Prinsep rejoins that the summary nature of the procedure will be destroyed. The enquiry will certainly be protracted to some extent, but it will be so protracted only if the case is complicated by forcible dispossession having occurred within the previous two months.

"I myself am inclined to object to this limit of two months as arbitrary and likely to be too short in some cases, and perhaps too long in others.

"On the whole, therefore, I would go back to the old law as it stood before the Criminal Procedure Code of 1861 was enacted, as it was intended by the Committee on the Code that it should stand after the enactment was passed, and as the High Court in earlier days interpreted it. I propose that the time when the dispute arose should be taken as the time which the Magistrate must look to as that determining the question of possession. This is the object of my amendment.

"Since I wish to go back to the law as it stood before the Criminal Procedure Code, I will ask the Council to bear with me while I briefly go through the history of this question.

"The oldest law to which we need refer is Act IV of 1840. It was (as described in the preamble) 'an Act for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession within the Presidency of Fort William in Bengal.' And in the 11th section it was laid down that the Act should not extend to any place beyond the limit of the Presidency of Fort William in Bengal, or to the Settlements of Prince of Wales' Island, Singapur or Malacca, or to any place situated within the local limits of the jurisdiction of Her Majesty's Supreme Court at Calcutta.

"With the other provisions we have no present concern; but there are two sections to which I invite the attention of the Council, namely, section 2 and section 4. The former enacted that whenever any Magistrate or other officer exercising the powers of a Magistrate might be 'certified' that a dispute likely to induce a breach of the peace existed concerning any land or produce of land and so forth in his jurisdiction, he should record a proceeding stating the grounds of his being so certified, and should call on all parties concerned in such dispute to attend his Court within a reasonable time and to give in a written statement as respects the actual fact of possession. The Magistrate then was to 'proceed to enquire what party was in possession of the subject of dispute when the dispute arose' (I am quoting the words of the section), 'and after satisfying himself upon that point,' to record a proceeding, declaring the party whom he might decide 'to *have been* in such possession, to be entitled to retain possession, until ousted by due course of law; and forbidding all disturb-

ance of possession until such time;' and 'if necessary' the Magistrate was required to put such party into possession and maintain him in possession, until the rights of the parties disputing should be determined by a competent Court.

"Section 4 enacted that, if any party should complain to a Magistrate, or other officer exercising the power of a Magistrate, that he had been without authority of law forcibly dispossessed of any land, premises, water, fisheries, crops or other produce of land, the Magistrate or other officer should require the party or parties complained against, and any other parties concerned, to appear and make defence; and if after the examination of the necessary witnesses and documents the complaint appeared to him to be substantiated, he should record a proceeding, ordering the party complaining to be put again into possession of the subject of dispute, and maintained in possession until the right or possession should be determined by a competent Court.

"The general distinction between the two sections is this. Section 2 authorized (and indeed directed) the Magistrate to interfere of his own motion in order to preserve the peace, to declare who was in possession when the dispute arose and who was entitled to retain possession, if necessary to put him into possession, and in any case to forbid all disturbance of such possession except by due course of law. Section 4 on the other hand required the Magistrate to adjudicate on private complaints of unlawful dispossession, and gave him authority to replace the ousted party in possession.

"It has been pressed upon me that only section 4 enabled the Magistrate to restore an ousted party to possession, and that section 2 merely gave him power to restore a party who had been ousted during the pendency of the proceedings. I can find nothing in the words to support this opinion. The section seems clear; the Magistrate inquired who was in possession '*when*' the dispute arose, he declared the party whom he might decide '*to have been* in possession'—I am using the words of the Act—'to be entitled to retain possession, until ousted by due course of law,' and forbade all disturbance of possession until such time; and 'if *necessary*' the Magistrate or other officer as aforesaid was required to put such party into possession, and maintain him in it. In cases under section 4 the complaint was of dispossession, and the only remedy possible was to restore possession. In cases under section 2 the person entitled to retain possession might or might not have been dispossessed since the dispute arose. If he had been dispossessed, he was to be put in possession; if he had not been dispossessed, obviously all that was requisite was to forbid disturbance. Possession at the date when the dispute arose was the one point to be looked at.

"After this law had worked for about 21 years the Criminal Procedure Code of 1861 was enacted. I have examined the discussions in the Council and have found that the only point on which there was argument was the proposal not to re-enact the substance of section 4. The mover (Mr. Harington) thought that that section gave the Criminal Courts a jurisdiction more properly exercised by the Civil Courts. Mr. Seton Karr, the Member for Bengal, objected to the omission of section 4, which he considered as valuable as any other part of 'the excellent law of 1840.' He remarked that 'a great deal of praise and a great deal of abuse had been lavished on this useful enactment.' 'He would deprecate any encroachment on Act IV of 1840. It had been successfully worked by a large number of officers. It would occupy a long time to enumerate the disputes it had terminated, and the broken heads it had saved. It was of great simplicity and strength; of admirable versatility; and of peculiar adaptation to the diversified claims which were likely to be preferred to landed interests and rights in this country, which claims it was necessary that those who were responsible for the peace and security of the country should have the means promptly and efficiently to decide.'

"Mr. Harington (on the other hand) 'had had a very long and large experience of the working of Act IV of 1840, and he must say he knew no law which had been more perverted from its proper purpose, or in which the intentions of the Legislature had been more grossly departed from' ..... 'The Magistrates often become in such cases Civil Courts of first instance, quite contrary to the intentions of the law, and much injustice was done in consequence. He had little doubt that if the cases referred to by the Hon'ble Member for Bengal as having been decided under section 4 of Act IV, 1840, were examined, it would be found that very many of them did not properly fall under that section.' Mr. Seton Karr admitted that mistakes occurred, but attributed half of them to 'young and inexperienced officers shifting the burden of proof on to the wrong party.' I may here mention on the authority of Beaufort's Digest—a work which was no doubt once very familiar to my friend Sir Henry Prinsep, and to which even I (a comparative junior) had in my early days frequent occasion to refer—that cases under Act IV were triable by Assistants and Deputy Magistrates with 'special powers,' who were equivalent to the second class Magistrates of the present day; and it is not wonderful that officers of this rank sometimes failed to distinguish between such cases as legitimately fell under section 4, and such as were within the province of the Civil Courts. Now cases under section 145 of the Procedure Code are

heard by the Magistrate of a district or subdivision or by a Magistrate with first class powers.

"The result of the discussion was that section 4 was not re-enacted; Mr. Harington said that 'the remaining sections of the proposed new chapter had been taken almost word for word from the existing law, and they did not appear to call for any particular remark from him.' The Chairman (I think Sir Barnes Peacock) remarked as follows:—'It was not proposed now by the clause before the Committee to give the Magistrate any greater power than he now possessed, or to take away from him any powers now vested in him. This clause only proposed to give the Magistrate a portion of the power conferred by Act IV of 1840, and when that Act might be repealed, provision could be made in the repealing Bill expressly keeping alive section 4 of the said Act, if it should be found necessary to do so.'

"I think, my Lord, that I have now shown that section 4 is the part of Act IV of 1840 which was objected to, and abandoned, as trenching too much on the Civil Courts, and that it was intended to re-enact section 2 in the Criminal Procedure Code of 1861 with nothing more than verbal amendments.

"One very important change, however, was imperceptibly introduced. Decisions passed under Act IV of 1840 could be appealed to the Sessions Judge, but that officer's orders could not be reviewed either by himself or by the Nijamat Adalat, which held as to the mufassal the place which is now held by the High Court. In regard to such cases (says Beaufort), 'that Court possesses no jurisdiction.' He goes on to say:—'Such being the case, the Court cannot assume to itself jurisdiction on the ground that the orders passed by a Sessions Judge are unwarranted or irregular. Sections 2 and 4, Act IV of 1840, declare in distinct and positive terms that the possession confirmed or given under the orders of the Magistrate is to be maintained until the right of the parties disputing be determined by a competent Court, subject only to one appeal to the Sessions Judge under section 8 of the Act; no review or further proceeding of any kind whatever is mentioned or contemplated by the Act.'

"When the Criminal Procedure Code of 1861 was passed, this rule was quite changed, and from that time till now the executive authorities have been equally perplexed and hampered by the action of the High Court. A law which has from time to time been re-enacted to assist those who are responsible for maintaining the peace has been persistently deprived of its effect by the

Judges, who have had no direct interest in maintaining the peace, and whose only function has been to hold the Magistrates' hands. To the District Magistrate (and, I venture to think, to the people) it is of vital importance that the District shall be quiet; if the peace be broken, it is not the High Court that is held responsible.

"Not much inconvenience, however, resulted from the earlier rulings—probably because the Judges had Act IV of 1840 fresh in their memory, and had not forgotten the experience which they had gathered in subordinate offices in the mufassal. I do not wish to weary the Council with many quotations from these rulings, but desire to invite attention to one of them, namely, that given in 1879 by Judges Ainslie and Maclean (both of whom had had large District experience) in the case of Mohesh Chunder Khan, petitioner, reported in the Indian Law Reports, 4 Calcutta, page 417. 'The Deputy Magistrate' (they say) 'seems to think that if two parties come forward, one being lawfully in possession and the other struggling for possession, and the latter succeeds in ousting the former, he is to recognize the stronger and successful party as the one to be maintained in possession under section 530 although such possession has never been acquiesced in, and the struggle for it is in fact that which caused him to interfere. This is an error. The Magistrate must look to possession which may be termed peaceful. He must go back to the time when the present dispute originated, and not to the dispute itself.'

