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LEGISLATIVE ASSEMBLY DEBATES

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THIRD SESSION

OF THE

LEGISLATIVE ASSEMBLY, 1923.

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Legislative Assembly.

The President :

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Deputy President :

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SARDAR BAHADUR GAJJAN SINGH, M.L.A.

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MR. S. C. GUPTA, BAR.-AT-LAW.

MR. G. H. SPENCE, I.C.S.

Marshal :

CAPTAIN SURAJ SINGH, BAHADUR, I.O.M.

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LEGISLATIVE ASSEMBLY.

Wednesday, 21st February, 1923.

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

MEMBER SWORN:

Sir Gordon Fraser, Kt., M.L.A. (Madras: European).

STATEMENT LAID ON THE TABLE.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, on behalf of Sir Henry Moncrieff Smith, I beg to lay on the table the information promised in reply to a question by Dr. H. S. Gour asked on the 16th January 1923, regarding action taken by Government on certain Resolutions of the Legislative Assembly.

Action taken by Government on certain Resolutions of the Legislative Assembly.

Serial No.	Date on which moved.	By whom moved.	Subject of Resolution.	Department concerned.	Action taken by Government.
1	26th March 1921	Mr. K. G. Bagde	Codification of Hindu Law	Home	The Government of India consulted the Local Governments and High Courts on the 15th June 1921, and copies of the opinions received have been placed in the Libraries of two Chambers.
2	24th February 1921.	Munshi Iswar Saran	Creation of an Indian Bar	Home	The Local Governments and High Courts were consulted on the 9th May, 1921, and their replies are under consideration.
3	2nd March 1921	Rai J. N. Majumdar Bahadur.	Equality of status of the two Chambers.	Home	Given effect to with modifications.
4	28th March 1921	Sir P. S. Sivaswamy Aiyer	Resolutions on Esher Committee's Report:		
			1. Equipment and organisation of the Indian Army.	Army	A copy of the Resolution was communicated to the Secretary of State. Every effort is being made to equip and organise the Indian Army, as far as is practicable, in the same manner as the British Army, but complete assimilation will not take place owing to financial and other reasons.
			2. Employment of Army in India for service outside the external frontiers of India.	Army	Resolution was communicated to the Secretary of State. Except in the cases of Aden and the Persian Gulf, all Indian troops stationed overseas are paid for by the Imperial Government. The cost of the garrisons at Aden and in the Persian Gulf is defrayed partly by the Imperial and partly by the Indian Government and questions regarding the strength and maintenance of both these garrisons are at present the subject of correspondence between the two Governments.
			3. The appointment of a Surveyor-General of Supply.	Army	The matter has been referred to the Secretary of State. No further action has been taken in this matter.

4. The appointment of Commander-in-Chief and Senior Staff Officers in India.	Army	.	The conditions regulating the appointment of these officers have been approved by the Secretary of State for India.
5. Commander-in-Chief's right to correspond with the Chief of the Imperial General Staff.	Army	.	This has been approved by the Secretary of State.
6. The admission of Indian subjects to all arms of His Majesty's Military, Naval and Air Forces in India.	Army	.	The matter is still under reference to the Secretary of State.
7. The establishment of a military college in India.	Army	.	The Secretary of State has sanctioned the establishment of a military college at Dehra Dun which will be shortly opened. The Prince of Wales' Royal Indian Military College, Dehra Dun, for the preliminary training of Indians to fit them to enter the Royal Military College, Sandhurst, was formally opened by His Royal Highness the Prince of Wales on the 18th March 1922. The number of cadets at present in residence is 37. Further entries will take place in the terms commencing in January and April, 1923, bringing the total number of cadets up to the present authorised establishment of 70. An *ad interim* report by the Commandant of the College on the first term's work has already been published and circulated to the Members of the Legislature.
8. The fixation of pay of all commissioned ranks in all branches of the Army with an overseas allowance.	Army	.	The rates of rank pay of British officers of the Indian Army have been revised and brought into line with those for British officers of the British Army but no overseas allowance has been sanctioned.
9. Formation of a territorial force, etc.	Army	.	The Resolution has been given effect to by Government. The Territorial Force is in process of development and recruitment has made good progress.
10. Grant of the rank of Second-Lieutenant, Lieutenant or higher rank to the officers of the Indian Territorial Force.	Army	.	The matter is under consideration by the Government of India and the Secretary of State. Officers of the Indian Territorial Force now hold a commission which confers British rank.

