

Monday, 19th September, 1921

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COUNCIL OF STATE.

Monday, 19th September, 1921.

The Council met in the Council Chamber at Eleven of the Clock. The Honourable the President was in the Chair.

QUESTIONS AND ANSWERS.

TRAINING OF INDIAN OFFICERS IN THE CIVIL SERVICES.

124. The HONOURABLE MR. G. M. BHURGRI : Will the Government be pleased to state—

- (a) Whether they have tried the experiment of training Indian officers in the Civil Services (both the Imperial and Provincial Service) as Reserve officers for the Indian Army on a similar basis as the European civilians are trained in the Indian Army Reserve of Officers ?
- (b) If so, with what measure of success ?
- (c) If not, the reasons why Government do not try the scheme ?

The HONOURABLE MR. DENYS BRAY : Proposals for the re-constitution of the Indian Army Reserve of Officers are under consideration.

These proposals include the training of officers, which heretofore had not been attempted in peace.

The scheme provides for the admission of Indian, as well as European, officers on the same conditions.

GOVERNMENT PROMISSORY NOTES.

125. The HONOURABLE SIR MANECKJI DADABHOY : (a) Have Government received and considered the reports of the different Committees appointed to explore the possibilities of improving the market for the old stocks of 3 per cent. and 3½ per cent. Government Promissory Notes ?

- (b) If so, when will final orders be passed on the subject ?

The HONOURABLE MR. E. M. COOK : The reports of the two Committees are being published to-day, together with a Communiqué, and copies are being sent to each Honourable Member. My Honourable friend will see from the Communiqué why it is that Government are not yet in a position to arrive at a final decision on the matter.

RAILWAY ACCIDENTS.

126. The HONOURABLE SIR MANECKJI DADABHOY : (a) Is it a fact that since 1911 railway accidents, including collisions, have been steadily on the increase, and that the increase in number in 1919-20, compared to the figure for 1918-19, was exceptionally high ?

- (b) If so, has any special inquiry been made into the whole question of railway accidents, and with what result ?

(c) Do Government propose to adopt special measures with a view to reduce railway accidents to the minimum, and in that connection to consider the British Board of Trade Rules on the subject and the system of automatic signalling, automatic continuous brake, automatic couplers and control of points and signals by electric power or air pressure adopted with considerable advantage on the railways of the United States of America?

The HONOURABLE MR. J. A. RICHEY: As the reply involved is very lengthy, the papers giving the particulars asked for are placed on the table.

(a) The total number of accidents on Indian Railways (including minor accidents not reported to Local Governments under section 83 of the Indian Railways Act) showed an increase from the year 1911 to 1914-15. There was a fall in 1915-16, and the number has again risen between the years 1916-17 and 1919-20.

Figures for the years 1911 to 1919-20 are given in the statement attached for the Honourable Member's information.

(b) No special inquiry has been made, but in regard to this part of the question, I do not think I can do better than to quote from a reply given by Sir T. R. Wynne, to a somewhat similar question in Council in September 1913.

'From the Honourable Member's question I am afraid he is under the impression that it is possible to find effective means to prevent any accident occurring in the future.'

I can assure him this is an impossibility. The causes of accidents are numberless, often complicated and, in the case of derailments, sometimes inexplicable.

Under the present procedure every serious accident is thoroughly inquired into both in respect to its technical side and to the possibility of its being due to carelessness or neglect in working, and steps are at once taken to introduce any precautions possible to prevent its recurrence. Accidents are mainly caused by neglect in carrying out rules of working, and therefore cannot be entirely prevented. They can only be minimized by constant care and supervision of working by the railway officials and by securing strict obedience to rules of working.'

(c) The Honourable Member is presumably referring to the powers granted to the British Board of Trade under the Regulation of the Railways Act, 1889. In accordance with this Act the Board of Trade—now the Ministry of Transport—may, from time to time, order a Railway Company—

(a) to adopt the block system on all or any of their railways open for the public conveyance of passengers,

(b) to provide for the interlocking of points and signals on, or in connection with, all or any of such railways,

(c) to provide for, and use on all their trains carrying passengers, continuous brakes.

The position in India is that with, the exception of a few unimportant Railways and certain sections of lines, the block system has been adopted on all Railways open for the public conveyance of passengers. Considerable progress has been made in interlocking of points and signals, and, generally speaking, nearly all lines carrying a heavy passenger traffic have installed a system of interlocking of points and signals at most of their stations. Further, most of the broad gauge coaching stock is equipped with the continuous brake, and considerable progress has been made on the metre gauge lines in this matter.

The question of automatic couplers is a large one. To begin with, it means the alteration of the present design of coupling on every vehicle on all the

broad gauge railways of India. It will, therefore, take a considerable time to introduce and will be extremely costly. The matter is, however, now under the consideration of the Government of India. I would add that all metre gauge stock already has an automatic coupler.

As regards the working of points and signals by electric power or air pressure, experiments have been made in this direction on some of the Railways, but without much success, and it is not considered that this would in any way conduce to greater safety. Electric control of points and signals is already in use on several railways.

Automatic signalling, if by this is meant signals actuated by the passage of the trains themselves, has not long emerged from the experimental stage, and, with the exception of the tube Railways in London, it is not in general use even in England. It is considered that the time is hardly ripe yet for its introduction into India. On certain of the busiest sections of railways in India, however, a starting signal cannot be lowered until a train has cleared the section ahead of it.

In India, the rules which govern the inspection of Railways before opening and periodically afterwards by a Government Inspector, are much more rigid than in great Britain, where the practice is that once a Railway or any new work in connection therewith has been passed by a Board of Trade Inspector, the railway or work is not inspected again during operation.

In India, the practice is that Railways are inspected and passed before opening for passenger traffic and annually after opening or more often if considered necessary.

It will be seen, therefore, that the Government of India have already adopted special measures with a view to reduce railway accidents to a minimum, and this is a matter which always has had, and still has, the careful attention of the Government of India.

Total number of accidents (i.e., those reported under section 83 of the Indian Railways Act and those not reported under that Act).