"Very different from this is the ruling which is now in force, that of Justices Tottenham and Ghose in the case of *Ambler* v. *Pushong* given on the 24th February, 1885. But, before I quote it, I ought to say that a change had crept into the Code of 1882, which seems to justify those Judges in some measure. Section 145, after directing that the Magistrate shall make an order in writing requiring the parties to appear and put in claims in writing as respects the actual fact of possession, proceeds to say that he shall, after hearing the parties and so forth, 'if possible, decide whether any, and which, of the parties is '*then*' in such possession.' What is the meaning of this new word 'then'? I have referred to the papers in the Legislative Department and have found that it did not appear in the Bill as introduced in 1882, but was inserted by the Select Committee. Apparently the first idea of the Select Committee was to insert the words 'who at the date of the said order,' but these were crossed out and 'is then' substituted. It seems that this was regarded as a mere verbal amendment, since it is not noticed in the Committee's report. I cannot find that the question

as between 'the date when such dispute arose' and the date of the Magistrate's first order, which 'then' is interpreted to mean, has ever been discussed, though there is a case in which a party appears to have claimed the benefit of his own turbulent conduct even up to the date of the Magistrate's decision. As against him, the date of the Magistrate's first order, and not that of the final decision, was held to be the proper date to be taken. I cannot help thinking that it was to provide for a case of this description, and not with the deliberate intention of changing the old law, that the word 'then' was introduced.

"The Judge in *Ambler* v. *Pushong* said as follows:—'For the petitioner it has been contended that "then" has its literal meaning, and means the time during which the enquiry is being made, or at any rate it cannot be construed as having reference to a period previous to the time when the case was instituted by the Magistrate; and this view, I think, is the correct one... ...He has simply to determine which party is *de facto* in possession at the time when he is enquiring into the matter. And I think that the law contemplates that the time of the institution of proceedings and the time of deciding the case is practically identical. It does not contemplate any change of possession pending the proceedings. The proceedings are intended to be prompt and to be concluded without any delay. In the present case the Magistrate distinctly finds that at the time when he instituted his proceedings, that is on the 18th October last, the first party were in possession *having two or three days before ousted the second party who had been in possession for some three or four weeks.* That being so, the Magistrate's simple duty was to maintain the first party in possession although he might be of opinion that they were in wrongful possession. He had no power in law in these proceedings to oust the party whom he considered in wrongful possession and maintain in possession the party whom he considered rightfully entitled to possession.'

"Such, my Lord, is the law as it is now interpreted; and such the law will remain if my amendment be rejected, and the proviso struck out as the Hon'ble Sir Henry Prinsep desires! I ask the Council to consider whether it is desirable that a party should be maintained by the State in possession of land which he had seized only two days before the Magistrate's proceeding, when he must have been well aware that the Magistrate was about to act—seizing it from another party who had been in possession for three weeks. The ruling may shew what the law is, but it shews with equal clearness what it ought not to be.

"I will now proceed to offer for the consideration of the Council a few opinions given by executive officers for whose help the law was intended, and who are responsible for preserving the public peace.

"A few years ago, when I first took charge of the Land Revenue Department of the Board of Revenue, I had to consider a proposal made by an officer in Eastern Bengal to ask Government to legislate with the view of transferring to Collectors part of the functions exercised by Magistrates under the Criminal Procedure Code. The opinions of local officers were asked for and received; and, though I ultimately decided not to ask for the suggested legislation, information of importance and value was collected.

"Mr. Forbes, then Commissioner of Dacca, wrote as follows:—

'That this difficulty is a very real and serious one is quite true, but it can, I think, be shown that it is a difficulty for which the law itself, as it now stands in Chapter XI, Code of Criminal Procedure, coupled with the strained rulings of the High Court, is responsible, and there can be no doubt that it can be entirely removed by a judicious amendment of the provisions of that Chapter. The great stumbling blocks in the way of a Magistrate when dealing with a case under Section 145 are the various interpretations which have been given by the High Court to the words "possession" and "the party then in possession." "Possession" has practically come to mean any possession, long or short, peaceable or forcible; and the party "then in possession" has been alternately held to be the party in possession when the dispute originated, at the time when the police were first called in, and finally at the moment the Magistrate took up the case. Then, again, the High Court has at one time held that the Magistrate's enquiry should be a summary one, and at another that he was not justified in refusing to hear lengthy arguments of pleaders, or to grant processes for over 200 witnesses in a single case. The result is that the Magistrate is now called upon to decide between a set of scramblers for possession as to which one had succeeded at a certain moment of time in beating off the others; and the proceedings have come to be spun out to an inordinate length in ascertaining and determining what is soon afterwards pushed aside by the Civil Court as an altogether immaterial point. Under such circumstances it is not a matter for surprise that Magistrates are in despair, and lawlessness is rampant.'

"Mr. Forbes then goes on to point out the necessity for making it clear that the possession to be confirmed must be peaceable undisturbed possession—not necessarily undisputed, but one which is not forcibly disputed.

'It is one thing' (he observes) 'for a Magistrate to have to decide in a rough and tumble contest who is uppermost at a certain moment of time, but quite another for him to ascertain whether there has or has not been a continued peaceful possession by either

party. The duty of deciding one of these Box and Cox cases at present bears a close affinity to the three-card trick, in which the Magistrate usually guesses one way and the High Court another.'

"Another officer wrote:—

'An eminent counsel told me that Mr. Tottenham's ruling' (that in *Ambler* v. *Pushong*) 'had done more than anything else to encourage violence, lawlessness and homicidal riots.'

"Again:—

'Before Mr. Tottenham's ruling Magistrates never used to give effect to acts of fraud, force and violence. They construed the words "actual possession" in a sensible and reasonable manner, that is to say, in the way the Legislature intended them to be construed.'

"Once more:—

'Mr. Tottenham's ruling, besides directly encouraging acts of violence and homicidal riots, has utterly demoralized the police in these disputes, and constitutes a strong incentive to bribery and corruption.'

"I may remark that I do not entirely agree with this officer, for I think that the ruling, though pushed to the utmost limits, is still justified in the main by the existing law; but I indicate the consequences of that law.

"I now desire to refer to some of the opinions given by Bengal officers on the Bill as first drafted. Mr. Ahmed, the Inspector of Registration, writes:—

'Section 145 (4) and (5) say that the Magistrate should decide which party was in possession on the date of his first order. I think this is not right. It is generally the stronger party who takes forcible possession, and it is generally the weaker party who comes to the Magistrate for redress. The final order should be to declare that party to have possession and keep possession who was in possession when the dispute began. My experience is that this is generally more equitable.'

"Mr. Beatson-Bell, who has had much experience of one of the districts most concerned, says:—

'It is very desirable that the Magistrate should make over the property to the last person, if any, who was in peaceful possession. The Bill as it stands puts a premium upon forcible or clandestine seizure of property.'

"Mr. Faulder (an experienced and careful Magistrate) says:—

'It is necessary to fix the moment, possession at which is to be confirmed, but I think the moment proposed is too late. A Magistrate should not be allowed to upset possession given by a Civil Court, or to confirm possession obtained by force during the pendency of the proceedings, but under the proposed clause, he could only confirm usurped possession, however illegal and barefaced. The Calcutta High Court have ruled that the Magistrate should determine which party was last in undisputed possession immediately before the dispute arose, which led to the matter being brought into Court under Section 145. This seems to be the most reasonable moment to fix.'

"Mr. Agasti (the Native Magistrate of another Eastern Deltaic District) says:—

'I am afraid the solution of the difficulty about the time of possession is not so easy as is supposed. If possession at the date of the order mentioned in paragraph 1 of clause 145 is to guide the Magistrate, the result, in the overwhelming majority of cases in the Districts of Eastern Bengal, at any rate, where these disputes are the commonest, will be that the Magistrate will have to attach under section 146. Immediately previous to or at the date of the order both parties will have exercised some act or other of possession, though such possession for one party cannot be peaceful. If possession at the date of the police report or receipt of other information was to be the guide, the matter would improve a little, but even then all difficulties will not be removed; for parties generally begin fighting some time before the police become cognizant of the fact—through village chaukidars in the great majority of cases—or other information that can be acted upon reaches the Magistrate. Probably the difficulty may be removed by defining possession to mean only undisturbed and peaceful possession.'

"Another Native District Magistrate, the whole of whose observations well deserve consideration, though they are too long for quotation, says:—

'It is proposed to limit the Magistrate's enquiry to the fact of actual possession at the date of the Magistrate's order. This, I am afraid, will lead to dangerous consequences. In all land disputes, the party declared to be in actual possession by a Magistrate secures a great advantage over his adversary; and if the amendment become law, there will be keen competition to gain and retain possession of the subject-matter of dispute by violent and unscrupulous means, as soon as any enquiry is set on foot by the police or the Magistrate.'