Action taken by Government on certain Resolutions of the Legislative Assembly—contd.

Serial No.	Date on which moved.	By whom moved.	Subject of Resolution.	Department concerned.	Action taken by Government.
			11. Interchange of officers between British and Indian Services.	Army .	The matter is still under reference to the Secretary of State.
			12. Reduction of administrative staff at Army Headquarters.	Army .	The Resolution will be given effect to as soon as conditions will permit of it. A five per cent. reduction at Army Headquarters and certain reductions in the staffs of Commands and districts were effected during the spring of 1922. Further reduction at Army Headquarters are now being effected as a result of the recommendations of the Committee presided over by the Hon'ble Mr. C. A. Innes appointed to enquire into the establishments of Army Headquarters, India.
			13. Appointment of a Committee for the purpose of examining and reporting upon the best method of giving effect to the natural rights and aspirations of the people of India for the attainment of full responsible Government.	Army .	All the points in the Resolution were discussed by the Military Requirements Committee.
			14. Inclusion of "Anglo-Indians" in the terms of "Indian subjects" or "Indians."	Army .	The matter is under consideration.
5	17th February 1921.	Mr. W. M. Hussanally .	Increase of listed posts .	Home .	Local Governments were addressed but the question is being held up pending a decision on the question of Indianisation.
6	28th March 1921	Dr. H. S. Gour . .	Establishment of a Supreme Court in India.	Home .	The Local Governments and High Courts were consulted on the 9th May 1921, and copies of the opinions received have been placed in the libraries of the two Chambers.

7	15th September 1921.	Mr. N. M. Samarth .	Abolition of racial distinctions .	Home .	The Government of India appointed a committee in December 1921, which submitted their report to the Government in July 1922. It is hoped that orders will issue shortly.
8	24th September 1921.	Rai J. N. Majumdar Bahadur.	Indian Autonomy . . .	Home .	The Resolution passed by the Assembly together with the debates thereon was forwarded to the Secretary of State and his despatch on the subject will be laid on the table of this House on the 24th January, 1923.
9	26th January 1922.	Mr. P. P. Ginwala . .	Abolition of the distinction between votable and non-votable items in the Budget.	Finance .	No action was taken.
10	23rd March 1922	Mr. P. L. Misra . .	Abolition of the posts of Commissioners.	Home .	Local Governments were addressed but replies from all of them have not yet been received.
11	8th February 1922.	Baba Ujagar Singh Bedi .	Revision of the Arms Rules . .	Home .	A Committee with a non-official majority was appointed. Their report has been submitted to the Government of India, and was published for general information on the 20th January. The various recommendations made therein are under the consideration of Government.
12	3rd February 1922.	Dr. H. S. Gour . .	Appointment of a Retrenchment Committee.	Finance .	A Committee with Lord Inchcape as President has been appointed and is now considering the whole question of retrenchment in the Central Government's expenditure.
13	9th February 1922.	Mr. K. B. L. Agnihotri .	Equality of status for Indians in South Africa.	Revenue and Agriculture.	The Resolution was communicated by telegram to the Secretary of State with the observations of the Government of India thereon. The telegram was published in India on the 18th February, 1922, in the form of a Press Communiqué.
14A	11th February 1923.	Mr. Jamnadas Dwarkadas .	Indianisation of the services . .	Home .	The Local Governments were addressed but replies from all of them have not yet been received, but it is expected that all replies will soon be complete and Government intend taking up the case without delay.

Action taken by Government on certain Resolutions of the Legislative Assembly—contd.