—	1911.	1912.	1913-14.	1914-15.	1915-16.
Total number of accidents of all classes.	11,612	12,859	13,188	13,806	13,536
Casualties per million of passengers—					
(a) Killed ...	0·030	0·015	0·124	0·035	0·041
(b) Injured ...	0·388	0·375	0·223	0·310	0·276

—	1916-17.	1917-18.	1918-19.	1919-20.	—
Total number of accidents of all classes.	14,043	14,485	16,286	17,951	
Casualties per million of passengers—					
(a) Killed ...	0·097	0·126	0·026	0·163	
(b) Injured ...	0·588	0·551	0·285	0·463	

DEhra DUN COLLEGE OF FORESTRY.

127. The HONOURABLE RAJA MOTI CHAND : Will the Government be pleased to state—

- (a) If it is a fact that the Dehra Dun College of Forestry is only equipped for the instruction of the Provincial Service Officer?
- (b) If it is a fact that this College cannot at all provide for the instruction of the Imperial Service Officer?
- (c) If the replies be in the affirmative, do the Government propose to take steps at an early date for establishing an institution in India which will render the journey of Indian students to England for the purposes of training in Forestry unnecessary?

The HONOURABLE MR. B. N. SARMA : (a) Yes.

(b) Yes.

(c) The future place of training of probationers for the Imperial Service is under consideration. Alternative proposals, one of which is for the establishment of an institution in India, were fully set forth in the Government of India's Circular letter to Local Governments No. 934, dated the 5th July 1921 which, with all necessary papers, was published in the Gazette of India, dated the 20th August 1921. Local Governments have been asked for their opinions, and, in particular, to obtain Indian opinion. The Government of India will also give the Central Legislature an opportunity of discussing the subject before making their recommendations to the Secretary of State.

TRAINING INDIANS IN THE ART OF NAVIGATION.

128. The HONOURABLE RAJA MOTI CHAND : (a) Will the Government be pleased to state if they propose to train Indians in the science and the art of Navigation so that they may become competent officers?

(b) If so, what steps do the Government propose to take in affording adequate nautical instruction for the purpose?

The HONOURABLE MR. E. M. COOK : As regards the Mercantile Marine, the Honourable Member is referred to the answer given by the Honourable Mr. A. C. Chatterjee to *question No. 52, which was asked by the Honourable Raja Promada Nath Roy in this Council on the 14th February last.

With regard to officers in the Royal Indian Marine, the Government of India have under consideration proposals to send selected Indians to England to undergo a course of training in the training ships "Conway" or "Worcester" or at the Pangbourne Nautical College, with a view to their qualifying eventually for service in the Royal Indian Marine as Executive Officers. Their subsequent training will be carried out by the Royal Indian Marine authorities in India. Proposals are also under consideration to facilitate the training of Indians, if possible, in India and otherwise in England, so that they may qualify for employment as officers in the Engineer Branch of the Royal Indian Marine.

BURMA MEAT TRADE IN THE UNITED PROVINCES.

129. The HONOURABLE LALA SUKHBIR SINHA : (a) Is the Government aware that the United Provinces Legislative Council passed a Resolution in March last to stop the Burma meat trade in the United Provinces and

*Vide page 39 of Vol. I of Council of State Debates.

recently the Central Provinces Council has also passed a similar Resolution to stop the trade in the Central Provinces ?

(b) Is the Government aware that the public feeling is very much against this trade ?

(c) Do Government propose to put a stop to it without any further delay ?

The HONOURABLE MR. B. N. SARMA : (a) Yes.

(b) Government are aware that a certain section of the public are opposed to this trade.

(c) Government are examining the position regarding this trade, and they are not at present prepared to define their policy in the matter.

STAFF SELECTION BOARD.

130. The HONOURABLE MR. G. S. KHAPARDE : (a) Will the Government be pleased to state whether among the staff employed by the Staff Selection Board in their own branch, there are employees who are not qualified candidates in the sense of having passed the examination prescribed by the Board itself ?

(b) If the answer to (a) be in the affirmative, will the Government be pleased to state whether there are employees in other Departments entertained or retained without passing the examination prescribed by the Staff Selection Board ?

(c) Is Government aware that a number of candidates, who had the privilege to serve the Government during the hard time of war, have now failed to pass the Board's test, and consequently their Departments are under an obligation to dispense with their services, irrespective of the consideration of their approved and loyal services ?

(d) Is it a fact that the temporary hands of long standing having, in some cases, the services of about five to seven years to their credit, have been examined by the Board and declared unfit, though their immediate superiors are satisfied with their work ?

(e) Is it a fact that a representation praying for exemption from the test prescribed by the Board has been submitted by the employees of the Surplus Stores Department ? If so, what action does Government propose to take on it ?

The HONOURABLE MR. H. D. CRAIK : (a) The Staff Selection Board had originally two clerks, both temporary employees. The Board decided that one of these should appear at the first examination and the other at the second examination. It is obvious that the work of the Board during examination would have completely broken down if both clerks had had to be absent undergoing examination. The only clerk left is the one who will take the next examination. The clerk who had sat for the last examination passed and is now employed in the Secretariat.

(b) Yes.

(c) There have been some such cases ; but the Board has taken the view that, where such men have proved to the satisfaction of the Department concerned that they are capable of performing their duties, and have been recommended by it, they should not be removed at once because they have failed to pass

the test. Such men have been retained in employment and will be allowed to appear at the Board's next examination. Those who were doing Assistant's work and were acting in the Upper Division have been allowed to continue to officiate therein.

(d) Yes ; but such men are being retained in employment in the same way as those mentioned in part (c).

It should be added that, after the written examination, the Board interviews each candidate and is assisted at the interview by a representative of the Department concerned. The recommendations of this representative, and therefore of the Department, are always given the fullest consideration.

(e) A representation on the subject has been submitted by certain members of the clerical staff of the office of the Chief Controller (Surplus Stores). The matter is under consideration.

The HONOURABLE MR. G. S. KHAPARDE : May I ask a supplementary question, Sir ? How long does it take to examine each candidate by this Staff Selection Board ?

The HONOURABLE MR. H. D. CRAIK : I am afraid I must ask for notice.

MEMORIAL FROM JEMADARS, DAFFADARS AND PEONS.

131. The HONOURABLE MR. G. S. KHAPARDE :

(i) Will the Government be pleased to state—

(a) Whether they received memorials from Jemadars, Daffadars and Peons, dated 18th July, 1920, submitted through the Secretaries of the Departments in which they serve ?