"The Magistrate concludes his remarks as follows:—

'If the suggestion which I make is not adopted, I should urge that the actual possession (peaceful or otherwise) which should be the subject of enquiry, should at least be the actual possession, not at the date of the Magistrate's order, but at the date when the dispute is brought to the notice of the police or the Magistrate, whichever is the first of the

two. Otherwise Magistrate and police-officers will be placed in a very unpleasant situation. They will be compelled in many cases to take hurried action without full and proper enquiry, and unscrupulous policemen who, pending the issue of any order under section 145, Civil Procedure Code, may be deputed to keep the peace, will find great opportunities of obtaining bribes opened out to them, and they will be tempted to lend their aid to the man who can bribe them most to take possession of the subject of dispute by unfair means.'

"I fear I have exhausted the indulgence of the Council already, and I will refrain from further quotations. The opinions which I have read are those of no theorists or dispensers of technical justice; the authors are experts, are close to the facts, and upon them rests the burden of responsibility, and of practical difficulties.

"I think, my Lord, that I have now proved that the words which I desire to replace in the law have fallen out of it through no deliberate purpose; that the existing law which it is desired by some to accentuate, and to continue, is dangerous to the public peace, and that the Magistrates who have to depend upon this law find that they hold in their hands a useless semblance of a weapon.

"The British Indian Association, the Bar, and the Chamber of Commerce all agree in condemning it. In fact, all those who are practically interested are on this side. I ask the Council to give their opinions the most serious consideration. I beg to move the amendment which stands in my name."

The Hon'ble MR. CHALMERS said:—"This amendment which has been moved by the Hon'ble Mr. Stevens no doubt raises a very important and a very debateable question. It is a question which we considered at very great length in the Select Committee, and what we did there was that we inserted a proviso which was a compromise between the opposing views. However, neither side is satisfied with the compromise. All I can say is this, that I hope the Council will carefully attend to the arguments brought forward on the other side by my Hon'ble friend Sir Henry Prinsep, and after considering the arguments *pro* and *con* will come to a careful conclusion. I have only one word more to add, and that is about the history of the present matter. As the clause was settled in Simla, it was settled with Sir Henry Prinsep that the Magistrate in making his order should have inquired into the possession at the date when his order was applied for, and the reason for this was that it is important to have some fixed date at which the Magistrate is to act. The Magistrate under this clause is not to decide

questions of title, but is to confirm existing actual possession. But, then, when we came to consider the matter in Select Committee, this objection was pointed out to us. The Magistrate will probably not be put in motion and will not hear the case until the ordinary possession has been disturbed. When a man has been evicted that is the time when he runs off to the Magistrate for protection, and if the section remained as it was originally drafted, the Magistrate would be obliged to confirm him in possession. In Committee we saw the difficulties of both views, and we came to the conclusion that *primâ facie* the duty of the Magistrate was not to go into questions of title, but to confirm the party in possession. If, however, it turned out that any party had been wrongfully and forcibly dispossessed, it was thought that the Magistrate ought to take cognizance of such a case, and give back the actual possession to the party who had been so ousted ; but it was thought undesirable that the Magistrate should go into a long roving inquiry, and we therefore fixed the period at which he might replace the party forcibly dispossessed in possession at two months. But neither party is satisfied with this rule, and I hope, therefore, the Council will clearly hear the arguments on both sides and then come to a decision."

His Excellency THE PRESIDENT intimated, with reference to the Hon'ble Sir Henry Prinsep's desire to address the Council at this stage, that he thought this would be convenient and would be glad to give effect to the Hon'ble Member's wish by suspending the Rules.

The Hon'ble SIR HENRY PRINSEP said :—"I am glad to have Your Lordship's permission to commence the debate on this amendment by stating the grounds on which it should, in my opinion, be rejected.

"The Hon'ble Member has presented a thrilling picture of the state of the lawlessness in some districts in Bengal alleged to have been caused by the present law, which it is proposed in the Bill to express in clearer terms. I venture to state that this picture is very exaggerated, and to add that if such confusion does anywhere exist it is due to imperfect acquaintance of District-officers with the existing law. It affords ample redress for all the grievances complained of, as well as for the prevention of all attempts to prevent the useful operation of section 145, and District-officers would have been better employed if they had encouraged the application of the present law rather than in advocating an alteration of it in a manner which has already been condemned as mischievous in its

operation before the Code of 1861. It is also inconceivable that, if there had been such urgent need as now represented for altering it, the late Lieutenant-Governor of Bengal, Sir Charles Elliott, in expressing his opinion on the matters requiring amendment in the new Code of Criminal Procedure, should never have referred to it, and that it should have been left for the Government of Bengal, temporarily administered by the Hon'ble Mover of the amendment in 1897, to have laid such stress on this subject. I am, moreover, not prepared to accept Mr. Stevens' reading of Act IV of 1840. I have been long enough in the service of Government to have had practical experience and knowledge of that Act; I have decided hundreds of cases under it, and therefore I am in a better position than one reading it for the first time to express an opinion on its meaning or the manner in which it was in actual operation in our Courts.

"This amendment will make a very material alteration in the present law which has remained unaltered since the enactment of the Code of 1861, and I appeal to Your Lordship and this Council whether such an amendment should be entertained at this late stage of the Bill, when this Council cannot have the advantage of the opinions of all the Local Governments concerned as well as of the Judges of the High Court on it. My Hon'ble friend who has moved this amendment has referred to some decisions of the Calcutta High Court in which the learned Judges have held that the possession to be found by a Magistrate is the possession at the time of the commencement of the dispute and not that at the time that the Magistrate has interposed to prevent a breach of the peace; but I can confidently appeal to a long series of cases reported in Law Reports since the passing of the Code of 1861, as showing that the law has not been so laid down by the High Courts of Madras, Bombay and Allahabad, while these solitary cases of the Calcutta High Court are met by an overwhelming majority of cases in the same Court in which the contrary view has been expressed and acted upon. I can also challenge an examination of the proceedings of the Legislative Council which will show that this view was accepted on debate when the Code of 1861 was being passed, and that never at any time when the Codes of 1872 and of 1882 were under preparation in the Legislative Department or under discussion in this Council was an alteration ever contemplated. I can also point to the reports submitted to Government of India, on its invitation for suggestions to amend the Code of 1882, that not one suggestion in the direction of the proposed amendment was made except by a few local officers in Bengal, and that in submitting these reports the Lieutenant-Governor of Bengal in a long letter to the Government of India never referred to the subject

but placed such suggestions within the remark that 'many other suggestions have been made which were not considered important enough to include in this abstract.'

"So far, therefore, I hope that I have satisfied the Council it was everywhere practically accepted that it was the duty of the Magistrate in proceedings under section 145 to find only the actual possession at the time of his taking action to prevent a breach of the peace; that from the proceedings of the Legislative Council it is shown that that was the object of the law; and that there has been no idea on the part of the Legislature, from 1860 until now, ever to vary the law as expressed in the Code of 1861.

"It was in view of the few decisions of the Calcutta High Court to the contrary which imparted an uncertainty in the law that in discussions with the Hon'ble Member in charge of the Bill I induced him to express the matter emphatically so that there should no longer be any doubt on the subject. The amendment thus made, which I maintain under the circumstances was only verbal, consisted in the last words of sub-section (*4*), to the effect that the Magistrate was, if possible, to decide whether any and which of the parties *was at the date of the order abovementioned* in such possession of the said subject; the words 'was at the date of the order abovementioned' being substituted for the words *is then*. This verbal alteration I would here again state has been passed without comment by all those reporting on the Bill except by the Government of Bengal, then administered by the Hon'ble mover of the amendment now before this Council, and the Chief Commissioner of Assam; so that it may be said that it has otherwise received unanimous approval. I happened to know that it was approved of by the Judges of the High Court of Calcutta, and as I am much interested in settling this part of the law, I was much disappointed at finding from their report that the Hon'ble Judges of that Court had made no mention of it, but on inquiry I have learnt that it was discussed at a full meeting of the Judges, who thought that it was unnecessary to refer expressly to this matter because the law thus set out was what it was and what it should be.

"On these grounds alone I submit to the Council that the amendment now under discussion should be negatived, or that at least, if the Council has any doubt on the subject, the matter which involves a considerable alteration in a most important part of the Code of Criminal Procedure should be referred for the opinions of other Local Governments and all the High Courts of this country rather than be now accepted at the instance of the Government of Bengal. I attach the highest

importance to this matter, not only because the amendment has not received proper criticism, but because, first, it will introduce an entirely new law into other Provinces, and a law which has hitherto never existed in those Provinces ; next, because the amendment introduces a summary jurisdiction which will interfere most materially with the present jurisdictions of the Civil and Criminal Courts ; next because such interference is, as I shall presently proceed to show, altogether unnecessary for the purpose of doing complete justice ; and, lastly, because it is certain to operate very prejudicially to the future determination of rights of property. I have also another, and to my mind, a fatal objection to the amendment in the vague terms in which it has been expressed.

"I must now ask the attention of the Council to the state of the law before the Code of 1861 in order that it may be better able to comprehend the object and scope of the amendment.