Serial No.	Date on which moved.	By whom moved.	Subject of Resolution.	Department concerned.	Action taken by Government.
14B	23rd February 1922.	Mr. N. M. Samarth.	Provision for technical education in India to enable Indians to enter the technical services: 1. Geological Survey of India and Indian Mines Department.	Industries.	The question of making provision for technical education in India to enable Indians to enter the Geological Survey of India and the Indian Mines Department has been considered. With a view to provide facilities in India for high grade instruction in mining and geology and their accessory sciences, the Government of India have already decided with the approval of the Secretary of State for India, to establish a school of Mining and Geology at Dhanbad as a Central institution. A sum of Rs. 1,00,000 was voted by the Legislative Assembly last March for this purpose and this sum is being spent during the current year mainly on the collection of bricks for the building of the school. It is proposed to make a provision of Rs. 3,50,000 exclusive of departmental charges to meet further expenditure on the construction of the school, and the Standing Finance Committee has agreed to this demand being placed before the Assembly. It is not possible to say at present whether this provision will be allowed to stand.
			2. Railways	Industries.	Technical schools exist at stations where railway workshops are located, *e.g.*, Lillooah, Jamalpur, Kanchrapara, Gorakpur, Lucknow, Lahore, Ajmer, Bombay, etc. At Jamalpur, Lucknow, Lahore and Kanchrapara, schemes for the erection of new and larger technical schools, at which a higher class of training will be possible, are now being introduced, the Local Government in each case co-operating with the Railway Administration.

			In this connection attention is invited to the reply given by the Honourable Mr. C. A. Innes to question No. 34 put by Mr. P. L. Misra in the Legislative Assembly on the 6th September 1922, in which it was stated that an officer had been placed on special duty to examine and report on the whole question of training of Indians for both superior and subordinate grades of all Departments of Railways. The report referred to has been received and is now in the hands of the printers and will shortly be considered by Government.
	3. Survey of India, Indian Forest Service, Indian Agricultural Service and Indian Civil Veterinary Service.	Industries	So far as the Survey of India and the Indian Forest Service are concerned, the question of providing technical education in India is under consideration. As regards the Indian Agricultural Service, educational facilities have been included in the general scheme for the reorganization of the Agricultural Research Institute and College which was sanctioned by the Secretary of State for India in December, 1921, and is being given effect to as financial conditions admit. In the Indian Civil Veterinary Service six Provincial Service Officers are undergoing post-graduate training at the Muktesar Laboratory, and it is hoped that the Laboratory will, in the very near future, develop into a central training institution not only for Provincial Service Officers desirous of promotion to the Indian Civil Veterinary Service but also for young students desirous of taking up a career in that Service.
	4. Training of Indian Officers and other ranks of the Indian Army.	Industries	Indian Officers and other ranks of the Indian Army continually receive instruction in gunnery and the handling of modern weapons of warfare in schools that have been established for that express purpose. It is not

Action taken by Government on certain Resolutions of the Legislative Assembly—concld.

Serial No.	Date on which moved.	By whom moved.	Subject of Resolution.	Departmet concerned.	Action taken by Government.
			4. Training of Indian Officers and other ranks of the Indian Army—*contd.*	Industries—*contd.*	considered likely that better results would be obtained by sending these officers and other ranks abroad for their training further, the cost would be out of all proportion to any possible increase in efficiency. In addition, a scheme for the training of apprentices in Ordnance factories has also been worked out, but its further consideration has been held up pending the report of the Inchcape Committee.
			5. Engineering and Wireless Telegraphy.	Industries	For imparting engineering education in India there are already 4 Engineering Colleges in the country and, in addition, the Government of Burma intend instituting shortly a course of such education in the Rangoon University. The Government of India have also had under consideration the question of specialised engineering training and post-graduate courses, but have decided to defer the further consideration of these questions until financial conditions improve. A departmental school of wireless telegraphy has recently been opened at Karachi in which it is proposed to give a preliminary training in that subject to suitably qualified Indian Electrical Engineers. In due course it is hoped to select some of the most promising candidates and to send them to England for further courses of training in practical and theoretical wireless telegraphy. A sum of Rs. 2,42,000 has been allotted during the current financial year for the construction of a building for the wireless Research and Training Centre at Karachi.