(b) Whether they received the subsequent reminders dated :—

(1) 21st June, 1921.

(2) 22nd July, 1921.

(ii) If the answer to (a) and (b) above be in the affirmative, will the Government be pleased to state what action has been or is intended to be taken on them ?

The HONOURABLE MR. H. D. CRAIK : (i) (a) and (b). Yes.

(ii) Orders are about to issue.

JUDICIAL ADMINISTRATION OF FRONTIER PROVINCE.

132. The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS :

Do the Government propose to put the entire judicial administration of the Frontier Province under the control and supervision of the Lahore High Court, as is that of Assam under the Calcutta High Court ?

The HONOURABLE MR. DENYS BRAY : The answer is in the negative.

IRREGULAR DELIVERY OF POSTAL ARTICLES.

133. The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS :

(a) Is the Government aware that, specially in the Punjab, there is great irregularity in the delivery of postal articles, as well as their loss, by the Post Office ? Will they kindly inform this Council what steps they have taken or they propose to take to remove this state of affairs ?

(b) Is it a fact that this irregularity and loss has taken place from the time the sorting of postal articles has been transferred to the Railway Mail Offices? If so, do the Government propose to consider the desirability of reverting to the old system?

The HONOURABLE MR. B. N. SARMA : (a) There have been some irregularities in the delivery of postal articles in the Punjab owing to the strike of postmen and menials which took place in December last. There is not wide-spread complaint in the matter, and the delivery of postal articles has greatly improved since January.

(b) The answer to the first part of the question is in the negative and the second does not, therefore, arise.

STRENGTH OF THE CLERICAL STAFF, RAILWAY MAIL OFFICES.

134. The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Will the Government kindly state what was the strength of the subordinate and clerical postal staff in Railway Mail Offices before the sorting of postal articles was transferred to them? Will they also inform this Council what is the strength of such staff now? Does the Government contemplate any increase in this staff?

The HONOURABLE MR. B. N. SARMA : The information asked for by the Honourable Member is being collected and will be furnished when received.

COMPARISON OF POSTAL BUSINESS IN 1914 WITH PRESENT TIMES.

135. The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Will the Government kindly lay before this Council a statement comparing the volume of postal business, as well as the strength of the subordinate and clerical postal staff in 1914 with what it is now? If the present staff is not sufficient to cope with the increase in postal business, will the Government kindly state what steps they have taken or they propose to take in the matter?

The HONOURABLE MR. B. N. SARMA : The statistics required by the Honourable Member will be found in Appendices II, V (a), VI and XVIII of the Annual Report on the Department of Posts and Telegraphs for 1914-15 and Appendices II, IV (a), V (a) and XVIII of the Report for 1919-20.

The staff is constantly augmented to cope with the increase in postal business. An officer is being placed on special duty with a view to ascertain whether any further substantial addition to the strength of the staff is necessary.

STRENGTH OF SORTING STAFF IN POST OFFICES.

136. The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Will the Government kindly state what was the strength of the sorting staff in Post Offices before sorting was transferred to the Railway Mail Offices, to what extent was this sorting staff brought under reduction in Post Offices and to what extent was station sorting staff, excluding running sorting staff, increased in the Railway Mail Offices, when this transfer of sorting took

place? Has this change of system effected any saving in expenditure? If so, to what extent?

The HONOURABLE MR. B. N. SARMA: The information asked for by the Honourable Member is being collected and will be furnished when received.

INSUFFICIENCY OF SIMLA ALLOWANCES.

187. The HONOURABLE RAI BAHDUR LALA RAM SARAN DAS: Is it a fact that the allowances granted to postal clerks in Simla are insufficient in the present day prices, and are actually lower than what are granted in other Departments? If so, do Government propose to remove this inequality?

The HONOURABLE MR. B. N. SARMA: It is not considered that the allowances are insufficient. The position is that prior to 1st September 1921, postal clerks in Simla on pay below Rs. 50 drew a local allowance of Rs. 20, while those on pay of Rs. 50 and above drew Rs. 25. As a result of the recent increase in pay, a local allowance at a uniform rate of Rs. 20 has been sanctioned for them, with effect from the 1st September 1921. The Honourable Member's attention is invited to paragraph 26 of Chapter II of the Report of the Postal Committee of 1920. It will be seen that the Committee were of opinion that with the revision of pay proposed by them there was no occasion whatever to increase the amount of existing local allowances. The local allowances granted in other Departments will be found in the Simla Allowance Code, but no comparison between them and the local allowances of postal clerks is sustainable. In addition to the local allowance postal clerks are being allowed grain compensation allowance at the rates and under the conditions sanctioned by the Local Government, with effect from the 1st August 1921, as a temporary measure, on account of the temporary rise in the prices of grain.

BALLOT PROCEDURE RULES.

The HONOURABLE THE PRESIDENT: I desire to invite the attention of the Council to rule 6 of Schedule I, which contains the Ballot Procedure Rules with regard to which some difficulty appears to have arisen. The rule is as follows:—

'6. A member may select, subject to the priorities of the list, any day allotted for the disposal of non-official business. But he or some other member authorised by him must state there and then, at the time of the ballot the Bill or Resolution that he wishes to have set down and the date on which he wishes it set down and, if he has not already given notice, (the notice of course being the 15 days' notice required by the rules) must do so on the day next following, or he will lose all priority.'

I understand that at the recent ballot an Honourable Member had had his name entered on the list, but did not attend on the day of the ballot. The Honourable Chairman who presided over the ballot, in the exercise of his discretion, decided that he had not authorised any other member within the terms of the rule to act on his behalf. That being so, he ruled—and ruled quite correctly—that the Honourable Member was debarred from taking part in the ballot. Subsequently thereto, the member gave notice of a Resolution apparently thinking he could do so under the concluding words of rule 6. As I have said, 'notice' there means notice for the purpose of the 15 days' rule, not for the purpose of stating the Resolution which an Honourable Member desires to bring forward. It is obvious, I think, to Honourable Members that the object of rule 6 is

[The President.]

to allow those Honourable Members who do attend the ballot to vary the Resolution which they may wish to bring forward. On hearing the Resolutions named by Honourable Members who are above them on the lists they may find themselves blocked ; perhaps the first Resolution they wish to bring forward may have been already mentioned by a member with priority. They therefore naturally will select another Resolution which is not blocked. It is clear that an Honourable Member must choose his Resolution either himself or by his delegate as soon as his name comes out in ballot and not a day later.