"There was then in force Act IV of 1840, only two sections of which need be described for the purposes of the present argument. Section 2 of that Act practically corresponded with section 145 of the Code of 1882. It did not, nor was it ever held to, enable a Magistrate in proceedings taken under it to restore a possession which had been illegally and forcibly disturbed unless this had been caused after he had taken action under that law. The latter part of section 2 was designed to enable this, and its operation was so limited. Section 4 of that Act provided for the restoration of a possession disturbed by illegal and forcible means. It empowered a Magistrate on complaint made to restore a person who had been illegally and forcibly dispossessed of land, etc., within one month before the date of complaint. Act IV of 1840, however, was in force only in the Bengal Presidency, including Bengal Proper and the North-Western Provinces. There was not, and there never has been, any corresponding law in force elsewhere. In the Presidencies of Madras and Bombay the Magistrates were, I believe, able to bind over disputing persons to keep the peace, but they had no power to declare or maintain possession of land, etc. The law in those Provinces gave power to officers in exercise of civil jurisdiction, generally of the lowest grade, to give relief in cases of forcible and illegal dispossession. As far as I can ascertain there was no such law in Bengal except that expressed in Act IV of 1840, section 4.

"When the preparation of a Code of Criminal Procedure came under consideration before the Legislative Council on the report and draft Bill prepared by the Indian Law Commissioners specially appointed for such purpose, it was decided (1) to repeal Act IV of 1840, (2) to give

a general right to bring possessory actions for summary decision by the Civil Courts, and (3) to re-enact section 2 of the Act of 1840 so as to apply it to those parts of British India to which the Code of Criminal Procedure might be extended, and this was practically to the whole of British India. It will be seen that some opposition to this was raised by Mr. Seton Karr, who then represented Bengal in the Legislative Council, but after an explanation given by Mr. Harington, who was in charge of the Criminal Procedure Bill, it was not pressed.

"Mr. Harington's remarks on this subject are deserving of attention because what was said in 1861 is as applicable to its fullest extent in 1898, and Mr. Harington's reputation as one thoroughly conversant with Indian law and of the highest experience and knowledge of all matters connected with the administration could not be equalled. He afterwards became one of the Members of the Viceroy's Council, and he is always referred to by Sir Henry Maine, one of his colleagues, in terms of the highest respect and veneration, and I venture to say that it would not be possible to obtain a higher certificate. Mr. Harington thus expressed himself:—

'He had had a very long and large experience of the working of Act IV of 1840, and he must say he knew no law which had been more perverted from its proper purpose, or in the administration of which the intention of the Legislature had been more grossly departed from. Instead of being restricted in its application, as the law intended, cases without number have been instituted under it, in which the Magistrate had no jurisdiction, and which should have gone to the Civil Courts. The Magistrates often became in such cases Civil Courts of first instance, quite contrary to the intentions of the law, and much injustice was done in consequence.'

"The Chief Justice of the Supreme Court, Sir Barnes Peacock, who was Chairman, followed:—

'Act IV of 1840 extended to two subjects, namely, first, retaining a man in possession and preventing a breach of the peace; and, secondly, under section 4 putting again in possession a man who had been turned out of possession. He thought that the duty of the Magistrate was to prevent a breach of the peace; and, if the Magistrate apprehended that a breach of the peace was likely to ensue, he might, in order to prevent such breach, declare who was in actual possession, and, having done so, retain that party in possession until a competent Court decided on the question of the right to possession. That he (the Chairman) thought was all that a Magistrate ought to do. If a person should be wrongfully turned out of possession by another party, then, under section 15 of

Act XIV of 1859, he might go immediately to a Civil Court, and the Civil Court, without trying the question of right, would restore him to possession until the other party chose to assert his right by instituting a suit to establish his title to the property in dispute and to recover possession thereof. You did not want two different proceedings. If the case was to go to a Court of law, you did not want the Magistrate to put the ousted party into possession.'

"That is exactly the position which I desire to maintain. The Council will bear in mind that this is an explanation of the Code of 1861. I have already stated that a careful examination of all the proceedings of the Legislative Council has shown that at no time during the preparation of more recent Bills on the subject or discussions on those Bills before they became the Codes of 1872 and 1882 was there any suggestion or inclination that I can find that there should be any alteration of the law in respect of the matter under discussion, though unfortunately the restlessness of draughtsmen, eager for improvement in expression, has caused a few verbal alterations; but if these verbal alterations are carefully examined, they do not mean any substantial alteration, and the proceedings to which I have referred bear this out. But, as I have also stated, there have been a few casual deviations in some reported decisions of the Calcutta High Court. These have never been followed even by other Judges of the same Court, and the overwhelming weight of authority of that Court is against them. If these cases are examined, it will be found that the learned Judges who delivered judgment in those exceptional cases amply illustrated the well-known and trite saying that hard cases make bad law. The parties for whom the Judges sympathised had other and sufficient remedies, and to these they should have been referred.

"And now I would ask, why is the law enacted in 1861 and twice re-enacted in 1872 and 1882 now to be altered? No cause is shown which did not exist in 1861, and then as I have shown the change in Bengal, and in Bengal alone be it remembered, was justified. Surely the Council will hesitate before restoring to Bengal a law deliberately altered in 1861, and in making a new law for other parts of British India one that those responsible for the government of those large provinces have never asked for. Their opinions have never been invited, and who can say that they will not be adverse to such a revolution of the existing practice? Even in Bengal I am in a position to say that the Judges of the High Court of Calcutta are unanimously in favour of the present law as more clearly and emphatically expressed in the Bill.

"But a great deal has been said against the impropriety and injustice of maintaining a possession wrongfully and forcibly obtained. I hope that it will be

understood that I have o sympathy with such a wrong-doer or that I am as anxious as any of the District-officers of Bengal to put down lawlessness or chicanery which they report has been encouraged successfully to defeat the present law. But I maintain that the present law is strong enough to afford full redress for any injuries so caused, to punish lawlessness, and to defeat underhand malpractices, and I maintain that it is only by a competent Court and in a regular trial held expressly with that object that any person can properly be found to have acquired possession of land through illegal and forcible means. Proceedings under section 145 are not directed to that object, and they should not be diverted from the useful object for which that law was enacted.

"The trial will then be on an issue expressly directed to that point. The object of section 145 is to prevent a breach of the peace, and it is only when that is imminent that a Magistrate can interpose. His duty is then to remove the cause of dispute by affirming and maintaining actual possession found by him at the time of his interposition. And when he has done this his functions under section 145 are at an end. The parties to the dispute are at the outset called upon 'to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute', and 'the Magistrate shall then without reference to the merits of the claims of any such parties to a right to possess the subject of dispute' 'if possible decide whether any and which of the parties is then in such possession of the said subject'. I have quoted the words of the present law. It is actual possession that the Magistrate is to find and maintain, and the law declares that this shall be without reference to the merits of any claims of any of the parties to a right to possess. These are matters distinctly reserved for consideration elsewhere. Mr. Stevens has referred 'to the merits of any claims of any of the parties to a right to possess' which are thus expressly reserved as a claim to title to the property. The words are not so limited. One such claim may indeed depend on the right and title to the property, but the right be restored on proof of an illegal and forcible possession without reference to title is equally within the terms, and in both respects ample remedies are provided for relief. There is the right of suit in a Civil Court which may be by a summary action known as a possessory action without reference to title to the property, as well as a suit to obtain possession on proof of title. Recourse can also be had by a complaint to the Magistrate if there has been forcible dispossession attended by criminal force and on proof of such an offence by conviction of the offender a Magistrate is expressly empowered by section 522 of the Code to order the complainant to be

restored to possession. In either of such cases the Civil or Criminal Court will proceed to try a distinct issue raised by the plaintiff or complainant in which the time and nature of the act of wrongful and forcible dispossession will be stated, and it will be for the party invoking the assistance of the Civil or Criminal Court to prove the issue raised by him. Surely this is ample. It is a well-known rule that a Court should be set in motion only by the party affected by the illegal conduct of another, and why, may I ask, should there be a departure from this salutary principle ?

"The Government of Bengal under the temporary rule of the mover of the amendment has stated that—

'It is represented that this' (that is, an order by the Magistrate declaring and maintaining actual possession at the time of his taking proceedings under section 145) 'will encourage the forcible taking of possession by one or other of the parties to a dispute before the case is reported by the police to the Magistrate, or even subsequently up to the date on which the Magistrate records his first order. The police might even connive with one party and delay reporting the dispute until that party has succeeded in forcibly ousting the rival claimant.'

"With all deference to an argument proceeding from so high an authority, I venture to say that it is absolutely unsound. What if either of the contingencies contemplated happens ? One would think that the law gives no redress ; and that the party so ejected would necessarily be prejudiced and would suffer from proceedings taken under section 145. The law is as open to him as to any one against whom an offence has been committed. He has a remedy either by complaint to a Magistrate of the offence committed ; and if on the trial he establishes his case and the accused is convicted, the law, section 522, expressly empowers the Magistrate to restore the possession which has been illegally and forcibly disturbed. Or he can bring a possessory action in the Civil Court in which he can obtain summarily an order for restoration of possession without reference to any title to the particular property, and this order is not open to appeal or even to a review of judgment. In neither case will his position or his rights be in any way affected by proceedings under section 145, for an order passed against him under that law would as expressed by it be 'without reference to the merits of his claim to a right to possess' the land. I venture also to say that a case in the Criminal Court or a possessory suit in the Civil Court would be decided as promptly as proceedings under section 145. And, as regards temptations to the police to misconduct themselves so as to favour one of the parties, I should say that these temptations would be far greater if, in a case properly

tried under section 145 to ascertain actual possession at the time of the Magistrate's order, it be possible for one of the parties to obtain evidence through the connivance of the police of his possession at any earlier period when the dispute is said to have arisen, and after he has realised from the evidence of his adversary already recorded that he must be defeated on the issue of actual present possession.