MESSAGE FROM THE COUNCIL OF STATE.

Secretary of the Assembly: Sir, the following Message has been received from the Secretary of the Council of State:

"I am directed to inform you that the Council of State has, at its meeting held on the 20th February, 1923, agreed without any amendments to the Bill to give effect in British India to the Treaty for the Limitation of Naval Armament, which was passed by the Legislative Assembly at its meeting of the 31st January, 1923."

THE CRIMINAL LAW AMENDMENT BILL.

Mr. President: The House will now resume consideration of the Bill further to amend the Code of Criminal Procedure, 1898, the European Vagrancy Act, 1874, the Indian Limitation Act, 1908, and the Central Provinces Courts Act, 1917, in order to provide for the removal of certain existing discriminations between European British subjects and Indians in criminal trials and proceedings.

Clauses 16 and 17 were added to the Bill.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, my amendment runs as follows:

"(*ii*) In clause 18 (2) in the proviso to the proposed sub-section (3) of section 326 for the words 'any person excluded from the list on the ground of his being exempted under section 320' substitute the words 'the required number of persons from any other district but chosen in the manner prescribed by or under this section'."

Under this proviso it has been laid down that, if the proper number of Europeans or Americans cannot otherwise be obtained for serving as jurymen, then the Court may, in its discretion for the purpose of constituting the jury, summon any person excluded from the list under section 320. Now, under section 320 of the Criminal Procedure Code, there are certain classes of persons who have been exempted from being summoned to serve as jurymen in trials. And here they provide by this proviso that, if the number of Europeans is not sufficient, in that case even such persons could be summoned at the discretion of the Magistrate. I beg to move, Sir, that that exemption be made to subsist and in the case of the difficulties that might arise, European jurors or assessors be summoned from any other district where there be a sufficient number and wherefrom they may be selected in the same way as has been provided here for the selection of jurors. It is desirable that persons already exempted from serving as jurymen should not be made to serve as such because they are the persons who are either in Government employ as Magistrates or Judges or Revenue Officers or Collectors or they are persons connected with the Courts of Law as pleaders or advocates or legal practitioners or persons who are employed in the Posts and Telegraphs or in the Army and Navy. It would be in the interests of justice and rather essential that such persons should be exempted in trials in which European subjects are concerned and the necessary jurors be selected from the neighbouring district where the number is sufficient. With these words, Sir, I move my amendment.

The Honourable Sir Malcolm Hailey (Home Member): I would point out to the House that the proviso to which Mr. Agnihotri has objected to is nothing new. In section 462 of the existing Code precisely the same

[Sir Malcolm Hailey.]

proviso finds a place. The effect of this is that if you cannot obtain in your own district a sufficient number of jurors, you can go to the exempted list. Mr. Agnihotri, in spite of that, would have us go to jurors in another district, thereby of course adding to the difficulty and to the expense attending the calling of jurors. Of the two alternatives, I put it to the House that it is preferable to go to the exempted list. Those exemptions have been made largely on the ground of convenience. If one turns to 320 one sees that there is nothing improper or unreasonable in itself in summoning exempted persons, as for instance persons in civil employ, persons officiating as priests or ministers of their respective religions, surgeons and others constantly practising the medical profession or legal practitioners or persons employed in the Post Office and Telegraph Departments. The only reason why they are exempted is on that of public convenience, and I maintain that, on the whole, grounds of public convenience will better be met by drawing on the exempted list than by calling jurors from another district. That is the sole ground on which I oppose Mr. Agnihotri. There is no great question of principle involved. It is purely one of convenience.

The amendment was negatived.

Clauses 18, 19 and 20 were added to the Bill.

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

"In clause 21, after the words 'Magistrate of the first class' where they occur for the first time insert the words 'or of whipping only'."

