Wednesday,
19th March, 1913

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. LI

April 1912 - March 1913

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ASSEMBLED FOR THE PURPOSE OF MAKING

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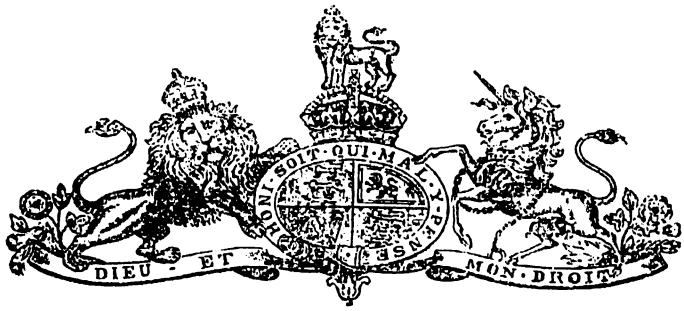

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

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 to 1909 (24 & 25 Vict., c. 67, 55 & 56 Vict., c. 14, AND 9 Edw. VII, c. 4).

The Council met at the Council Chamber, Imperial Secretariat, Delhi, on Wednesday, the 19th March, 1913.

PRESENT:

The Hon'ble SIR GUY FLEETWOOD WILSON, G.C.I.E., K.C.B., K.C.M.G., Vice-President, *presiding*,

and 64 Members, of whom 58 were Additional Members.

THE INDIAN CRIMINAL LAW AMENDMENT BILL.

The Hon'ble Mr. Vijiaraghavachariar:—"Sir, I beg to move the amendment of section 120 A. I move the first part, but as regards the remarks I wish to make on this it is just as well that I should call the attention of the Hon'ble Members to the next two following amendments also standing in my name, namely—"

The President:—"Order, order. The Hon'ble Member will have to limit his remarks to this particular amendment unless he is prepared to withdraw the other two. He cannot take the three together."

The Hon'ble Mr. Vijiaraghavachariar:—"I agree, Sir. I am not moving the other two amendments, but my remarks upon the first would be more intelligible and would be better understood if I address my remarks upon all the three. I will not move them all now. I will move the first amendment, but the remarks I am going to make will be, not only relating to this amendment, but also somewhat relating to the other two amendments, and I won't allude to these remarks again when I move the other amendments."

The President:—"The Hon'ble Member must limit himself strictly to the amendment which is before the Council, and that is No. 25 on the notice paper. If he intends to ask the permission of the Council to withdraw the other two, he can make his remarks which would cover the other two on this one; but if he proposes to move the three Resolutions one after the other, then he should limit his remarks to each Resolution in turn."

The Hon'ble Mr. Vijiaraghavachariar:—"The amendment I wish to move relates to sub-section (1) of the same section (section 120A), and is that for the words 'an illegal act' the words 'to commit any of the offences made punishable under sections 122, 123, 124, 124A, 125, 130, 131, 132, 133, 134, 135, 136 and 138 of the Indian Penal Code, or any offence notified in the Gazette of India under sub-section (3) of this section,' be substituted.

"I have to explain at all events what I mean by 'any offence notified in the Gazette of India under sub-section (3) of this section.' I have to explain to the Council what I mean by that. I do not think I shall detain the Council very long. My object is that the proposed conspiracy, that is offences created by the new law, may be confined to certain serious offences made punishable under the Indian Penal Code, and under the Indian Penal Code alone. As the proposed law now stands, I need hardly repeat my statement that it embraces three classes of actions, that is to say, conspiracies to commit an offence, conspiracies to commit an illegal act not amounting to an offence, and conspiracies to commit a legal act but by illegal means.

"These are the three classes of offences constituted by the proposed law. The first of these conspiracies, namely, conspiracies to commit offences may, for the purposes of my amendment, be divided into two classes, because under the Indian Penal Code the word 'offence' as defined is not only an offence made punishable under the Penal Code, but also by any local law and by any special law. My amendment, therefore, excludes conspiracies to commit three sets of acts, namely, conspiracies to commit illegal acts, conspiracies to commit legal acts, but by illegal means, and also conspiracies to commit offences other than certain serious offences under the Indian Penal Code. That is to say, it limits the new offences to conspiracies to commit certain serious offences punishable under the Indian Penal Code. In my amendment I propose to contract greatly the volume of the actions designated as objects of conspiracy under the proposed law. I have already called the attention of Hon'ble Members in the remarks I made when the Bill was introduced and the motion referring it to Select Committee was put, to the origin, nature and scope of this branch of common law in England. I also pointed out on that occasion that the Common law as it prevails in England, and as it is administered in England, is greatly different from the common law as it is proposed to be introduced in India. Whatever may be the common law in England, I said that not being a Statute law, but being entirely construed, moulded and administered entirely by Judges, it is adapted and varied to suit any circumstances—an observation which far from being contradicted on the other side derives corroboration from the very high authority of the Hon'ble and distinguished Advocate General. He says the same thing; that this branch of the common law of England though centuries old has been moulded and adapted to local circumstances by Judges. That being so, the question is—now that we are making a statutory law of it,—what follows? As a statutory law our Judges and our Magistrates will not have the power to go behind the law: they will simply interpret the law in legal language—they cannot go beyond that and examine the policy of the law, or say that they will apply it in a special manner in a particular case. I have already drawn the attention of the Hon'ble Members to the fact that in England Lord Ellenborough declined to apply the existing conspiracy law to a number of people who combined to commit criminal trespass upon another man's field, namely, by sporting on it. There were not the two elements, that is immorality and injury to the public, and though the case was matter which might furnish a basis for a civil action he declined to say that a combination to commit a civil action under the particular circumstances was a conspiracy. Lord Halsbury approves of this decision, and says that this is sound law. It is important to remember that in the 'Laws of England' by Lord Halsbury the date is given in each volume. Now in this volume from which I am going to quote the date given is August 10, 1909. Therefore the observation made relates to the law as it was in force up to August 1909. The decision in R. *versus* Turner was no doubt disapproved in R. *versus* Rolands on

the ground that the facts in R. *versus* Turner amounted to conspiracy to commit an indictable offence. But, observes Lord Halsbury, in R. *versus* Rolands, no opinion was expressed on the dictum of Lord Ellenborough. What I mean is this: The disapproval did not relate to the proposition of law maintained by Lord Ellenborough; but the disapproval implied that he was wrong in saying that the facts in the particular case did not amount to an indictable offence. And so the distinguished author of this book says that the proposition of law in R. *versus* Turner, namely, that people going into another man's field for the purpose of sport without the man's consent would certainly not be guilty of an indictable offence in England, although the act would be matter for a civil action; but the combination to sport upon another man's field without that man's consent would be an indictable offence under the proposed law here. There is no remedy for it. There is one instance among many I shall cite. I will recall to the attention of Hon'ble Members another observation I have already made, that is, that the criminal branch of this common law in England could not easily be codified. I alluded to an observation made by the Commission that unless this branch of law was taken to pieces, and a reconstruction made out of the materials, reform was impossible. Now you will easily agree with me that this law is not worth importation into this country from the above fact and also from the fact that this conspiracy law has been codified in England in so far as employers and workmen are concerned. Employers have immense power there, and employers and workmen have saved themselves from the operation of the conspiracy branch of the common law, and they have now a Statute applicable to them. Thus the conspiracy branch of the law is no longer applicable in England to confederacies by workmen and to confederacies by employers. They have saved themselves by a special Statute. The gist of the offence of conspiracy is this, that whereas acts done by a single individual or by individuals are not necessarily criminal even though improper, yet the same acts, when agreed to be committed by a plurality of men acting in concert, become conspiracies as then the danger to society arises—that is the gist of what is called Conspiracy Law. In the case of the Statute applicable to employers and workmen in England, that principle is taken away so that the law is much less rigourous and much more guaranteed to safeguard organizations among employers and employed in England. Combinations to keep down wages, to compel workmen to continue to work on the same wages, and as a counterblast to strikes by them are no longer offences. On the other hand, strikes by workmen, combination by workmen to raise wages to better their condition, and things of that sort have also been removed from the purview of the common law in England. Now what have we here corresponding to the law applicable to employers and workmen in England? None. In England, employers and workmen have power; they have secured immunity from the common law of England notwithstanding that Judges, great Judges, are adapting the common law to the needs and circumstances of modern conditions. But what have we here? There is no such provision, no safeguard: organizations of employers and workmen in this country where industry is in an infantile condition are absolutely new; at the same time they have no such protection as have been secured by employers and workmen in England. As the law will now stand our merchants, manufacturers and workmen have absolutely no protection similar to that accorded in England, hence I submit that this measure, which indeed is a law which is intended to affect all classes of people, needs examination, scrutiny and criticism by the public. This has been for some reason or other not allowed in the present instance. Therefore I beg Hon'ble Members to proceed with this instalment first, namely, that the proposed law may at first be confined to what are called State offences and offences against the Army and Navy, and such other offences as Government might think to be of a political nature. I have already said that there is absolutely no connection whatever between the proposed law and what is called the existing political situation. It may be our standpoints are different. While I adhere to that view, I propose this amendment as a sort of compromise. I do not recede from the position that the political situation, whatever it may mean

does not stand in any need of such law; but in the nature of a compromise I propose this, as several distinguished colleagues of mine among the non-official members believe that this is very necessary to meet the present political situation, as they say: in view of this feeling I have proposed this. Dealing as it does with State offences, with offences against the Army and Navy and of a political nature, and if this will enable Government to meet the present political situation, I do not wish to stand in the way of its securing a law to that extent, and to that extent only and no more, if the present political situation really demands such a law. Then I have added that Government might have power from time to time to add to the list of offences which I now propose in the amendment, such offences as in its wisdom it considers to be of a political nature. Suppose we have dacoities taking place and Government came to the conclusion that they are not ordinary dacoities, that they are not what I may call hunger dacoities, but what I shall call political dacoities; if Government comes to the conclusion that certain dacoities are committed for the sake not of hunger but to terrorise the people and to make them join in a political conspiracy, or to get money for any political purpose, the border line between such offences and what are actually called State offences may be very little; I leave the discretion to describe such offences as political to the Indian Government. So my amendment gives power from time to time to the Indian Government to add to the list of these offences, offences against the State and the Army and Navy, such other offences as it may deem proper to designate as political offences. This, I submit, must be absolutely satisfactory if the Government means at this time that additional power is a political necessity, and if Government means exactly what it says, and if there is nothing more behind, this amendment must satisfy them and all persons who think it is their duty at this crisis thus to arm Government. With these words, I leave my amendment in your hands."

The Hon'ble Malik Umar Hayat Khan:—"Sir, I divide what I am going to say into two parts: First, the requirements of the country from the ordinary point of view. Second, well, the present law as used in India is taken from the Roman law and it was taken in England. People, I believe, were in a certain stage of development. This law has been devised for India. It was done by the English people and done on this present basis. That is the law we have been hearing discussed here. I think that law is suited to those countries. In a poor country like this we have to devise our own laws for certain particular times. I always hear the police being run down because they don't help the public. The law does not suit our requirements. If a man is to give evidence he has to go through three different Courts. There are able lawyers who after cross-examination break down his evidence at once. Under the ordinary law the evidence of people can easily be broken down. I think if this Conspiracy Law comes in, it will be just the same. In this country I think neither the police are to blame nor the public. Why should we have such laws as do not suit our requirements or the requirements of our country? Why should we discuss English law and Roman law and those things which happen in England? They do not happen here. We want it for such things as happen here. That is what we are trying for now. I think anything which relates to England, Rome, and perhaps Russia, does not suit us. That is why I oppose this amendment."

The Hon'ble Babu Surendra Nath Banerjee:—"May I be permitted to call attention to the fact that the amendment which stands in my name practically covers the same ground as the amendment of my Hon'ble friend?"

The President:—"Order, order. When you come to your amendment, you will be able to deal with it."

The Hon'ble Sir Reginald Craddock:—"Sir, I am afraid the Government cannot possibly accept the amendment proposed by the Hon'ble Member. His amendment is that in place of the words 'an illegal act,' should be substituted those sections of the Indian Penal Code which relate to offences against the State and against the Army and Navy. He refrained entirely in pressing this amendment from justifying or explaining why conspiracies should be confined only to those offences and not to serious crimes of a general kind. He gives no reason why he would not include such crimes as murder, robbery, arson and all the other serious crimes which are to be found in the Indian Penal Code. What he did do was to stray somewhat from his subject, and inform us that in England legislation had been enacted to save from the conspiracy laws combinations of workmen to secure higher wages, and so forth. He strayed in fact from the illegal act which was in the clause, and which it was his proposal to delete, to the second part of the section which deals with legal objects to be attained by illegal means. On that second point there are other amendments on the agenda, in speaking to which it will be possible to discuss the question of these other acts which are not offences, and as to the reasons why they should be included in this law. But I would only remark that, if at any time after this law were passed, it should be found that there were organisations of employers or of servants which were formed and managed on lines similar to those in England, no doubt at that time similar measures might be taken to provide for such exceptional cases: at present they do not exist. I would prefer at this stage to confine my remarks simply to the strict lines of the Hon'ble Member's amendment, which is that, in place of the words 'an illegal act,' offences against the State and the Army and Navy alone should be made conspiracies. When I introduced this Bill into the Council, I explained carefully that it was not merely in the interests of the State that it was proposed to amend the law relating to conspiracies. The interests of the State were no doubt concerned, and the fact that conspiracies of a political nature have been abroad in the land was true, and even since the day that I introduced the Bill fresh papers have come into the possession of Government on the same subject. It is true that there were and are such conspiracies, and that the State also will benefit by the enactment of this law. But the main object of this law, as I explained at length in Council on that day, and as I understand Hon'ble Members fully grasped, was that there was a gap in our criminal law, and by means of that gap criminals were able to plot together to commit the most heinous crimes with impunity, unless they proceeded to carry out the crimes themselves or do some overt acts in pursuance of those crimes. The amendment, therefore, which the Hon'ble Member has proposed, will strike at the roots of the whole Bill the principle of which was approved in this Council, and would emasculate it entirely. It would not fill the gap on which I have laid so much stress, and to fill which I understand the Council fully acquiesced was a necessary measure.

"For these reasons, Sir, Government cannot possibly accept the amendment proposed by the Hon'ble Member."

The Hon'ble Mr. Vijiaraghavachariar:—"The Hon'ble the Home Member says that I gave no reasons. I confess that I could not be longer and give more reasons than I have been able. Strong opposition is only possible where there is stamina for an attack. You cannot cut a hair with a big sword. Now I wish to know what are the reasons given for the inclusion of this clause in this Bill. Where no reasons are given it is extremely difficult to assign many reasons by way of opposition to a measure not based upon much reason. All that the Hon'ble the Home Member said was that modern conditions and dangerous conspiracies require this drastic measure, but beyond that absolutely no reason has been vouchsafed to me or to the Council as to how the existing law has been found insufficient to cope with the alleged situation. I asked for information over and over again, and no information has been vouchsafed to me. Now the one important reason I gave is this. If this is intended to fill up a gap which has existed in a law nearly a century

old from its conception and origin and over fifty years old since it was matured and completed, I ask why could not we wait a few months more, take the country into our confidence, circulate the Bill and ask for information and opinions? Why should we not adopt the usual method of procedure adopted in legislation? No answer has been vouchsafed up to this date, and yet the Hon'ble the Home Member says to-day that I have brought forward no reasons for confining the law to the most serious offences and excluding these other offences and acts. I have distinctly stated in my remarks, as well as I was able, that I want to limit the operation of the measure in view of a feeling genuinely existing among my Hon'ble colleagues, especially the non-official members, that it is necessary to arm Government with additional powers just now. Now I said that in justice to them and in view of their feeling, that I have introduced this amendment. I cannot give a greater reason than that.

"As to the other portion of the reasons, it is extremely desirable in all civilised countries that no legislation should be sprung like this upon a people. Among the fundamental principles of legislation from the days of the Twelve Tables is the doctrine of promulgation; and with this doctrine of promulgation is closely connected the important doctrine that ignorance of law is no excuse by way of defence for the commission of an offence. Now what happens if you pass this Bill to-day? To-night you can have up and punish a man for conspiracy at Tuticorin. How are people at Tuticorin to know this law, unless there has been sufficient previous promulgation? Promulgation implies a lot of circumstances, among which are publication, circulation and free public discussion before a measure becomes law. You pass this law to-day and to-morrow a policeman at Tuticorin, or at the extreme eastern end of Burma, could arrest people for conspiracies as they will be liable from the day on which the law comes into force. Where is the principle of promulgation here? The very alphabet of the fundamental doctrine of promulgation is violated in springing laws of this kind upon three or four hundred million people who belong, under God's providence, to His Majesty King George. I ask you to limit and to confine the law to meet the alleged political situation: and as to the rest, to wait for a little and to take the country into your confidence. And the Hon'ble the Home Member says that I have given no reasons. Sir, in my conscience I have given reasons which satisfy me."

The amendment was put and negatived.

The Hon'ble Mr. Vijiaraghavachariar:—"Sir, I beg to withdraw the next amendment, namely:—

'That in sub-section (2) of the same section (120A) for the words 'an act which is not illegal by illegal means,' the words 'to overawe by criminal force, or show of criminal force, the Legislative or Executive Government of India, the Government of any Presidency or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant' be substituted.'

It is more or less consequential upon the first amendment that is intended to give additional power to Government. I, therefore, beg to withdraw".

The President:—"The amendment standing in the name of the Hon'ble Mr. Vijiaraghavachariar is by consent withdrawn."

The Hon'ble Babu Surendra Nath Banerjee:—"Sir, I have the honour to move—'that in the same section for the words 'an illegal act' in sub-section (1) the words 'any offence against the State other than that provided for in sections 120 and 121A of this Code, or any offence against the Army or Navy,' be substituted, and the word 'or' in sub-section (1) and in sub-section (2), the proviso and the Explanation, be omitted.'

"Sir, the object of this amendment is to confine the scope of the Bill to offences against the State and against the Army and the Navy. Sir, it will be in the recollection of Hon'ble Members that when this Bill was discussed on the 5th of March last, some Hon'ble Members who supported the Bill—I think

[19TH MARCH, 1913.] [*Babu Surendra Nath Banerjee.*]

I may mention the names of the Hon'ble Mr. Jinnah and the Hon'ble Mr. Sita Nath Roy—held that the measure ought to be confined to State offences, and to be limited to a definite point of time. I do not go so far as that. I accept only the first part of their suggestion. Therefore, Sir, looking at the matter from that point of view I claim that my proposal is a modest one, more moderate than what some of the supporters of the Bill have proposed. Sir, it has been said in the Statement of Objects and Reasons that experience has disclosed the existence of dangerous conspiracies. Now, Sir, if there are these dangerous conspiracies directed against the safety of the State, I am sure they would be matters of the gravest public concern, and any reasonable proposal to cope with the situation and treat it as a tentative measure would, I am quite sure, meet with the unstinted support of public opinion. But, Sir, no evidence whatever has been laid before us to show the existence of these dangerous conspiracies. Nevertheless, inasmuch as this Council has accepted the principle of the Bill, we must deal with the situation such as it is, and my amendment is in the nature of a compromise on the part of those who are opposed to the Bill, opposed to its principles and opposed to its details. Sir, the Hon'ble Home Member, in introducing the Bill, referred to the dacoities in Eastern Bengal as justifying the ample scope given to it. Sir, speaking as a native of Bengal, I say this, that we deplore these dacoities. I would even go further than that, we are ashamed of them. They constitute a reflection upon the peaceful and law-abiding character of our people. We are the greatest sufferers from these dacoities; our countrymen, our kinsmen, our friends and relations are looted, plundered and sometimes murdered. We would do anything to suppress them, and if the Government could bring forward a reasonable measure for the suppression of these dacoities I am sure public opinion in Bengal would hail it with acclamation. But, Sir, is the Hon'ble Member in charge of the Bill quite sure that if this Bill be passed into law the police will have been provided with an effective remedy for the suppression of these dacoities? I think, Sir, if we analyse the situation, we should be precluded from indulging in this somewhat pleasant anticipation. Overt acts have been committed in the full blaze of publicity—dacoities cannot be committed in secret—and the culprits have not been traced. And now you propose to enact a law which will make, not overt acts, but the designs to commit dacoities which are secret things, and the combinations to commit dacoities which are also secret things, punishable, and you hope with the aid of this law to ferret out the conspirators and their secret dens. The overt acts elude the gaze of the police, but armed with this law, it is expected they will be able to discover the conspirators and their designs. It seems to me to be altogether a vain hope. The overt acts are not brought home to the culprits, but the designs which are impalpable, invisible, areal things are now to be discovered with the aid of this law. Sir, Parliamentary Statutes can no more make men moral than a law of this kind is likely to invest the police with greater efficiency than what they now possess. I am reminded in this connection of a beautiful passage in Burke's Reflections on the French Revolution, where the great orator refers to the newly elected members of the French National Assembly. Speaking of them he says that the mere fact of their being members of that Assembly did not confer upon them gifts which nature had not bestowed upon them with her ordaining hand. Sir, you may exhaust the resources of your legislative wisdom, pile weapon upon weapon, and you will not have sensibly added to the efficiency of the police. It is not a new law, but greater detective ability that is wanted, and if the police could detect even a sensible proportion of these crimes and punish the offenders, I am quite certain that these dacoities would be reduced in number and gradually disappear. But I have heard it said, said with some show of reason, and said with absolute show of confidence, that dacoity is about the safest crime to commit in Eastern Bengal. A law of this kind is not what is needed to cope with the situation, and as it seems to me to be associated with powers which may prove formidable weapons in the hands of unscrupulous men, I think it is the duty of us patriotic citizens to restrict its scope as far as we may.

"With these words, I venture to move the amendment which stands against my name."

The Hon'ble Mr. Syed Ali Imam :—"Sir, the amendment proposed by the Hon'ble Mr. Banerjee goes to the very root of this Bill, and it seems to me that, if this amendment were accepted, we should be practically wrecking the whole Bill. The Hon'ble Mr. Banerjee has, in his criticism of this measure, and in support of the amendment that has been put forward, said that the offence of dacoity is a grave one, and that the dacoities that have been committed in East Bengal have reflected a great deal of discredit upon our country. The Hon'ble Member has very rightly deplored the state of affairs at present existing in Bengal and elsewhere. In that sense of shame to which he has alluded, I take a share, and I venture to think a very large share; but I feel that the mere sense of shame or self-abnegation is not of very great help to us in really coping with the situation. We have to consider as to whether or not it is possible for this Council to do more than merely deplore these unfortunate occurrences that have taken place in Bengal. The Hon'ble Mr. Banerjee does not stop there. He suggests—and from his point of view he thinks that the suggestion is sufficient—that the Bill should confine itself to only such aspects of crime as have already threatened the country. He therefore thinks that the deletion of the words that, in the clause, relate to conspiracies that have for their object the commission of an illegal act, or a legal act by illegal means, is justifiable, inasmuch as he thinks it is premature to embark upon legislation of this kind. He goes further and he says that, not only the deletion of those words is necessary, but also that the conspiracies under consideration should be confined only to such offences as are somewhat loosely termed of a political nature.

"I feel satisfied in my mind that the Hon'ble Member is anxious to give us help, but is doubtful as to the exact extent to which he should accord his support to the Bill. I should be failing in my duty if I did not place before the Council certain considerations that strike me as exceedingly relevant to the conspiracies under discussion and covered by his amendment. I venture to think that dacoity or murder—heinous crimes as they are—do not exhaust the list of crimes that may be the object of such conspiracies as have arrived at a determined resolution to make administration impossible. It is not really so much the gravity of the substantive crime which really is the issue before the Council. It is the question of combination which is the real element of difficulty before us. Whether it is murder or any other offences that are so many offences affecting the human body, whether it is dacoity—or any other offences that relate to property, or there be offences which do not even relate to these things, that is either the human body or property, but relate to other rights—for instance, religion or public tranquillity, and various others that matter so much as the combination to commit them. Well now, if the only standard were the heinous nature of the substantive offence, there would be a great deal of force and strength in the remarks that have fallen from the Hon'ble Mr. Banerjee. But the crux of the whole question does not lie in the nature of the crime which is the substantive offence, it lies really in the question of combination. For instance, if for one moment we were to examine the question in this light—that a combination exists, and that combination has for its purpose an offence which is neither dacoity nor murder, such a combination as that, it is conceivable, can make administration impossible. Of late we have had some evidence of the character and force of combination. If there be a strong combination to commit a very simple offence, such a simple offence as, for instance, defiling the supply of drinking water, it is impossible to exaggerate the gravity such a conspiracy may develop. Supposing there was a strong combination, and a number of misguided young men were determined anyhow to bring about an intolerable state of affairs in regard to an important supply like this—a supply of good drinking water to a town—they would thereby by the mere combination, be not only committing what is after all not a very heinous crime in the Code, inasmuch as though it is cognizable by the police, but is punishable by considerably less than two years of imprisonment, but by the combination itself they would make the prevention of the commission of the principal offence itself almost a hopeless task. The gravity of the offence of conspiracy

does not so much lie in its object or the character of the crime which is its object: it lies in the matter of combination, and that is the difficulty with which we are concerned. We thankfully receive the help that Mr. Banerjee gives us by conceding that there is need for putting a stop to combination for murder and dacoity. We say, on the other hand, that there is also a need of action of the same sort, not only in respect of murder and dacoity, but in respect of various other crimes that are in themselves very small; but when they are the subject of a combination, they assume proportions of a very grave character. Similarly, take the other aspect of the case, that is conspiracies that have for their object either an illegal act or some illegal means to effect that object even if it is legal. It seems on the face of it to be a very simple matter. It seems as if this Council was taking a leap into the unknown, that it was trying to force upon the country a law that is full of coercion. I submit there is no such thing at all so far as the provisions of this Bill go. Is there any offence more serious than combination? Take into consideration the case of a combination against an individual. If an individual is tyrannised by another, it is possible for him to cope with the situation; but when a number of men combine and the enemies of this man are multiplied, and a strong combination is made against him, then it has been found from experience gathered in all civilised countries that it is almost impossible for him to resist a combination like that unless the State comes to the rescue of the unfortunate man. The Bill should therefore be examined from this point of view. It is a law distinct in itself because of the matter of combination, and not because of the object of that combination so much. It is in that aspect that we have to regard this Bill, and from that point of view that the importance of the Bill as a necessary measure for the safety of the public has got to be considered. I may here also assure my Hon'ble friend Mr. Banerjee that any sense of danger has been very largely set at rest by the protective provisions that have been introduced into this Bill. It was observed not very long ago when the last amendment was moved, that if to-day this Bill is passed, and if a conspiracy with an illegal object—illegal other than crime—is committed to-morrow, a man at Tuticorin might be arrested by the police. I venture to think that in that observation one aspect of the Bill has been completely overlooked—that is, that in such conspiracies as those, the Local Government, and no less than the Local Government, must first have given its sanction before a prosecution can be started; and that conspiracies of that kind under the Bill have been put completely out of the reach of the police. Therefore the public does not stand in any danger of being interfered with by the police; nor is it in the hands of any unscrupulous person to start a prosecution like this without permission from Government. Therefore the immunity that is secured by this Bill is very large. It is not that the Bill when passed will throw the country at once into the difficulties that on account of misconception I fear are apprehended. No real ground for such anticipations exists. Sir, it seems to me that if we were to take away from this Bill the very important provision regarding conspiracies with objects which may be legal but to be attained by illegal means or with objects that are illegal or if in any way the operation of the Bill with reference to such conspiracies as have offences for their object be reduced, in either of those cases we shall be taking away from the usefulness of this measure very largely, and I may remind the Council that on the first day when this matter was considered, this the real principle of the Bill was accepted by an overwhelming majority. Under these circumstances, Sir, I do not think that I can accord my support to the amendment that has been proposed by the Hon'ble Mr. Surendra Nath Banerjee."