"Let me state a case to make my meaning clear. A and B are the disputing parties called upon by the Magistrate under section 145 to put in written statements of their respective claims in respect to the fact of actual possession of the subject of dispute. Written statements are put in, and the trial, if the proceedings may be so termed, commences. Each party has to prove the affirmative, that is to say, the fact of his actual possession. A commences and *primâ facie* his evidence is conclusive. B realises this and asks for and obtains an adjournment on some spacious grounds. He then starts a new case, such as the amendment would permit, that his possession was illegally and forcibly disturbed on an earlier date. The Magistrate changes the issue under trial. Can anything be more unfair? What a field for false evidence, what an opportunity for obtaining the sympathies of the police by illegal gratifications! And what necessity is there for allowing this? Why should not B have started this case long ago either by complaint in the Magistrate's Court of the offence now brought to notice or by a possessory action in the Civil Court? Either Court would have given him the relief which the amendment, if it is accepted, would enable the Magistrate to give him in proceedings deliberately directed to the trial of another issue—*present actual possession*. An order properly given under section 145 on the present law and on the Bill as it now stands would not debar him from seeking redress from either of these Courts if he sets it in motion properly, and in either case the order passed would supersede the effect of an order under section 145 which is only an *ad interim* order. In such a case too his adversary would have full notice of the case that he has to meet.

"It may perhaps be said that a more speedy relief will be given under a law expressed as in the terms of the amendment. I venture to dispute this. If the case under its new form as contemplated by the amendment be tried, the proceedings will be as in a trial for an offence, that is, illegal dispossession accompanied by criminal force, and they will not be shorter than in a regular trial. They will also lose the merit of a criminal trial, for they will not have commenced on a

complaint stating certain acts constituting the alleged offence, verified on oath by the examination of the complainant, but they will proceed on loose statements made by comparatively irresponsible witnesses; and, lastly, if the alleged offence be established, it will not be possible for the Magistrate in such proceedings to convict and punish the aggressor for breaking the law. If, on the other hand, the party is left to his remedy by a possessory suit in the Civil Court, the trial, being under summary jurisdiction, will be prompt and will be brought to an early termination, for there will be only one simple issue of fact for determination. I am aware that executive officers who know little of the practice of Civil Courts and are too apt to be influenced to their prejudice by evil report may be inclined to dispute my statement that the trial of possessory actions is tried and completed without delay. But here again I will refer to what Mr. Harington said in 1861, quoting with his approval and entire concurrence a report of the Commissioner of Benares to the following effect :—

'This class of cases was transferred to the Magistrates on account of the delay in the Civil Courts. Now that civil suits are decided almost as fast as Act IV of 1840 cases, there seems no reason for burdening the Magistrates any longer with any of these cases except those involving actual violence and breach of the peace punishable as assault.'

"From a long experience of the Courts of Bengal commencing from 1862 almost without interruption to the present time, I can confirm this statement in regard to the trial of possessory actions under summary jurisdiction as true up to the present time. Those cases in which simple issues of fact are alone raised are nearly always tried at the first hearing, if the parties are ready. They are necessarily summary suits. The law gives no right of appeal, and even an application for review of judgment is barred. There is, therefore, no impediment to their early decision, and, as a matter of fact, my experience goes to show that there is very rarely, if ever, any delay in their trial. I am unable to claim such promptness in proceeding under section 145 before Magistrates, for I can point to many instances of delays of months in bringing them to a termination.

"What reason, therefore, may I ask, is shown by those who are in favour of the amendment for interfering with the jurisdiction of the Civil and Criminal Courts for the decision of such matters in a regular manner—a jurisdiction which has been deliberately conferred and uniformly exercised beyond memory of the vast majority of officers of our Local Governments?"

The Hon'ble SIR JOHN WOODBURN:—"May I interrupt my Hon'ble friend for a moment to ask what this summary jurisdiction in Bengal is under?"

The Hon'ble SIR HENRY PRINSEP:—"It is under the Specific Relief Act of 1869. It was originally under the Act of 1859 which remained in force until the Specific Relief Act, and the Act of 1859, came into force simultaneously with the Criminal Procedure of 1861.

"I have only one other point to which I would desire to refer, and this relates to the terms of the amendment. It is proposed to enact that the Magistrate should decide whether any and which of the parties was, at the time when the dispute arose, in *such* (that is, actual) possession of the said subject. No limitation is prescribed. The Magistrate is to be given a free hand to go back as far as he thinks proper to ascertain the time at which the dispute arose. I can point to cases in which police-reports on which proceedings have eventually been taken under section 145 have shown the existence of a dispute, such as would come within the terms of the section, for many months, if not years, before the Magistrate has instituted proceedings under section 145. The limitation in regard to a possessory action in the Civil Court is six months from the date of an illegal and forcible dispossession. Act IV of 1840, section 4, which it is now proposed practically to re-enact, enabled the Magistrate to restore the possession disturbed by illegal and forcible means on a complaint made to him, and not otherwise, *within one month from the date of such dispossession.* I submit that it would be unreasonable, I may say impossible, to give a Magistrate power to act as now proposed without any limit of time, and on these grounds, if for no other, I maintain that the amendment cannot be accepted.

"My Lord, I feel that I owe an apology to this Council for having so long detained it in explaining at considerable length my reasons for opposing this amendment. I have been employed by Your Lordship's Government to take an active part in assisting to prepare this Bill. It is a subject in which I feel the greatest interest, and it has been my desire to spare no effort to assist in adding to the Statute-book of India a law which may be accepted by those who have to administer it as a substantial improvement on the existing law. If I were asked what part of the Code of Criminal Procedure was in my opinion most important to the administration of this country, both in regard to the benefits to be conferred and also in regard to the danger and mischief likely to ensue if power conferred on Magistrates were carelessly or arbitrarily exercised, I should have no hesitation in pointing to section 145. It is beneficial because, by conferring summary jurisdiction on Magistrates, it strength-

ens the administration by enabling a Magistrate to prevent a breach of the peace and a serious agrarian riot. But, as pointed out by Mr. Harington and Sir Barnes Peacock in 1861, unless this power be carefully exercised and, I may add, restricted to its legitimate objects, nothing can be more mischievous or dangerous to private rights of property. It was on these grounds that the power which it is now proposed to confer on Magistrates throughout British India was withdrawn from Magistrates in Bengal, by whom alone it had been exercised. The conferring, moreover, of powers so as to alter the original object of inquiry, that is, actual possession at the time of the Magistrate's order interposing to prevent a breach of the peace, and to enable a Magistrate to determine possession of an anterior date, without any limit of time and not on the complaint of any person who may have suffered, is, to my mind, offering a premium to suborning false evidence to be adduced after the proceedings have commenced and, indeed, after the evidence of the opposite side may have been taken. It will also tend to offer additional temptations to a corrupt police to assist in establishing a new case set up as an after-thought even as a forlorn hope.

"I have done my duty to lay before this Council the serious objections which I have to the proposed alteration of our existing law and, if I should unfortunately fail to convince the Members of this Council of the soundness of my objections, I shall at least have the satisfaction of feeling that I am in no way responsible for the mischief and injustice which from an unusually long experience I can confidently state will follow."

The Hon'ble MR. NICHOLSON said :—"After the exposition of the case given to us by the Hon'ble Sir Henry Prinsep in opposing the amendment, I would not add my mite to the discussion, but that I desire to state my view briefly as an executive officer of a province other than Bengal. I disagree with the Hon'ble Mr. Stevens' amendment—so far as regards the substitution of the words 'the time when the dispute arose'—partly because the change does not appear to me to be necessary, partly because it would, in my opinion, have a positively bad effect.

"The whole *raison d'être* of this chapter, which gives Magistrates a *quasi*-civil jurisdiction, is the prevention of breaches of the peace; prior to the Code of 1861 there was, I believe, no law except that of 1840 in Bengal, which gave Magistrates this exceptional power, while, since 1861, the civil law with, *inter alia*, its provision for summary restoration of possession in cases of forcible disturbance, has taken away from Magistrates any necessity for dealing with

possession cases except in their preventive capacity. Hence the criminal law, ever since 1861, has given power to the Magistrate solely to ascertain possession '*then*,' at the time of enquiry, which for all practical purposes was interpreted as the time when the Magistrate began his enquiry, that is, when he passed the preliminary order under section 145. All that the Select Committee have done, outside of the new proviso, is to make it clear that this preliminary order shall be the starting point of the Magistrate's enquiry. Hence in face of the long existence and, in general, the fair working of the present law, it lies on the mover of the amendment to show strong cause for an amendment which is to affect the whole of India and not merely to apply to Bengal, and which will, in fact, as the Hon'ble Sir Henry Prinsep has told us, actually introduce into provinces outside of Bengal, a law which has never yet existed in them, *viz.*, that power of going into and deciding questions of possession anterior to the date of enquiry, which existed only in Bengal by virtue of the Act of 1840. Such cause has, I submit, not been shown.