ARREST OF ALI BROTHERS.

The HONOURABLE THE PRESIDENT : Before we proceed to the business of the day, I must read to Council the following notice which I have received from the Honourable Sir Maneckji Dadabhoy. It runs as follows :

'I beg to inform you that when the Council of State meets this morning, I propose, with reference to Standing Order No. 21, to ask the leave of the President to make a motion for the adjournment of the business of the Council for the purpose of discussing a definite matter of urgent public importance, namely, the arrest of the Ali Brothers and others and the policy of the Government in the matter of political arrests of this nature.'

The HONOURABLE MR. G. M. BHURGRI : Sir, I understand from the Government Communiqué that has been published by the Bombay Government that the case is under trial under the ordinary law, and I think therefore that it will be against the interests of the accused to discuss this matter now. In these circumstances, I want to know, Sir, whether this motion for adjournment is in order.

The HONOURABLE THE PRESIDENT : In order to enable me to decide this matter, I would ask the Member of Government whether the facts are as stated by the Honourable Mr. Bhurgri.

The HONOURABLE MR. H. D. CRAIK : Sir, I will briefly state what the facts exactly are. The Government of Bombay decided, with the full approval of the Governor General in Council, to prosecute seven persons in all under section 120-B, read with sections 131 and 505 of the Indian Penal Code. The seven persons concerned are : Messrs. Mohammed Ali and Shaukat Ali, Dr. Kitchlew, Ghulam Mujadid, Maulvi Hasan Ali, Nisar Ahmad, and a Hindu calling himself Shri Shankaracharya, whose real name I have not ascertained. The prosecution has been launched in respect of the support given by these persons to a Resolution passed at the all-India Khilafat Conference.

The HONOURABLE THE PRESIDENT : Order, order. I should be glad if the Honourable Member will answer the question which I put to him. The facts I desire to ascertain are, whether these persons were arrested by an order of the Magistrate, under the ordinary process of law, or are held in detention under any special Act ?

The HONOURABLE MR. H. D. CRAIK : So far as I know, Sir, four persons have been arrested, Messrs. Muhammad Ali and Shaukat Ali, Dr. Kitchlew and Pir Ghulam Mujadid, and a fifth accused is already in jail on another charge. Mr. Muhammad Ali was arrested by order of the Government of Madras under the security sections of the Criminal Procedure Code,

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and was detained at the place where he was arrested pending the arrival of a police-officer who held a warrant for his arrest issued by the Magistrate of Karachi. That police-officer has now arrived and Muhammad Ali was, I believe, taken into custody by him. Dr. Kitchlew was, I am certain, arrested here in Simla on a warrant issued by the Magistrate of Karachi. Mr. Shaukat Ali was arrested in Bombay, presumably on a warrant issued by the Magistrate of Karachi. There is no question of exercising any executive action whatever. The prosecution is not under the Defence of India Act, Regulation III or any other special law, but under the Penal Code.

The HONOURABLE THE PRESIDENT : The point is not whether the prosecutions were made under the Defence of India Act, but whether the arrests have been made under the ordinary criminal law. I understand from the Honourable Member that that is so.

The HONOURABLE MR. H. D. CRAIK : That is so, to the best of my belief.

The HONOURABLE SIR MANECKJI DADABHOY : When I gave notice of this motion I was not sure whether the arrests were made under the ordinary law or under any special Acts. In view of the statement made by the Honourable the Home Secretary, it is perfectly clear that these arrests were made under warrant under the ordinary criminal law. In that case my motion would be out of order and I will ask leave to withdraw it.

The HONOURABLE THE PRESIDENT : It is clear from the statement made by the Honourable Member that these persons were arrested by the ordinary process of law, and that they are about to undergo trial. There is no question of action under any special Act. The cases are therefore *sub-judice*, and the matter will not therefore be further proceeded with.

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

The HONOURABLE MR. H. D. CRAIK : I beg leave to move—

'That this Council do recommend to the Legislative Assembly that the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, be referred to a Joint Committee of this Council and of the Legislative Assembly, and that the Joint Committee do consist of 12 members.'

When I mentioned this Bill in this Council on the 6th September, I made it clear, I hope, that the Government would follow the wishes of this Council in deciding what was the proper course to adopt with regard to the Bill. It seemed that the opinion of the Council then was that the Bill should be again referred to the Legislative Assembly for the appointment of a Joint Committee, and that is why this motion appears on the List to-day. I think it is unnecessary for me to say anything more at this stage, except that the Bill is a very long one with 159 clauses, and that clearly the main work on it must be done in Committee. If this motion is accepted, Government will take steps to appoint a representative and fully qualified Committee to consider the Bill.

The HONOURABLE MR. G. S. KHAPARDE : Sir, I do not propose to oppose this motion, but I wish to point out that one matter, which appears to me to be rather important, has been left out through inadvertence. It

refers to the definition of the word 'Pleader' in clause 4, and I wish that, in the event of this motion being accepted, this matter may also be referred to the Joint Committee.

The HONOURABLE MR. H. D. CRAIK : I will take steps to bring that point to the notice of the Joint Committee.

The HONOURABLE THE PRESIDENT : The question is that the following motion be adopted :

'That this Council do recommend to the Legislative Assembly that the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, be referred to a Joint Committee of this Council and of the Legislative Assembly, and that the Joint Committee do consist of 12 members.'

The motion was adopted.

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

The HONOURABLE MR. H. D. CRAIK : Sir, I beg to move—

'That the Bill to provide that, when fire-arms are used for the purpose of dispersing an assembly, preliminary warning shall, in certain circumstances, be given,' be taken into consideration.