The Hon'ble Sir Reginald Craddock:—"Sir, I only rise to say that Government cannot possibly accept this amendment, which practically amounts to the same amendment as was negatived just now, namely, that offences of criminal conspiracy should be confined to offences against the State. I have already explained to the Council that the whole object of this proposed legislation is not merely protection of the State, but the protection of Society. It is obvious therefore that a limitation such as that proposed by the Hon'ble Member

practically does away with the whole measure. With reference to two or three remarks made by the Hon'ble Mr. Banerjee, I should like to say, in the first place, that he has never explained why he is so anxious that conspiracy to commit serious offences should not be punished. He wishes us to limit it simply to those State offences; at the same time he tells us that the measure is useless; that the measure is of no advantage whatever in detecting crime. I have never said that this is a law of procedure which gives drastic powers for the detection of crime, but what it does do is that it will enable us to punish those conspirators when we have got them. We may not be able to catch them as fast as we should like to, but when we find that our law will not be able to punish them when we do catch them it is full time that we should amend that law.

"For these reasons, Sir, it is quite impossible to accept the amendment proposed by the Hon'ble Mr. Banerjee."

The Hon'ble Babu Surendra Nath Banerjee:—"Sir, nothing could be more courteous or luminous than the observations of the Hon'ble the Law Member in reply to the remarks which I have felt it my duty to lay before the Council. We are grateful to the Government for the concessions which have already been made, and I will at once admit that they give us substantial guarantees in reference to the offences to which they apply. But, Sir, with reference to the more serious offences, cognisable offences of a grave character, the power of the police remains unrestricted; and it is here that we spy danger. Sir, the Hon'ble the Law Member has told us that the crux of the matter lies in combination. A number of young men may combine for the purpose of defiling the supply of water to a town. I readily admit that that would be an exceedingly serious matter. I am not aware that any such attempt has ever been made, perhaps a report on the matter may have come from the Criminal Intelligence Department, and may be in the archives of Government, but so far as the public are concerned, we have never heard of any attempt of the kind in any part of India conceived and concocted by any one. Be that as it may, my contention is this, that you have not been able to detect overt acts; tangible, visible, palpable, committed day after day, night after night, before your eyes, your police have exhibited an extraordinary amount of inefficiency in dealing with these offences. And now you think that you might be able with the aid of this law to deal with combinations which may or may not be attended with overt acts, combinations confined to secret designs and the machinations of evil-minded persons. This seems to me to be altogether irrational and not justified by our knowledge of life and the experience of life. It is because I feel with all the weight of my conviction, and it is shared by a very large section of my countrymen, and it is because I feel that this Bill will be infructuous for the purpose for which it is intended, and may prove mischievous in the hands of unscrupulous and designing men, that I have felt it my duty to offer my opposition to it. Could I be persuaded for one moment that it would go even a little way towards the eradication of these combinations, towards the suppression of these dacoities, I would have accorded my whole-hearted support, and would have asked my countrymen with what influence I may command to do likewise. It is because I feel that this Bill will be infructuous and even harmful, that we have felt it our duty to offer this opposition in this Council."

The Hon'ble Sir Reginald Craddock:—"Sir, I just want to remark that Government are perfectly prepared to take the risks of the measure being infructuous. The Hon'ble Mr. Banerjee need not be anxious about that point in opposing the Bill. I ask that the amendment be put."

The amendment was put and negatived.

The Hon'ble Babu Surendra Nath Banerjee:—"Sir, I beg to move that in sub-section (1) of the same section (new section 126A), for the words 'an illegal act' the words 'an offence' be substituted, and in sub-section (2) for the words 'by illegal means' the words 'by means amounting to an offence' be substituted, and the proviso and the Explanation be omitted.

[19TH MARCH, 1913.] [*Babu Surendra Nath Banerjee; Sir Reginald Craddock.*]

"Sir, the object of this amendment again is to restrict the scope of the Bill. The word 'offence' is defined in the Penal Code. The definition of offence in the Penal Code is sufficiently wide. It is given in section 40 of the Code. It includes anything punishable by that Code or by any local or special Act. It seems to me that this is a sufficiently wide and liberal definition. Sir, in moving this amendment, I am following the lines of a recommendation made by a great authority whose name, I believe, has been quoted by the Hon'ble Member in charge of the Bill in support of this measure, namely, Sir FitzJames Stephen. Sir FitzJames Stephen wrote an important Digest on the Criminal Law of England. It is a work of great authority, a standard work in which he foreshadowed the lines of the future codification of the English Criminal Law. Sir FitzJames Stephen thus defined criminal conspiracy at page 29 of the Digest: He says 'when two or more persons agree to commit any crime, they are guilty of a misdemeanour called conspiracy, whether the crime is committed or not.' Therefore, I claim for my amendment that it is in accordance with the views of so great an authority as Sir FitzJames Stephen. Sir, I quite admit that the English law is wider, but I do not overstate the fact when I say that eminent English jurists have condemned the all-comprehensive character of the English law as regards criminal conspiracy, and the trend of modern parliamentary legislation has been distinctly in the direction of restricting its scope. Thus, for instance, by the Statute of 1875, to which reference was made by the Hon'ble Mr. Achariar, combinations for trade purposes were withdrawn from the purview of the criminal law of conspiracy, and it has to be borne in mind that this was done not by a Liberal administration wedded to ultra-radical views, but by a Conservative Government under Mr. Benjamin Disraeli.

"Sir, if you do not confine the provisions of this Bill to offences, I ask, have you got the machinery for the trial of these cases? If conspiracies under this Bill are to range over the whole field of civil law, I ask where are the Magistrates to try them? Your Magistrates are familiar only with criminal cases. I do not think they will form competent tribunals to deal efficiently with cases of this kind. And, Sir, let not the impression go forth that a new species of offences has been created which the tribunals of the land are unable to deal with by reason of their want of knowledge and experience Such an impression, if it were to go forth, would be disastrous to the best interests of the administration, for it would give a shock to that sense of confidence which is justly felt in our judicial system.

"With these words I beg to move the amendment which stands in my name."

The Hon'ble Sir Reginald Craddock:—"Sir, in this amendment the Hon'ble Mr. Banerjee wishes us to confine the offence of criminal conspiracy to cases in which the objects of the conspiracy and the means to be employed constitute offences. In other words, if you want to persecute a man, in order to make him do something that he is not bound to do, you will be allowed to do so, provided that you take care that you commit no offence in doing so. There are many ingenious ways, short of criminal offences, by which men can be driven to abandon their rights in desperation. We have no desire to put a premium upon the ingenuity of would-be persecutors who wish to combine against an individual or against a class of individual to deprive them of their rights or to drive them to abandon their rights. The Hon'ble Mr. Banerjee has quoted Sir James FitzJames Stephen. I can also quote from the same eminent authority. He writes, 'There is more harm than good in telling people how far they may go in pursuit of an unlawful purpose without risk of punishment.' We have taken as our model here the English Common law, and we do not wish to depart from that model. We do not want to encourage persecution by indicating what persecution can be legally conducted and what cannot. We stand upon the definition of 'illegal' as defined in the Indian Penal Code. The law is the English Common law, and it will be interpreted and applied to individual cases as it has been inter-

preted and applied in England. It is not for us here to propound in this Council all sorts of legal conundrums as to what particular acts would constitute conspiracy or offences, or what would not. If we adhere to the English Common law, and to our own definitions as embodied in the Indian Penal Code, we shall be on the safest ground on which it is possible for us to rest. Our business is to see that combinations to do wrong are checked whenever they amount to a public danger, and we are legislating in this Bill to check such combination by a law which has stood the test of application and interpretation for centuries in England, and we are using terms which the existing law has adequately defined. Well-disposed and law-abiding persons need have no fear from this law. They are not the persons who desire to embark upon doubtful enterprises of the kind aimed at. If they are acting in a *bonâ fide* belief of their rights, they are protected; they have nothing to fear. The chances of injudicious prosecution have been reduced to the vanishing point by the provision that no such prosecution of cases in which offences are not concerned can be instituted without the sanction of the Local Government.

"Sir, I do not know how I can better describe the exact position than by the use of certain words of Hindustani which will be familiar to most of the Members of Council. The kind of persecution that you want to get at is that defined by the word so well known to everyone of 'zoolam'. We all know in India the term 'zoolam', oppression, 'zalim', the oppressor, and 'mazlum', the oppressed. Mr. Banerjee wishes to confine the operation of this law to that kind of 'zoolam' which is defined as 'jurum' or crime. We want to keep it not at 'jurum', but to embrace 'zoolam', which will cover all the kinds of persecution which this law intends to provide against, and which are well understood in this country. Sir, we want no form of licensed 'zoolam' in this country, and we are not prepared to sacrifice the interests of the oppressed to the interests of the oppressor. I cannot accept this amendment on behalf of Government."

The Hon'ble Babu Surendra Nath Banerjee:—"Sir, I just want to say one word by way of reply. The Hon'ble the Home Member has been good enough to tell us that the object of the law is to protect private persons against 'zoolum.' Now is that the function of the State, and if it were so, would the State be successful in performing this self-imposed task? Sir, these are matters which are very well left to private persons themselves. There are secret, insidious methods of private persecution which I think even the long arm of the State would never be able to reach, and which in making the attempt to reach, the State would involve itself in infinite difficulties, and give rise to a considerable amount of hardship and oppression committed upon innocent persons. Sir, my Hon'ble friend is unacquainted with the complexities of our social system, and with the various forms of social boycott which we are in a position to practise upon innocent persons if we are so minded. I am perfectly certain that, with the aid of the law, an inconceivable amount of hardship would be committed upon innocent persons by machinating and evil-minded individuals. I do not think I need say any more in defence of the amendment."

The amendment was put and negatived.

The Hon'ble Babu Surendra Nath Banerjee:—"Sir, I beg to move that in sub-section (1) of the same section, for the words 'an illegal act' the words 'an offence or a malicious wrong to any person or the public' be substituted, and in sub-section (2) for the words 'illegal means' the words 'means amounting to an offence or to a malicious wrong to any person or the public' be substituted."

"Sir, the Hon'ble Member in charge of the Bill was good enough to say, I think in reply to my observations, that he takes his stand upon the Common Law of England. Well, Sir, I meet him on that ground here, so far as this particular amendment is concerned. It follows closely the Common Law of England, much more closely than the Bill itself. Sir, the constituent

elements of an act of criminal conspiracy are laid down by Dr. Kinney in his 'Outlines of Criminal Law.' "

"These constituent elements are first an act of agreement, secondly an agreement between two and more persons, husband and wife being treated as one person in the eye of the English law. Lastly, it must be an agreement for an unlawful purpose. The expression 'for an unlawful purpose' has not been defined by any great English authority. Dr. Kinney says that it is a unique phrase, but he analyses what an unlawful purpose is, and gives us its constituent elements. In the first place, an agreement for an unlawful purpose is an agreement to commit a substantive crime, that is one element. An agreement for an unlawful purpose is to commit a malicious tort, not tort or civil wrong of any kind, but there must be an element of malice. Thirdly, it must be agreement to commit a breach of contract causing some public injury, not any kind of breach of contract; and lastly, it must be an agreement to commit acts grossly immoral. Now, Sir, I venture to submit that my amendment follows closely the lines of the English law upon which the Hon'ble Member in charge of the Bill takes his stand. Sir, our expression in the Bill is 'illegal act'. The word 'illegal' is defined in section 43 of the Indian Penal Code. It includes an offence; it includes whatever is punishable by the law, and lastly, it includes whatever furnishes ground for civil action. It will be seen on comparison that the Indian expression 'illegal act' is much wider than the English phrase used in the Common Law, 'unlawful purpose.' Let me take one or two illustrations in support of the view which I have ventured to put forward. An agreement to commit a civil wrong comes under the purview of the Bill. An agreement to commit a civil wrong, a tort, will not come under the purview of the English law, unless and until the element of malice is associated with it. An agreement to commit a breach of contract comes under purview of the Bill; an agreement to commit a breach of contract does not come under the purview of the English law, unless it is attended with injury to the public. Therefore, Sir, it is obvious that the Indian expression is much wider, and the present Bill is far more comprehensive than the English law is. In the Statement of Objects and Reasons, it was stated that the object of this law is to approximate the Indian law to the law of England, and you have just had the statement repeated by the Hon'ble the Home Member, that he takes his stand upon the English law. Therefore, Sir, I claim that my amendment is more in conformity with the English law than is the Bill, and as such it should be accepted.

"Not only that, Sir, the Hon'ble Member who, I am afraid, is not sufficiently acquainted with the complexities of our social system, has no conception of the amount of hardship, of the powerful engine of oppression which this Bill will prove to be in the hands of interested persons as a means of wreaking vengeance upon their neighbours. I make this statement, not on my own authority, but on the authority of a legal journal of the highest weight and importance. That journal is the 'Calcutta Weekly Notes.' My Hon'ble friend, the Law Member, is well acquainted with that journal. This is what the 'Weekly Notes' says:—

'Take the very common instances where matrimonial matches are made or broken off in this country. In the former case misrepresentations are often made, which may not amount to cheating, but may all the same amount to fraud, whilst in the latter, things may be said by the parents of the bride or bridegroom, which may amount to slander or libel. The persons who have agreed amongst themselves that the match should be brought about or broken off would surely be chargeable with criminal conspiracy under the new law. The husband and wife in this country are not one person as they are in the contemplation of the English law. So these two persons or their relations or friends on whose advice they have acted may be harassed in the criminal Courts by the parents, relations or friends of the disappointed father. People resent such disappointment much more keenly in this country than perhaps in any other.'

"I know what reply will be given to this statement, namely that sanction would be required, but such sanction is to be given by an individual officer, and we are all liable to make mistakes, and he may abuse his discretion, misapply it, wrongly use it, and then the peace of families might be disturbed.

"Sir, it is a very serious matter, and therefore I earnestly appeal to the Hon'ble the Home Member to accept this amendment which is much more in conformity with the Common Law than the Bill is, and which, if not accepted, would allow the law a comprehensiveness which would be injurious to the best happiness and contentment of many Indian families."

The Hon'ble Mr. Kenrick:—"Sir, the amendment which has just been proposed by the Hon'ble Mr. Banerjee is one of a highly technical nature. It is at the same time one of substance, and it seems to me that it deserves an answer. This proposed amendment is one of some subtlety, and its true purport does not appear upon the surface. Now Mr. Banerjee proposes to substitute the words 'an offence or a malicious wrong to any person or the public' instead of the words 'an illegal act' in the Bill as drafted.

"Now I shall make it perfectly clear to the Council that to accept this amendment would be to raise gratuitously difficulties of construction; not only that, but very distinctly to limit the scope of the Bill. The reason that the words 'illegal act' are used in the definition in the Bill is simply this because they are appropriate inasmuch as they have received definition in the earlier portion of the Penal Code. The term 'illegal act' is defined in section 43 of the Indian Penal Code. The word 'illegal' is defined as being applicable to everything which is an offence or which is prohibited by law, or which furnishes a ground for civil action.

"On the other hand, the words which the Hon'ble Member proposes to substitute, namely the words 'malicious wrong' would require special definition in the Penal Code. There is at present in the Penal Code no definition whatever of the terms 'malice' or 'malicious'; and the Legislature has undoubtedly abstained, and abstained advisedly, from embarking upon the difficult task of a definition of those words 'malice' and 'malicious.' I would remind the Hon'ble Member who puts forward this proposition that the use of the term 'malice' in the English Criminal Law is highly technical. In different branches of the English criminal law the word is used with different significations. The legal conception of malice in the crimes of murder, of libel, of malicious injuries to property differs. The term 'malice' as used in the English criminal law with regard to murder is one of a purely artificial conception. For instance, a man who causes the death of another in the course of committing a felony is said to cause that death by 'malice aforethought.' In other branches of the Criminal Law in England malice denotes simply indirect motive. Again, it is sometimes used as connoting malice in fact, that is direct personal ill-will.

"Now I have just reminded the Hon'ble Member of these various uses of the term in the English law to demonstrate the impossibility of introducing such a term for the first time into the Indian Penal Code, as suggested by the Hon'ble Member. He has said that the definition which he proposes by the use of the word 'malicious' would more closely follow the English Law than the definition in the Bill as drafted. I challenge that directly. It is not so—it is not a fact. The suggestion arises from a misconception of law. Any agreement to cause an injury to an individual or to a class or to the public, whatever be the ultimate object of that conspiracy, is a conspiracy at common law. Any conspiracy whatever, any combination of two or more individuals who form an agreement to do any act causing injury to any person or class of persons or to the public—and that without any importation necessarily of the idea of personal malice—is in English law an indictable crime. It is to incorporate the English definition into the Indian law which is the design of this Bill. The Bill goes no further than the English law.

"Now, it seems perfectly obvious that the object of this proposed amendment is to throw on the Crown in every prosecution for conspiracy the onus of proving malice or personal ill-will by the persons charged with the conspiracy towards the individual or individuals who are the object of the conspiracy. I take it that is the object of the Hon'ble Member's proposed amendment, namely to throw on the Crown in every case of prosecution for conspiracy the

onus of proving direct personal ill-will or malice. Now to import that necessity of proving malice would narrow the scope of the legislation—would narrow it in such a way that it would not co-ordinate with the English law of conspiracy.

"More than that, it would have the effect, if adopted, of restricting the cases in which conspiracies to injure individuals or to injure the public could be prosecuted because it is the English law of conspiracy that an agreement to cause an injury or to do an act by unlawful means is an indictable offence, irrespective of whether malice is or is not capable of being proved. I will just give one illustration. Take the case of persons combining to prevent tenants of a particular land-owner or zamindar from paying their rent to him in order to induce him to do certain things, or to induce him to change his particular views or to induce him to join a particular cause. Now in any of these cases mentioned, personal ill-will or malice towards the land-owner in the sense in which the Hon'ble Member has used the term does not exist and cannot be proved. The case I have put could be, and has been, prosecuted under the English law of conspiracy, and it is to that end that the present Bill, among other matters, is designed. If the amendment proposed by the Hon'ble Member were accepted, the effect would be to exclude the possibility of prosecution of conspiracy in such a case as the one I have put—a case which I venture to think every right-minded individual would see the expediency of proceeding against as an indictable crime."

The Hon'ble Mr. Madhu Sudan Das:—"Sir, I can very well understand, and do really very fully sympathise with, the anxiety of the Hon'ble mover of this Resolution to see that there should not be any such abuse of this Bill when it became law as would cause a disturbance in private social affairs. I can assure him that this anxiety was shared by us when discussing the provisions of the Bill in the Select Committee.

"As regards the remark that the word 'illegal' should be removed and 'unlawful' should be used. I shall point out to the Hon'ble mover that as far as I remember—and I do not think my memory fails me—that he will come across numerous rulings and decisions of the English Courts where the word 'illegal' is used in speaking of these acts. In fact, on referring to these rulings we find that there are more instances in which this word 'illegal' is used than the word 'unlawful.'"

The Hon'ble Mr. Pandit:—"Sir, may I rise to a point of order. Is the Hon'ble Member discussing the particular amendment that has been moved by the Hon'ble Mr. Surendra Nath Banerjee. There is no word 'unlawful' in the amendment."

The President:—"I assume that the Hon'ble Member is leading up to some particular point, and that he will deal with the amendment which is before the Council."

The Hon'ble Mr. Madhu Sudan Das:—"I understood the Hon'ble Member to say that the word 'unlawful' was used in the Indian Penal Code and not used here, but another word 'illegal' has been substituted. That is the point. (The Hon'ble Mr. Banerjee says I am correct there.) Well, 'illegal' is a word which has been used indiscriminately in the English decisions with 'unlawful,' and it so happens that the word 'illegal' is defined in the Indian law, whereas I don't know that either the word 'unlawful' or 'illegal' has been defined in the English law. The word 'unlawful' is used in the Penal Code in that very well-known section on unlawful assemblies. Are we to suppose that it is not there used as synonymous with 'illegal.'? Are we to suppose that when the expression 'unlawful' is used in those sections of the Indian Penal Code it does not mean illegal? The word 'illegal' has been defined, 'unlawful' has not been defined. It comes to this—that in the Penal Code, 'illegal' and 'unlawful' are indiscriminately used.

"Then as regards malice, I think the Hon'ble mover believes that the introduction of 'malice' would be a better safeguard than has been provided for by requiring prosecutions of this nature to be proceeded against with the sanctions added in the Select Committee. Malice is a term which has not been defined anywhere. It is chameleon-like, putting on any colour. We know 'malice propense,' we know 'malice aforethought,' we know 'universal malice'—(that is a law term); and we know natural malice. Now, are we likely to gain by using a term when we do not know what it means? It will, it is said, throw the onus of proof on the prosecution. No doubt it does; but if my Hon'ble friend who moved the Resolution would kindly lend me the book from which he has been quoting I will show there.

"Sir, I cannot at this moment find out a passage which I searched for, but what I mean to say is this, that the onus is on the prosecution, but then we must not lose sight of the principle of law that the law in most cases presumes malice; there is a presumption of malice. The prosecution starts with a presumption in its favour, and often in cases of this nature malice means a state of the mind, it refers really to *mens rea*. There must be a proof of the act before any inference of malice can be made from it. Now if we introduce this into a section like this which deals with conspiracy, then it means this that before you start a prosecution, before it proves any act had been done, you must show actually that there was an intention, whereas if malice is introduced, what will be the result? An act will be proved and then the Court will be asked to presume malice, and the nature of the act itself would show whether that presumption should stand or not. Then as regards social disturbances, the Hon'ble Member has referred to *Calcutta Weekly Notes* and he referred to matches. I believe we tried our best in Select Committee to make these safety matches so that they would ignite without the consent of some Magistrate. Prosecutions cannot be started against these offences without the sanction of Government. It is only with regard to offences of a serious nature in which the police have cognizance that no sanction is necessary. I do not think, Sir, that the introduction of these words would improve the situation or disarm the police, which is so much hated."

The Hon'ble Mr. Syed Ali Imam:—"Sir, the discussion over this amendment has largely centred on that portion of the proposed amendment which runs as follows:—

'To do a malicious wrong to any person or the public.' The Hon'ble mover who is known to be as careful a worker as we can find in the country, has purposely, it seems to me, avoided the use of the word 'unlawful'. If he had used the word 'unlawful' in place of those words that he has put in, namely 'a malicious wrong to any person or the public,' then in that case he would unquestionably have been nearer, in fact identical with, the English law. The various decisions of English Courts, especially those which have been referred to frequently in the discussions here, such as the case of Mulcahy or of O'Connell and in more recent times the case of Leatham, decided by Lord Brampton, show that in all these cases the learned Judges have made use of the term 'unlawful', that is to say, where the object of the conspiracy is unlawful or where the means employed for the purpose of carrying out even a lawful object are unlawful, that conspiracy has been held to be criminal. If the Hon'ble mover had confined himself to the use of the word 'unlawful', there would have been considerable force in his contention when he is asking the Council to accept in respect of this amendment, what is exactly the position of the law according to English decisions. But knowing as we do the critical mind of the Hon'ble Member, I am not surprised that, instead of using the word 'unlawful,' the Hon'ble Member has put in words which bring in the important element of malice and malicious wrong; and in this connection I associate myself entirely with the remarks made by the learned Advocate-General that if these words that are on the proposed amendment were accepted, in that case a narrower meaning would be given to this clause than has been given to the law of criminal conspiracy in England, on the basis of the decisions to which I have

just now alluded. Therefore, it seems to me that the acceptance of this amendment by the Council would amount to narrowing the law down to something which is less than the English law.