"It is urged for the amendment that if the clause as it has come from the Select Committee be passed, there will be endeavours in each case to dispossess the occupier by force as soon as an enquiry is set on foot by the police: hence actual incentives to breaches of the peace, and the chance that trespassers by force will reap the advantage of their own wrong. My Lord, I consider that the danger is in general non-existent, at all events in the province with which I am acquainted. Practically, as I have said, there has been no alteration in the law, and hence there is no reason that what has not happened in the past should happen in the future; in Madras, at least, I have known of no cases where the beginning of an enquiry has been followed, as an effect, by attempts at violent dispossession. In fact, there is good reason why such attempts should *not* be made; when the attention of the authorities has been expressly turned to a dispute, there is surely less rather than greater probability of recourse to violence: open violence is comparatively easy of proof, and a claimant would put himself hopelessly in the wrong by attempts, *pendente lite*, at forcible dispossession. Again—and I make this a chief point—should any such attempt be made, the enquiry into possession would be replaced, and properly replaced, whether by the action of the party or of the authorities, by a regular criminal case, with the chances that the offender would be punished and that the Magistrate would, in case of proved disturbance of possession, restore it under the provisions of section 522 and thus do away with the necessity for an enquiry

under Chapter XII. Moreover, in by far the greater number of cases it is not physical possession, such as the living in a house, that is in dispute, but such possession as is involved in the cultivation of land, very often through rival tenants, payments of rent, etc., and in such cases dispossession by force does not take place, but only indecisive breaches of the peace. If, as a matter of fact, any chance of such forcible dispossession should arise, a provision such as that contained in the Hon'ble Mr. James's amendment would furnish a remedy. Hence I do not consider the change under discussion to be necessary.

"On the other hand, I see grave objection to it. Instead of possession at a particular and recent period, it is possession at an indefinite period, *viz.*, the beginning of the dispute, that would have to be decided. Such beginning may have been, and often is, many years before, and the parties to a dispute may be merely the successors in interest of the original disputants: how are we to go back to some remote possession? Moreover, it is precisely here that the chief objection lies, *viz.*, that the Magistrate will no longer be concerned in deciding who is in *de facto* possession, but who was, once upon a time, the possessor, and consequently, who should be now the proper possessor: in other words, it will not be who is, but who ought to be, in possession: the enquiry will not be into questions of possession, but into questions of title. That is not the object of the power given to Magistrates under Chapter XII, and I need hardly say how eagerly parties will, if the scope of the enquiry includes questions of title, rush to the Magistrates' Courts for a summary decision by which they hope both to force their opponents into a Civil Court as plaintiffs, and to place them at a disadvantage in such Courts, and how largely the time of the Magistrates will be taken up in *quasi*-civil work.

"I therefore deprecate the acceptance of this amendment."

The Hon'ble MR. LATOUCHE said:—"My Lord, I am opposed to this amendment because it substitutes for a fixed date a date which is uncertain and indefinite, namely, the date when the dispute arose. The Magistrate intervenes in a dispute when it is at the stage when it is likely to cause a breach of the peace, but the dispute may be a chronic one or may have arisen long previously, or the time when it arose may be quite uncertain.

"The Magistrate calls on the parties to produce evidence of actual possession and, in the words of section 145 (4), without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute decides, if possible, the fact of possession. Section 4 of Act IV of 1840 empowered a

Magistrate, on complaint of forcible dispossession within one month, to restore possession, but this portion of Act IV of 1840 was deliberately omitted when the Criminal Procedure Code of 1861 was framed, and between 1861 and 1872 a person dispossessed could recover possession only in the Civil Court. He can now recover possession in the Civil Court under section 9 of the Specific Relief Act, which runs—

'If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he may by suit instituted within six months from the date of the dispossession recover possession thereof notwithstanding any other title that may be set up in such suit.'

"But in the Code of 1872 a section was inserted in this chapter which provided that whenever a person was convicted of an offence attended by criminal force, if it appears to the Court that by such force any person has been dispossessed of any immoveable property, the Court may, if it thinks fit, order such person to be restored to the possession of the same.

"This section was re-enacted in the Code of 1882, but was removed from Chapter XII, and it appears in the present Bill as section 522.

"The present law empowers a Magistrate's Court to restore possession if force was used in dispossessing any person from immoveable property, but if the dispossession was merely wrongful or against the consent of the occupier, the aggrieved person must recover possession in the Civil Court either summarily or by regular suit.

"The present amendment goes considerably beyond the proviso inserted by the Select Committee."

The Hon'ble SIR GRIFFITH EVANS:—"This has always been one of the most difficult, quite the most difficult section in the Code. First of all we had in 1882 the matter complicated by the introduction of the word 'then'. Nobody knew what that meant. If you took it in a grammatical sense it meant at the date of the decision, but that was impossible as the evidence related to a period anterior to the decision. Then the courts were driven to say it meant the time of the first order. Then there came a number of cases in which the result was so exceedingly unsatisfactory to the Court that they tried to get out of it. There was one case in which after it had been decided that the word 'then' meant at the date of the order or the beginning of the enquiry this state of things happened. The Teotah

Raja had got a *char* and the *char* raiyats got discontented and they set up another *malik* or proprietor—a neighbouring man who really had no rights. They turned to him and paid rent to him for six months. The Teotah Raja then with his men went on the *char* and the Magistrate found that as it was a case of constructive possession by receipt of rent that therefore the new man Sumboo Chunder to whom the raiyats had been paying rent for six months was in possession. This came up to the High Court in revision. The High Court did not like the result, and Mr. Justice Pigot came to the conclusion that though there was such a thing as constructive possession by receipt of rent, yet that the right to receive the rent was the real possession; therefore the Teotah Raja was in possession. Then came the Katras-Jherria case. This was the case of a coal mine. The lessor wanted to oust the lessee and got all the workmen to turn round and join him and he appointed a Manager to take possession. He paid all the workmen to take his side and began working the colliery. All the lessee was able to do was to maintain possession of the bungalow. The Magistrate thought himself bound to hold that the lessor was in possession as he had got the workmen to join him a few days before the issue of the order. It came up to the High Court and they got out of it by finding that nobody was in possession, because the one was in the bungalow and the other man was in the pit. The fact of the matter is that it is a most difficult thing to decide, because first of all you have great difficulty as to what is possession. In Madras they have laid down that this section refers only to possession of something which is capable of actual possession, such as a house or land that you are actually cultivating yourself. In Bengal at one time this view obtained favour. In the Act of 1882, they put in the words 'possession of tangible immoveable property', meaning thereby, as is frequently thought property capable of actual physical possession and not a constructive right to receive rent which in the English law is looked upon as a reversion and incorporeal. However, the High Court thought that the results would be so lamentable and there would probably be such a frightful amount of rioting, that they did a certain amount of violence to the words and they acted on the old interpretation that receipt of rent was possession of land. The objection to the Hon'ble Mr. Stevens' amendment, which I heartily sympathise with from a moral point of view, is this: the first issue would be, when did this dispute arise, and on that it would be very difficult to come to any conclusion at all. When you had ascertained when the dispute arose you would have solved the difficulty, but it may be that it was years before. When you come to a question about a *char* and try to find out who was in posses-

sion a year before, it is more difficult still, and I can assure Your Excellency that the mass of evidence and papers that they produce on both sides to show that they have been in possession for years is something perfectly appalling, and it is very difficult to decide any thing at all. I therefore find a very great difficulty, although I should be very glad to do so, in accepting Mr. Stevens' proposal because of the difficulty of ascertaining when the dispute arose.

"As regards Eastern Bengal with its great rivers, I think the remedy mentioned by His Honour is the only effectual means of stopping *char* riots, that is sending a Deputy Collector round every year when the floods subside to attach all new *chars* and parcel them out according to the survey maps and in the meantime collect the rents."

The Hon'ble MR. CHARLU:—"I think I must also oppose this amendment. After the very elaborate explanation given by Sir Henry Prinsep and the other Members who spoke before me I think it is unnecessary to take up the time of the Council except to point out this. The Magistrate's competency to interfere is not upon the ground that he is considered sufficiently qualified to unravel the difficulty as to what constitutes possession or is able to decide when the dispute practically commenced and what is in reality the beginning of the dispute. These are questions which are capable of being competently and successfully disposed of by Civil Courts, specially qualified for such work. Bearing in mind that the right or rather the authority vested in the Magistrate is in the interests of peace and for the purpose of punishing a person who commits criminal force upon another, it seems to me that the Magistrate's action is confined to these two cases, *viz.*, (1) where criminal force has been used and land thereby taken possession of, (2) where breach of peace is threatened. In these cases, the Magistrate gives the remedy under section 522 or 145. Then under the Specific Relief Act, a remedy exists where there is no force or threat of breach of peace. That being so and there being the fullest and clearest remedy to a person dispossessed without the use of force and finding that the jurisdiction of the Magistrate can be given only in the interests of peace or for the purpose of punishing the man for committing an offence, it strikes me that the amendment is not correct."