It is a very short and simple Bill with a single operative section, and as explained at the time of introduction, it is the result of a motion moved by the Right Honourable Srinivasa Sastri at the last Session of the Council. One part of that Resolution was accepted by the Government and passed by the Council, namely, that when fire-arms are used for the purpose of dispersing an assembly, preliminary warning should, where possible, be given. This suggestion has been given effect to in the Bill by means of a direction that, before giving the order for the crowd to be fired upon, the person giving the order shall warn the assembly by such means, if any, as may be available at the moment that, unless it disperses forthwith, it will be fired on. I think the Council will realise that it is impossible to give in the Bill an absolute direction that warning must in all circumstances be given. There may be circumstances when it would be physically impossible for the officer giving the order to fire to give a warning. The crowd may conceivably be all round him and his forces at the moment may be actually in conflict with the crowd, and the noise and confusion in that case would probably be so great, that any warning given would be inaudible and ineffective. Similarly, the expression 'if possible' is not one that can be inserted in an Act, and we have, therefore, worded the operative clause of the Bill in the way in which it has been framed, namely, "warn the assembly by such means, if any, as may be available at the moment." I do not think that there is anything else to say on this very short Bill, but if any Honourable Member has any suggestions to make I shall be glad to consider them.

The HONOURABLE THE PRESIDENT : The question is—

'That the Bill to provide that, when fire-arms are used for the purpose of dispersing an assembly, preliminary warning shall in certain circumstances be given,' be taken into consideration.

The motion was adopted.

The HONOURABLE SAIYID RAZA ALI : Sir, as has been pointed out in the Statement of Objects and Reasons, the proposed enactment wishes to put into force the fifth clause of the Resolution that was moved in this Council by the Right Honourable Srinivasa Sastri on the 3rd of March 1921. Sir, there is no doubt that the proposed amendment explains the spirit of the

[Saiyid Raza Ali.]

law more clearly than perhaps would appear otherwise. All the same, Honourable Members of this Council should not feel exultant because any change of policy in this direction has been accepted by Government. I just want to make it quite clear that there is already in the Criminal Procedure Code a section which covers the amendment that has been brought forward by Government. As Honourable Members, especially those of the Members who belong to the legal profession, are aware, the law relating to unlawful assemblies is incorporated in Chapter IX of the Criminal Procedure Code. Now, if Honourable Members will turn to section 130, sub-section (2), they will find it reads thus:—

'Every such officer' (namely, the officer dealing with unlawful assemblies) 'shall obey such requisition in such manner as he thinks fit, but in so doing, he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.'

Now, Sir, it is quite clear that, if as little injury to person and property is to be done as is consistent with the circumstances of the case, then it would be the clearest duty of the Magistrate or officer dealing with an unlawful assembly to give as full notice as is possible. In that view I do not think it is very necessary to enact this amendment. I have no objection to the intention of the Legislature being made quite clear on the subject, but I feel it is my duty to point out that we are dealing with a measure that is already incorporated in the Criminal Procedure Code. The question is not as to whether this amendment gives us any right that we did not possess before, but the real question is, as to how the intention of the Legislature is to be carried into effect by those who are to act under Chapter IX. In other words, the letter of the law is there; but what we specially invite the attention of the Government to is that the spirit of the law should be fully followed and carried out. If the spirit of sub-section (2) of section 130 is carried out fully, as is clear from the letter of the law, I do not think it will be necessary to pass into law the amendment that we are considering to-day. Still, Sir, I must say that we must be thankful for the small mercies that may be shown to us, and in that view, though I am far from being enthusiastic in casting my vote in favour of the amendment, I do not think it will be right on my part to oppose the amendment. But I think it is our duty to consider whether the Government are actually giving anything to us. As I have shown, I do not think they are giving us anything at all, but perhaps they are putting the intention of the Legislature in more clear terms, and, therefore, I do not propose to oppose this amendment.

THE HONOURABLE COLONEL SIR UMAR HAYAT KHAN : Sir, there is only one remark I want to make in connection with this. It is said that whenever it is possible, notice should be given. Now, I just want to say a word. There are mobs where the people are holding illegal meetings and are unarmed. It is quite all right to give them notice. But there are other mobs which have perhaps got fire-arms or sticks. With such mobs, particularly if they are at a short distance, if one wastes time so as to tell them "Please do not hit us," I think the opposing police force or whatever it is will be killed before stopping the mob. So, what is wanted is to calculate the pace it is coming at, its numbers and then one's own force. If they are already doing mischief, burning the bazar or attacking the people, to tell them "Please do not kill people or burn the bazar, otherwise we will shoot you," would be a waste of time. I think it would be proper to warn the people when they are

unarmed and just having a sort of meeting which is illegal, but, if they are doing mischief, I think it would be wrong to lose any time.

THE HONOURABLE SIR MANECKJI DADABHOY : Sir, I only wish to contribute one word to this Debate. I am rather surprised to hear my Honourable friend, Saiyid Raza Ali, say that this provision of the Act is covered by section 130, sub-section (2), of Chapter IX of the Indian Penal Code. Probably my Honourable friend was not present when the Right Honourable Srinivasa Sastri brought in his Resolution. The Right Honourable gentleman made it perfectly clear that what he wanted was to introduce into our legislation something on the analogy of the Riot Act, that our legislation in these matters should be so framed that the provision of the Riot Act, which made a warning obligatory, should be clearly introduced into the existing law. It was in consonance with that request that this legislation was promised by Government, and I am of opinion that this legislation is a distinct improvement on the existing law, and one which is essentially needed. I am also of opinion that the provision which is now contemplated by this new section is not at all covered by section 130 of the Indian Penal Code. I think a distinct legislation of this nature, which makes it obligatory that a warning should be given as far as it is possible in any way that may be available to such officer, will conduce very largely to quell such disturbances with the minimum of force possible. I therefore welcome this legislation, and I give my support to it.

THE HONOURABLE RAJA PRAMADA NATH ROY, OF DIGHAPATIA : Sir, I beg to suggest that after the words "the assembly be fired on" the words...

THE HONOURABLE THE PRESIDENT : Order, order. Is the Honourable Member moving an amendment? If so, he should have given notice in writing of it. Let him do so at once.

THE HONOURABLE RAJA PRAMADA NATH ROY, OF DIGHAPATIA : I wanted to put in one word...

THE HONOURABLE THE PRESIDENT : Does the Honourable Member wish to move an amendment? Then he will write out his amendment and hand it in at the table. While he is writing it out, the Debate may proceed.