"There is another aspect of the question to which I should for a moment like to draw attention, and it is this; why is it that we have preferred to use the term 'illegal' in the Bill to the term 'unlawful'? Well, we have done so because in drafting we generally rely upon such terms as have an exact and known meaning. They are words of art. And here, inasmuch as the word 'illegal' has been defined in the Indian Penal Code, we have relied upon the use of that word. Among other observations that were made by the Hon'ble mover, he was pleased to say that the contention of the Government has been to draw inspiration from the law of conspiracy as existing in England, and therefore we should accept his amendment as that is, according to his contention, nearer to that law. We do not deny that in the framing of this Bill we have, as a matter of fact, very largely drawn from the principles of the law of conspiracy as existing in England; but at the same time I should like to draw the attention of the Council to the fact that, although we have very largely borrowed in principle, we have not been at all forgetful—and that is the most important part of the discussion—we have not been forgetful of conditions that prevail in this country. It has not been a blind importation in regard to this part of the Bill of the principles of the English law of conspiracy. No, what we have done is this that, knowing very well the varying circumstances, the social circumstances and many other variances, we have gone and put in a very important proviso, and that proviso is this, that not only should there be a combination to do an unlawful act, or a lawful act by unlawful means, but that there should be a further condition, a reservation that there should be over and above that an overt act. In this connection we take leave of the English law of conspiracy. The English law of conspiracy makes an offence a complete offence if there is an agreement between two or more, and the object is unlawful, or the means by which that object is to be achieved are unlawful. There the offence committed is criminal conspiracy; but knowing the conditions of India, and knowing the difficulties with which we have got to contend here, we have not rested satisfied with that; we have put in an important provision, and that is, that there should be the necessary element of the overt act. Therefore I may claim that in regard to this part of the Bill, care has been taken to have due regard to the conditions that obtain in my country. But we do not only stop at that. A greater, and larger, and if I may say so, a very important distinction again arises in the fact that not one single case of this kind can be started without the permission, not of a Chief Presidency Magistrate, or of a District Magistrate, but of no less an authority than the Local Government or the Governor General in Council, or of some such officer as the Governor General in Council may appoint in that behalf. Therefore it will be seen that the dangers to which reference has been made are really not by any means so great as they have been painted to be. My Hon'ble colleague, Mr. Banerjee, has drawn pointedly my attention to an article in the *Weekly Notes*. I personally have very great respect for that Journal, which is a very great help in legal circles in throwing useful and valuable light upon difficult questions of law. But I may venture to say that the article to which reference has been made is an article that the very able and learned editor of that Journal brought out at a time when this Bill had not emerged from the Select Committee. It was the skeleton, the original Bill that was introduced, that had been the subject of comment by that valuable paper, and the safeguards that have since been introduced could not have been present in the mind of the writer of that article; therefore, any fear of grave disturbances in the matrimonial markets of India on account of the passing of this Bill need not occupy the attention of the Council, unless, which to my mind is almost inconceivable, a match or a proposed match has attracted such attention as to become so grave and has assumed such public importance that eventually the Local Government or the Governor General in Council is induced to give sanction to the prosecution of people who conspire to unlawfully or illegally effect or frustrate that match. Unless such a case as that arises, I cannot for a moment picture to myself

how any difficulties could be expected to be thrown in the way of good people occupied in the pleasant pastime of match-making.

"Therefore, if the amendment is carefully considered in the light of the English law as understood by the decisions, of the matter of the overt act, and furthermore of the very important provision of the safeguard of previous sanction, and if these matters are given one might, I feel convinced that the Council will, realise that the apprehensions that have been entertained by my Hon'ble colleague have not the same terrors in fact as they have in imagination.

"On behalf of Government, Sir, I am unable to accept the amendment."

The amendment was put and negatived.

The Hon'ble Mr. Vijiaraghavachariar:—"Sir, I beg to withdraw the amendment No. 30 which stands in my name, namely:—

'(3) The Governor General in Council may from time to time, by a notification published in the Gazette of India, add to the list of the offences mentioned in sub-section (1) of this section any other offence or offences which he considers to be of a political nature and may, by a like notification, cancel the addition so made to the list wholly or in part.'

The President:—"The amendment No. 30 on the notice paper in Mr. Achariar's name is, with permission, withdrawn."

The Hon'ble Mr. Achariar then also withdrew amendment No. 31 standing in his name, namely:—

'To omit the Proviso from the same section.'

The Hon'ble Mr. Vijiaraghavachariar:—"Sir, the proviso being retained, I ask you to permit me to move this amendment, namely:—

'That in the said Proviso the words 'to effect the object thereof' be omitted, and after the word 'agreement' the words 'and in furtherance of such agreement' be added.'

"The act done after the agreement should flow naturally from the agreement. As it stands, it says some act besides the agreement is done to effect the object thereof by one or more of the parties. I will give you an illustration. A, B and C may enter into an agreement to commit a particular act by illegal means, or to commit an offence. Afterwards A may know nothing about it; he may have repented and withdrawn from the agreement, so may have B. C and some others even unknown to A and B may join together and commit the act. In these circumstances A and B cannot be said to be parties to the act, because what C does was not in consequence of the agreement, was not in pursuance of the agreement, was not in furtherance of the agreement. The agreement was shattered to pieces when A and B withdrew. When three persons enter into an agreement and two of them withdraw from the agreement before it can be given effect to, and if the remaining one person joins other persons, the subsequent act cannot bind, cannot effect those persons who were originally a party to the agreement. I move that the words 'to effect the object thereof' be omitted, and the words 'in furtherance thereof' be inserted as proposed."

The Hon'ble Mr. Syed Ali Imam:—"Sir, I do not know if it will be agreeable to the Hon'ble Member opposite to accept a suggestion that I venture to make, and that is that the amendment that is proposed might be effected by the use of the words 'in pursuance thereof.' This expression has been used in the Indian Penal Code in several places. For instance, in the explanation to section 121A, this very expression has been used. It has also been used in section 107, the section of abetment. Therefore I invite the Hon'ble the mover to consider if he will be satisfied if we proposed to adhere to the language of the Code. I trust that I shall have the refreshing experience of finding the Hon'ble Member agreeing with a Member of the Government."

The Hon'ble Mr Vijiaraghavachariar:—"Following his example, Sir, may I ask the Hon'ble Member to add to his kindness and tell me how my expression 'in furtherance thereof' will misinterpret the intentions of the Government, and 'in pursuance thereof' will better interpret those intentions?' I ask for information."

The Hon'ble Mr. Syed Ali Imam:—"The Hon'ble Member laid some claim to a knowledge of astrology only a little while ago."

The Hon'ble Mr. Vijiaraghavachariar:—"I said political astrology."

The Hon'ble Mr. Syed Ali Imam:—"I think that is a science which gives more knowledge than we ordinary mortals are possessed of. However, I will try to explain my meaning when I venture to draw a distinction between the two terms 'in pursuance thereof' and 'in furtherance thereof.' 'In pursuance thereof' has a meaning which is slightly different from the meaning conveyed by the term 'in furtherance thereof.' I may say at once that the distinction is an exceedingly fine one, of very very great refinement; but at the same time that there is a difference, there can be no question. 'In furtherance thereof' is an expression which suggests, as a matter of fact, some degree of advancement towards the accomplishment of the object itself.

"'In pursuance of' may be an act which in fact may not further, but, so far as the intention of the perpetrators is concerned, may be in pursuit of the accomplishment of that object. As I have said before there is a difference and it is somewhat refined. That is one reason why I suggest that the term 'in pursuance of' may be accepted. I will illustrate my meaning. It is quite possible that an act may be done in pursuit of a certain object without in any way in fact advancing it. For instance, a man may go and actually buy a drug, taking it to be some poisonous stuff, and the idea may be to administer it and thereby commit a crime. But in fact he may buy an absolutely innocent stuff. His act will be 'in pursuance of' although as a matter of fact the object that was to be accomplished has in no way been furthered. Therefore, there is a distinction. It is not that the two terms have exactly the same meaning; but even if for a moment my Hon'ble friend on the other side disagrees with me, and thinks that there is no difference, on a technical ground I should be justified in inviting him to accept the expression 'in pursuance of', because that is an expression that is used by the Code, and we ought, as far as possible, to adhere to the language of that Code."

The Hon'ble Mr. Vijiaraghavachariar:—"May I now turn the tables slightly? Since there is very little difference between the two phrases, why should not Government accept mine?."

The Hon'ble Mr. Syed Ali Imam:—"I have explained, Sir. My explanation has been that, even at the invitation of the Hon'ble Mr. Vijiaraghavachariar, I and my Department find ourselves absolutely unable to depart from the established practice to employ consistently, as much as possible, the same language in an enactment."

The Hon'ble Mr. Vijiaraghavachariar:—"No doubt there is a proverb that you must not look a gift horse in the mouth, but I am one of those who would not like to have an unsound horse. The maintenance would cost more than the value of the horse.

"My amendment follows the language of another section of the Indian Penal Code—section 34, that when a criminal act is done by several persons 'in furtherance of', etc. This is Macaulay's and the other is Sir James FitzJames Stephen's. I confess to a preference for the language of Macaulay to the language of Stephen's, and I hope I shall not be called upon to account for my partiality. All of us are entitled to our opinions, and therefore I chose my language from the section drafted by Macaulay and settled by Peacock. My Hon'ble friend on the other side borrows his language from Sir James FitzJames Stephen and asks me to accept it. However, I am likely to accept it for this reason, that they say that Indian political actions

are visible to the Government but invisible to the people. So somebody says. I am not able to see subtle distinctions very much, but my ordinary common sense tells me that my language will protect the people better. When it suits the Government, it indulges in language of refined subtlety. However, half a loaf is better than no loaf. With thanks *pro tanto* I accept the amendment."

The Hon'ble Mr. Syed Ali Imam:—"I accept the willingness with which the Hon'ble Member—."

The Hon'ble Mr. Vijiaraghavachariar:—"My thanks or my amendment ?"

The Hon'ble Mr. Syed Ali Imam:—"I am accepting the amendment which has been introduced by the Hon'ble Member. I have to do so formally on behalf of the Government. May I ask, Sir, that some order may be kept. It is impossible for me to keep up a running fire with the Hon'ble Member."

The President:—"I answer the Hon'ble Member's point of order. The discussion across the table has been of a discursive character on both sides, but have not stopped it in the hope of an agreement being reached."

The Hon'ble Mr. Syed Ali Imam:—"On behalf of the Government I accept the insertion of the words 'in pursuance of' instead of the words that are in the Bill—'the object thereof.'"

The amendment as altered reads :—

'That in the said Proviso the words 'to effect the object thereof' be omitted, and after the word 'agreement,' the words 'in pursuance of such agreement' be added.'

The altered amendment was put and agreed to.

The Hon'ble Mr. Vijiaraghavachariar moved that in the same section the Explanation be omitted. He said :—"My amendment is that this explanation be deleted, and I press the amendment because although it is a small one, it has far-reaching consequences. From the speeches hitherto made on the other side, I have not been able to understand exactly the origin and development of the principle of this explanation. One can perfectly understand an act done by several persons which constitutes an agreement to commit any one of these three things, namely, an offence, or an act prohibited by the law, or an act which can be made the basis of a civil action. Where the act is intended—where it is present to the minds of the persons that are parties to the agreement, one can understand punishing them. But I am unable to understand what is meant by 'whether the illegal act be the ultimate object or merely incidental to that object.' If it is merely incidental to that object, the law is capable of being misunderstood and abused by Courts—by even the best Courts. 'Merely incidental' in ordinary language means 'not foreseen', 'not contemplated' by the people so agreeing. If they are to be held responsible for this incidental circumstance, all that I can say is, that it is impossible, Sir, with all the safeguards provided for by Government, to administer this kind of law. As Herbert Spencer puts it, the inhabitants of the earth would then be insufficient to be converted into policemen to detect offences of this kind. We would have to import beings from a different planet to police us, and to detect crimes in the light of this explanation, 'incidental thereto.' Why, Sir, at this rate a coach-builder may be punished if a number of coachmen combine and coaches rashly. Makers of motor-cars may be punished if on the way, as a car is driven, it incidentally kills somebody. I cannot understand the origin of this phrase 'incidental thereto' at all.

"We are now dealing with conspiracies. Let us confine ourselves to conspiracy ; and here let me not be met with subtle refinements visible only to the Government. This law is intended for the people. One object of the law, let us not forget, is to educate the people into what we call moral conduct and order, tending to the well-being of society not by punishments alone, but by

educating them into right conduct. The ideal of law is to educate them and not merely to threaten them, and to the extent to which it merely threatens and punishes them, it is a survival of old individual and tribal method of obtaining revenge.

"Society has taken the law of revenge from private hands and entrusted it to its own agency for the best of purposes in public interests. Law by the Government and the Sovereign is, or ought to be, strictly speaking, law by society in its collective character And one object of all such laws is to educate the moral and the nobler part; the baser part is to punish, to take away the spirit of revenge that would otherwise exist in private persons and in tribes and in certain classes which originally existed and still does exist in savage lands; in order that it might be taken away from those persons, in order that it might still be regulated and enforced, where private persons ordinarily could not have the means of enforcing it; and in order that the measure of punishment may be well estimated, well weighed in dealing with this penal portion the law must be certain and capable of being understood so as to be educative. If you say an act may be something incidental to an agreement, I do not understand it. I can understand the penal portion of it. I fail to understand how it serves the educative portion of the law, how it would inform ordinary people with ordinary faculties like myself what 'incidental' here means. It is just possible that Government has an excellent explanation and that it has a trump card, but they have not shown it. I have been carefully watching the speeches made here, but I have not been able to discover what this incidental means. I await further statements."

The Hon'ble Mr. Kenrick.—"Sir, the Hon'ble Member has invited attention to the Explanation which is appended to section 120A (*2*) of the Bill. He desires us to omit this Explanation from the Bill. He says that it is a very small amendment. He also invites the Council to come to the conclusion that they are embodying in this Explanation certain refinements which are understood by the Government, but which are not capable of being understood by the ordinary man of common intelligence. The Explanation is in these words: 'it is immaterial whether an illegal act is the ultimate object of such agreement or is merely incidental to it.'

"In the first place, I would remind the Hon'ble Member that he has clearly overlooked the fact that to omit this Explanation would in no way alter the meaning of the statement which precedes it, and of which it purports to be explanatory. The section, together with the Explanation, which the Hon'ble Member asks us to omit, is merely an enunciation of the English law of conspiracy. If the Explanation be eliminated, the force of the enactment remains precisely the same, neither more nor less. Then why are we asked to omit this Explanation? Why is it that the Hon'ble Member asks us to omit this Explanation? There can be only one object in excluding it, and that is to leave the door open to elusive argument at the bar in this matter, to facilitate conjecture by imperfectly trained minds as to the true construction. The Explanation leaves the true construction beyond any doubt. I need hardly say that the object of all legislation should be to secure precision, and, so far as possible, to avoid uncertainty. That is done in this case by this Explanation if it is read with a reasonable degree of understanding.

"The Hon'ble Member said he could not understand the meaning of the words in the Explanation. The actual words seem to speak for themselves. I must trouble the Council with them again for one moment, and follow them by an illustration, which will show the Hon'ble Member the purport of the Explanation and the way it will operate if it is incorporated, as no doubt it will be, in this Bill. The words are 'it is immaterial whether an illegal act is the ultimate object of such agreement or is merely incidental to it.' That is what the Hon'ble Member fails to understand. Take a concrete case. Take the example of conspiracy to murder a particular individual, a Magistrate we will say for instance. The meaning of the Explanation is this, that it is immaterial whether the illegal act, that is the causing of the death of this particular Magistrate, is in itself the ultimate object of the conspiracy, or whether it is

merely incidental to a wider object, such for instance as the supersession of all authority. I venture to think that when these words are read with ordinary understanding, they convey no doubt as to their meaning. It says as plainly as possible in illustration of the enactment which precedes it, that when there is a conspiracy it is quite immaterial, it matters not whether the illegal act which is the object of the conspiracy is merely incidental as in the case of the putting out of existence of a particular individual or whether it has a wider object, the ultimate or main object of conspiracy.

"It makes for precision. It is merely, as I said, an enunciation of the English common law of conspiracy. It does not carry it further. It removes the possibility of ambiguity and waste of time in elusive argument. It is for that reason that the Explanation has been inserted."

The Hon'ble Sir William Vincent:— "Sir, the Hon'ble Member has said he does not know where this explanation originated. I may be able to give him some information on that point. It has been repeatedly pointed out in this Council that, in framing the present Bill, we have attempted, as far as possible, to follow the English common law. Now, in the year 1848, a special report of the Criminal Law Commissioners, men of great authority in their profession, was issued, and that defined the criminal law of conspiracy much in the same way as we have defined it in this Bill. The Commissioners, however, thought it expedient and necessary to add an explanation on the lines of the present explanation, the relevant part of which runs as follows:— 'It is immaterial to the crime of conspiracy whether the causing of the injury be the ultimate object of the crime or be merely incidental to that object.' This was the authority upon which we based our drafting. I do submit to this Council that we shall be acting wisely if we follow an authority of that standing when we are attempting to place the criminal law of conspiracy of this country on the same footing as the English common law."

The Hon'ble Sir Reginald Craddock:—"Sir, for the reasons explained by the Hon'ble the Advocate-General and the Hon'ble Sir William Vincent, the Government cannot accept this amendment."

The Hon'ble Mr. Vijiaraghavachariar:—"Sir, just a word. I have the good fortune of getting support from the Hon'ble the distinguished Advocate-General whether he intends it or not, but under the disguise of his remarks in opposition to me. I had occasion to allude to such a support yesterday. To-day, I believe I shall have the good fortune again to allude to it. He says the omission of this explanation will in no way affect the provision of the law. May I, therefore, ask Government to be so good as to act on the high authority of its Advocate-General and give me the boon of omitting it? Take your stand upon the law. It is a fair challenge, a very fair challenge. Yet, if you will not accept my amendment, I will adhere to my suspicion that you probably say less and mean more. Therefore, here is a statement that my amendment, if accepted, will in no way affect the law. Take it therefore. I do not want the explanation. The clause is very indefinite and is capable of being much abused. Now I have brought to the notice of the Council one important fact, that unless the original parties to the agreement either intend it or fairly foresee it, it is not fair to charge them with what may arise incidentally and make them responsible for it. It is no answer to say that this explanation has been based upon an observation of a Law Commission in England. We do not know under what circumstances they made the observation, or whether those observations will be adhered to by them if they were called upon to frame a draft code. It is of no use, therefore, to adopt an isolated statement made in the course of a report or of a letter by a Law Commission. That is not a draft code. It is one thing to make observations in making reports; it is a totally different thing to sit and make a draft. Now my point is that all criminal actions must have the element of consciousness on the part of the perpetrators, except crimes based on rashness and negligence. The purpose of the criminal law is to educate people to greater morality, and to become law-abiding and

partly to punish them if, in spite of that, they commit wrong. This clause as to an act incidentally arising from an agreement being made an offence ceases to have that effect. No answer has been given by the Hon'ble the Advocate General, no answer by the Hon'ble Sir William Vincent as regards that portion of my objection, could it be fairly foreseen or fairly intended? That is the point, gentlemen."

The President:—"It may have been a slip of the tongue, but you must address the Chair, and not use the word 'gentlemen.'"

The Hon'ble Mr. Vijiaraghavachariar:—"Very well, Sir. I have a little more to add. It seems to me that the word 'incidental,' or 'merely incidental,' in my humble view is capable of being abused; it cannot be understood always in the sense in which the Hon'ble the distinguished Advocate-General and the Hon'ble Sir William Vincent meant. The decisions and Commissions' reports in England are not likely to be very much open to us, to the Indian Courts, to the Indian police, and to the authorities who are charged with the duty of sanctions. Therefore, I accept the statement which the distinguished Advocate-General made that the two are identical, and that the omission of it will not affect the law, and I beg of Hon'ble Members, that, in omitting it, they do no injury to the law.

"I beg, therefore, to press the amendment."

The amendment being put, the Council divided and the result was as follows:—

Ayes.—8.

The Hon'ble Nawab Saiyid Muhammad; the Hon'ble Mr. Vijiaraghavachariar; the Hon'ble Sir Ibrahim Rahimtoola; the Hon'ble Babu Surendra Nath Banerji; the Hon'ble Maharaja Ranajit Sinha of Nashipur; the Hon'ble Malik Umar Hayat Khan; the Hon'ble Mr. V. R. Pandit; the Hon'ble Sir G. M. Chitnavis.

Noes.—51.

The Hon'ble Sir Guy Fleetwood Wilson; the Hon'ble Sir Robert Carlyle; the Hon'ble Sir Harcourt Butler; the Hon'ble Mr. Syed Ali Imam; the Hon'ble Mr. Clark; the Hon'ble Sir Reginald Craddock; the Hon'ble Mr. Hailey; the Hon'ble Sir T. R. Wynne; the Hon'ble Mr. Meugens; the Hon'ble Mr. Monteath; the Hon'ble Maharaja Manindra Chandra Nandi; the Hon'ble Raja of Mahmudabad; the Hon'ble Raja Kushalpal Singh; the Hon'ble Mr. Saunders; the Hon'ble Sir A. H. McMahon; the Hon'ble Mr. Wheeler; the Hon'ble Mr. Enthoven; the Hon'ble Mr. Sharp; the Hon'ble Mr. Porter; the Hon'ble Sir E. D. Maclagan; the Hon'ble Mr. Gillan; the Hon'ble Major-General Birdwood; the Hon'ble Mr. Michael; the Hon'ble Surgeon General Sir C. P. Lukis; the Hon'ble Mr. Gordon; the Hon'ble Mr. Maxwell; the Hon'ble Major Robertson; the Hon'ble Mr. Kenrick; the Hon'ble Mr. Kesteven; the Hon'ble Mr. Kinney; the Hon'ble Sir William Vincent; the Hon'ble Mr. Carr; the Hon'ble Sri Rama Raya of Panagallu; the Hon'ble Khan Bahadur Mir Asad Ali Khan; the Hon'ble Sir C. Armstrong; the Hon'ble Mr. Fuzulbhoy Currimbhoy Ebrahim; the Hon'ble Mr. Macpherson; the Hon'ble Raja Saiyid Abu Jafar; the Hon'ble Mr. Maude; the Hon'ble Mr. Madhu Sudan Das; the Hon'ble Maharaj-Kumar of Tikari; the Hon'ble Mr. Huda; the Hon'ble Mr. Arthur; the Hon'ble Major Brooke Blakeway; the Hon'ble Raja Jai Chand; the Hon'ble Sardar Daljit Singh; the Hon'ble Mr. Fenton; the Hon'ble Mr. Walker; the Hon'ble Mr. Arbuthnott; the Hon'ble Mr. Eales; the Hon'ble Maung Myé.

So the amendment was negatived.

The Hon'ble Mr. Vijiaraghavachariar:—"Sir, the next amendment which I beg to move consists of a number of explanations which I desire to add. I will take them one by one. The first is this—

'An 'agreement' is not an offence within the meaning of this section unless two at least of the persons so combining are both capable by law of committing an offence.'

"This I take it to be is the object of the proposed law, and I do not know if, in moving it, I am going contrary to the intentions of the Hon'ble the Home Member. The law purports to be taken from the English law on the subject. It is very clear to my mind that what is meant there is that the persons agreeing must be capable singly of committing penal crimes. I will put an extreme instance. Take, for instance, a mother with her babe comes to an agreement to commit a crime. I believe that that agreement is not meant to be within the purview of this coming law. Again, supposing a man, an adult, capable of committing a crime, enters into an agreement with boys under 7. Under the Indian Penal Code boys under 7 are incapable of committing an offence. I respectfully submit therefore that an agreement come to by an adult with boys under 7 incapable of committing a penal offence ought not to be made an agreement made punishable under the coming law. Instead of leaving this to be evolved by Judges, as the case does arise, I submit it would be far better, as this is a new law, and as there will be no decisions for some time in India, that the Statute should provide that the persons agreeing must be by law individually capable of committing an offence. I would just remind you of the statement made by the Hon'ble Advocate-General and the Hon'ble the Home Member, that the gist of this offence consists in combination. That is to say, where it is confined to individuals, society does not choose to recognise that danger for inclusion in its penal law. That is to say where a single individual commits a crime, society does not mean to make it penal. It chooses to draw a line somewhere. It says that, an act committed by a single individual would not necessarily be penal, but if the same is committed in combination, by a number of persons acting in concert, then danger to society arises. That danger this law proposes to make penal. I therefore respectfully submit that that danger must really exist. The two or more persons must, when taken individually, be by law capable of committing the crime. The word 'agreement' also, if we can have a reference to the Civil law is this, that two persons can only be said to agree on a particular matter when they have the same mind as regards that matter, and when both are capable by law of entering into a contract. If one man thinks of one aspect of a thing and another man of another, they cannot be said to agree as regards that matter. I respectfully submit that it is well to provide against the possibility of abuse of this section in the administration thereof."

The Hon'ble Mr. Kenrick.—"Sir, the Hon'ble Member has proposed that this explanation should be inserted in the Bill, and I venture to think that when he really comprehends what the present state of the law is, he will see that there is no need whatever of any addition on the lines he has suggested.

"The explanation he desires inserted is this, that the agreement is not an offence within the meaning of the section."

The President. "I must interrupt you for one moment. Does the Hon'ble Member (Hon'ble Mr. Vijiaraghavachariar), propose to drop his explanations II, III and IV? I cannot allow him to take one bit at a time."

The Hon'ble Mr. Vijiaraghavachariar.—"Although I put them all under one amendment, I beg to be permitted to take them separately."

The President.—"Oh no, you must speak on the whole of your amendment; you cannot break up the amendment."

The Hon'ble Mr. Kenrick.—"May I say this, it would be extremely convenient, if your ruling admits of it, that the Hon'ble Member should be answered with regard to each of these explanations separately. It would be more coherent and more easily intelligible."

The President.—"Obviously it would be impossible to deal with the amendments paragraph by paragraph. It would lead to confusion and it would lead to interminable discussion. The Hon'ble Member must complete his remarks on that amendment and then you will be able to deal with it."

[19TH MARCH, 1913.] [*Mr. Vijiaraghavachariar.*]

The Hon'ble Mr. Vijiaraghavachariar.—"Very well Sir, my amendment consists of four parts. The first part is what I have already alluded to, namely, that since this offence involves the combination of at least two persons, as I understand the principle, the persons must be by law capable of committing the offence, when acting individually.

"I won't detain the Council any further on this amendment. My second amendment is precisely in accordance with the English law. It is that—

'An agreement is not an offence within the meaning of this section if the persons so agreeing are related to each other as husband and wife.'

"Now this is a well-settled English law. I don't know if it is going to be opposed, and if so on what ground. I again quote from Lord Halsbury's Laws (page 264). Husband and wife cannot alone commit the crime of conspiracy as they are really but one person in law. That is a settled law, and as we are borrowing this law from the English common law, it is well that we borrow its leading doctrines. I don't know how this doctrine arose. I can't tell whether it is religion or poetry that invented the idea that husband and wife are one. Whether Mrs. Pankhurst would accept that doctrine or not I don't know. All that I know is that England has been in need of this maxim; that for a large number of purposes husband and wife are deemed one person, and I do not at all see why the same principle cannot be extended to India. I should like to hear what will be the nature of the opposition on the other side if any. That being the English law, as we are borrowing from the English law, it is just as well to have that safeguard.