The Hon'ble PANDIT BISHAMBAR NATH:—"The subject is, no doubt, a thorny and most difficult one, as it has been pronounced to be such by so eminent a lawyer as Sir Griffith Evans. To my mind, the question at issue is after all a simple one, though it has assumed enormous proportions and, in fact,

resolved into a metaphysical disquisition. I need not, however, at this late stage of proceedings dwell long upon the intricacies of the question and must submit that with reference to the weighty considerations set forth in the erudite statement of the law, as enunciated by the Hon'ble Sir H. Prinsep, I am inclined to say that I am unable to agree to the amendment proposed by the Hon'ble Mr. Stevens, as to 'the time when the dispute arose.' "

The Hon'ble SIR JAMES WESTLAND : —" I think that whatever decision we may come to in the question which is now under discussion we at least have had the advantage of having the two sides of it completely laid before us by the Hon'ble Mr. Stevens on the one side and the Hon'ble Sir Henry Prinsep on the other. I confess that the arguments of these two Hon'ble Members have left me in considerable doubt as to the decision which I ought to take, but I cannot help feeling that a term such as 'possession at the time of the dispute' is one that may carry us too far back. At the same time it has been shewn that the law as it at present stands is a law which works very great injustice, and it also tends very greatly to the commission of a breach of the peace, because it places the person who happens to have taken possession, whether rightfully or wrongfully, in a very advantageous position. I do not think it is possible to leave the law in the form in which it is at present. Sir Henry Prinsep has told us that even Judges of the High Court have come to different conclusions as to what the meaning of the law is, and that itself seems to me is a sufficient reason for making the law clearer. I think that too much has been made of the question of 'possession at the time of the dispute,' namely, in thinking that it was necessary to carry back the investigation to the time of some original claims out of which the dispute the causing a breach of the peace has arisen. Sir Henry Prinsep has told us that with reference to this particular point Mr. Harrington, a name renowned in Bengal, asserted that a wrong interpretation had been given to Act II of 1840, and that the words which are there found, namely, that the Magistrate is to decide who was in possession at the time of the dispute, had been wrested into an authority to make investigations which really belonged to the Civil Court and not to the Criminal Court; but at the same time when he came to the end of his speech, and deprecated the adoption of the phrase which occurs in Act II of 1846, he told us that that phrase had the particular meaning which Mr. Harrington deprecated and really gave authority to a Magistrate to carry back his investigations to an interminable time. If I may say so, I think that the proper interpretation to be given to the phrase 'at the time the dispute arose' is to refer it to the time when such dispute as lead to a breach of the peace occurred,

and that the Select Committee have really, in introducing the proviso that a Magistrate may carry back his investigation to two months' time, adopted what Mr. Harrington has explained and what Sir Henry Prinsep has also commended as a true meaning of Act II of 1840; that is, that the Magistrate can look before the actual possession at the time he issues the order, and that the Courts will not be obliged to issue what I cannot help calling a positively absurd decision, *viz.*, that a person who has taken possession violently two days before the Magistrate's order must be kept in possession by the Magistrate. I am disposed, therefore, for myself to accept the comp omise which was come to in the Select Committee, namely, that the Magistrate can look back for two months before the date of his own order and find what kind of possession then existed. It is a reasonable assumption that the state of possession which was in existence two months before the date of his order was a possession before the dispute arose which has caused the Magistrate's intervention, the dispute, namely, that is likely to cause a breach of the peace. I would therefore accept the section as issued from the Select Committee because I think that it expresses the actual meaning of so much of my Hon'ble friend Mr. Stevens' amendment as I can agree with. I say this subject to what His Honour the Lieutenant-Governor may say. Of course I feel at some disadvantage in addressing myself to a subject of this kind without hearing what the head of the Province of Bengal has to say, but, subject to what he may have to say, I think that the proviso gives the power which the Hon'ble Mr. Stevens sets before us as desirable that the Magistrate should have. I think also I may go forward to another amendment which is to be proposed by the Hon'ble Mr. James, giving power of attachment in cases where possession is not determinable. That amendment will improve the section and direct the Magistrate to what his duty is, namely, to look less at the rights of the parties than at the object of establishing a state of things which will at least prevent a breach of the peace taking place."

His Honour THE LIEUTENANT-GOVERNOR:—"I do not propose to detain the Council at any great length at this late stage. I would only say that nobody knows better than my Hon'ble friend Sir Henry Prinsep that disputes of this description are extremely common in the Eastern Districts of Bengal and that fact he recognised fully at the close of his speech. The general result in my mind from the debate is to lead me to the conclusion that I agree with my Hon'ble friend Sir James Westland that the compromise made by the Select Committee should be maintained, although the criticisms of my Hon'ble friend Mr. Stevens' proposal are not altogether fair, because he never proposed to go back years and years to

the beginning of old hereditary disputes, but to go back to the time when the dispute leading to and resulting in the current breach of the peace arose. I think that no really practical man, no good Magistrate, would have any real difficulty in ascertaining and deciding when the beginning of the dispute arose. I think, however, that, as doubts do exist on the question, we should perhaps on the whole get as much as we expect from the executive point of view, if we accept the proviso which has been adopted by the Select Committee, and I am also strongly disposed to accept Mr. James' further amendment allowing the Magistrate to attach in cases of emergency. I have no doubt whatever that the law as it has stood hitherto has been a cause of constant trouble. The Hon'ble Sir Henry Prinsep represented to us the High Court as a happy united band all standing together and not having a single objection to raise with reference to the law as it stands. But I have here the opinion of one of the Judges that the present chapter is so defective that it is almost impossible for the most careful Magistrate to work it; that the High Court is constantly interfering on technical grounds, and that the merits of the Magistrate's orders are constantly being gone into on revision. The whole object of the law is thus frustrated.

"I may also say that I have received from many landholders in Eastern Bengal frequent complaints that as the law stands they are in constant dread of what may happen in connection with these *char* lands. In fact, at one time a memorial was laid before me requesting that I would move the Government to make it compulsory in all cases for Magistrates to attach these lands. With reference to the suggestions made that possessory actions in the Civil Court are open to them, you must look at the thing from the point of view of native character. They would prefer, except in the very last resort, not to go into the Civil Courts, and no native landowner would, if he could help it, admit himself to be out of possession. After listening to the whole debate and weighing all that has been said, I have come to the conclusion that on the whole it is best to accept the compromise and not to press the amendment which my Hon'ble friend Mr. Stevens has put forward."

The Hon'ble MR. STEVENS said:—"My Lord, I regret to see that so many Hon'ble Members of the Council are opposed to my amendment. I will not, under the circumstances, occupy much more of their time; but there are certain points which I feel it my duty to clear up.

"I will begin by bringing to the notice of the Council a case in which the law, as it at present stands, completely fails, and it has actually been necessary

for the High Court in its interpretation to go back to the old law. In the case of *Jagat Kishore Acharjya Chowdry* v. *Khajah Ashanullah Khan Bahadur*, decided by Justices Mitter and Trevelyan on the 13th February, 1889, and reported in the Indian Law Reports, Calcutta Series, Volume XVI, page 281, the dispute had reference to the right of felling trees. The Magistrate, following as well as he could the precedent in the case of *Ambler* v. *Pushong*, which had been decided some four years before, found in favour of the second party, having come to the conclusion that he was proved to have been in possession at the time when the proceedings were instituted. The learned Judges did not agree with him, but remanded the case with the following observations:

'Having regard to the nature of the property in dispute, and the mode in which possession may be exercised over the property, we think that, in order to find which party was in possession when the proceedings were instituted, it is necessary to enquire which party was in the undisturbed possession of the land in dispute by felling timber and removing the same without objection on the occasion immediately preceding the one in which the dispute arose.'

"The decision appears to govern all cases in which the possession is intermittent, for example, cases relating to *char* lands submerged for a portion of the year. It thus seems that in a very important class of cases the law cannot be carried out literally, and that it is necessary to make believe that it is identical with the old law which it is the purpose of my amendment to replace.

"These cases cannot, I may say, be met even by the proviso in the Bill before us.

"My Hon'ble friend Sir Henry Prinsep has stated that Act XXV of 1861 repealed all but one section, namely, section 2 of Act IV of 1840. But the correct statement of the case, so far as concerns the present matter, is that one section (section 4) was repealed.

"The Council have heard from Sir Henry Prinsep much about the discussions in the Council regarding the Bill which became law as Act XXV of 1861. I anticipated him in a great measure and I pointed out, as I venture again to point out, that the strictures passed in the course of those discussions had reference, not to section 2 (with the analogue of which we have now to do), but to section 4, which was not embodied in Act XXV, but which was repealed and never re-enacted, and which no one wants to re-enact now. I showed that Mr. Harington, the

Member in charge of the Bill, and Sir Barnes Peacock, the Chairman, had no intention, when they proposed the incorporation of section 2 of Act IV of 1840 in Act XXV of 1861, of changing the law. They distinctly said so, and (as I have shown) the earlier rulings of the High Court dealt with Act XXV of 1861 as if its provisions concerning this matter were old law. I showed that, in later times, with no deliberate intention but by accident, the law was changed into what it now is.

"Some Hon'ble Members have thought that there would be difficulty in working the section as brought back, in accordance with my amendment, to the old law. To that my reply is, that the Act of 1840 worked for twenty years, and there is no sign whatever in the discussions of the Council that the difficulty now anticipated ever existed. It has been said that 'at the time when the dispute arose' is a vague expression. It is vague because the meaning of it varies according to the facts of each individual case. Generally speaking, by the term 'dispute' is not meant mere adverse claim, but such a dispute as gives rise to an anticipated breach of the peace.

"The Hon'ble Sir Henry Prinsep has said that there is an overwhelming weight of authority against the rulings which I have quoted. My Lord, to the best of my belief, I have obtained those rulings from the very valuable work published by the Hon'ble Member. If rulings of no authority have been held up for our guidance, the fault, I venture to say, is not mine.