Clause 21 refers to section 413 of the Criminal Procedure Code. Section 413 of the Criminal Procedure Code provides:

"Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only or of whipping only."

In this new clause 21 we now provide for appeals against convictions by the District Magistrates or Magistrates of the first class where they pass a sentence of imprisonment even for a period of one month or less but we do not provide any appeal against a sentence of whipping. My object in moving this amendment is to provide such appeal and to lay down that where a sentence of whipping be passed by the Sessions Judge or the District Magistrate or the Magistrate of the first class, the accused shall have a right of appeal against that sentence. It is very hard that such a right to appeal should be left unprovided for in the revised Criminal Procedure Code. It was not made in the past and there is no reason why we should not make it now. Though under the Whipping Act there are provisions that the sentence of whipping could be given only under certain conditions, still there is a likelihood, nay it sometimes happens that the sentence of whipping is given in undesirable cases. Moreover, the sentence of whipping may wrongly be passed or may have been rightly passed, but on appeal the whole order may subsequently be upset! In such cases there is no remedy, because the whipping may have already been administered. Therefore, it is necessary that an appeal should be provided in the case of whipping also, in which case the sentence of whipping would necessarily be postponed till the appeal is decided. In the appeal if the appellate court finds that the lower court was wrong in passing a sentence of whipping or in convicting the accused, that man will escape punishment which

would otherwise have been wrongly inflicted on him. I submit that such a provision should be made in this clause providing an appeal against the sentence of whipping also. With these words, Sir, I move my amendment.

Mr. President: Amendment moved:

"In clause 21, after the words 'Magistrate of the first class' where they occur for the first time insert the words "and the words 'or of whipping only'"."

There is a mistake in drafting. It is necessary to add those three words to the amendment.

Mr. K. B. L. Agnihotri: All right, Sir.

Rao Bahadur T. Rangachariar: (Madras City: Non-Muhammadan Urban): Sir, I heartily support this amendment. So long as the sentence of whipping is to remain on the Statute Book I think it is a case where an appeal ought to be allowed, because you inflict disgrace upon a man. As the Legislature has now provided for appeals in all cases of imprisonment, however short it may be, I think it is but right in a case like this, where serious disgrace is involved, in a sentence of whipping, that we should provide for an appeal. Sir, I heartily support the amendment and I hope the House will approve of this amendment.

The Honourable Sir Malcolm Hailey: As Mr. Agnihotri has recognised, we are of course not now dealing with a case arising out of racial discrimination. This is an amendment tending to effect what he deems to be an improvement in the general criminal law of the country. He has also himself recognised in addressing the House that his amendment in itself would not effect all that he desires. Under section 390 of the Code it is provided that whipping "shall be executed at such place and time as the Court may direct." That is naturally taken by the Courts as authorising as a matter of practice that whipping should take place as soon as possible. If an appeal is to be allowed, then it is obvious that we must also amend section 390 of the Code; otherwise the appeal provision would be entirely inoperative. That is to say, the person sentenced would only be able to appeal after the sentence of whipping had been carried out, because the Code does not make any provision for the necessary detention of the offender during the period pending an appeal.

Rao Bahadur T. Rangachariar: Will the Honourable Member read 391? That will provide for it.

The Honourable Sir Malcolm Hailey: That only provides for the case in which a sentence of whipping is given in addition to one of imprisonment. We are considering the case here of whipping only. Cases where whipping is given in addition to imprisonment are of course provided for, but not sentences of whipping only. Now when the Committee considered the question of whipping, as we noticed yesterday, some of the Members thought that whipping as a punishment should be abolished. They decided however on the whole not to recommend that as an immediate step. They considered that public opinion should be invited as regards the punishment of whipping:

"in particular on the question whether the punishment should not be confined to persons convicted of any of the offences mentioned in section 4 of the Whipping Act, and also in the way of school discipline to juvenile offenders."