"My third amendment is this. It is very nearly allied to the second one My second one relates only to a combination exclusively between husband and wife where there is no third person. My third amendment reads thus:—

'Where there are reasonable grounds for believing that a married woman became party to any such agreement by reason of the influence of her husband she commits no offence under this section.'

"But let us suppose there are more persons than husband and wife, and the husband, some of his friends and his wife are party to the agreement. As the group does not concern husband and wife alone, but as there are also third persons, the question is whether the wife should be deemed in these circumstances a necessary party to the agreement. My amendment suggests that in deciding that question all the circumstances must be taken into consideration. I don't ask for absolute immunity for her. Neither do I say that she should be invariably treated as any other person. My contention is that there is a well-known presumption that the wife must be *primâ facie* deemed to be acting under the coercion of her husband, and it is conceded by our friends that we do not treat our wives as well as they treat theirs. I do not subscribe to this view, but I only state their case. At all events wife-beating does still take place in India—I won't say more commonly than in England because it might be resented. If we treat our wives more cruelly than our English fellow-subjects of His Majesty, and if our wives are less independent than English wives, it follows, Sir, that the law which obtains in England, namely, that a wife in combination with her husband even for a criminal purpose must be *primâ facie* assumed to have acted under the coercion of her husband, should be given effect to in India. The circumstances may be proved where the ordinary presumption may fail and the saying that the grey mare is the better horse might prevail. Under those circumstances the wife will come to grief; whether the husband should be saved in these cases is more than I can say. At any rate, it is not part of my amendment. All that I say is, that where there are reasonable grounds for believing that a married woman became party to any such agreement by reason of the influence of her husband, she commits no offence under this section, and as regards the principle of the amendment, namely, that a married woman in such circumstances is ordinarily presumed to be acting under the coercion of her husband,

I will only quote another authority from the same book,—Lord Halsbury's Laws. 'If husband and wife act together in committing certain crimes, and the wife acts in the presence of her husband, there is a presumption that the wife acted under the coercion of her husband.' Therefore, this is what we call in legal language qualified immunity, and this is all that I ask for—a qualified privilege. In the previous explanation, it is an absolute privilege that I asked for the wife, namely, when she and her husband are alone, I ask for absolute immunity in accordance with English law. In the next place, where she, her husband and his friends act together, I ask for qualified privilege for the wife. If the Court or the sanctioning authority has reasonable grounds for believing that the married woman acted under the influence of her husband.

Then the last amendment is this :—

'Where the illegal act or illegal means does not amount to an offence no party to any such agreement commits an offence, under this section, unless he knows or has reason to believe that the act or means is illegal.'

"I put this in order to show that the presumption that every man is presumed to know the law of the land should not be carried too far. In other words, this amendment follows the principle often adopted in the description of penal acts in the ordinary criminal law. In certain offences under the Indian Penal Code, we very often find the expressions 'intentionally,' or 'having knowledge,' or 'having reasonable grounds for believing,' and so forth. Those three expressions often occur. Similarly here, certain persons might be most unwittingly party to the agreement without knowing that the act as to which they combine is an illegal act. I shall take one more instance. A number of young school boys are told by an adult who might know better that there is no harm in having a game of football in a neighbour's ground upon which there are no crops. They all combine here and they do combine to do what I call an illegal act in the sense that they go and trespass upon a neighbour's land without his consent. What I mean is, that instead of leaving it to Judges and Magistrates, we should provide in the section that where persons do combine to commit an illegal act, let not that presumption, that persons are supposed to know all laws applicable to offences."

The Hon'ble Mr. Kenrick :—"Sir, the Hon'ble Member proposes to insert four distinct explanations on matters of some technicality. I am sure the Hon'ble Member, if he gives a little more consideration to the subject, will see that there is no reason to alter the ordinary principles that are already enunciated by the Indian Penal Code in these matters. I propose to say a few words on each of his explanations.

"The first explanation he asks us to insert in the Bill is this :—

'An agreement is not an offence within the meaning of this section unless two at least of the persons so combining are both capable by law of committing an offence.'

"Now to insert that proposed explanation would be to alter the general principles of the penal law which are to be found in the Code, including in particular the law of abetment. The Penal Code as it stands contains an enunciation of the principles applicable to this particular matter. There are four sections of the Penal Code which deal with classes or cases of persons who for one reason or another are immune from the ordinary doctrine of responsibility for crime. The first is the case which the Hon'ble Member has referred to, children under seven years of age. There is total criminal irresponsibility or immunity from liability in respect of acts done by them which, if done by any other individuals, would be crimes.

"Then there is the case of children above seven and under twelve. Any such child who does not understand the nature and consequences of his conduct is also criminally irresponsible for any act for which an adult would be responsible. The third class is that of persons who have been proved to be of unsound mind ; they are exempted from liability.

"The fourth class is that of persons who are under the influence of intoxication involuntarily incurred ; when drugs have been administered, or alcohol,

so as to cloud the understanding, so that the individual does not know what he is doing.

"The proposed explanation asks us to say that the agreement is not an offence within the meaning of this section unless two at least of the persons so combining are both capable by law of committing an offence.

"The Hon'ble Member had in mind the possible but not probable case of one individual who is an adult of full age and understanding entering into an agreement with one other individual who is subject to one of these incapacities. In that case the Hon'ble Member would by his explanation exclude a person of full understanding, an adult of normal temperament from any criminal responsibility altogether.

"The Code itself already deals with the matter, and I venture to think that there is no need whatever to supplement in any way its provisions. The effect of it is that a person who is not in one of these classes, persons of criminal irresponsibility, were to agree with a person who is within one of these classes to do an illegal act, the former could be indicted for conspiracy, and the latter would be immune from responsibility. So that as the law stands at present, arguing from the analogy of cases of abetment, a person who is not within one of these classes who are criminally irresponsible, if he enters into an agreement with a child under seven years of age, a case to which the Hon'ble Member referred, the result would be that there is only one party to the agreement who is a normal individual for the purposes of the criminal law. He would nevertheless be liable to the criminal law of conspiracy as he is at the present moment to the criminal law of abetment. The other individual would not be affected at all. The ordinary principles of law with regard to persons of unsound mind, intoxicated, etc., to which the Hon'ble Member referred, would not be touched by the provisions of this Bill at all.

"Now I want to tell the Hon'ble Member, I think he ought to know, as a matter of fact that the Explanation which he gives does not quadrate with the English Law of Conspiracy when he says in Explanation I that 'an agreement is not an offence within the meaning of this section unless two at least of the persons so combining are both capable by law of committing an offence.' If he turns to the well-known case of Regina *v.* Whitchurch, he will find the result of the English Law is this that a person may be indicted for conspiracy though in the circumstances of the case he was incapable of committing the act which was the object of the conspiracy.

"The Hon'ble Member proposes by this Explanation to alter the common law of conspiracy as it stands. I propose to show the Hon'ble Member that there is no reason to insert this Explanation. If we do insert the Explanation, we shall be altering the English Common Law of Conspiracy, and we would be altering the Indian law of abetment. In the Indian Penal Code, section 108, 3rd Explanation, the Hon'ble Member will find this is the way it deals with the subject of abetment in the circumstances which he is dealing with in his proposed amendment:—

"'It is not necessary that the person abetted should be capable by law of committing an offence,' and yet the Hon'ble Member wants to put in an Explanation which would run counter to the provisions of the Indian Penal Code in the case of abetment.

"There is an illustration given, namely, 'A with guilty intention abets a child or a lunatic to commit an act which would be an offence if committed by a person capable by law of committing an offence.' Here, A, whether the act be committed or not is guilty of abetting an offence. The Hon'ble Member asks us to say by our present law that he should not be guilty. So on that point I have no hesitation in saying that the Explanation is not only needless, as the other following Explanations are, but it would be in derogation of the existing provisions of the Indian Penal Code. These principles should be left untouched.

"The second Explanation is that 'an agreement is not an offence within the meaning of this section if the persons so agreeing are related to each other as husband and wife.'

"Here again, to insert this Explanation would be to alter the general principles of the criminal law in India as laid down in the Indian Penal Code. The English law notoriously differs in some respects from the law of India in its treatment of husband and wife from the point of view of the criminal law. In the English law, the relationship of husband and wife affects the criminal liability of the wife, even in some cases of the husband. For instance, it is perfectly true, as has been stated by the Hon'ble Member, that in the conception of criminal law in England the husband and wife being in law one person, it has been held that conspiracy by them alone to do an illegal act is not a criminal conspiracy for which they could be indicted. But, on the other hand, it is also equally well known in the English law of conspiracy that the husband and wife may both be indicted for conspiracy for conspiring with other persons to do an unlawful act. If we accepted this Explanation, we should have that rule given the 'go-by' to.

"We must keep in mind that this measure which we are now introducing has for its object merely the insertion of a particular class of offence as it obtains under the English law. But it does not propose to alter the general principles of the Indian Penal law as laid down in the Code.

"I want to draw the special attention of the Hon'ble Member, in dealing with the proposed amendment, to this fact that this English doctrine to which he has referred that husband and wife are one person in law finds no place whatever in the Indian Penal Code. As I said, it is not the scope of the present Bill in any way to affect the general principles which are laid down in that Code.

"I will again give the Hon'ble Member one very simple illustration, and I think the Council will agree that it is certainly a case which should be met by the law which we propose to introduce, and not by the rule of law which he would have. Now take this case as an illustration of the working of the Bill as it would work, in the event of its being left alone unhampered by this so-called explanation of the Hon'ble Member. A husband and wife agree together to decoy or entrap a third person and to kill him. Well the simple position would be, under the law as the Bill introduces it, that the offence would be one of criminal conspiracy, and the husband and wife would be capable of being indicted for conspiracy to murder. I venture to think that there could be no reasonable objection to that being so. So much for the second of the explanations which the Hon'ble Member proposed.

"The third Explanation he asks us to insert is this: 'Where there are reasonable grounds for believing that a married woman became party to any such agreement by reason of the influence of her husband, she commits no offence under this section.' With all respect for the profundity of the Hon'ble Member's legal attainments, I say that he has asked us to accept this explanation without a just appreciation of what the principles of the English Law on the subject are. He, undoubtedly, in framing the wording of this explanation, had in his mind the doctrine which he has just referred to from a well-known text book as to the presumed coercion of a married woman by her husband. But here again I want to point out that if this explanation were inserted, it would alter the general principles of the Indian Penal Code, for this reason that the English Law and the Indian Law are not on the same footing with regard to the general principles as regards the criminal responsibility of husband and wife in matters of crime. Now the Hon'ble Member quoted from that well-known text book these words: 'If husband and wife act together in committing certain crimes, and the wife acts in the presence of her husband, there is a presumption that the wife acted under the coercion of her husband, and if she is tried for such an act, she is *primâ facie* entitled to acquittal.' That is so, but even in reading that quotation the Hon'ble Member refrained from completing it. He refrained from telling the Council that the

quotation goes further and states that this is only a doctrine which is limited in its application and applicable only to certain well ascertained crimes in the English Law, such, for example, as the crimes of theft or receiving stolen goods, and so on. The immunity which results to the married women from the doctrine of the law, the so-called presumed coercion of the wife by the husband, is limited first of all to acts which are done by the wife in the presence of the husband; then further, it is limited only to certain classes of cases. The more important classes of cases are excluded altogether from the operation of the rule, and the doctrine of presumed coercion, which the Hon'ble Member has referred to does not apply, as he will ascertain and find in the text book—following upon the very quotation which he has given—he will find that this somewhat artificial doctrine of the English Common Law has been held not to apply to cases of treason, murder, assault, and a whole series of other crimes. So that in stating it as a general proposition, which he is doing in his explanation, he is going far beyond the limits of the somewhat artificial doctrine of the English Common Law on the subject. Moreover the Hon'ble Member refrained from mentioning what is undoubtedly the fact that this presumption of the English Common Law, in the case of a crime committed by a wife acting in the presence of the husband, is merely a *primâ facie* presumption and is rebuttable by evidence in any particular case. The mere fact of proof of the crime being committed in presence of her husband, if the offence is within the limited category to which the doctrine is held to refer, would result in immunity from criminal responsibility. But it is capable of being, as I said, rebutted by evidence that the wife was the actual instigator or the chief party to the act.

"Again this doctrine has not been introduced at any point into the Indian Penal Code owing to local conditions and customs and for reasons which were no doubt well considered by the legislators of the period. This artificial conception of the English Law finds no place in the Indian Penal Law.

"In conclusion, with regard to this point that has been made by the Hon'ble Member, I should like to add that no injustice results, or can result, or is likely to result from the absence of this English Common Law doctrine in regard to a wife being liable for crime, because if, in fact, in any particular case, a wife acts under the compulsion of the husband, that is always, under the Indian Law, a defence. If, in fact, there is any compulsion or threat by the husband to the wife resulting in crime by the wife, then she has got a complete defence in law to any charge of crime. Therefore I say that this explanation 3 is needless, and is unnecessary for any protective purposes

"Then there is one other Explanation put forward in regard to which I should like to say a few words. The Hon'ble Member puts forward this Explanation IV—he asks us to insert the explanation which runs as follows :—'Where the illegal act or illegal means does not amount to an offence, no party to any such agreement commits an offence under this section unless he knows or has reason to believe that the act or means is illegal.' Well, the meaning of that is, to put it in a popular way, merely this, that an act done in good faith under a mistake of fact is not to be regarded as criminal. That is undoubtedly an excellent principle. But the answer to the Hon'ble Member when he asks that this explanatory statement should be inserted is this, that there is no need whatever to insert this explanation inasmuch as if he turns to section 79 of the Indian Penal Code, he will find that this is embodied already as a general principle of the criminal law. Section 79 says :—'Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law in doing it.' That directly enunciates the principle which the Hon'ble Member proposes to embody in his Explanation.

"There is a great deal of misconception as to the meaning of this legislation, based upon misapprehension of the general principles of the Penal Code which underlie all offences whether of conspiracy or otherwise. If there were a just appreciation of these principles, many criticisms which have been urged against this Bill would not have been put forward at all. Take for instance an

illustration that has been put forward. The case was put in this way. A municipal meeting decides, so it was said, to take possession of certain roadside land, and proceeds to stack metal upon it, the Commissioners will, so it was urged by the critics of the Bill, be criminally liable under the new law if the land turns out to be private land. Of course that is an entire misconception of the law. The answer to that is that, if by reason of a mistake of fact, the Commissioners do an act which in good faith they believed that they were legally justified in doing, they would be perfectly immune from any criminal responsibility whatever. Under section 79 of the Indian Penal Code, no offence has been committed in that case, and that and other sections were overlooked by the critics who have been urging that this measure introduces all sorts of possibilities of offences being charged when none were intended. It would be undoubtedly a serious criticism if it were not capable of complete refutation by those who understand the matter. There is no reason whatever for inserting this proposed amendment."

The Hon'ble Mr. Vijiaraghavachariar:—"Sir, on the last two occasions I congratulated myself, perhaps a little too prematurely, that the Hon'ble Advocate-General agreed with me. I am very sorry to find that this statement of mine has put him somewhat, on his guard, and he has played a brilliant game of hide and seek with me just now.

"Where what I say is exactly English law, he says 'do not look there, look to India.' And where what I say is already in India, he says 'oh no, no, this is a limited doctrine in England.' So he dissipates my amendment between England and India. This is a new style of argument, and I am unable to cope with him exactly.

"Now, take this case of husband and wife, he says I have correctly stated the law in England, but that this has not been introduced into the Indian Penal Code. I thought all the while that the Hon'ble gentlemen opposite were anxious to fill up the great gap in the Indian Penal Code. You want to introduce a new structure, because there is a gap, a gap left by a brilliant array of men from Lord Macaulay downwards, and in filling the gap you say 'I do not find this or that in the Indian Penal Code'! Leave the whole of the gap alone; that is what I ask you. But you say you are going to fill up the gap with a beautiful English structure of venerable antiquity, and yet you say you will leave out some points because they are not in the Indian Penal Code! I must say, and I mean no disrespect, the distinguished Advocate-General was not over happy in the case he was called upon to advocate against me.

"Now, I will take the points one by one. As regards the first explanation which I wished to move, it was that both conspirators must be capable of committing a penal offence individually. Now as to that he meets me by saying 'it is not in the law of abetment.' We all know that in the case of abetment, it is an offence capable of being committed by a single person, and the instance he gave, namely using a child is perfectly intelligible. There the child is used as a stick might be, for instance if a man capable of committing a crime sends poison by means of a child to be administered to another man, he uses the child not in the sense of agreement with the child; no agreement is intended with the child. He uses the child very much like a dog or like a stick or like anything else. One can perfectly understand that. Now we were told with a flourish of trumpets that the essence of the agreements consists in two or more persons agreeing. When I ask you to let it be a reality, you say 'go to the law of abetment.' If the other person with whom I am to agree is incapable of committing an offence under the law, you may as well say I may agree with my wall or with my table. What is the principle involved in this? The principle involved is where a man cannot commit a crime individually, the criminality arises from federation, from combination, and the greater the number of the persons who combine, the greater is the danger to society. It is for you, Sir, and the Hon'ble Members really to say whether the Hon'ble the Advocate-General has fairly and candidly met me on that ground. It would be a mere fiction to say that an agreement is a conspiracy where two persons agree of whom

one of them understands not any agreement, of whom one is not a responsible being of society, of one of whom society says I will excuse you whatever may be the crime you might do' on account of his immaturity of intellect, or on account of his being an idiot or anything else. From the reply given to me by the Hon'ble Advocate General, I repeat, he could not have been happy in taking me to the law of abetment when the essence of the principle of this offence is an agreement between two or more persons capable of committing a crime.

"Sir, the next amendment is about the law between husband and wife. I cannot understand why it is opposed at all. It is opposed because it is not in the Indian Penal Code; it is not there recognised. But I will call the attention of the Hon'ble the Advocate General to one important provision in the Indian Penal Code—I forget the exact section, but it is the case of harbouring. Harbouring is made an offence in the Indian Penal Code, but where a wife harbours a husband or a husband harbours a wife, the Indian Penal Code excuses this kind of harbouring from being a criminal offence. I think it is section 212 of the Indian Penal Code—it is a long section, I need not read it, it relates to the offence of harbouring. I will read only the first sentence. 'Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be an offender, with the intention of screening him from legal punishment, shall' etc. (It prescribes certain punishment.) The explanation to that is this. 'This provision shall not extend to any case in which the harbouring or concealment is by the husband or wife of the offender.'

"As stated therefore the statement of the Hon'ble the Advocate General that this relationship between husband and wife is not recognised by the Indian Penal Code will have to be limited by the existence of this explanation to section 212 of the Indian Penal Code. There the law distinctly recognises the high importance to society of conjugal relations between husband and wife, and it is such that under those circumstances it is not deemed for the good of society that what would be an offence of harbouring among strangers should not be deemed an offence between husband and wife. Why, Sir, I need not go into the ecclesiastical doctrine of those words husband and wife constituting one person. It is not altogether a fiction or a poetical fancy. It is recognised and acted upon in view to the best interests of society. It would look like reading a sermon if I go into this question of the relationship of husband and wife. If it is so in the best interests of society in England, I respectfully claim that it would be to the best interests of society in India, and I also say that it is far more necessary, Sir, in India than in England. In India the doctrine that every man's house is his castle, that the King cannot enter it except in the name of the law, does not seem to apply. Here any policeman, under any pretence whatever, can enter the inmost recesses of the house and he can arrest any person.'

"My amendment will save the wife from rude hands in the investigation of very many of these new offences. We have a large class of cognizable offences as to which no sanction is needed under the new Criminal Law. I just want by means of my amendment to secure that the home of the cottager and his wife should be left unmolested, otherwise more milk, more eggs, and more vegetables will flow from the cottage into the hands of the policemen. That is my object in proposing my amendment. Therefore, Sir, I believe that I propose this amendment in the very best interests of society, and if it is true, as the Hon'ble the Home Member said, that the teeming millions of India, the drawers of water, and the hewers of wood are under the special protection of Government, I cannot possibly understand how they can resist it with any show of reason. That is my amendment, and I leave it to you, Sir, how far my amendment can be said to be unreasonable. We are told nothing except the fact that it is not in the old Penal Code. The old Penal Code has gaps which the Home Member assisted by his brilliant advisors is now trying to fill up.

"My next question is about the wife being considered not quite a voluntary agent in the presence of her husband. That also is closely connected with the

other amendment, whatever be the origin of it, as a rule the wife occupies even in England a subordinate position to her husband. It may be different if Mrs. Pankhurst succeeds. Even in enlightened England the wife occupies a subordinate position. In India, she occupies a more subordinate position still. In these circumstances, her position is entitled to be taken by society into consideration in dealing with so attenuated an offence as conspiracy. I ask you gentlemen, how many wives will say if I am going to play in my neighbour's field 'Oh don't.' How many wives will say that it is trespass. How many wives will prevent their husbands from carrying out their intention to sport on their neighbour's fields. Therefore, gentlemen, in these circumstances, we had leave our wives alone. Let us not allow the policeman to carry off the wife with the husband into the tannah pending further investigation and to be remanded to jail at the rate of 14 days at a time in the meantime, everything in the house, including children being deserted. Protect this home from the invasion of policemen on the merest pretext. That is my amendment, my Hon'ble friend the distinguished Advocate General has said that the fact that the wife is under the influence of the husband is defence in a criminal case. I shall be extremely obliged to him if he will tell me where he derives that law from. I believe—I do not profess to have studied the criminal law of India well—I believe that this statement of his needs revision. It is not accurate to say that a wife, any more than any other person, if she commits a crime, can put forward as her defence the fact that she did so under the influence of her husband. I have heard it for the first time in my life, and I shall be very glad if the Hon'ble the Advocate General, as the advisor of Government, will tell me where that law is contained. There is only one section in the Indian Penal Code which tells us what necessity will excuse persons when they act under the influence of others, and that is s. 94, which says that, except murder and offences against the State punishable by death, nothing is an offence which is done by a person who is so compelled to do it by threats which at the time of doing it reasonably caused the apprehension that instant death for that person would otherwise be the consequence. The point I wish to emphasise is, that no kind of threat, no kind of danger, will excuse a man from committing murder or a State offence punishable with death. As regards the other offences, the law states that if there is apprehension of instant death, then the man is excused. For instance, a number of burglars go and compel a smith with the threat 'You must either take your tools and go with us and open the door of that man's house or we will kill you on the spot.' Then the smith if he takes his tools and assists the burglars in opening the door, that man is excused because between his death and the robbery of the property of his neighbour society recognises that the man is entitled to his life. That is the principle involved there, but even this principle, society declines to recognise in the case of murder, or in a State offence punishable with death—rightly enough. If it is a question of taking somebody else's life or your own life, society says take yours. But in inferior offences if the man is obliged to save his life, society says 'Save your life.' I fail to see wherefrom the learned Advocate General got the law, that a wife can plead as defence her position as such in the case of a criminal trial. Unless and until he is pleased to inform me and give me that information, I am obliged to say that it is a statement which he will probably revise.

"As regards the learned Advocate General's observation on the last clause, he quotes section 79 of the Indian Penal Code. Here again—I proceed with great diffidence and great humility because I feel and in all sincerity recognise that when there is a doubt, his opinion must prevail, but I do not think he is absolutely on safe ground when he says that section 79 will protect an accused person. I believe it won't in every case 'Nothing is an offence which is done by any person who is justified by law or by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law.' I respectfully submit that what the Advocate General said will not apply to the case in question. For instance, if a man attacks me, the law as to the right of private defence allows me to use force; if I use that force, I commit no offence. The next section, which is most important, would only

excuse a man, if at the time he commits the offence, he labours under a mistake of fact and not a mistake of law. That, I think, the learned Advocate General by oversight did not tell us. Take the case which I have already put before you, namely, that of students going and sporting upon another man's field.

"Sir, the older men tell them 'this is the neighbour's land, never mind his consent, go and play there—we don't mean to injure his land.' There is no mistake of fact there; the land belongs to some neighbour and he does not give his consent. They go there in defiance of the law, or in ignorance of the law. How does the question of mistake of fact arise? There is no mistake there. It is very necessary in every society to protect school boys except when they knowingly commit offences. That is all my amendment, namely, that when entering into an agreement, children, boys and women must know exactly that they go to sport in a neighbour's field, without his consent, and that the act would furnish matter for a civil action. For all these reasons I think my amendment has something to recommend it."

The Hon'ble Sir Reginald Craddock:—"For the reasons given—."

The Hon'ble Mr. Vijiaraghavachariar:—"Sir, I though that they had already spoken and therefore I replied."

The President:—"You have had your chance of replying. You have replied to the Advocate General. The Member in charge has in any case the right of getting up again after you have done."

The Hon'ble Sir Reginald Craddock:—"Sir, I was only going to say on behalf of Government that I cannot accept this amendment for the reasons given by the Hon'ble the Advocate General."

The amendment was put and negatived.

The Hon'ble Mr. Vijiaraghavachariar:—"Sir, my next motion is that after clause 3 of the said Bill the following clause be inserted, namely:—

'After section 191 of the Code of Criminal Procedure, 1898, the following shall be inserted, namely:—

'191A. Where a Magistrate takes cognizance of an offence punishable under section 120 B. of the Indian Penal Code upon the complaint or authority or with the consent of a District Magistrate under section 196A of this Code, the accused person, or where there are more than one accused person, any of them, may demand that the case shall be committed to the Court of Sessions, or transferred for trial by a competent Court in some other District.'

"Sir, in asking for the adoption of this amendment I will briefly explain that the principle I wish to enunciate is neither new, nor does it imply any reflection on any authority. It is a well recognized principle of the Indian Criminal Procedure, that a Judge who sanctions the prosecution of a case, cannot try it either originally or on appeal. It is also recognized by law that where the person presiding over a Court has any kind of interest—that interest need not necessarily be personal—in the subject-matter of the trial, he is ordinarily precluded from trying the case. I borrowed this principle somewhat from the provisions of section 191 of the Code of Criminal Procedure. In India criminal laws are put in motion in three or four ways for cognizance by Magistrates in view to the administration of criminal justice. One is upon the report of the Police in the case of what are known as cognizable offences. Police Officers investigate these offences and when they believe that the case ought to be tried, they put up a report upon which the Magistrate takes what is called cognizance, and if it is a case triable by the Sessions Court or the High Court, he holds a preliminary inquiry and commits the accused; if it is a case triable by him, he tries the offender and acquits or convicts him in the end. This is one method.