"My Lord, the Hon'ble Member has spoken to us of his experience in connection with Act IV of 1840. But I think that we must bear in mind that the officer who passed through those experiences was not the Sir Henry Prinsep whom we all know, and on whose matured knowledge we so much depend, but a very young Civilian, possibly (though, I admit, not probably) one of those very same young and inexperienced officials whose work is so lightly spoken of in those discussions which we have read – one of those who brought Act IV of 1840 into disrepute by the manner in which they misplaced the burden of proof and converted the Criminal Courts into Civil Courts.

"It has been urged upon us that this law is not required in Madras. I have to point out, as I have already pointed out, that Act IV of 1840 did not extend to any Presidency except that of Bengal in the wide sense. Consequently the officers of Madras had had no experience of Act IV of 1840, and were not in so good a position to appreciate and interpret Act XXV of 1861 as the officers of Bengal. Suppose this law is not required in Madras; there is no necessity for its being

used there. The use of section 145 lies entirely in the discretion of the Magistrate. If he does not want it, he need not use it. This argument therefore is of no weight whatever if the provision is required for Bengal.

"And now I would remind the Council of a point of which no notice whatever has been taken by any speaker who has followed me in the debate. I said, and I again say, that all those who are practically concerned in this matter are against the law as it is now interpreted to be. The British Indian Association, the Bar, the Chamber of Commerce, the Executive Officers who have to keep the peace, are all on one side. Who is there on the other?

"The Hon'ble Sir Henry Prinsep reminds me that the parties had other means of obtaining the desired result. No doubt they have, and if the parties themselves would do what we consider to be their duty there would be little occasion for this section 145, but the advantage of section 145 is that when the parties persist in raiding and do not mind resorting to violence in support of their claims, the Executive Officer in charge of the district is able to step in and it is for him to try and prevent a breach of the peace. A large part of my Hon'ble friend Sir Henry Prinsep's speech seemed to me to be turned against section 145 altogether, but in that I think no one else has followed him. It has been remarked that the time at which the dispute arose is too vague and that there is no limitation. I think that His Honour the Lieutenant-Governor has fairly disposed of the fact. It could clearly not be the time at which the conflicting claims were made, but the time at which the actual dispute was likely to cause a breach of the peace arose. No doubt it is difficult to fix any exact time which would be free from objection and the reason for that is that the circumstances of various cases differ so enormously, but I think we might trust the Magistrates with the discretion to see what course should be taken in the particular case before them. Now as to this point of time,—the time at which the dispute arose—is that which was laid down in section 2 of Act IV of 1840, and for twenty years that was in force and acted upon, and we have not heard what the difficulties were in working under that Act. More than that, as I have already said, the section corresponding with section 2 was passed over without remark. I think, if there had been any practical difficulties in the way of fixing the term of limitation, that something would have been said on that subject. These, my Lord, are the remarks that I have to make. I think that in the great majority of cases the proviso which has been settled in the Select Committee would answer all necessary pur-

poses, but I also think that there are cases which it would not meet, and I have given you a concrete example in which the High Court have absolutely been obliged to abandon it in favour of the words which I have proposed to insert."

The Council divided :—

| *Ayes—4.* | *Noes—15.* |
|---|---|
| The Hon'ble Allan Arthur. | The Hon'ble Gangadhar Rao Madhav Chitnavis. |
| The Hon'ble C. C. Stevens. | The Hon'ble Rai Bahadur Pandit Suraj Kaul. |
| The Hon'ble Joy Gobind Law. | The Hon'ble F. A. Nicholson. |
| His Honour the Lieutenant-Governor of Bengal. | The Hon'ble J. J. D. LaTouche. |
| | The Hon'ble Sir G. H. P. Evans. |
| | The Hon'ble Rai Bahadur Ananda Charlu. |
| | The Hon'ble H. E. M. James. |
| | The Hon'ble Sir H. T. Prinsep. |
| | The Hon'ble Pandit Bishambar Nath. |
| | The Hon'ble Rahimtula Muhammad Sayani. |
| | 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 John Woodburn. |
| | The Hon'ble Sir J. Westland. |

So the motion was negatived.

The Hon'ble SIR HENRY PRINSEP moved that the proviso to clause 145, sub-clause (*4*), of the Bill as amended by the Select Committee be omitted.

His Excellency THE PRESIDENT :—"I wish to state to the Council that the amendment on which we have just voted is this—that certain words should be substituted and that the proviso thereto should be omitted. The Council have now voted that the proviso should not be omitted. I think myself that that would cover the Hon'ble Sir Henry Prinsep's amendment, but of course, as a matter of courtesy to him, I do not desire to shut out anything he wishes to say, if the Council wishes to hear it."

The Hon'ble SIR HENRY PRINSEP said :—"The latter portion of Mr. Stevens' amendment escaped me, and therefore I did not address myself to the proviso to sub-section (*4*), the omission of which I had given notice that I

intended to move. The proviso is not necessarily a part of the motion which has just been negatived, and it seems to me therefore that it should be considered separately on its merits.

"I have already expressed myself so fully on the terms of section 145 in reference to the amendment proposed by the Hon'ble Member to my left (Mr. Stevens), that it is unnecessary for me to do more than enter my protest against the enactment of the proviso to sub-section (*4*). The objections that I have already taken apply equally to this proviso. I regret that the opinions of the Judges of the Calcutta High Court have not been obtained on the alteration thus made by the Select Committee and expressed in its report. One of the Judges, Mr. Justice Wilkins, has expressed a strong opinion against the proviso in a memorandum which he has sent to the Hon'ble Member in charge of this Bill, and I understand that the other Judges have abstained from offering their opinions until they shall have been solicited to do so. I have reason, however, to believe that they share in the objections raised by Mr. Justice Wilkins. With these observations I leave my amendment before this Council."

THE Hon'ble SIR GRIFFITH EVANS :—"I do not wish to take up the time of the Council, but I want to make one or two remarks. There is a great deal of misapprehension about these two months, but, as a matter of fact, as we all know, most of these are *char* cases and the matter in dispute is constructive possession by receipt of rent, and it is no use talking as if you were to find who is in receipt of a particular rent on a particular date. You cannot do that : you must go back a month, and sometimes two, to the last kist of rent. The real fact of the matter is that, constructive possession is a matter of law to be inferred from certain facts of the case, and the case cited from the High Court by the Hon'ble Mr. Stevens is an instance of it. There it was a case of the right of felling timber, and on the last occasion, when they were felling timber, the parties came to loggerheads and there was a row. The High Court said, 'Find for me who peacefully felled the timber last, and then I will tell you that, as a matter of law, his possession continued until the date of the disturbance.' That is what they said. It is not that you had to go and find possession on a prior date, but when you find the facts from which you could infer possession, the law constructively will make that possession continue up to the time when it is disturbed. Therefore it is not a proposal to carry the enquiry two months further back. I have not seen a case where the enquiry had not to,

go two months back—very often a great deal more—in order to get at the facts necessary to arrive at a correct inference who was in possession at the time of the order. So that, whatever we do, we must go back two months for this purpose. Sometimes you must consider title in order to decide which is in possession because the law says, if two men are fighting in a field, the man who is the owner of the field is the man in possession, and the other is not in possession in the eye of the law but is a mere casual trespasser. Therefore the rule will not lengthen the enquiry much while it will avoid injustice in many cases.

The Hon'ble SIR JAMES WESTLAND :—"I speak on this occasion with the advantage of knowing what the opinion of His Honour the Lieutenant-Governor is. I regret to say that my opinion of a Magistrate's duty differs entirely from that of my Hon'ble friend Sir Henry Prinsep. I cannot conceive a Magistrate who knows that a breach of the peace is likely to be committed sitting calmly in his chair until somebody sets him in motion by a formal complaint. It is the business of the Magistrate to intervene to prevent a breach of the peace, and if the Magistrate's intervention is made under such conditions that, if he finds a man in possession whom he knows to have only just obtained possession by violent means, he is bound to keep him there, the law will present a direct incitement to continuous breaches of the peace. I think the compromise which the Select Committee propose is a compromise sound in itself, and is likely to carry out the object of preventing a breach of the peace."

The motion was put and negatived.

The Hon'ble MR. JAMES moved that to clause 145, sub-clause (*4*), of the Bill as amended by the Select Committee the following proviso be added, namely :—

"Provided that, if the Magistrate considers the case one of emergency, he may at any time attach the subject of such dispute, pending his decision under this section."

He said :—"This amendment is suggested by the Bombay Government, but as there seems a general disposition to accept it, I need not take up time by speaking at any length. I do not advocate it as a short way of cutting the Gordian knot, but because in some parts of the country there is not time to go through all the formalities of the Code, if the Queen's peace is to be preserved. By the time the Magistrate comes to know that a fight is likely, matters have often advanced too far to admit of any delay. When the Magistrate attaches both parties subside, a faction fight is averted, and then the law takes its course. I knew a case not

long ago in which a District Magistrate actually did as I propose he should have legal power to do, in order to avert a conflict."

The Hon'ble MR. CHALMERS:—"I have no objection to this amendment."

The motion was put and agreed to.

The Council adjourned till Saturday, the 12th March 1898.

J. M. MACPHERSON,

*Secretary to the Govt. of India,*
*Legislative Department.*

CALCUTTA;
*The 18th March, 1898.*

*Note.*—The Meeting of Council which was fixed for the 4th March was subsequently postponed to the 11th idem.