THE HONOURABLE MR. H. D. CRAIK : Sir, the Honourable Saiyid Raza Ali has said that Honourable Members should not feel exultant as this Bill indicates no change of policy on the part of Government. I entirely agree. I thought I had made it clear, when introducing the Bill, that there was no change whatever in the policy of Government. This direction that warning should be given before a crowd is fired on has for many years been included in executive instructions issued by Government, namely, in the Indian Army Regulations and in the various Provincial Police Manuals. We are not making the slightest change in policy; we are merely giving statutory effect to what is at present an executive order. I hope the Honourable Member understands that point....

THE HONOURABLE SAIYID RAZA ALI : Unfortunately I do.

THE HONOURABLE MR. H. D. CRAIK : As regards the point raised by the Honourable Member about section 130 (2) of the Code, I am afraid the Honourable Member's reading of that sub-section has been rather perfunctory. In the first place, the sub-section does not contain a word as to warning of any

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kind. It merely says that an officer obeying a requisition to fire shall, in doing so, use as little force and do as little injury to person and property as may be consistent with dispersing the assembly. There is no word as to warning at all there.

Moreover, there is another point. Section 130 (2) refers to the single case stated in sub-section (1) of that section where a Magistrate requires a commissioned or non-commissioned officer in command of any soldiers to fire. It does not cover the case of a policeman firing or the case where a soldier or a policeman fires on his own initiative without the order of the Magistrate, a thing which sometimes may happen, and which I am sorry to say has been frequently necessary of late. Section 130 only refers to one of many kinds of cases where firing may be necessary. The Bill refers to every case where anybody, soldier, policeman or private individual, has to fire on a crowd. That seems to me to make a very great difference.

The HONOURABLE SARDAR JOGENDRA SINGH : Sir, there is just one thing that I wish to say regarding the Honourable Mr. Craik's declaration that there is no change of policy. I am rather surprised to hear this from the Honourable Member, because when the two Houses are sitting, representative of the whole of India, they will shape and re-shape the policy as they like. This is what responsible government means. How can he say that the policy of the Government is not changing when they have really amended and presented a Bill as the Right Honourable Srinivasa Sastri desired ; so there is really a change of policy, and that change of policy has to be accepted by the Government. I have nothing more to add regarding the Bill itself, as I am not a lawyer and do not understand it.

The HONOURABLE THE PRESIDENT : An Amendment has been proposed for consideration. With reference to that I would say that it is exceedingly inconvenient that Amendments to a Bill should be brought up without notice. It is unfair to Government, and from my experience the practice leads to hasty and ill-considered legislation. I find, however, that the particular Amendment proposed by the Honourable Raja of Dighapatia is not a very difficult Amendment for the Council to follow. If Honourable Members will turn to the Bill, they will see that in the new section proposed to be inserted, the word " warn " occurs. The Honourable Raja proposes, if I have read his Amendment aright, that for the word " warn " the words " give reasonable warning to " should be substituted. Do I understand the Amendment correctly ?

The HONOURABLE RAJA PRAMADA NATH ROY, OF DIGHAPATIA : Yes.

The HONOURABLE THE PRESIDENT : The question now before the House is, that to the Bill now under consideration an Amendment has been proposed that for the word " warn " in the new section proposed to be inserted the words " give reasonable warning to " should be substituted. That matter is now under debate.

The HONOURABLE RAJA PRAMADA NATH ROY, OF DIGHAPATIA : The reason for my putting forward this Amendment that for the word " warn " in new section 131-A the words " give reasonable warning to " should be substituted is, that I think it would make the meaning clear. It would not make any difference in the Bill, and that is why I bring forward

this Amendment. No doubt the meaning may be the same, but still I would like to put it that way, and if the Council would accept the Amendment, I do not think it would make much difference.

The HONOURABLE SIR MANECKJI DADABHOY : Sir, I object to this Amendment. I think if this Amendment is carried, it will cause a lot of complication by the incorporation of the word "reasonable." How is the officer on duty to interpret the word "reasonable" at the time ? The word would be often liable to serious misconstruction, and the officer would not be able to perform his duty. The expression "reasonable" is very wide. Many things might be reasonable, many things might be unreasonable for the moment ; and I therefore think the word "warn" which has been used in the section is very suitable and meets the requirements of the case. I am of opinion that the Council should not allow any tampering like this with the plain language of an important piece of legislation. I, therefore, oppose the Amendment.

The HONOURABLE DIWAN BAHADUR RAMABHADRA NAIDU : I oppose the Amendment.

The HONOURABLE COLONEL SIR UMAR HAYAT KHAN : Sir, I support the Amendment very strongly. Everything ought to be according to reason, and if that word is brought in it will really help, I think. We want all things to be done reasonably, and why should we not get in such a good word ? I hope all will support the Amendment.

The HONOURABLE SIR B. C. MITTER : Sir, I support this Amendment, though I myself think that upon a true construction of the section, the word "warn" in a Court of law would be construed as meaning reasonable warning. Supposing in a Statute we have got the words "notice should be given" would not that mean reasonable notice ? Reasonable notice would be such notice as the law considers that a reasonable man would consider sufficient. Therefore, probably the section as it stands really means reasonable warning. Supposing it is otherwise, is it to be contended that warning should be given within five seconds of the firing taking place ? The circumstances of each case must determine what is reasonable. As one of the Honourable Members of this House pointed out, it may be that there is absolutely no time to give warning. Under such circumstances that matter will have to be taken into account. Therefore, if the matter comes before a Court of law, I venture to submit that the word "warn" must necessarily mean reasonable warning ; but whether the Council would prefer not to have the matter left open for argument is a different question. I myself do not see any objection to clearing up the matter and amending the section in such a way as to accord with the real intention of the Mover.

The HONOURABLE MR. H. D. CRAIK : Sir, I am afraid I cannot accept this Amendment. In the first place, the Honourable Member who moved it admitted himself that it made no great difference. I certainly do not think it is an improvement on the Bill to insert the words "give reasonable warning to" in place of the brief and explicit Anglo-Saxon word "warn." The word "warn" is obviously governed by what comes later, that is to say, by the words "by such means, if any, as may be available at the moment"; that is to say, you give the officer who orders the firing a definite direction that he is bound to warn by all means that are available to him. Why complicate the clause and introduce what, I venture to think, would be an element of doubt, by the insertion of the words "reasonable warning" ?