"The next is a complaint by a private person, he need not necessarily be the injured person, he might be the father, brother or husband, or simply interested in the redress. This is called taking cognizance upon the complaint of a

private person. The third is upon information, that is a person having no interest except that of humanity. As we walk along we see a person A robbing and injuring Z. I walk to the nearest Police-station and give information that I found A robbing or injuring Z. In the fourth case a Magistrate himself takes cognizance of an offence upon his own suspicion or knowledge. With this last, section 191 deals. A Magistrate takes cognizance in this last way, issues a process, it may be a warrant, it may be a summons, brings the accused person before him and asks him to take his trial for the offence, so and so. Then the law compels him to tell the accused person, 'I have taken this case on my own suspicion or my own knowledge, and that it is open to the accused to submit to a trial by himself or to demand that he be tried by some other Court or by the Sessions Court.' This is section 191. The principle there recognized is that a person who brings up an offender before himself on his own suspicion or knowledge is in all probability not likely to be free from prejudice, to be free from bias. Therefore when any Magistrate has suspected a particular man of being an offender and on his own initiative has brought him up before him, then the law contemplates it is not likely that the trial before him would be in the highest degree fair. There is also another aspect which may be brought to notice. The law recognizes not only that as a matter of fact the trial held and the justice rendered should be above suspicion, but that the accused, if possible, and the public should feel it as such. It is very necessary for the due administration of justice; for the real prestige of Government that not only true justice should be administered, but that the public should accept this administration of justice as being beyond a shadow of suspicion.

"On these two grounds the principle enunciated under section 191 is based, *viz.*, that the administration of justice should be not only in fact pure, but that it should be accepted as pure by the persons concerned and by the public at large. Now I base the principle of this amendment upon this; when a District Magistrate gives sanction, he does so, I take it, after some inquiry, and after forming some opinion upon the materials placed before him, I believe that it won't be a haphazard sanction. To have the case tried by a Magistrate who is subordinate to him, is in the highest degree unsafe, because it is placing before the subordinate trying Magistrate the very same materials, and it is asking one of his subordinates to take a different view from the District Magistrate. The District Magistrate may or may not have heard the person accused. It may be that there may be rebutting evidence, or it may be that the examination of the materials upon which sanction has been accorded by the District Magistrate may appear in a different light to his subordinate. As a matter of fact, however, there would be an unconscious endeavour on the part of the subordinate Magistrate, who is placed in the hands of a District Magistrate for his prospects and promotion, and what not; there would be a sort of unconscious, inherent feeling to say 'if possible, let me agree with my superior who has given sanction.' For this reason it is that I ask that an accused may ask for trial by a competent Court in some other district than the one in which the offence has been committed. My amendment does not say trial by him is illegal; it simply says following the principle enunciated in section 191, that this case ought not to be tried in a district, where sanction has been given by the District Magistrate, by one of his subordinates if the accused objects to it. He might commit or it might be reported for the orders of the High Court, to be transferred to a different district."

The Hon'ble Sir Reginald Craddock:—"Sir, I am afraid that I cannot accept this amendment on behalf of the Government, and I think also that it is really an unnecessary amendment. Section 191, to which the Hon'ble Member has referred, provides that where a Magistrate has taken cognizance of an offence upon information received from any person other than a police officer, or upon his own knowledge or suspicion, in such cases the accused may object to being tried by the Magistrate, and the case can be committed to the Court of Sessions or transferred to another Magistrate. Now the mere fact that the District Magistrate has given his consent to the

institution of these proceedings would not deprive the accused of his right to be tried by another Magistrate, if the Magistrate who was going to take the case had wished to take cognisance of it on his own knowledge or suspicion, and had then asked the District Magistrate to signify his assent to the initiation of the proceedings. The rights of the accused would be just the same as they were before; nor is the Hon'ble Member correct in thinking that the sanction intended, the consent in writing of the District Magistrate, implies any sort of inquiry into the facts of the case, as to whether there was a conspiracy or whether there was not. All that he has got to do is to signify by his consent that the case is one in which a prosecution for conspiracy, in preference to some other method, would be justifiable in the public interests. I should like, Sir, to express with some firmness the view which I would like this Council to accept, that the theory that the new offence of criminal conspiracy has got something extraordinary about it is absolutely incorrect. It is just like any other offence. The same rules of evidence, the same procedure and the same privileges to accused persons will exist as in the case of abetment of offences or in the case of any offence known to the criminal law. The safeguards which we have accepted are intended to prevent proceedings being instituted vexatiously, or without due consideration. But when once proceedings are instituted, there is nothing to differentiate the trial from any other trial. The Criminal Procedure Code bristles with safeguards to secure accused persons an impartial trial, and the idea that any extraordinary safeguards are necessary for the trial of persons charged with conspiracy is not one that I can recommend to this Council. For this reason I am unable to agree to the amendment which the Hon'ble Member has proposed."

The Hon'ble Mr. Vijiaraghavacharior:—"Sir, I am exceedingly obliged to the Hon'ble the Home Member for his statement that the consent of the District Magistrate will be given without an inquiry. I have all along thought so, and I shall have occasion to make use of his admission when I make my remarks upon the final motion that the Bill be passed into law. I hope, Sir, you will remember it, and I hope Hon'ble Members will also remember it, that the so-called sanction will not follow any inquiry by the District Magistrate. It is clear that what applies to the District Magistrate will also apply to the Local Government and the Indian Government that sanction will follow no inquiry. I have all along thought so; when several gentlemen have tried to persuade me that the safeguard was sufficient, I have always told them these safeguards are a mere illusion. I am extremely obliged that in opposing this amendment of mine the Hon'ble the Home Member has made this valuable statement. I can only beg and pray him not to recede from the position he has taken to-day; and I wish to have it registered and well remembered by Hon'ble Members.

"Then, Sir, as regards the amendment itself I cannot understand why it is opposed at all. I only suggested it as an enabling section. In the present state of things in this country, we find on the one hand that Government still requires the unnatural combination of the judicial and executive: on the other hand, there is the undoubted fact that even a first class Magistrate is in the hands of a District Magistrate for his promotion and prospects generally, and even for his confirmation as a first class Magistrate, and he is at once the subordinate of the District Magistrate, not only in his capacity as Magistrate, but in his capacity as Deputy Collector, Assistant Collector, and so forth. All that I say is that there may be cases where it will be necessary, as well in the interests of the trying Magistrate as in the interests of the accused, that this power should exist in the law. That is all my amendment, and I believe the Hon'ble the Home Member does not say that it would cast a slur upon any body. I have borrowed the principle from the existing law, and yet it is opposed. I press the amendment for the consideration of the Council."

The Hon'ble Sir Reginald Craddock:—"Sir, may I just be allowed a word of explanation? The Hon'ble mover of this amendment seems

to have misunderstood what I did say about the inquiry. What I said was that the section about the consent of the District Magistrate did not lay down that any judicial inquiry was necessary. Of course, no executive officer, giving his consent in a case like this, would consider himself debarred from making any such inquiry as to the circumstances which he thought necessary, in order to justify him in giving the consent; but the Bill does not contain any provision which suggests that he should have to make any preliminary inquiry of a judicial nature into the truth of the conspiracy."

The amendment was put and negatived.

The Hon'ble Mr. Vijiaraghavachariar :—"Sir, I beg to move the next amendment standing in my name—

'That in clause 5 of the said Bill, sub-sections (*1*) and (*2*) of new section 196A, except the words 'unless upon complaint made by order or under authority from the Governor General in Council, the Local Government or some officer empowered by the Governor General in Council in this behalf' be omitted.'

"I beg permission to analyse the safeguards provided by the Select Committee. I wish to analyse them for two reasons, to show the volume and value of the statement made and repeated, in season and out of season, that ample safeguards have been provided; that we estimate the value of that statement at its proper worth. What is the nature of the safeguards? It is necessary for me to divide the provisions as to sanction or complaint into three or four parts. There are three clauses relating to sanction, and one portion which authorizes the police to investigate the offence of a conspiracy without previous sanction or complaint. These are called cognisable offences in the new schedule. Now there are certain offences mentioned in the Criminal Procedure Code as to which the prosecution cannot be started except by sanction of Courts of justice and also of certain officers, including revenue officers, because those offences are committed in relation to certain proceedings in these Courts, whether criminal or civil or revenue Courts, and before or in relation to those officers. That is referred to in section 195 of the Criminal Procedure Code. It says that no Court shall take cognizance of any offence punishable under sections 172 to 188 of the Indian Penal Code 'except with the previous sanction or on the complaint of the public servant concerned, or of some public servant to whom he is subordinate.'

"The next clause relates to various kinds of perjury committed in a Court of justice, and also the launching of false cases in a Court of justice.

"Then the next relates to forgery and use of forged documents. Those are all the offences under section 195.

"By a later enactment, not merely the commission of these offences, but the abetments of such offences and attempts to commit such offences were added to the list. Now most naturally we are merely adding a fourth category, namely, conspiracies to commit these offences. This is concession No. 1, safeguard No. 1. That is to say, a number of offences already exist as to which the Criminal Procedure Code says the initiation of a prosecution requires the sanction of Courts and certain public servants and not only as to those offences, but as to attempts to commit those offences and abetments thereof sanction by law is provided. Now the Hon'ble the Home Member and the Select Committee have put in there a conspiracy to commit those same offences and they are very very proud of it.

"The next section, namely, s. 196, relates to State offences. No Court shall take cognisance of any offence punishable under Chapter VI of the Indian Penal Code, with some exceptions, 'unless upon the complaint made by the order of, or under the authority of, the Governor General in Council, the Local Governments, or some officer empowered by the Governor General in Council in this behalf.' Here also the conspiracy to commit these offences is placed in this category. Section 196 does demand sanction of certain recognised authorities mentioned therein for the initiation and prosecution of the offences specified in it. All that the Bill does, is to use the theosophical language of the Hon'ble the Home Member, to put the new offences on the same plane

with those offences. Then what have we left? In the case where the object of the conspiracy is to commit any non-cognisable offence, or a cognisable offence not punishable by death, transportation or rigorous imprisonment for a term of two years or more, the law provides previous sanction or complaint. Then this new clause as to sanction relates to the new offences and also to some old offences in this way. Firstly it relates to the new offences which did not exist before, I mean to a portion of the new offences, and to some of the old offences to this extent, namely, conspiracies to commit non-cognisable offences and also the small number of cognisable offences punishable with less than two years' imprisonment.

"Now what I propose is that the whole list of the cognisable offences, that is, conspiracies to do any such offences, should require the sanction of the authorities mentioned already if society is to be safeguarded at all against vexatious and false charges. Now a word as regards non-cognisable offences. All the Hon'ble Members may not be aware of what is meant by non-cognisable offences. Non-cognisable offences are offences the prosecution of which cannot be initiated by the police. The police have no power to arrest persons who commit non-cognisable offences. They have no power to enter and search their homes; and they have no power to put up reports before Magistrates in view to prosecution. Therefore non-cognisable offences may well be left as they are, and prosecutions for such offences may, as now, be instituted by private persons injured or by other private persons on their behalf, or even by a Magistrate on his own knowledge or on information given to him. In these cases there is one very important guarantee and one important safeguard. At the initial stage a private person cannot, when he launches a case and induces a Magistrate to issue a process, enter a home, he cannot handcuff persons, he cannot search property or persons. We have therefore an inherent safeguard. We want very little protection in the case of non-cognisable offences. There the Hon'ble Home Member and his advisers say 'we give you protection.' Where we do not want protection, they provide ample protection. We have two remedies in cases which are non-cognisable. In the first place, a man who starts the case may be criminally prosecuted if the Courts come to the conclusion that the case launched by him is false. That is one of the sections provided for above. If he also gives evidence, one can prosecute him for perjury as well and get him convicted; if without giving evidence he launches a case and prosecutes it, then for having made a false charge one can get him convicted.

"And we have an additional remedy against those persons in the case of non-cognisable offences. We have the remedy of damages. If a man brings a false charge against one, whatever be the result of the case in Criminal Courts, one can go to the Civil Courts and recover damages against him. These two remedies we have against private individuals. But we have no remedies against the police if a policeman comes to arrest you on a false charge. I have not yet heard of a policeman being prosecuted for having brought a false case. If the law does not protect them, the administrative machinery protects them. So in the case of the policeman, you have no remedy if cognisable cases are launched falsely. Omit the non-cognisable offences as to previous sanction, if you please, but let us have the safeguard of previous sanction for prosecutions for conspiracies to commit offences which are cognizable as principal offences. Therefore, this provision as to sanction is large in volume, but not in the value. Give me less if you like, but let me have something tangible and really useful. And then we have sanction for cognizable offences, punishable with less than two years' imprisonment, that is to say, those offences which would not invite the policemen or make it worth his while to investigate. It won't add to his kudos; he won't be made a Rai Bahadur if he successfully investigates and brings to light these petty offences. You say we have sanction to get from the Governor General in Council downwards. A police man won't be tempted into going into our homes in view to prosecute petty offences. If you have in all these petty offences to get sanction, I have no doubt sanction will be given as a matter of course. I don't

believe there will be much of any scrutiny. Unless we multiply the number of Members of the Executive Council ten times and the Secretaries twenty times, it is impossible to investigate each case on its merits for the purpose of sanctions. And it would be practically placing the country under the Criminal Investigation Department or any other department which might take its place in future. If the Government is really anxious to have on the one hand a law with which they could punish political conspiracies, and if it is at the same time anxious not to hand the people over to the police, let us have the safeguard in substance, namely, to save the people from the depredations of the police into their homes in the case of higher offences.

"I, therefore, respectfully submit that the new guarantees of which so much has been made in this Council and outside, are practically a delusion. We have guarantees and safeguards in the Indian Criminal Procedure Code. As to the additional safeguard provided in the Bill, it is big in volume, nothing in substance, and, therefore, I beg to move that this amendment may be accepted by the Hon'ble Council."

The Hon'ble Sir Reginald Craddock:—"Sir, the Hon'ble Member's amendment is practically, as he says, to provide that no criminal conspiracy of any kind could be prosecuted without the sanction of the Governor General in Council, or an officer empowered in his behalf or by the Local Government. Well, Sir, we cannot possibly accept such a proposal. His main objection is to any kind of criminal conspiracy being cognizable by the police. Every objection that he has brought would apply equally to the existing law relating to the investigation of cognizable offences and to abetments of those offences. If these possibilities of oppression are open to the police under the existing law in cases of all cognizable offences, the same would be open, no more and no less, in the case of criminal conspiracies to commit those offences. There is no new addition to the terrors which the Hon'ble mover has referred to. The reason why the police are empowered to investigate serious and heinous offences without prior authorisation from the Court, is because there is no time for delay, and the same reason therefore applies to criminal conspiracies to commit those offences. I ask the Hon'ble Member whether if he were given information that two or three persons were plotting a crime against him—the crime of murder against him or some relative of his; if he were to go to the police and ask them to help him, what would they say? The police would say to him 'Sir, this is only a conspiracy to murder you; it is not cognizable by us; if you want us to do anything with these men, you must go to the Governor General in Council; if not, stay where you are. When you are murdered and your friends tell us about it, then we will be very glad to do what we can to help you.'

"That is the position which the Hon'ble Member has seriously asked the Council to accept—that because criminal conspiracy is put on the same basis as instigation, therefore, the whole of society will be overturned. I have never heard anything more extravagant or more preposterously absurd. Take an example of this kind,—A instigates B to murder Z, then the police may intervene. No harm apparently has occurred. But if A and B conspire to murder Z, then if the police intervene the whole of society is to be upset, and the poor are to be trampled on. It is no easier to bring a false charge of criminal conspiracy than to bring a false charge of any other offence; and if any person does bring a false charge of criminal conspiracy, he can be punished just in the same way as if he brought a false charge of any other offence. The whole object of this amendment, one might suppose, is to turn the Bill into a Bill for the protection of conspirators and to make the Council understand that the comfort and the convenience of conspirators is the one and only thing that we are considering in this Council. Sir, the Government cannot accept this amendment."

The Hon'ble Mr. Vijiaraghavachariar:—"Sir, I am exceedingly glad that in the warmth of his feeling the Hon'ble the Home Member used language which I may, perhaps, take care to remember and use as a charter.

[19TH MARCH, 1913.] [*Mr. Vijiaraghavachariar; Sir Reginald Craddock; the President; Babu Surendra Nath Banerjee; Malik Umar Hayat Khan.*]

My amendment has been characterised as absurd. I have no objection to the language myself, but I only want sanction to use something half as strong in my remarks whenever it may be necessary. The gist of my amendment has been lost sight of by the Hon'ble the Home Member. The real complexion of the provisions relating to sanction has been ignored by him. What I say is, the guarantee provision has been made much of, and votes have been captured—I won't say in the Select Committee—by the use of the expressions 'guarantee safeguard,' 'safeguard guarantee.' Now I venture to state that the guarantee is a bubble, let us prick it, and it will be found without tangible substance really. I can't follow what has been said about a hypothetical attempt at a murder of myself. If anybody is so insane as to think it worth while to kill me, I won't think of applying to the nearest police-station to protect me. I respectfully submit it was not a fair argument to make at all. The objection is that where it is found necessary to provide safeguards in the law against the possible abuse of its provisions, it is not safe to exclude very serious offences from their operation, and I ask Government to extend that principle to such offences where it is that the law is really capable of being abused—where it is likely to be most abused.

"Sir, instead of meeting me on that ground, the Hon'ble the Home Member takes an analogy and says therefore he cannot accept my amendment. Take, for instance, State offences punishable under section 121. 'Whoever wages war against the Queen or attempts to wage war or abets the waging of war, shall be punished with death or transportation for life and shall forfeit his property.' This is a most serious State offence. This by the existing law is non-cognisable. I do not think my argument will be absurd if I say, I place my value, my life far below what is intended in this section. Here waging war against the Queen which is punishable with death is placed beyond the reach of the policeman, for detecting an offence under section 121 he cannot invade any man's house; he cannot act if plots and designs are taking place therein. If he cannot act and catch these people in the matter of the most serious State offences, I should certainly be entitled to know why the new law gives him power to go and invade every house where petty conspiracies are suspected by him. Why should a policeman enter, if I merely agree to steal my neighbour's crops or calves? I respectfully submit that the opposition to my amendment is extremely unfair. These are sleight-of-hand-tricks, and not at all a proper honest attempt to meet my objections."

The Hon'ble Sir Reginald Craddock:—"I protest against the use of an expression like that of the Hon'ble Member's."

The President:—"I trust the Hon'ble Mr. Achariar will himself on reflection withdraw his remarks in reference to the Hon'ble Member. I am alluding to his remarks as regards 'tricks.'"

The Hon'ble Mr. Vijiaraghavachariar:—"I withdraw the word 'tricks', but 'sleight-of-hand' was used in this Council once before, and I meant sleight-of-hand-tricks when I used the word."

The amendment was put and negatived.

The Hon'ble Babu Surendra Nath Banerjee:—"Sir, I have the honour to move the amendment which stands in my name. In doing so I beg to state that I have the Hon'ble Home Member's authority to state that he has no objection to my making a small change in the amendment. I will read my amendment with this slight change:—

"I move that in the same section (196 A) for the words 'or a Chief Presidency Magistrate or District Magistrate,' the words 'some *judicial* officer empowered' be substituted."

The Hon'ble Malik Umar Hayat Khan:—"I rise to a point of order."

[*Babu Surendra Nath Banerjee; Malik Umar Hayat Khan; the President; Sir Reginald Craddock.*] [19TH MARCH, 1913.]

The Hon'ble Babu Surendra Nath Banerjee:—"I am in possession of the house and my friend has no right to interrupt me."

The Hon'ble Malik Umar Hayat Khan:—"I rise to a point of order. If that section is changed, it becomes a new thing altogether. Every Member has got a right of speaking on it."

The President:—"What is the attitude of the Member in charge of the Bill?"

The Hon'ble Sir Reginald Craddock:—"My attitude is this. That amendment, as worded was sent in by wire. The Hon'ble Mr. Banerjee afterwards explained that he had omitted one word from it. It is quite true that that word was a very important one, but as he said it was an absolute accident, I accepted his statement on that point, and said I would not raise any technical objection that the amendment was not in time."

The President:—"Does the Hon'ble Member in charge of the Bill propose to accept the amendment either as it stands or in its amended form?"

The Hon'ble Sir Reginald Craddock:—"No."

The President:—"Then I think it is hardly worth while suspending the rules to admit of an alteration, because the result would be the same. The Hon'ble Member might be allowed some latitude in dealing with the amendment."

The Hon'ble Babu Surendra Nath Banerjee:—"Thank you, Sir. This amendment has reference to section 196A. This is a new section introduced by the Select Committee, and had no place in the original Bill. I think it is a distinct improvement.

"I have expressed my sense of appreciation of it. I do think it is a safeguard. Under that section before a Court of law can be moved in respect of a class of conspiracy cases, the sanction of superior authority is needed. In the case of a conspiracy to commit an illegal act, the sanction of the Governor General or of the Local Government is needed. In the case of conspiracies to commit a non-cognisable offence of a minor sort, the sanction of the Local Government or of the District Magistrate or Presidency Magistrate empowered in that behalf is needed. My amendment is with reference to the words 'District Magistrate and Presidency Magistrate.' The District Magistrate or Presidency Magistrate sanctioning the prosecution may have to try the case, or their subordinates may have to try the case. I think it is mischievous in principle and condemnable in practice that the sanctioning Magistrate should also be the trying Magistrate. I may add that it is entirely inconsistent with those legal principles which are embalmed in the Statutes of the land or in the decisions of our law Courts. It is not open to a Court of justice sanctioning the prosecution of a person charged with perjury to try the offender itself. Further, a Court directing contempt proceedings cannot try the case. It seems to me to be desirable, in the interests of these safeguards which the Hon'ble the Home Member is so anxious to render efficient, that the power to sanction should not be given to the District Magistrate or the Presidency Magistrate, and I venture to suggest that it should be vested in a judicial officer who would be above all executive considerations.

"Such an officer would be in a position to view the application with a judicial eye and an altogether impartial mind free from all kinds of executive bias. I am sure, Sir, that a small amendment of this kind will be very helpful in reconciling at least some features of this law to the people of this country.

"I therefore move that the words 'some officer empowered' be substituted for the words 'or a Chief Presidency Magistrate or a District Magistrate.' My objection is to the District Magistrate and the Presidency Magistrate being vested with the power of sanction in these cases."

[19TH MARCH, 1913.] [*Maharaja Ranajit Sinha of Nashipur; Sir Reginald Craddock; Babu Surendra Nath Banerjee.*]

The Hon'ble Maharaja Ranajit Sinha of Nashipur:—"Sir, I have full sympathy with the object which my Hon'ble friend on the right has in view. While in the Select Committee, I also suggested that the powers of sanctioning a prosecution should not be given to the District Magistrates, but to some officers empowered by the Local Government in that behalf. The Hon'ble the Law Member, however, pointed out to me that in that case the Local Government might empower even a sub-divisional officer to sanction a prosecution, and so the case might be worse. Under those circumstances, I had to accept the safeguard which was provided in the Select Committee, but, Sir, I still think that the District Magistrates should not have the power of sanctioning such prosecution. My friend says that the power should be vested in a judicial officer. There is no such word in the Indian Penal Code. The definition of 'Judge' also includes a 'Magistrate', so I am afraid that the amendment—of course it has been allowed—may fall to the ground. I suggested the word 'Commissioner' in the Select Committee, but my friend, the Hon'ble the Law Member, said there was no word as 'Commissioner' in the Penal Code, and especially in some provinces there was no Commissioner at all. But if there be any remedy, I hope the Council will accept it."

The Hon'ble Sir Reginald Craddock:—"Sir, as the amendment is actually worded here, it will of course open the door very widely in the matter to an extent which it was certainly never intended by the Hon'ble mover, for it would enable a Sub-Inspector of Police to be empowered to authorise a prosecution."

The Hon'ble Babu Surendra Nath Banerjee:—"That was an obvious mistake."

The Hon'ble Sir Reginald Craddock:—"As I said before, I have no desire whatever to take any advantage of a slip of this kind, and therefore I shall treat the matter as if the case before us was whether the Presidency Magistrate and District Magistrate should have this power, or whether it should be entrusted to some judicial officer. I am glad to find that the Hon'ble Mr. Banerjee, in contradistinction to the Hon'ble Mr. Achariar, does recognise that the provisions that we have put into this Bill are substantial safeguards. But I think that in this particular case the request that he makes to have a judicial officer empowered is not one that we can very well accept, because, in a matter of this kind, the Chief Magistrates of the District, or the Presidency Magistrates, are largely responsible for the maintenance of peace, and therefore they are the persons who are in the best position to judge how far sanction to initiate proceedings of this kind should be given. This is one of those matters in which the inquiries, if any, to be made by the officer will be largely of an executive nature. He would not concern himself with the exact weight of the evidence on either side, for that would merely mean holding two inquiries instead of one. What he would interest himself in would be whether the remedy which these men, the complainant or others came forward to ask for was a reasonable way of obtaining reparation. For instance, it would be absurd if a man, when he could make a complaint about the offence itself, were given sanction to bring a complaint for a conspiracy to commit the offence. The object of this amendment is very largely to check the disposition which those familiar with criminal Courts have seen so much of, of a petition-writer putting down a section which would make a case triable by a first class Magistrate, and therefore make a big thing out of a very small one. It is unlikely that a District Magistrate or a Presidency Magistrate would do anything to assist in a frivolous or vexatious endeavour on the part of petitioners or on the part of complainants, to use this new law simply for the annoyance of the public or of their enemies. And the Government consider that this safeguard of empowering a District Magistrate and the Chief Presidency Magistrate is adequate, and as it is worded, it is so framed that the Local Government has specially to empower these Magistrates; so that it would always be open to a Local Government, if in a particular district an acting or officiating District Magistrate was considered to be somewhat inexperienced, not to empower him

with this particular power. But in a matter like that the Local Government must be the best judges. Considering, therefore, that this safeguard is fully adequate, on behalf of the Government, I must oppose the amendment."

The amendment was put and negatived.

The Hon'ble Mr. Vijiaraghavachariar:—"The next amendment I wish to move is rather an important one. It reads thus:—'After section 268 of the Code of Criminal Procedure, 1898, insert the following section namely:—

'268 A. All trials before a Court of Sessions for offences under section 120 B of the Indian Penal Code shall be by jury.'

"After section 561 of the Code of Criminal Procedure, 1898, insert the following section, namely:—

'561 A. In trials for offences under section 120 B of the Indian Penal Code before a Magistrate, the accused person or, where there are more than one accused person, any one of the accused persons may at any time before he is heard in his defence in a summons case under section 244 and in a warrant case under section 256, claim that the trial shall be by a jury, composed in manner prescribed in section 275. Thereupon, notwithstanding anything contained in Chapters XX and XXI of this Code, to the contrary, the provisions of section 451, sub-sections (*2*) to (*10*) inclusive, shall, as nearly as may be, apply to such trials.'

"To section 403 of the Code of Criminal Procedure, 1898, add the following as sub-section (*5*), namely:—

'(*5*) A person acquitted or convicted of any offence, or the abetment thereof or an attempt to commit the same cannot afterwards be tried for a criminal conspiracy punishable under section 120B of the Indian Penal Code to commit the same offence or *vice versa*.'

The President:—"I must ask you to take them as they stand."

The Hon'ble Mr. Vijiaraghavachariar:—"Of the three amendments, two relate to trial by jury and the third relates to a matter of procedure and somewhat of principle. Technicalities apart, section 268 relates to trials by jury in Courts of Session. Section 268 says that trials before a Court of Session shall be either by jury or with the aid of assessors, so that, as the Code now stands, except in the case of certain persons, nobody is entitled in Courts of Session to trial by jury as a matter of right, until Government acts under the next section which provides as follows:—

'The Local Government may, with the previous sanction of the Governor General in Council by order in the official gazette, direct that the trial of all offences or of any particular class of offences before any Court of Session shall be by jury in any district and may with the like sanction revoke or alter such order.'

"That is to say the law provides in the case of sessions trials that they must be either by jury or by assessors. But as regards a trial by jury, until the Local Government passes such an order as is contemplated in the next section, namely, which must say in any particular district, any particular class of offences, shall be tried by jury; until that notification takes place, trial by jury is not a right. So far as the law is concerned, it is an enabling law. Section 268 enables the Local Government to provide by order for the trial of any particular class of offences by jury. As regards trial before Magistrates, ordinarily there is none, except in one case which it is not necessary to relate here. It is conceded that the law that is now being enacted has not been in existence in India, and that there has been a gap for over 50 years. Now we are introducing the law from England. Now in introducing that law, it requires considerable care that it may be administered in the light of the series of decisions which alone embody the criminal law on this branch in England, because it is the common law and there is no such thing as an authoritative book containing all the common law as far as I am aware. It is embodied in various decisions. No doubt eminent text-writers write upon such subjects, but there is no book from which you can say authoritatively what is the common law of England in this or that particular matter. It is necessary to know therefore the practice obtaining in England, not only as to the law but the sort of evidence that is needed and enacted, for proving

the agreement as to conspiracy. Where it is only a question of law, the jury and assessor are all the same, but where it is a blended question of law and facts; when the facts will merely be design and preparation and when they will amount to an agreement, what an overt act means and whether there is one in the particular case, when a certain set of circumstances can be said to be of the nature of the elements of agreement and when not. All these are mixed questions of fact and law. In deciding on these mixed questions of fact and law, a knowledge of the habits and character of the people who might be placed in the dock, their method of talking, the very peculiar language of the particular class or district, all these become of the highest importance. In deciding on the question of a criminal agreement, we all know regard has to be paid to the class of people, their special habits, their mode of talking, their mode of saying 'yes' or 'no,' and several other peculiarities. All these things come into requisition in a trial for conspiracy offences. Now a jury would be of the highest importance in finding out and in interpreting what really took place, what was the agreement, if there was an agreement at all. It is of no use to say that the assessors will equally perform that function. Assessors, as we all know, are ordinarily only two gentlemen. But the assessors excuse themselves by saying that, whatever they may say, there is no responsibility, and where there is no responsibility, they do not take the same trouble as persons on whose verdict the final decision is to rest. Thus the distinction is a very important matter. We have only the word 'agreement' in the law, and there are no words connecting the word agreement with anything else, and loose conversations may make the whole offence as to conspiracies We must remember where conspiracies end with the agreement it is one matter, and where conspiracies reach the commission of crimes it is a different matter. But where a man is tried for conspiracy and conspiracy alone, it is a question of mere agreement, and except in a few matters, no overt act is by law necessary. Being so, it is entirely what I call a 'conversation' offence. There may be an overt act in addition, but the law does not need it, except in the cases mentioned in the Bill. Ordinarily therefore, in all higher offences, no overt act is necessary; all that is needed is the mere agreement. Hence the view that a jury might take as to what a particular man said, not merely what he said but what he meant by it, is very important. I mean no disrespect—I hope no one would be surprised if I say that a member of the Civil Service asked me whether in token of assent whether we nod our head or shake our head? He had been 15 years in India and he seriously did not know whether we shake assent or nod assent or shake dissent or nod dissent; and he added 'I thought you do not, like us, nod your head in token of assent, but you shake your head in token of assent and nod your head in token of dissent.' Fifteen years' experience in this country had not been sufficient for him to know whether we nod assent or shake assent, or nod dissent or shake dissent.

"I once knew a particular gentleman who professed to know the vernacular language, and the ordinary people said 'catch hold of the thief.' He translated the word 'catch' into 'arrest' and came to the conclusion that this man had no power to arrest under the law, and therefore he convicted him, and no amount of argument would convince him that by 'catch hold of' the common people did not mean 'arrest' the man. He said 'there is the sworn translation, 'catch hold of' means 'arrest', and therefore if this man has no power to arrest, he must be convicted.

'All that I say is that in a matter of this kind, it is of the highest importance for the well-being of society on the one hand, and also to assist the Judge seriously on the other hand, that the materials which would consist mostly of words, if not entirely of words in conspiracies to commit the highest offences, should be properly placed by the witnesses and properly construed for the purpose of trial and for the purpose of taking away a man's liberty; they must be properly and not literally interpreted as to what the man exactly meant. In these circumstances, a body of responsible men to assist the trying Judge would be of immense use.

[*Mr. Vijiaraghavachariar; Babu Surendra Nath Banerjee; Mr. Wheeler.*] [19TH MARCH, 1913.]

"These remarks will not apply to Magistrates who are merely inquiring into cases as committing Magistrates, but where a Magistrate has to try a man and come to a final conclusion and condemn him or acquit him, what I have said above as to trials in Sessions Courts will apply to him. There is now trial by jury before Magistrates in one class of cases. The most extraordinary thing is that we Indians have trial by juries in matters of nuisance before a Magistrate. How trial by jury has been given to us in the matter of nuisance I do not know.

"Under section 135 of the Code of Criminal Procedure in the Chapter on nuisances, the person against whom an order is made, calling upon him to abate a nuisance shall within the time prescribed in the order, either obey the order or appear in Court and apply to the Magistrate by whom it was made, to appoint a jury to try whether the order is reasonable and proper; so that we have a jury before a Magistrate in matters of nuisances If the Magistrate is called upon to be assisted by a jury in a matter of nuisance, I do not at all see why the principle cannot be extended to so important a matter as this new offence. The new offence would consist of a number of uncouth words and expressions which may have one meaning almost in one street, and another meaning in another street of the same town. Therefore, I respectfully submit that it is important that a trying Magistrate should have the assistance of a responsible body of men, and that responsible body of men can only be jury. That is all I have got to say on this matter. The third one is amendment 38 (5)—

'A person acquitted or convicted of any offence, or the abetment thereof or an attempt to commit the same cannot afterwards be tried for a criminal conspiracy punishable under section 120 B of the Indian Penal Code to commit the same offence or *vice versâ*.'

"I believe that is the gist of the principles ordinarily practised now in the trial of offences, and when a new law is introduced, it is safer that the provision is included in the law itself. At present a person cannot be tried for a principal offence, and also for the abetment thereof.

"It is just possible there might be difficulties in construing the existing law on this point so as to make it applicable to the proposed law. No doubt, this would be part of the Indian Penal Code, but I am not sure that under the existing law, one can be quite certain, unless the Hon'ble the Advocate-General assures us, that a man cannot be prosecuted both for criminal conspiracy as well as for the abetment of it and the principal offence.

"With these remarks I beg to move the amendment."

The Hon'ble Babu Surendra Nath Banerjee:— "May I associate myself with the demand of the Hon'ble Member for a jury in the trial of these cases. Sir, it was stated in support of this Bill that this is an importation from the English law. Conspiracy cases in England are all tried by juries, and therefore, inasmuch as this is an importation from the law of England, I think we ought to have the necessary safeguards, which the law of England imposes in cases of this kind. Over and above that, I think, there are very strong reasons for juries in cases of this kind. A new kind of offences is being created. Complicated facts will have to be dealt with, Magistrates will have to deal with them, and it would be a distinct advantage if the Magistrate or the Sessions Court were associated with a number of jurors for the purpose of disentangling the facts that might come before them. I think there are very strong grounds for the appeal which my Hon'ble friend has made for the trial of these cases by juries."

The Hon'ble Mr. Wheeler:—"As the Hon'ble Member who moved the amendment recognises, it comprises two portions which have very little connection with one another, and I only desire to confine myself to the one point which refers to jury trials. In that respect his proposal is briefly, that every offence of conspiracy shall be made triable by jury in a sessions court, while in a Magistrate's Court the right shall be given to the accused to claim a jury if he so desires. The proposal is urged on the ground that it will afford yet another safeguard, or as the Hon'ble Mr. Surendra Nath

Banerjee puts it, that it will introduce a safeguard which obtains in English law, and for the additional reason represented by Mr. Vijiaraghavachariar, that the offence of conspiracy is of so special a character, that it is desirable to give the Court the assistance of a jury in dealing with the narrow shades of verbal meaning and the like which will be in issue before it. Now in the matter of safeguards, Sir, it is essential that any safeguards that are proposed should be workable under the existing procedure and system of the Code, as is the case with the other safeguards which have been inserted in this Bill, but were the proposal accepted in respect of jury trials as it stands, it would not be workable. As the Hon'ble Member has himself pointed out, there is no offence in respect of which it is declared by the Code that its trial shall be by jury. The first relevant provisions of the Code are section 267, which says that all trials before a High Court under Chapter XXIII shall be by jury, and section 268, which states that cases before a sessions court shall be tried either with the aid of assessors or a jury. After laying down those two propositions the Code goes on to leave it to the Local Government, with the previous sanction of the Governor General in Council, to notify in what districts and in respect of what offences jury trial shall prevail in sessions courts, and such a notification can be revoked or altered. Under that section various Local Governments have notified different districts as suitable for the jury system, but nowhere except, I think, in the case of Madras, has every district been so notified, and nowhere has the jury system been extended to all classes of offences. In fact, the number of offences in which it obtains is in the minority, as also are the districts in which the system prevails. That being so if we are now to proceed to say that this particular offence of conspiracy *shall* be tried by jury in all districts, we are accepting a proposal which is unworkable since merely to take the simplest example, what is to happen in those districts in which no juries are at present constituted?

"With regard, Sir, to the question of safeguards there is always a certain danger in the contention that because a thing exists in England it should be adopted here because there may be other respects in which the procedure in this country is not the same as in England, and the argument more or less presupposes complete uniformity. Merely to take the question of the rights of appeal, these are far more extended in this country than in England; or again there is nothing in England which corresponds to the special safeguards of preliminary sanction by various authorities in different cases, which now find a place in the Bill. To seek an ideal assimilation between the procedure in the two countries, is not, therefore, practicable.

"If then the amendment is unworkable and impracticable, we are left only with the argument that the offence of conspiracy is of so special and peculiar a character that this change is justifiable. It has already been pointed out on various occasions this afternoon that there is nothing so special about this offence of conspiracy which would require us to depart from all the procedure of the Code. There are already many offences of a serious description in the trial of which a jury is not convened. For instance, you have a heinous offence like murder, which is not triable by jury in many districts, and can it be contended that where that is so, a conspiracy, say, to commit an assault (assuming that the institution of such a prosecution is approved) must always be tried by a jury?

"Lastly, Sir, the amendment is unnecessary because, should it ever be held at any time that the offence of conspiracy was one which might be properly tried by a jury in any particular district, it is open to the Local Government so to notify it under the existing sections of the Code.

"For these reasons, Sir, I urge that the amendment cannot be accepted, and if it should be rejected in the case of Sessions trials, it is still more open to objection in the case of trials before Magistrates, in respect of which the departure from the existing procedure of the Code would be still more marked and in practical working, surrounded with even greater difficulties."

The Hon'ble Mr. Kenrick:—"Sir, it is necessary for me to say two or three words upon the second portion of this amendment, namely, the proposal to amend section 403 of the Criminal Procedure Code.

"Sir, the proposal to amend this section of the Criminal Procedure Code runs as follows:—

'A person acquitted or convicted of any offence, or the abetment thereof or an attempt to commit the same cannot afterwards be tried for a criminal conspiracy punishable under section 120B of the Indian Penal Code to commit the same offence or *vice versâ*.'

"The wording of the proposed amendment is somewhat peculiar, but the meaning is fairly clear, that is, that a person should not be put on trial for conspiracy to commit an offence after he has been tried for it and acquitted or convicted of the offence which is the object of the conspiracy. My answer to the contention that this amendment should be put in is this: that there is no need whatever to alter the principles which are already laid down upon that subject in the Criminal Procedure Code. I think that the Hon'ble Member who proposes this amendment himself saw that there was no substance in it. He seemed doubtful whether sufficient safeguards are provided by the existing procedure. If he turns to sub-sections (*2*) and (*3*) of section 403 which enact the circumstances in which a person convicted or acquitted may be tried again for offences after a previous trial, he will see the circumstances which are applicable to the new law of conspiracy as they would be to any other offences under the Code. Therefore there is no reason for altering the existing principles. Of course the general principle undoubtedly is, that when a man has been on trial and in peril of conviction on certain facts, he is not to be re-tried on the same facts. At the same time there are circumstances in which a person who has been convicted may be re-tried for other offences, for example, the offence of conspiracy, which arise upon the previous facts. Sub-sections (*1*), (*2*) and (*3*) of section 403 meet the case, and there is no need for putting in an amendment such as is proposed by the Hon'ble Member."

The Hon'ble Mr. Syed Ali Imam:—"I intend, Sir, to limit my remarks only to the amendment that has been proposed in respect of section 403. The proposed amendment amounts really to a modification of the principles that govern the provisions of the law relating to previous acquittals and convictions, and that law is fully contained in that very section, No. 403, which the Hon'ble Member desires to amend. The principle that has been accepted is that a plea of previous acquittal or conviction in bar of further proceedings will stand when it is shown that a trial on the same facts has already taken place, and that the stage that entitles or requires a Court to give a decision upon the guilt or innocence of the accused was reached ending in an acquittal or conviction. Such a stage as that is necessary. Well, if the Hon'ble Member will reflect, he will find that, so far as that principle goes, the soundness of which cannot be questioned, no necessity for this amendment seems to arise, unless of course it is the intention of the Hon'ble Member to grant a man charged with criminal conspiracies special facilities. I concede that it is only right that a man should not stand in the same peril and in the same position in which he has once stood and undergone a trial. But if the amendment is accepted, there will be a departure from this principle, and as far as I can see, it will be a somewhat novel departure, as I am not aware that there is any system of law which recognizes anything more than this that a man who has once been put upon his trial and has stood in peril, after he has been acquitted or convicted, should not again be subjected to a fresh trial and put in the same peril to undergo practically the same difficulties in which he had been placed before. It will be seen that the application of the principle depends entirely on questions of fact. If in a case where a man was charged with criminal conspiracy, he could satisfy the Court that as a matter of fact he had undergone a trial and had been convicted or acquitted, and that the case that was now preferred against him was covered by section 403, read with section 236, he would have, I venture to think, absolute immunity. But if the Hon'ble Member, on the other hand,

desires that a man who has committed an offence, but because he happens to have committed the offence of conspiracy, although he has not been previously on trial for it or been acquitted or convicted but not on the same facts, he should have complete immunity, it would mean a departure from existing principles that govern the plea in bar on the basis of a previous conviction or acquittal. I submit it would be a very difficult matter indeed for any lawyer to accept the amendment. I should look upon it as a great departure indeed, a great innovation on the principles that govern cases of *autrefois* acquittals or convictions. Therefore, on reflection, I trust the Hon'ble Member will realize that he is asking the Council for a great deal more than is the accepted principle. I am unable to find why a criminal conspirator of all persons in the world should have in respect of this principle greater immunity given to him than is given even to a murderer or a man who wages war against the King or commits any other heinous offence. Why because he happens to have the privilege or the distinction of being a conspirator, should established principles be departed from? I am unable, Sir, to support the amendment that has been put forward and I oppose it."

The Hon'ble Sir Reginald Craddock:—"Sir, the Government cannot accept the whole amendment for the reasons given."

The Hon'ble Mr. Vijiaraghavachariar:—"Sir, I fail to see the exact nature of the objection; the nature of the objection seems to be that because it does not as a matter of right exist as regards the trial of other offences, therefore it should not exist as to trials for these new offences. I have already submitted that the new law consists, to a great extent and in some cases almost entirely, of words and nothing but words; on that point I have not had the advantage of hearing any Hon'ble Member on the other side. I specially pointed out the difficulties of construing words that pass current among various persons who might be said to be parties to an agreement especially when these persons use words and expressions which have a special meaning in a particular district or part of a district, or use words under a secret understanding as to their meaning and which is not ordinarily open to the public.

"In all these difficulties I desire to say that a jury drawn from the neighbourhood would be in a far better position to exactly understand and weigh what each man said, and they would be of immense use to the trying Judge or to the trying Magistrate. I regret that upon this aspect of the case I have received no information, no light from the Hon'ble Members on the other side, beyond the statement that, because in the case of other offences no absolute right exists unless and until the Government is pleased to sanction it, therefore there is no necessity for accepting my amendment. This is what I call the custom argument, that because it does not exist in the case of other offences we should not have it for the new offences. But we are told that this is an offence which has been transported from England. How is it there? Is it open to be tried summarily? Except in the case of some petty offences where summary powers are given, they are there tried by jury, and the Judge has enormous power of applying this law to any particular case as he likes. In borrowing this law from England, can we not also borrow a little of the machinery which already exists in India in a modified form?

"If I say I want to introduce this principle, I am told it is new to this country, but if I want to introduce a principle, which already exists in India, I am told it is not necessary. Of course the Government when they want can always find some argument or other to oppose to me. But the gist of my argument is that a trying Judge would derive very material assistance in finding out the meanings of words, and whether they amount to an agreement or merely a sort of language used in courtesy or not to contradict anything said by some powerful person. All these things are extremely difficult to be estimated by Judges, and persons conversant with the habits and with the language of any particular locality would be of immense use. Therefore I remain unconvinced that the opposition has substance.

"Then, Sir, as regards the question of law as to multiple trials on same set of facts. I myself put it forward with considerable diffidence, but I am not satisfied that the assurance given by the Hon'ble the Advocate-General and the Hon'ble the eminent Law Member are satisfactory. I do not say they intend to mislead me; all I say is that they do not appear to be clear and satisfactory. The Hon'ble the Law Member says my amendment proposes a novel departure. I cannot understand where a departure comes in, or wherein the novelty exists. I am not able to follow him. The law says that a man cannot be tried more than once for the same offence, or for certain offences for which he might have been tried under the law on the same set of facts. But doubts do arise. A man is tried for dacoity or a State offence. In the trial for that offence no evidence has been adduced as to any agreement, because it was not necessary, although it may, if the prosecution likes, strengthen its case by proving an agreement. If dacoity is proved by the finding of property or by the capturing of the culprits on the spot, then it is wholly unnecessary for the prosecution to adduce evidence to show that these persons met and conspired together. Suppose these persons are tried for the dacoity and acquitted. What my amendment says is that afterwards none of these persons, who have been tried for the more important offence of dacoity, ought to be again tried for a mere conspiracy to commit the offience. As the law exists, they cannot afterwards be tried on the same facts. There are Judges who hold the same facts to mean the same facts used in the trial: there are other Judges who hold that the expression 'same facts' include facts which might and ought to have been adduced by the prosecution with ordinary diligence in that particular trial. But such an interpretation has been held by many Courts to be a strange interpretation. The same facts I take to mean facts adduced, not facts which might or ought to have been adduced in the previous trial.

"As the law now stands a man may be prosecuted for mere conspiracy. Whatever be the result, he may afterwards be prosecuted for the principal offence, towards which he was said to have conspired. First of all, therefore, it will give an opportunity to the police to try this man in one instalment for a conspiracy, and if they failed, to try him in the next instalment for the principal offence or *vice versâ*. That is what I wish to guard against, and I am told that the existing law is sufficient. I am unable to accept the view that the existing law is sufficient in this matter. If the existing law is quite sufficient, what is the harm in accepting a surplusage? I am invariably told the existing law is sufficient. I have no objection to my amendment being drafted and re-drafted with the assistance of the Hon'ble the Advocate General or the Hon'ble the Law Member. Therefore, if the existing law is sufficient, please re-draft my amendment in any way you like, but let me have the pith and substance of it. I am sorry to say that I am compelled to press my amendment."

The amendment was put and negatived.

The Hon'ble Mr. Vijiaraghavachariar:—"Would I be in order if I asked you kindly to adjourn the proceedings until to-morrow?"

The President:—"The Hon'ble Member would be quite in order, but I shall not accept it."

The Hon'ble Mr. Vijiaraghavachariar:—"I am rather tired and have some more amendments to move."

The President:—"The Hon'ble Member can do just as he likes about withdrawing his amendment or proceeding with it. We have now reached a stage when we hope to carry the Bill and I propose to go on."

The Hon'ble Mr. Vijiaraghavachariar:—"The next amendment which stands in my name is this:—

'(*a*) In column 3, for the words beginning with the word 'may' and ending with the word 'otherwise' the words 'shall not arrest without a warrant' be substituted, and for the second paragraph in the same column the word 'ditto' be substituted.'

[*Mr. Vijiaraghavachariar; the President; Sir William Vincent.*] [19TH MARCH, 1913.]

"The object of this amendment is to make the offence non-cognisable. It is analogous to the amendment I have already moved, namely that all offences should get the sanction of the Government of India. Of course the details may not be analogous, but the principle is, there are a number of offences which are very heinous, and which are yet non-cognisable. I have already quoted one section, 121, the offence under which of waging war against the King, which is punishable with death or transportation, is non-cognizable. Now, if we apply the same principle here, no harm can accrue to any extent if we have regard to the fact that no harm was contemplated by the framers of the Indian Penal Code who have made an offence under section 121 non-cognizable. As a matter of fact, all the State offences—I believe—are excluded from the purview of the police. The underlying principle in all these matters is that where sanction is needed from any authority, the offences cannot be made cognisable because the two authorities might otherwise come into conflict. The underlying principle there is that, however heinous the offence may be, wherever sanction is needed, the policeman is excluded from investigating the offence and arresting persons in connection with these offences. Pursuing that principle, I beg that my amendment may be accepted, namely, that offences proposed to be constituted under this law may be made non-cognizable. As a matter of fact this would be a greater safeguard in the working and the administration of the new law than the sanction that is said to be necessary before the initiation of the prosecution for several offences under this Bill. With these few words, I move the amendment."

The President :—"Do you wish to make any observations on (*b*) and (*c*)? You will not have a chance of speaking on them again."

The Hon'ble Mr. Vijiaraghavachariar :—"Yes, Sir, a word or two about the second part of my amendment, that

> '(*b*) in column 5, for the whole of the first paragraph the words "Bailable, except where the object of the conspiracy is an offence punishable with death or imprisonment for life;' be substituted:

"'Imprisonment for life' I am afraid that is a mistake. I do not think the Code provides imprisonment for life."

The Hon'ble Sir William Vincent :—"The amendment is perfectly right. May I explain, Sir, I only wish to say that I verified it from the draft of the amendment which the Hon'ble Member filed, and there it is 'Imprisonment for life.' Speaking subject to correction, I am not aware of any offence in the Indian Penal Code which is punishable with imprisonment for life. I speak, as I said, subject to correction."

The Hon'ble Mr. Vijiaraghavachariar :—"I had not up to this moment noticed it. Will you, Sir, permit me to convert it to 'transportation for life?'"

The President :—"You may not offer any remarks on the assumption that it is changed. No change can be made now."

The Hon'ble Mr. Vijiaraghavachariar :—"The amendment is, that except in the case of conspiracies to commit very serious offences punishable with death or deprivation of the liberty of a man for life, the accused man may be allowed bail. Now the question of bail becomes of importance, firstly, because that would be one of the guarantees against the abuse of the power which, as regards cognizable offences, naturally vests in the police. Now the police, in the case of bailable offences under the law as it exists, are bound to accept bail if sufficient bail is offered. But in the case of non-bailable offences I take it, subject to correction, that even if the police believe that they can hold the man to bail, as the law is administered, he has no power to grant bail, but the Courts alone have the power. This has been the accepted canon of the interpretation of the words 'bailable' and 'non-bailable' in the schedule of the Criminal Procedure Code. The whole object of bail or no bail depends upon the question why an accused person should be

arrested at all. The arrest is not a preliminary punishment, it is not a punishment for the offence which has to be proved hereafter, and of which the man may or may not be convicted; the object of bail is entirely to secure the person in view that he may be tried and justice may be rendered, the sole object is to prevent him from running away. The principle recognised in the Criminal Procedure Code, as I understand it, is this, that the severer the punishment, the greater would be the temptation for the man to run away.