[Mr. H. D. Craik.]

The Honourable Sir B. C. Mitter, who is doubtless a much higher authority than I am, has admitted that the legal interpretation of the word "warn" is, ordinarily, to give a reasonable warning. If these words were inserted, you would introduce an element of doubt which may give rise to much discussion in the Court that may subsequently have to inquire into the matter. Lawyers would no doubt exercise their ingenuity in arguing whether the warning which was given, was, in fact, a reasonable warning or not. As I say, I do not see that this Amendment will in any way improve the Bill, and I submit that it would be much better to leave the Bill as it stands at present.

THE HONOURABLE SAIYID RAZA ALI : Sir, I thought the Government would have no objection to accepting the Amendment of my Honourable Friend the Raja of Dighapatia. I should just like to read out what took place last March on the debate on the Right Honourable Srinivasa Sastri's Resolution. This is what the Honourable Sir William Vincent said :—“As regards the fifth proposal in the Resolution, I think that has always been acted upon and, as far as possible, warning is given. In many cases however,—and this is important, Sir, “it is impossible to give a warning. In the case of a mob of 10,000 people, and that is the kind of mob in the case of which firing is resorted to, it is impossible to give a warning that will be heard by any save very few in the mob, but so far as possible, warning is always given and I have no objection to accepting this part of the Resolution.” Now I should like to tell the Honourable Mr. Craik that what was said by Sir William Vincent on the 3rd March is just the spirit of the Amendment which has just been moved by my Honourable Friend. As a matter of fact, Sir William Vincent's point was that it was impossible to give a warning in every case, but the utmost that they could undertake to do was to give a reasonable warning. The Honourable Mr. Craik laid much stress on the word “reasonable,” but, as a matter of fact, a Magistrate or an officer dealing with an unlawful assembly may not find it possible to give a warning that will satisfy everybody, but he could give a reasonable warning, and no man can undertake to give more than a reasonable warning, and any man who undertakes to give more than a reasonable warning, well I know not by what name we could call him. Therefore, I think the Amendment is one which should be accepted by Government, if on no other ground than that contained in the statement made by Sir William Vincent on the 3rd March last.

I need say but little regarding the speech made by the Honourable Sir Maneckji Dadabhoy on the Amendment. He was one of those who opposed the motion of the Right Honourable Srinivasa Sastri.....

THE HONOURABLE SIR MANECKJI DADABHOY : You are mistaken.

THE HONOURABLE THE PRESIDENT : Order, order. I have on several occasions laid down the rule that members must not rise to speak unless the member speaking gives way.

THE HONOURABLE SAIYID RAZA ALI : I need not detain the Council on this question, but the Honourable Member's speech is in print here before me and it shows he opposed the Resolution.

THE HONOURABLE SIR MANECKJI DADABHOY : Sir, may I rise to give a personal explanation? I did not oppose the Resolution of the Right Honourable Srinivasa Sastri at all. I supported that part of his Resolution

which has culminated in the introduction of this Bill. It was the other clauses of the Right Honourable Srinivasa Sastri's Resolution which I opposed. It is quite clear that the Honourable Member has not fully read my speech made on that occasion.

THE HONOURABLE MR. H. MONCRIEFF SMITH : Sir, I do not think that my Honourable friend Saiyid Raza Ali has added very much to this debate. If I understand him rightly, he says that there may be occasions on which no warning could be given, and therefore he suggests that we should provide that reasonable warning should be given. I do not understand how no warning at all could be a reasonable warning. What he has said is met by the Bill as it stands.

The clause says :—

'such person shall.....warn the assembly by such means, if any, as may be available at the moment'.

If there are no means available he cannot give a warning at all, and it is not a question of giving a reasonable warning or not.

The chief objection to this Amendment, has, I think, been put forward by the Honourable the Raja who moved it and by those of His Honourable friends who spoke in support of it. They have all told us that it does not add to the Bill at all and that the law is quite clear as it stands.

I agree too with the Honourable Sir Maneckji Dadabhoy when he says that it introduces another element of doubt into the proceedings when they come before a Court of law. The Courts will always have to interpret those words, and but for the fact of their presence the point need not be raised. I would therefore ask the House to pass the Bill as it stands.

THE HONOURABLE THE PRESIDENT : The question is that in the new section 131A proposed to be inserted by the Bill, for the word "warn" the words "give reasonable warning to" be inserted."

The Noes have it.

THE HONOURABLE RAJA PRAMADA NATH ROY OF DIGHAPATIA : I wish to press the Amendment to a division, Sir.

The Council divided as follows :—

AYES—15.

Acharyya Chaudhuri, Maharaja S. K.

Rampal Singh, Raja Sir.

Altaf Ali, Mr.

Ram Saran Das, Rai Bahadur Lala.

Bhurgri, Mr. G. M.

Raza Ali, Saiyid.

Harnam Singh, Raja Sir.

Roy, P. N., Raja of Dighapatia.

Mitter, Sir B. C.

Sethna, Mr. P. C.

Muhammad Ismail Khan, Haji Chowdhuri.

Sukhbir Sinha, Lala.

Moti Chand, Raja.

Umar Hayat Khan, Colonel Sir.

Nandy, Maharaja Sir M. C.

Noes—22.

Amin-ul-Islam, Khan Bahadur.

Lalubhai Samaldas, Mr.

Bray, Mr. Denys.

Lloyd, Mr. E. S.

Chettiyar, Rao Bahadur Rm. M. A. A.

Murray, Sir A. R.

Craik, Mr. H. D.

Nayudu, Diwan Bahadur V. R.

Dadabhoy, Sir M. B.

Pratt, Mr. F. G.

Froom, Mr. A. H.

Richey, Mr. J. A.

Ganga Nath Jha, Mahamahopadhyaya, Dr.

Robinson, Major-General W. H. B.

Hammond, Mr. E. L. L.

Sarma, Rao Bahadur B. N.

Holberton, Sir E. J.

Smith, Mr. H. Moncrieff.

Keshava Prasad Singh, Maharaja Bahadur.

Wacha, Sir Dinshaw.

Khaparde, Mr. G. S.

Zahir-ud-din, Khan Bahadur S.

The Amendment was therefore rejected.