"For instance, if death or transportation for life be the punishment, the temptation of the man if you held him to bail would be the greatest to run away. Therefore the higher the offence the greater is the danger of the man running away: hence the Criminal Procedure Code draws the line, so far as the provision in the schedule is concerned, between the serious offences and the non-serious offences. In an important case this principle has been dwelt upon by Mr. Justice Tyabji of Bombay in a very illuminating and exhaustive judgment wherein he says that the object of the law in India is not whether he is guilty or not guilty, but as to whether he will be available for justice or not. That is the principle he has enunciated. In giving effect to this principle, the punishment provided might be taken into consideration in estimating the risk of leaving the man at large.

"For these reasons I beg that my amendment may be accepted."

The President:—"Does the Hon'ble Member propose to deal with compoundable offences?"

The Hon'ble Mr. Vijiaraghavachariar:—"I have stated all I have to say, Sir."

The Hon'ble Sir Reginald Craddock:—"Sir, this is not an amendment that the Government can accept. I have already shown in speaking to the previous amendment how impossible it would be to deprive the police of their power to take cognizance of conspiracies to commit heinous crimes, and how unreasonable it would be to distinguish conspiracy to commit an offence from abetment of that offence. Similarly, there is nothing in this new offence which would lead us to depart from our ordinary law governing the grant of bail. We have made conspiracies to commit minor offences non-cognizable by the police even if the offences themselves are cognizable. In doing so, we have gone as far as we can to meet any objections that are based on the fear of undue police interference with the liberty of the subject. I did not gather quite whether the Hon'ble Member was pressing what he said about making the offence compoundable,—whether he put forward that amendment or not. As regards compoundable offences, as is well known, the composition of the more serious offences is contrary to public morality, and is also directly prohibited by the law. Whereas in regard to the minor offences, the one thing we desire to guard against is the risk of vexatious charges of conspiracy with a view to levy black-mail. Although the law does permit minor offences to be compounded when the complainant receives some reparation, yet undoubtedly this power of composition is often an inducement to persons to have resort to the criminal Court merely as a means of exacting some compensation. It is therefore most undesirable that complaints of conspiracy should be used as a means to this end, and the fact that composition is not possible should be a discouragement rather than an encouragement of charges of conspiracy. Lastly, as regards the other forms of conspiracy to commit illegal acts or to use illegal means, inasmuch as the authorisation of the State is a preliminary condition of the prosecution, the question of compounding an offence with a private person does not arise.

"For these reasons, I am unable to accept on behalf of Government the amendment."

The amendment was put and negatived.

The Hon'ble Sir Reginald Craddock:—"Sir, I now beg to move that the Bill further to amend the Indian Penal Code and the Code of

Criminal Procedure of 1898, as already amended, be passed. So much has already been said both on the principle and the details of the Bill that I do not wish at this stage to say anything further, but will reserve any remarks that yet remain to be made until Hon'ble Members who wish to speak have said what they desire to say."

The Hon'ble Sardar Daljit Singh:—"Sir, it is with a heavy heart that I rise to speak a few words on this measure, and it must be deeply regretted by all that irony of circumstances should have compelled Government to invoke the aid of the Legislature in order to strengthen their hands for the suppression of illegal practices aiming at the disturbance of peace and avoidance of law.

"The present measure is intended to bring the law of conspiracy more or less in line with the law in force in England and in other civilised countries. This measure when passed into law will make conspiracy itself the object of which is found to be association of people for the accomplishment of illegal deeds, as a substantive offence, and it is high time that such conspiracies were nipped in the bud, so to speak, instead of allowing them to develop into what ultimately may turn out to be disastrous to public peace and tranquillity. No one, whatever his political views may be, can oppose such a measure for the obvious reason that associations for achievement of unlawful objects can never be defencible, and if the law is helpless to punish conspiracies in unlawful deeds, it requires amendment so that its arm may be long enough to catch them. As matters stand at present some delinquents think they can escape because their machinations fall short of treason, but their ulterior designs should not be permitted to mature by reason of the absence in the Statute-book of an enactment which cannot punish such conspirators. This is not the first time that the Indian Penal Code and Code of Criminal Procedure have been brought before the Indian Legislature for amendment; so there can be no matter for alarm on the part of the public. Every new thing is alarming to the popular sentiment. Not to speak of laws or sections dealing with political crimes, when a purely social reform measure—the Age of Consent Bill—was on the anvil the hue and cry raised against it forms a chapter in the history of the development of political wisdom in India. It was argued that with that measure passed into law the peace of the home would become a thing of the past. But now the best intellect of the land regard it a source of unmixed blessing to society.

"In the same way those who are on the side of law and order regard the present Bill a beneficent measure to secure tranquillity in the country. With safeguards provided in the Bill, as amended by Select Committee, the fears that powers given by the amended law will be abused are baseless and visionary, and I am sure all lovers of peace and order will extend to the measure their unstinted support.

"With these few remarks I support the motion before the Council."

The Hon'ble Raja Jai Chand:—"Sir, I rise to support the Indian Criminal Law Amendment Bill, or the Conspiracy Bill, as amended by the Select Committee and as it is now before the Council. As much has already been said and discussed freely, therefore I only slightly differ with my Hon'ble colleague, a brother soldier of mine too, sitting on my left; he wished the Bill to be passed at once, and I wish the Bill as now stands to be passed into law at a possible early date.

"Before I sit I beg to congratulate the Hon'ble the Home Member in charge of the Bill and welcome the necessary measure taken."

The Hon'ble Malik Umar Hayat Khan:—"Sir, I have expressed my views already on the subject which I still hold.

"After following the debate on the last stage, it was evident that most of the Hon'ble Members were for this measure. As they represent the bulk of Indian population, it was considered that the minority, after knowing the

opinion of the majority, would follow them. But as this has not been the case and a Minute of Dissent has been recorded, as well as some amendments moved, I have chosen to say a word on behalf of the Muhammadans of the Punjab. Outrages and conspiracies are not allowed by our religion, and I am voicing my co-religionists when I say that this addition in the law which strengthens the hands of authorities will be welcomed by them. I hope the members who supported the Bill will remain firm. I am glad such amendments which weakened the measure and made it less effective have not been accepted by the Council.

"The speeches of our two Hon'ble old gallant men, I don't mean old in the matter of age, would go a long way to interpret the meaning of the law, as well as all the other debates. I ask them both to rise to the occasion and let the Bill be passed unanimously as it will be more effective.

"In conclusion, I accord my support to the measure now before the Council. I am also glad to hear from the three speeches of the Punjabis, a Sikh, a Hindu and a Mussalman, that the whole of the Punjab, the mother-country of soldiers, is unanimous upon this measure. I am glad that my friend on my right wishes the Bill to be passed soon. There is a law that the rules can be suspended—so he is not really against me but for me."

The Hon'ble Mr. Ghuznavi :—"Sir, at the time of the introduction of this Bill I took the privilege of giving expression to my approval of the principle of this Act and assured Government on behalf of the Mussulmans of Bengal, whom I have the honour to represent, of our ready support and active co-operation in any measure or measures which the Government might take in stamping out anarchism and sedition from this land. Although some of us are of opinion that this measure is directed not only against anarchisms, not only against sedition mongers, not merely against burglars and dacoits, but also against persons who conspire to commit any criminal offence whatsoever, I cannot dissociate myself from the idea that our chief aim is to forge a weapon to reach those who are the real enemies of our country.

"Less than a decade ago, this land of ours was free from all suspicion of sedition, from all insidious influences of the anarchists, from all depraved cravings of intellectual maniacs. But alas, unhappily a change has come for the worse. Burke and Mill have not been read aright. Their teachings have created an indigestion and it has gone to prove once more the old adage that 'little learning is a dangerous thing, drink deep or taste not of the Pyrean spring.'

"Sir, I am convinced that the ideals of a true Englishman and a true Indian are one and the same so far as this country is concerned. England's mission here is not that of everlasting enthraldom and of keeping us in perpetual darkness and of squeezing us until there was no more to squeeze. With a microscopically small exception, I think, all Indians are now equally convinced as well as myself that her mission is a much nobler one. She is here to enlighten us, to uplift us, to guide us to a better goal. And it is that infinitesimally small exception, that microscopically small sect of maniacs against whom not only this measure alone, but if a dozen other measures were brought by Government, the true lovers of our country should always be prepared to support. Our object is to reach those who carry in their hands bombs and revolvers which are the sure handmaids not of the restorers of their country's liberty, but of the disturbers of their country's tranquillity. I am sure neither the Government nor any sane person objects to constitutional agitation of a constructive character. But here it is the destructive elements with which we are concerned.

"Sir, in my speech at the time of the introduction of this Bill, I sounded a note of warning against the Bill as it stood, lest, it might be turned into an engine of oppression of the innocent. Hence, my appeal to the members of the Select Committee was that they should find some safeguards, certain effective safeguards, not against the use but abuse of this new law. I am happy to say that the Bill as amended in the Select Committee has emerged

in a greatly improved condition. In order to provide against misuse of this Act, I find two new clauses have been added. The first of these provides for cases of criminal conspiracy to commit offences referred to in section 195 of the Code of Criminal Procedure of 1898, and requires the same sanction for prosecutions for conspiracies to commit such offences as is required for prosecutions for the offences themselves. The second clause provides that no Court shall take cognisance of any criminal conspiracy to commit certain offences specified in section 196 of the Criminal Procedure Code of 1898 or to commit illegal acts which are not offences or to effect legal objects by illegal means except upon complaints made by or under the authority of the Governor General in Council, the Local Government or some officer empowered by the Governor General in Council in that behalf. I find that it also provides that no Court shall take cognisance of criminal conspiracies to commit non-cognisable offences or cognisable offences punishable with less than two years' rigorous imprisonment without the direct consent in writing of the Local Government or of a District Magistrate or a Chief Presidency Magistrate empowered in this behalf by the Local Government. I congratulate the Committee for having added these safeguards which to my mind were extremely essential.

"Although having regard to the conditions that prevail in this country we cannot fail to recognise the gravity of our friend the Hon'ble Pandit Malaviya's objections in his note of dissent, yet how I look at it is this. That in view of the disquieting events of recent years it is better to have an imperfect weapon than no weapon at all. I am quite sure but for these unfortunate occurrences which have cast a slur on the fair name of Ind, neither would this Bill have been introduced in the inaugural session of this Council at the new capital of Delhi, nor would we almost as a body have given it our unstinted support.

"Sir, one word more and it is this. How well I remember that on the very eve of the opening of the enlarged Council under the Reform Scheme by Lord Minto, all Calcutta was startled by the news of the foul murder of Sultan Alam who was done to death by the cruel hand of the assassin in the very precincts—the sacred precincts of the High Court—while he was discharging his duty. The political horizon which had hitherto been calm and serene was suddenly overcast with dense clouds, and the following week saw the birth of the Press Bill which a few days later was enacted into law. History in this instance too, Sir, has repeated itself. Yesterday the news reached us that two bombs had found their way to the General Post Office at Calcutta, and to-day we are engaged in enacting this Conspiracy Bill into law. Since that cold-blooded assassination of Sultan Alam, consequently one repressive measure has been followed by a still stronger measure. With the assumption, however, of the Viceroyalty by His Excellency Lord Hardinge, the entire policy of Government underwent a change. Repression was replaced by conciliation, and suspicion gave way to fullest trust and confidence. Yet the life of that very Statesman who had inaugurated this wise and benign policy was jeopardised the other day, and was only saved to us through the infinite mercy of Providence. As our spontaneous admiration is excited by the truly noble example of courage which he displayed to the world, as our love and intense gratitude went out to him when at the opening of this Council he uttered those memorable words, namely, 'I will pursue without faltering the same policy in the future as during the past two years, and I will not waver a hair's breadth from that course', so must we justify the trust which he has reposed in us when he said in the last words of that never-to-be-forgotten speech that he was 'inspired with confidence in the determination of the people of India to stamp out from their midst the fungus growth of terrorism and to restore to their beautiful motherland an untarnished record of fame'

"Sir, the policy that we ought to follow is perhaps best expressed in the old French proverb for which I can find no adequate translation—'*Oignez le vilain il vous poindra, poignez le vilain il vous oindra.*'

"I therefore have no hesitation in supporting the motion."

The Hon'ble Maharaja Ranajit Sinha of Nashipur:—"Sir, I am not in favour of any repressive measure unless the emergency of the case demands it; for I think that such a measure generally does no good. I am fully alive to the responsibility of my position as an elected representative of Bengal, and I would not have signed the Select Committee's Report, had I not been convinced that the measure which is now before the Council is not a repressive measure, and would not lead to an oppression or harassment of innocent persons. Sir, I must say that there is a feeling of alarm in the minds of our educated country-men about this measure, not because that they encourage or approve of conspiracies, but the fact is that they do not trust the police, and they are afraid that this measure will be a fresh engine in the hands of the police for the harassment and oppression of innocent persons. With the safeguards that have been provided in this Bill, I am sure that the chances of abuses are very much minimised. My friend, the Hon'ble the Law Member, has very lucidly explained the objects with which the safeguards have been provided, and I hope his explanation will remove any cause of apprehension in the minds of the public.

"Sir, I must also admit that there is also a feeling among our countrymen—I refer to Bengal—that there is no necessity for such a measure. I am sure that no one will deny that since the visit of Their Imperial Majesties to India, there has been an outburst of genuine feelings of loyalty and contentment throughout the length and breadth of India. At the same time, Sir, I cannot deny the fact that there are circumstances existing which compel the Government to introduce this measure. Who ever dreamt that the outrage which was committed on the day of the State Entry into Delhi could have been possible against the representative of our august Sovereign, and specially against a high personage whose whole-hearted sympathy goes forth for the good of India, and who by his sympathetic and conciliatory administration has opened a new era in the administration of this country. Therefore, Sir, we cannot at all blame the Government for bringing forward this measure, and I hope, and I am sure, that our countrymen who are always willing to co-operate with the Government for the restoration of law, peace and order will find that the measure will not operate against innocent persons, but only against persons who are trying to do injury to the country.

"With these few remarks I support the Bill."

The Hon'ble Mir Asad Ali Khan:—"Sir, the Criminal Conspiracies Bill before the House is, perhaps, the most important legislative measure during the Council term this year. It has evoked an amount of public criticism which cannot altogether be ignored. The emergency of the measure is questioned, and the operation of the Bill is feared. Groundless as are the apprehensions of a section of the Indian public, it must be admitted that the Bill itself is very comprehensive. It is explained away that the Bill proposes to bring the existing law on conspiracy in the Indian Penal Code in line with the British law. But British conditions do not prevail in this country. With a weak police and a system of less efficient judiciary in this country, the Bill, unless it includes far more safeguards than it has now, is in some cases likely to be used as an oppressive weapon, especially in the hands of unscrupulous persons. However, we are deeply thankful to the Select Committee for the absolutely necessary safeguards they have introduced in the measure. To obtain Government sanction in all cases of grave offences is the most important safeguard. Also, the executive, it is earnestly hoped, will exercise the new powers created by the provisions of this Bill with judicious care and caution. We all recognise the need for this measure, and are resolved in our endeavours to stamp out all manner of disloyal crimes. I hope that in its application the Bill, when passed into law, will bring to book the real offenders, and thus ensure public peace. Mahomedans, Sir, have always been known for their steadfast loyalty to the British Throne, and, as a humble representative of the Muslim community, it is my bounden duty to support Government. I agree with the main principle of the Bill, and give it my cordial support."

[19TH MARCH, 1913.] [*Mr. Qumrul Huda; Babu Surendra Nath Banerjee.*]

The Hon'ble Mr. Qumrul Huda:—"Sir, when I first saw the draft of this Bill about three weeks ago, I confess there arose in my mind some misgivings as to whether there was going to be a change in the policy of Government, from a policy of conciliation back again to that of repression. The Statement of Objects and Reasons did not altogether dispel my doubts or give any great satisfaction. For although it told us that what was sought was merely to bring our law into a line with the English Criminal Law, I could not very well forget that what was suited to England was not always suited to India.

"When however we heard the speech of the Hon'ble Sir Reginald Craddock at the time of introducing the Bill in this Council, I at least felt a sort of relief. The tone of the speech was conciliatory, and it removed all fears and doubts which were created in one's mind as to the change in the policy of Government. He was submitting the Bill to the Select Committee with an open mind, and was willing to take into consideration among others 'the undesirable consequences' it may entail. Now when we read the Report of the Select Committee on the Bill, we find that happily many of our expectations have been fulfilled, and the Bill has come out of it much improved though I do not mean to say that there is no room for further improvement. Insertion of clause 5 in the Select Committee will prove a great check on the powers of the police, and it will be a safeguard against hasty proceedings. The amendment in the schedule ensures the trial of such cases by senior and experienced officers in the service.

"The Government is convinced that the executive authorities are in need of a comprehensive Act to deal with lawlessness prevalent in some parts of the country. In spite of the fact that the Government could not disclose the facts which led them to this conviction, we should be the last persons to throw obstacles in their way in giving the authorities the required power. When they are held responsible for the dacoities and heinous crimes which have become so common in recent years, it will be unfair on our part not to arm the executives with proper weapon to deal with them.

"With these few remarks, I strongly support the Criminal Conspiracy Bill."

The Hon'ble Babu Surendra Nath Banerjee:—"Sir, amid the chorus of applause that has greeted the motion of the Hon'ble the Home Member for the passing of this Bill, it is an unpleasant duty for me to strike a discordant note and to oppose the Bill. I said, Sir, it is an unpleasant duty, but I feel that it is a duty and I am quite sure that the English gentlemen who sit round this table will not grudge me the performance of what I believe to be my duty.

"Sir, I thankfully admit that the Government has made concessions, important concessions, to public opinion. I have gratefully tendered my acknowledgments to the Government for the modifications and the safeguards which they have introduced. At the same time, Sir, I feel that those modifications, important as they are—and I have not the smallest desire to minimise them—are not sufficient. Sir, amendment after amendment has been laid before the Council by my friend to my right and by myself, and the Government has not seen its way to accept any of them. Sir, we are here—I speak on behalf of the elected representatives sent by the different Councils—we are here to voice the opinions of our constituents when those opinions are in harmony with our own conscientious convictions. And I say this, so far as this Bill is concerned, that it is not in accordance with the educated sense of the Province which I have the honour to represent. It is not in accordance with the requirements of the situation so far as we have been able to understand those requirements. We regard the measure, and I believe my countrymen in Bengal regard it, as unnecessary, and it may even prove mischievous. With these convictions, Sir, which I strongly hold, it is necessary for me to record my vote of opposition to this Bill.

"Sir, I may be mistaken—I hope I am—but so long as my views have not been shaken by the hard logic of facts, I will continue to hold that the Government has committed an error by passing a law of this kind. I do not for a moment question the high motives of the Government. I am sure the Government is animated by the loftiest intentions in the interests of peace, order and tranquillity; but the representatives of the people are at liberty to take an opposite view of the situation. Sir, there may be differences of opinion round this table regarding the great measures of Government, but I hope there will be always amongst official as well as non-official members a large sense of charity, tolerance, mutual respect and mutual esteem. I claim for my attitude that it is sincere, that it is honest, that it has been carefully thought out, that it deliberately reflects the sense of the great educated community of Bengal which I have the honour to represent in this Council. More than this I am not prepared to say at the present moment."

The Hon'ble Mr. Madhu Sudan Das:—"Sir, during the passage of this Bill through the Council there have been remarks which no doubt go to show that in some minds there is very serious apprehension of the police abusing their power, and that there is ahead very great oppression for every one of us.

"The law of conspiracy has been imported in this sense that, though there was the law of conspiracy applicable only to two sections in the Penal Code, it has now been, as it were, incorporated as a part and parcel of the Penal Code itself. It is a foreign law newly introduced, and it is natural that in a country like India it should create some degree of alarm. But we have another foreign visitor amongst us as well; and that is the anarchist. By anarchist I do not mean a person who commits a particular kind of offence. I have not certainly before my mind that class of persons who have been committing heinous crimes within the walls of a High Court in broad daylight, or people who have been committing outrages like that which was committed the other day at Delhi; but by an anarchist I mean a person or a body of persons whose object is to set aside law, to introduce disorder into society. And law may be set aside under many circumstances; outrages might be committed, not only against the State, not only against officials, but against private individuals as well. We have had instances of crimes of the most atrocious nature, of a nature which were unknown in India.

"Sir, I cannot overlook the fact that India is a country where crimes of this nature, *i.e.*, taking away the life of a man was considered a serious thing. Indians have such a love of life, such a respect for the lives of the others that India is the country which first produced vegetarians. India is the country which has produced Buddhists. That is the country where we have now amongst us men who really seem to think that they are performing patriotic acts if they indulge in murders and assassinations of the most atrocious kind. We have had instances of dacoities, to which reference has been made in this Council, in East Bengal, and I happen to have some figures with me which I found the other day in the columns of a newspaper—I think the *Pioneer*. I find that in 1906, there were 155 dacoities against 26 convictions; in 1907, 131 dacoities against 19 convictions, in 1908, 166 dacoities against 26 convictions, in 1909, 160 dacoities against 18 convictions, in 1910, 179 dacoities against 24 convictions, in 1911, 181 dacoities against 19 convictions. At a glance at these figures one sees that, while the number of crimes is increasing, the percentage of conviction is on the decline; and it has been said also in this chamber that there is a want of detective skill on the part of the police. Whether it be want of detective skill or it be want of some other power, and whether the absence of that power be in the hands of the police or in the hands of those who are responsible for the administration of the country, the fact stares us in the face that atrocious crimes of this nature which involve loss of property, life and limb to innocent people, are committed without the offenders being brought to justice. Certainly those who are responsible for the administration of the country have not been able to answer this

[19TH MARCH, 1913.] [*Mr. Madhu Sudan Das; Maharaja Manindra Chandra Nandi; Mr. Vijiaraghavachariar.*]

question 'What shall we do under the circumstances?' I fully share the feeling of shame which my Hon'ble friend Babu Surendra Nath Banerjee said he has when he hears of these things; but then I ask myself, have I been able to help Government or those responsible for the administration of the country, to get rid of these people, though these outrages are committed against my own countrymen, my kith and kin. What have I done? That is really the thing. Two facts stand out prominently before us They are that the Government has failed to do anything; the people have failed to do anything; to get at these criminals. We don't know where they are and consequently the time is come if they are not to be found in the broad daylight, if they hide themselves in dens, in secret places, something must be done to get at them, and the Conspiracy Bill is nothing but this. If we can't get hold of these men when they have committed overt acts, let us try if we can reach them when they are hatching their plots. Now, for instance, taking an analogy from plague, it is really a case like this: if we can't get hold of the rat when he comes out of his hole and tries to go about the house and spread infection, let us try to enter the hole and kill him there if we can. Well, whether this will succeed or not it is very difficult to say, but certainly I felt that I should not be justified (when I cannot do anything to stamp out this evil from my country) in opposing Government when those people who are responsible for the administration of the country say this is a measure they want to give a trial. I am not a lover of policemen. I have had personal experience, personal attention not of a very enduring character from both the policemen and the anarchist. The policeman tried to rob me of my character; the anarchist sent me a threatening letter saying if I did not withdraw certain remarks, which I had made in the Council chamber, my life was not mine. Well, between these two, it did not take me long to decide which was the better. We have two evils amongst us. The policeman may be an evil, but he is a necessary evil. A policeman's position reminds me of a nursery lesson. A child had a running nose and he complained to his mother 'Mamma, why has God given me a nose, that nose troubles me very often,' and the mamma said 'Well, if you had not a nose you could not breathe.' Well, a policeman is a necessary evil in that sense. I have no doubt in a few minutes more this Bill will be passed. Government undertakes the responsibility to make the best use of this Bill, to stamp out the new state of things, the new criminal developments which have made their appearance in the country. In the meantime, I make an appeal to my countrymen both inside this chamber and outside this chamber to lift up the finger of scorn against this class of people. A finger of scorn is very powerful. The soldier who will walk up to the mouth of a cannon which emits red hot balls from it boldly and courageously will shrink before the finger of scorn in society. I say let society raise up its finger of scorn, or if I may use such an expression the kick of scorn against these men until they feel that there is a kick which is as heavy as the kick of a sixteen-hand high waler."

The Hon'ble Maharaja Manindra Chandra Nandi of Kasim Bazar:—"Sir, at this time of the day every body is anxious to go home, and I do not like to make a speech. The Bill is intended for the peace of the country. It was introduced by the Hon'ble the Home Member, and passed through the Select Committee, and has been discussed in this Council. I beg to support it."

The Hon'ble Mr. Vijiaraghavachariar:—"Sir, it is now nearly half past six o'clock. I do not think it will be possible for me carefully to scrutinize the whole of this measure, having regard to its policy, the plan of action adopted, the time chosen for its enactment, or, the provisions of the Bill to carry out the intentions of Government. I confess that if I was unconvinced on the day the Bill was introduced into this Council, I remain more unconvinced still to-day because of what has since happened. While the interval has revealed to me certain aspects of the whole situation, the Home Department does not yet give me the information that I have long been

seeking and seeking in vain. I have asked for information on two points on which this Bill as mentioned in the Statement of Objects and Reasons is made to rest; these two points being the alleged existence of dangerous conspiracies and modern conditions. On a former occasion, I had to allude to the fact that my request had not been complied with, and while making no complaint, I had to lament the fact to show why I was absolutely in ignorance as to any evidence on which it may have been found necessary for Government to launch this Bill all on a sudden, like a bolt from the blue. Subsequently I have been favoured with a reply, dated 11th instant which is as follows :—

'In reply to your request of the 1st instant, for papers relating to the existence of dangerous conspiracies and the insufficiency of the existing law on the subject of conspiracies to meet them I am directed to inform you that in the light of the statement, already made by the Hon'ble the Home Member in the Legislative Council on the 5th March, the production of the papers is not contemplated.'

'This is the reply that has been since vouchsafed to me. It is thus very clear that for any and every information I may desire, I am to look to the speech made by the Hon'ble the Home Member when the Bill was introduced. What are the grounds on which this Bill has been launched and is being hurried through? And why is there a departure from the usual rule adopted throughout the civilised world in enacting legislative measures and adopted in this Council also hitherto and even before the Indian Council's Act was passed in 1861? I have in vain looked for light and guidance upon this matter in Council in the speeches of the Hon'ble the Home Member, the Hon'ble the Advocate-General, the Hon'ble the Law Member and the other members who have supported the Home Member. I must say there has been absolutely no indication towards any such information. We have been favoured with no shadow of a reason for adopting an exceptional measure and so exceptional a procedure. There was no leave asked to introduce this Bill, but there is a special rule which dispenses with this provision. That was adopted, the Bill was published in the *Gazette of India*, and the first thing the Council knew about it was when it was introduced and referred to Select Committee. It is remarkable that a series of infirmities have adhered to the proceedings throughout adopted by Government in reference to this Bill. No reason has been shown why it has been so. I next ask, I have asked again and again, what are the circumstances under which the existing law has been stated to be inadequate for the purpose of putting down and punishing any crime? There have been abundant speeches both by officials and non-officials, but absolutely no light has been thrown upon that subject; let us take the case of dacoities committed in Bengal. It is a well known fact that we cannot punish people under the existing law for mere conspiracy, but facts showing the existence of conspiracy could be proved under the law for the purpose of proving the crime. Have we then any statement, much less, evidence that if this proposed law had been already in the Statute-book, such conspiracies as were alleged in the trials of the principal offences, could have been proved and punished? I wonder that statements are so very easily made that trials for these dacoities failed because of the gap in the law. We have got statistics as to acquittals and convictions. If evidence as to the existence of any conspiracies do not satisfy the Courts, presumably these dacoities were due to special conspiracies and organisations which the law was unable to reach. I fail to see how then the new law can manage to reach these subtle conspiracies and make a portion of the transaction penal. I use the word 'transactions' in a legal sense, meaning the whole set of circumstances which can be proved in order to prove the crime. That is how Sir J. Stephen defines it. How by making a portion of the transaction criminal and punishable, the hands of Government will be strengthened and lengthened so as to reach these dacoits, I fail to see. On this aspect of the question, all the speeches on the official side have been absolutely silent. The next point I wish to urge is with regard to the provisions embodied in the Bill. How will they enable criminal trials to be far more successful than they have been? I respectfully submit that it is absolutely impossible to prove conspiracies by any evidence other than that of accomplices and by confessions. This is an important matter

that ought not to be lost sight of. It is in the highest degree unlikely that the conspirators will be men who will be willing to join for the purpose of hatching conspiracies with the knowledge and in the presence of persons whose evidence will be accepted as that of disinterested witnesses, as unimpeachable testimony. The only way in which the powers of the police could be said as having been strengthened is the facility this law creates for catching hold of people and make them confess as conspirators. The evidence of accomplices is a technical thing; the evidence of accomplices arises where people are placed in the dock. To one of them at any rate pardon for his crime is tendered; he is then called upon to give evidence against his fellow criminals. Before you get at him to secure his evidence, you must manage to get a confession from him. I have the highest authority to warrant me in saying that confessions can be of no use whatever when taken apart from the machinery existing in the country for the detection of crime. That is what I mean when I say that this law is demoralizing; it would be impotent, even more impotent than the law now existing, and which the other side has declared to be futile. I do think it would be impotent. If it is in any degree to be made potent at all, if it is to be made any wise useful, the policeman must manufacture confessions and induce people to give evidence against their accomplices. This is the most demoralizing part of the law. Therefore we say, far from being a hand-maid in the hands of Government to punish offenders, it would be a kind of inducement to the police to manufacture confessions as best they may.

"Then I fail to understand why a little amendment of mine that offences should be made compoundable has been omitted. As the Bill now stands, any and every conspiracy is non-compoundable. I made a little suggestion that the word 'not' before the word 'compoundable' might be omitted as regards certain offences. In the Indian Penal Code, there are, I believe, some thirty offences which are made compoundable. By compoundable it is meant, as Hon'ble Members know, that persons who are injured by the offences have the power, under the law, of making a compromise with the accused person, and thereupon Courts let the latter go. That is what is called 'compoundable,' and a number of offences, amounting to between twenty-five and thirty, are compoundable under the Indian Penal Code. I am not now in a position to say what offences under special or local laws are compoundable. Confining myself to the Indian Penal Code, I fail to see why, in the case of conspiracies to commit compoundable offences no offences should be made compoundable. Let me take an ordinary instance, that of an editor and a sub-editor. Let us assume that they agree to criminally defame a man in their paper. This will be an agreement to commit an offence. When they carry it out, they may be prosecuted. But the offence of defamation is compoundable. So if they complete the offence they are allowed to compound it, but if they stop with agreement, the law says it is not compoundable. I am absolutely unable to reconcile myself to the principles of such provisions. Why it is quite an inducement to conspirators to go on and to complete the offence, for the law says to them, 'Do not stop at conspiracies as regards offences which are compoundable. If you stop there you cannot compound, but finish the crime and you will be able to compound it.' So I am astonished that that little amendment of mine was not accepted by the other side. Take again the case of hurt. Supposing a man actually hurts me, I have the power to forgive him, I have the power to compound the offence, but not the offence of conspiracy to commit it for—

The President:—"I am sorry to interrupt the Hon'ble Member, but he is really dealing all over again with sub-section 3, or rather the heading in the amendment No. 39, which he moved some time ago. This was fully discussed and at any rate, fully answered. He can deal with the whole Bill and the principle involved in the Bill, but he is not entitled to go back and re-discuss the whole of that amendment."

The Hon'ble Mr Vijiaraghavachariar:—"Very well, Sir, but permit me to say that the Bill does not carry out the stated intentions of the Government. I was only going to say that the Bill does not carry out the

proposed intentions of Government. On the whole, therefore, taking the provisions of the Bill as they are, they are most mischievous and most calculated to demoralise the police, because they give them power to interfere in matters where it is impossible to get anything like real evidence, and there would be no other way to bring to light such crimes except by extorting confessions and making people who confess accomplices and witnesses against themselves and their fellow criminals.

"Then as regards safeguards, permit me, Sir, to call attention to the fact that there is a distinction introduced between cognisable and non-cognisable offences for this purpose. Now it is well-known that in the case of cognisable offences the police have power to investigate of their own accord. In the case of non-cognisable offences, after once the Magistrate takes cognisance of such offences, the police then have power to investigate them when authorized by Magistrates who have ordinarily no means of investigating non-cognisable offences except by the employment of the police. Therefore, the distinction between non-cognisable and cognisable offences is this, that the policeman can without authority investigate cognisable offences, but in the case of non-cognisable offences he needs the authority of a Magistrate to investigate them. Practically, therefore, all these offences will be in the hands of the police. It can be more easily imagined than it is necessary for me to describe what would be the effect of increasing so enormously both the degree of power and the volume of power in the hands of our police.

"Then there are a few arguments placed before us as regards the policy and necessity for this law, and there are three or four catchwords freely used such as, modern conditions and dangerous conspiracies, the gap argument, the imperfection argument and the innocence argument and so forth. As regards this gap argument, I have already disposed of this matter long ago. Therefore I do not think it necessary to repeat my argument that it was not a gap, that it was intended by the framers of the original Indian Penal Code to be what it was. On that day I relied upon my memory as to a particular passage in the Macaulay Commission which I said was the language of Macaulay. I have since found the passage and I beg permission to read it. The passage runs thus:—

'State crimes and especially the most heinous and formidable State crimes have this peculiarity, that if they are successfully committed the criminal is almost always secure from punishment. The murderer is in greater danger after his victim is despatched than before. The thief is in greater danger after the purse is taken than before. But the rebel is out of danger as soon as he has subverted the Government. So the Penal Law is impotent against a successful rebel, it is consequently necessary that it should be made strong and sharp against the first beginnings of rebellion, against treasonable designs which have been carried no further than plots and preparation. We have therefore not thought it expedient to leave such plots and preparations to the ordinary law of abetment. That law is framed on principles which, though they appear to us to be quite sound as respects the great majority of offences, would be inapplicable here.'

"This is quoted with approval, I believe, by Stokes in the preparation of his Anglo-Indian Code, and my remarks based upon this proposition are that it is recognised by the Macaulay Commission that the principles of the ordinary law, *viz.*, that we should begin with abetment and not go further than that, are sound ordinarily, but that in the case of State offences we want, for the reasons stated in the passage, to get hold of the offenders at an earlier stage, and hence we make a departure from the principles which are accepted by the Commission as sound as regards the ordinary law. They make a departure in the case of State offences, and I submit very respectfully that the refusal of the Macaulay Commission to introduce a further law of conspiracy was intentional, deliberate, and mature. These high principles enunciated by the Macaulay Commission were accepted by this Council, after the Mutiny, under most provoking conditions.

"Then we are told that Sir James Fitzjames Stephen characterised the Indian criminal law as imperfect in the sense that it did not contain the English law of conspiracy more fully. It is a fact that he says so, but when does he say that? He says it 10 years after he left India. I believe he left India in 1873. I am not quite sure, he did not stay here the full 5 years.

About 1873, he left India and he published his History of the Criminal Law of England in 1883. It is there this passage for the first time occurs. I am therefore entitled to ask the question, as he was the Law Member of this Council and as he was a very powerful member too, what effect did he give to this view of his that the criminal law of India was imperfect as regards the conspiracies? Did he try to give effect to that opinion of his which he subsequently mentioned in his History of the Criminal Law? If he did not, I am entitled to say that the idea did not occur to him while he remained in India, and while he had in his mind the conditions of India most fresh Further let me add that the conspiracy law under section 121A was introduced by him, and he says in one of the passages, I think in the speech in this Council, that he was personally responsible for it. So that while he was in India, he introduced this conspiracy law, namely 121A. It could not be therefore that he had no opportunity to think of this imperfection in the criminal law. He had an opportunity; he had dealt with a particular branch of the conspiracy law, namely as regards State offences, and yet he did not try to introduce the additional conspiracy law from the English law, either in toto or modified so as to suit the circumstances of this country. Therefore, in the light of these remarks his statement 10 years later that the Indian law is imperfect in this matter is not entitled to a great deal of weight. If, on the other hand, it be maintained that he tried and did not succeed, still it strengthens my argument. It means that his colleagues and the Government of the day did not agree with him that the criminal law was imperfect in the sense in which he said it was. Therefore it is immaterial to me which view we have to take. Either he held this opinion while he was in India, but was unable to give effect to it; or the opinion which he formed, he formed much later, namely about 10 years later. That is the imperfection argument.

"The statement of Sir James Fitzjames Stephen in these circumstances that this law is imperfect is not entitled to that weight which it would have if he had not come to India, if he had not the resources, powers and opportunities to make the law all that he desired it to be. I shall have to speak with historic freedom if I say that in matters of criminal law, I should ask responsible members of Government and non-official members not to take Sir James Fitzjames Stephen as a very great authority. Sir Frederick Pollock, speaking of his achievements in India, said that his notions were rough and not exactly in accordance with English ideas. I quote from memory, that Sir Frederick Pollock characterised the ideas of Sir James Fitzjames Stephen in relation to India as rough and not quite in accordance with English views. Therefore I am entitled to say that Sir James Fitzjames Stephen ought not to be accepted as quite as an authority in matters relating to criminal law affecting India.

"The argument based on innocence is made much of by the Hon'ble the Home Member and he complimented me by saying that I was a law-abiding member. All that I say is that I cannot understand how this serves him as an argument. May I ask why England has alone in the world secured the most extraordinary network of conditions and guarantees for its liberty? Why has it the Habeas Corpus Act, while it is not given to us? I need not argue the point further; it is a superstition to say that innocence and freedom from oppression are synonymous. If Englishmen need safeguards, much more do we need safeguards. Englishmen very wisely found and proved to the world, that it is not enough to have good laws, but that you must have guarantees that those laws are not abused by those entrusted with their administration. And of all people in the world, Englishmen should be the last to say that innocence and immunity from arrest and trial on false charges of offences are in any way correlated. I hope I shall not be misunderstood if I quote an instance. I do it for the best of purposes and from the best of motives. How did the English throughout this country act when the Ilbert Bill was introduced? From a High Court Judge downwards they opposed it, and to my mind rightly opposed it according to their own ideas about us. If the argument of innocence is to prevail, everyone of them was wrong. From the High Court Judge downwards they objected to being tried

by the most enlightened Indian District Magistrates. Suppose I asked them 'are you all going to be offenders? Why are you afraid of the most enlightened Indian District Magistrates?' What would be the answer given by Englishmen who started that agitation? That agitation, Sir, was quite a storm, a sublime storm, how do you account for such an agitation? Will anybody give me a satisfactory answer why the innocence argument fails when it is applied to the principles of that agitation?

"All that I humbly submit is that the innocence argument as it applies to us, Indians, is carried too far. I repeat, it is a mistake and it is a very serious mistake to say that because a man is innocent, therefore he should not be afraid of bad laws and of the abuse of laws.

"The next argument, Sir, is what I may venture to call the company argument. The Hon'ble the Home Member is jubilant over the degree of support he has got in this Council in connection with this measure. Here again I tread upon dangerous ground, and I hope I shall not be called to account by my Hon'ble non-official colleagues. I will allude here to one or two facts. This company argument is an extremely vulnerable argument. In the first place, the Legislative Council is so constructed that Government is eternally bound to have its majority. No doubt, over and above the ordinary majority it is expected to command, there is a great deal of support forthcoming to this Bill, but I decline to associate this additional support with the real necessity for this Bill itself. Perhaps I would be justified, I think, if I allude to an important principle that exists in England, of which Lord Erskine was ostentatiously proud. In matters of treason the English law prohibits too prompt trials. And Lord Erskine rightly makes much of it, in that it is a product of the English constitution and it is due to the genius of the administration of justice in England, that when a man commits an offence against the reigning sovereign, commits treason, the law prohibits his trial promptly. Why is it? Because it is well known that, human nature being human nature everywhere that impartial administration of justice, that careful weighing of evidence, that freedom from prejudice which are necessary for finding out legal guilt would not exist if people are tried while the feeling is very great, because of the fact that a serious outrage offending the whole nation has been committed. Exactly the same thing has happened here, and reversing the great English constitutional principle that is exactly the reason why this Bill has been sprung upon this country and why the Government will not wait for the circulation of the Bill and for the opinions of the country usually sought and obtained. Now this has been taken advantage of, the fact that the country feels very warmly, rightly; and the national outburst of grief and loyalty is so very great still this opportunity has been skilfully chosen suddenly to spring this Bill upon us. No other explanation has been vouchsafed, and I have no other explanation to detect except this. But if this Bill had been brought one year earlier or one year hence, I console myself, I flatter myself, that the degree of support which the Hon'ble the Home Member would have obtained, would not be what it is now. Why, look at the speeches made on the day the Bill was introduced, and look at the speeches made now. It is very clear as I said a little while ago, that there is a genuine feeling on the part of my non-official colleagues that, on account of this outrage, they are bound to co-operate with Government in this matter. The argument, Sir, would have done honour to the argument which Mark Twain introduces so comically.

"This looks exactly like it. Hon'ble Members—some of them—saw the outrage committed, others have heard of it: hence they say we all must support the Bill. There is no more connection between this Bill and the outrage than there is between Mark Twain's seeing the cave, and the truth of the story of the Seven Sleepers. Therefore I respectfully submit this is not an opportunity that ought to have been taken advantage of for this legislation. It is fraught with danger and most mischievous in its scope and nature. This opportunity should not have been chosen by Government for flinging upon us such a Bill. And hence the support. This support I do not at all envy the Hon'ble the Home Member in having secured under these circumstances. It is said dacoities take

place, political dacoities. I am willing to raise the level of my imagination, and I ask the Hon'ble Members to fly with me for a while. What will be the next law, may I know? What will be the next law to arm the Government to suppress crime? Imagination fails me. Nothing is left—absolutely nothing. But it strikes me this is not at all an argument that ought to have been seriously advanced in the way it has been advanced, namely, to connect it with an outrage for which everybody is most sorry. There are people, Sir, throughout the country who are most distressed now on account of the deplorable outrage, but it is my duty once for all to warn Government and Englishmen not to be misled by profuse lamentations in this connection. It is an unnatural and unholy thing Pure and real feeling of loyalty exists in a subdued manner, and it would show itself in a natural manner rather than in profuse statements of joy or grief in and out of season. It is on these occasions that the best of Governments become nervous I warn Englishmen from being deceived by these profuse statements. I respectfully submit that the Hon'ble the Home Member—you will pardon me the allusion—is occupying exactly the position which the ancient King of Britain? King Lear occupied. I have no other way of describing his position now. He will forgive me if I say I occupy the position of the King's last child. It is my duty to warn the Hon'ble the Home Member not to be misled by things of this kind. I beg leave to state that this is not the way in which crimes in India ought to be or can be put down. The other day the Hon'ble the Home Member was very angry with the Hon'ble Mr. Banerjee when he alluded to a policy of distrust I have to allude to it. I will not call it a policy of distrust: I will call it a policy of weakness and want of true statesmanship. I will call it a policy of bad statesmanship. How do you administer the Arms Act, and the rules under the Arms Act? Our scoundrels have arms: our good men have no arms. Administer the rules in such a way that the scoundrels have no arms. Arm the villagers, and dacoities will cease in India. Arm the villagers, selected men, and trust them. Send your sepoys to the village and taking the best of the villagers, arm them and drill them, and see whether dacoities do not cease the next day. You may add law after law to the Statute-book but the dacoities will not disappear. That is my view. What is the answer given? What answer can the Government give? How do they explain this phenomenon in the administering of the law in such a way that the poor helpless people have no means of defending themselves while, whether *viâ* the Persian Gulf or somehow, the dacoits and other criminals manage to get and provide themselves with the best arms. But the law-abiding, peace-loving people cannot. The obvious remedy is not to trust and arm the Police the more—a most futile act—but to place more and more reliance on the people themselves. I cannot bless the Arms Act."

The President.—"I think if the Hon'ble Member would endeavour to confine himself to the Bill before the Council, and not discuss the Arms Act, we might possibly be able to adjourn at a reasonable hour."

The Hon'ble Mr. Vijiaragharachariar:—"It was only by way of illustration, Sir. I may be a little irrelevant but I crave your indulgence. I bow to the ruling of the Chair, but I ask him to allow me at this very late hour—not in the metaphorical sense—in the literal sense—to say that the remedies adopted to suppress crime in India are totally different from the remedies that have been adopted from time to time in Europe and all other advanced countries. I cannot but lament over the situation on the whole. It is sad indeed that only one or two are obliged to oppose this Bill, and the Hon'ble Mr. Surendra Nath Banerjee has well expressed it when he said that our conduct is inspired by nothing unworthy. I for my part do not stand here simply as a representative of the masses or the plebians. I am not simply for them, but I am of them, and therefore in stating my views in opposition to the Bill, I have regard to what I believe to be the well-being of the people, especially the lower orders who can ill afford to take care of themselves. Just at this moment, Sir, when Indian thinkers and leaders are endeavouring to lift up the lower orders—the ill-born, the ill-fed and the ill-clad—to a higher level, social,

economic and if possible, political, just at this very time, a law like this is suddenly passed and added to the permanent Statute-book. Does the Government really believe that it is possible for Indian leaders and thinkers to co-operate with Government in the administration of laws of this kind, which though not in fact due to suspicion, are capable of being construed as arising from a policy of distrust and suspicion, passed as they are without taking the country into confidence? In this particular case it has been said that Government does it to protect the people. Not one Hon'ble Member on the other side—not one official Member on the other side—has told us that any suggestion came from the sufferers throughout the length and breadth of India to say that they wanted such a law. Not one sufferer has ever asked Government to protect them by severer laws than exist now. It is a remarkable silence pervading the whole of the speeches made on the official side. There is no evidence that there is any demand for this law from the people. There can be none. Government still is always thinking for us—never thinking with us.

"The whole of the thinking is done for us. In this thinking no assistance from the public has been sought. Sir, I very respectfully submit that I am unable to join in the congratulations bestowed so freely and so profusely upon the Government on this occasion. Sir, in justice to everything I hold dear and sacred, in justice to my countrymen, to my Sovereign and to Englishmen, I must say that I think that this measure is the outcome of a very shortsighted policy, more calculated further to embarrass than to meet the position. I venture to say that it is not at all designed the better to strengthen Government as they fondly imagine. It would emasculate the thinkers and leaders of India who would willingly co-operate with Government in ruling this Empire. I remember a short sentence by the Hon'ble the Home Member in reply to the Hon'ble Mr. Surendranath Banerjee that the Government takes the risk of working this law. Such words would never have been uttered in former days. Such a sentence would never have been uttered by a Bentinck or Canning, a Malcolm or Munro, a Macaulay or Peacock that Government would take the risk, that Government will take care of themselves and that we had better mind our own business. Such a spirit is absolutely inconsistent with the spirit of the makers of the British Indian Empire.

"Now I have only one or two remarks more to make and I shall have done. It has been said that this law is in several respects better than the English law. I beg leave to differ. I continue to adhere to my opinion that it goes further than the English law, while it has not all its safeguards. As I said the other day, in England employers and workmen have protected themselves from the operation of this branch of the conspiracy law by a special Statute. It has been said very ostentatiously that guarantees are provided in that there is the provision as to overt acts which the English law does not possess. That is not exactly accurate. As I said the English conspiracy law is not a statutory law: it is a law of which I may say briefly that Judges are at once legislators and administrators. One golden rule in the administration of the English law is this—that though in a conspiracy an unlawful agreement is of itself a sufficient overt act yet in a prosecution for conspiracy, unless there is direct proof of an unlawful agreement, the evidence must in order to establish the agreement show an overt act done in pursuance of the alleged agreement. Lord Halsbury adds 'the evidence of such an act is always desirable even though it is not legally necessary.' What is the good of this boast then that we have introduced special safeguards which the English law does not possess? The English common law is scattered over a lot of things. How does the English law stand? Where there is no direct evidence of an agreement of a conspiracy an overt act is in all cases necessary in practice. I say this practice protects the English people far better than our law as to overt acts would. Lord Halsbury says that in all cases where it is not even legally necessary an overt act is necessary. That is how the conspiracy law is administered in England. Will our Judges and Magistrates administer it in the same spirit? I therefore join issue with the Hon'ble the

Home Member and his supporters in the statement that our law is better than the English law. It is not better but much worse. It is very comprehensive. It has not the same guarantees, and it is capable of being abused, to an extent unknown and such as cannot be imagined in England. Sir, how many minutes more may I speak to-day?"

The President:—"I leave it to the Hon'ble Member's good feeling."

The Hon'ble Mr. Vijiaraghavachariar:—"It is my duty to obey the recommendation of the Chair, I shall obey it and will conclude with these few remarks. I do not want to trespass on the time of the Council and the Chair any further. Sir, it strikes me that this Bill is exceedingly mischievous in its origin, in its development and in its passage throughout and in its present final form and scope. The policy of the law, I am sorry to say, having regard to the existing circumstances of the country, is a mischievous policy, and the plan of action adopted in carrying it through is a dangerous precedent. It is unlike the method followed by the Hon'ble Member entrusted with the Company Law. How did he behave when certain objections came to him at the last moment—objections which he said were unreasonable? With fresher English instincts—I blame none or only the climate of this country—with less sun-burnt English instincts, we find that even when objections are declared to be unreasonable he said 'Let us give those fellows a chance though.' I don't understand why the Hon'ble the Home Member did not adopt a similar attitude regarding this Bill.

"Sir, where I have no power fruitfully to criticise, give me the power to lament, to be in distress, to be in grief. I therefore repeat my analogy; my grief is like that of the divine child Cordelia. I hope like her and I pray like her that the Hon'ble the Home Member and those who support him and share his joy at present will not be involved along with the people of the country in one common ruin upon the administration of this law."

The Hon'ble Sir Reginald Craddock:—"Sir, I feel that I have the majority of the Council with me in cutting short any remarks that I might have intended to make on the merits of this measure. It was examined in Select Committee; and suggestions have been thrown out that the Members of the Select Committee agreed to the Report under some misapprehension. The best answer to this is that a Minute of Dissent was written by the Hon'ble Pandit Madan Mohan Malaviya. If there was any misapprehension, it was not shared by him, and if any members wanted to join him in that dissent, they were at perfect liberty to do so. Therefore I feel there can in no sense whatever have been any misapprehension about the support that they gave either in Select Committee or in their speeches this evening. There have been two opponents only, I might say, to the Bill, and they have opposed it with a pertinacity worthy of a better cause. It has been urged that there was no necessity for it, that it was ineffectual, and finally that it would act as an engine of oppression. That last is the only objection that requires a special answer at this late stage. I feel certain that the majority of this Council are satisfied that the safeguards that have been introduced will prevent the Bill being in any sense an engine of oppression. What safeguards do the opponents of this Bill want? Do they want safeguards which may be safeguards to prevent innocent people being harassed? or do they want safeguards by which guilty people may find loopholes of escape? If they want the former, we have given these safeguards; if they want the latter, we cannot and will not give them. Other strange statements have fallen from those who have opposed the Bill in the course of this debate. We were told, for instance, that the oppression of the private individual was not the concern of the State. As if the whole basis of the *Pax Britannica* in India, the whole basis of the confidence reposed in the British Government was not the belief and the confidence of the people in the power of Government to protect the weak from the oppressor.

"Sir, I feel convinced that all the fears expressed by the opponents of this Bill (of whose attitude I do not desire to complain) that all the fears they have expressed are absolutely groundless. I feel convinced that the confidence of those Hon'ble Members who have supported this measure will be fully justified by its working.

"It will enable one serious gap, as we have called it, in the Penal law to be filled up, and it will give no further facilities for police oppression or for persecution by the police or by private persons than would be the case under any existing section of the law. I am convinced that there are no such dangers as are apprehended by the opponents of this measure.

"Sir, there are certain measures which affect the safety of the Commonwealth which the Government, as constituted in this country, have to carry, with the support of the Council if it may, and without that support if it must. This measure is of that nature, and it is all the more gratifying to us that we should have had that support. I would even have liked to have won the support in the end of those two members who have opposed it. But it is most gratifying to us to have received the support that we have, because we feel that the co-operation of those supporters goes beyond the mere assertion that they lament and regret the crimes and outrages, and shows us that they are willing to give us their support in the practical way in which we have asked for it.

"Sir, I will ask now that the question be put."

The motion was put and agreed to.

The Council adjourned to Thursday, the 20th March, 1913.

DELHI;
The 31st March 1913.

W. H. VINCENT,
Secretary to the Government of India,
Legislative Department.