[Mr. H. D. CRAIK.]

THE HONOURABLE MR. H. D. CRAIK : I move, Sir, that the Bill to provide that when fire-arms are used for the purpose of dispersing an assembly preliminary warning shall, in certain circumstances, be given, be passed.

The motion was adopted.

CATTLE-TRESPASS (AMENDMENT) BILL.

THE HONOURABLE MR. H. D. CRAIK : I move, Sir,—

'That the Bill further to amend the Cattle-trespass Act, 1871, be taken into consideration.'

Sir, this is a wholly non-controversial Bill, and I trust that it will be accepted by the House. It merely provides that, instead of the existing fixed scale of fees for cattle impounded, it shall in future be left to the discretion of Local Governments to prescribe a scale of fees which may vary for different local areas. I think every Honourable Member will admit that this is a convenient change to make in the law. The existing scale, which was fixed when the Act was passed 50 years ago, is now quite out-of-date owing to the rise in prices, and, although the Local Government may by the proviso to the existing section 12 double the scale of fees, it cannot otherwise vary it, and, as I pointed out in introducing the Bill, even doubling the existing scale is in present circumstances inadequate. We now propose to give Local Governments entire discretion, and I think Honourable Members will agree that they are the persons best qualified to fix the scale of fees suitable for any particular locality.

THE HONOURABLE THE PRESIDENT : The question is that the Bill further to amend the Cattle-trespass Act, 1871, be taken into consideration.

The motion was adopted.

THE HONOURABLE MR. H. D. CRAIK : I move, Sir, that the Bill be now passed.

THE HONOURABLE THE PRESIDENT : The question is that the Bill further to amend the Cattle-trespass Act, 1871, be passed.

The motion was adopted.

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

THE HONOURABLE MR. H. D. CRAIK : Sir, I move for leave to introduce a Bill further to amend the Code of Criminal Procedure, 1898, by providing for the issue by Courts in British India of commissions for the examination of witnesses to such Courts of Princes and Chiefs in India as are notified in this behalf, and for the execution by Courts in British India of commissions issued by such Courts.

Sir, the Bill which I ask for leave to introduce amends a single section of the Code of Criminal Procedure, section 503. That is its main object. It also makes smaller amendments in sections 505 and 507, and inserts a new section, section 508-A. The existing section 503 refers to the issue of commissions for the examination of witnesses who are residing beyond the jurisdiction of the Court, and the sub-section (2) of it runs as follows :—

'When the witness resides in the territories of any Prince or Chief in India in which there is no officer representing the British Indian Government, the commission may be issued to such officer.'

Then sub-section (3) provides that—

*the Magistrate or officer to whom the commission is issued shall proceed to the place where the witness is or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code.'

That sub-section has given rise to some practical difficulty in the case of witnesses whose evidence is required by Courts in British India, but who may be residing in an Indian State. The main difficulty is this.

The Political Agent to whom the commission is issued is required by sub-section (3) either to go himself to the place where the witness resides or to summon the witness to appear before him. There is no power for the Political Agent to send the commission to a Darbar Court for execution. Consequently, in actual practice, it becomes necessary for the Political Agent to exercise within the area of the State certain powers not conferred on him by law which are an interference with the sovereign powers of the Darbar.

The Political Agent, I believe, has no legal power to summon witnesses who are resident in an Indian State, and though, in practice, he has done so, objection has been taken to that practice. Similarly, although in practice, Political Agents have sent commissions for execution to Darbar Courts, there is no statutory authorisation for that practice and the Darbar Courts might refuse to execute the commission. What we now wish to provide in this Bill is that the Governor General may, by notification in the Gazette of India, declare that any Court situated within the territories of any Prince or Chief in India, not being a Court established or continued in such territories under the authority of the Governor General in Council, is a Court to which commissions issued by Courts in British India may be sent through the officer mentioned in sub-section (2), that is to say, through the Political Agent. That will put the present practice on a legal and satisfactory basis. The Political Agent to whom the commission is issued by the British Indian Court will have the right to send the commission to a Darbar Court. The Darbar Court will then execute it, and in doing so can summon witnesses, etc. under its ordinary powers. Sub-clause (5) of the principal clause of the Bill gives the Political Agent discretion either to execute the commission himself, or to forward it to the Darbar Court for execution. The changes in clause 5 are consequential changes. Section 508-A introduces a new provision, namely, it empowers Darbar Courts, when notified in this behalf, and to send to the Political Agent commissions which they may desire to have executed by Courts in British India. That introduces the principle of reciprocity between Indian States and British India which, so far as I am aware, does not at present exist in regard to the examination of witnesses in criminal trials. The changes in the law which this Bill seeks to introduce have been framed in consultation with, and with the concurrence of, a committee of Princes and have been accepted, I think I am right in saying, by practically all the Darbars of the Indian States, and I think the Council will agree that the changes made will be conducive to the more rapid disposal of criminal cases as between British Courts and Courts in Indian States.

THE HONOURABLE THE PRESIDENT : The question is that leave be given to introduce a Bill further to amend the Code of Criminal Procedure, 1898, by providing for the issue by Courts in British India of commissions for the examination of witnesses to such Courts of Princes and Chiefs in India

[The President.]

as are notified in this behalf and for the execution by Courts in British India of commissions issued by such Courts.

The motion was adopted.

THE HONOURABLE MR. H. D. CRAIK : I introduce the Bill.

POINT OF PROCEDURE.

THE HONOURABLE SAIYID RAZA ALI : May I rise to put a question relating to a point of procedure in regard to the time of the meeting of this Council?

THE HONOURABLE THE PRESIDENT : Order, order. The correct time for the Honourable Member to raise a question of order is after questions have been put and answered and before the commencement of the business of the day. If the Honourable Member will raise his question at the appropriate time when the Council meets next, he will be given an opportunity of doing so. The time of the adjournment is not the proper moment. The Council stands adjourned till Thursday, the 22nd at 11 O'clock in this Chamber.

The Council then adjourned till Thursday, the 22nd instant, at 11 O'clock.

ERRATUM.

On page 251 of the Council of State Debates of Volume II, No. 4, in Sir Maneckji Dadabhoy's speech, *for* the words "Indian Penal Code" *read* "Code of Criminal Procedure."