[Sir Malcolm Hailey.]

and they went on to say:

".....if.....the punishment of whipping is retained, it should apply to Europeans and Indians alike; that it should be provided for the same offences; and that the same classes of officers should have power to sentence to the punishment Europeans and Indians alike, subject always to the provisions of a right of appeal, even where the sentence is one of whipping only, and to the further provision that the execution of the sentence should be suspended pending the disposal of the appeal."

Now, I recognise the sentiments that have been put forward by Mr. Rangachariar in this respect, but I put it to the House, as I did yesterday, that it is better that we should deal with this question as a whole. It will need consideration in the light of the views of Local Governments, the High Courts and indeed of the public, and I think it should be treated as a whole, particularly as I have pointed out that other consequential amendments to the existing Code will be necessary if we grant a right of appeal.

Mr. P. E. Percival (Bombay: Nominated Official): Sir, may I just confirm the statement of the Honourable the Home Member, and point out that the existing law goes, if I may say so, even further than he mentioned, because it is laid down in the rulings under section 390 of the Code of Criminal Procedure that a postponement of the execution of the sentence of whipping to a future date is illegal. So that not merely the Magistrate may direct a sentence of whipping should take place at once, but it has been ruled that it is illegal for him to postpone the sentence, when there is a sentence of whipping only and no sentence of imprisonment. Thus, if this amendment is carried, the result would be nugatory; the Magistrate would order the sentence of whipping to take place at once, and the appeal would be nominal only. Consequently an amendment would be absolutely necessary in section 390, and there is no such amendment in our agenda to-day.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): The Honourable the Home Member is not quite right when he says that the question as to whether a sentence of whipping should be appealable does not involve any racial distinction. He read an extract from the report of the Joint Committee on Racial Distinctions and pointed out a passage in which we strongly recommended that a sentence of whipping should be made appealable, and further pointed out that the sentence of whipping should be abolished and that public opinion should be invited to that end. Honourable Members will remember that in the case of European convicts there can be no sentence of whipping except by a Presidency Magistrate as now. I submit that it would certainly not remove the racial distinction but it will minimise the racial distinction if a person sentenced to whipping is given the right of appeal.

Then comes the question raised by the Honourable Mr. Percival and also raised by the Honourable the Home Member, what provision is there in the existing Code of Criminal Procedure to postpone the sentence of whipping pending the disposal of appeal. I venture to submit that there is a general provision embodied in section 344 of the Code which enables the Magistrate to adjourn the case from time to time for a sufficient cause shown, and if the accused intimates that he is going to appeal against the finding of the Magistrate inflicting upon him the sentence of whipping, then I submit it would be a good cause for the adjournment of the case for the execution of the sentence. It is perfectly true that the Court may

record a finding and abstain from carrying out the sentence. I am asked how. By inditing the order, staying proceedings till the order of the appellate Court is obtained. My Honourable friend Mr. Percival pointed out the rulings under section 390 which preclude the Court from postponing a sentence of whipping. But he forgets that those are rulings under the existing law which does not allow an appeal against a sentence of whipping, and if we once admit the principle that whipping should be appealable, then I submit those rulings would no longer be good. I submit that this is a question which is integrally connected with the Bill we are considering here and that it will certainly ameliorate the condition of the Indian convict as compared with the European convict if we allow the former at least a right of appeal. The Honourable the Home Member says that the question of whipping must be considered as a whole. That of course raises the question as to whether a sentence of whipping should not be abolished altogether from the Statute Book, and if it is not abolished, whether it should not be limited to certain specific cases mentioned in section 4 of the Whipping Act. My submission is that that is a large question for which we cannot wait. We have now here a Racial Distinctions Bill and my submission is that while we are considering that Bill we should try and equalise the status of the British and Indian convicts as far as we possibly can, and it is in that view that I support this amendment.

Mr. H. Tonkinson (Home Department: Nominated Official): I merely wish to refer very briefly to the rather astonishing reference made by my Honourable and learned friend, Dr. Gour, to the provisions of section 344. The provisions of section 344 permit of the postponement or adjournment of an inquiry or trial. I do not know whether my Honourable friend desired to suggest that if the Court was about to sentence a person to whipping it should write the order and not sign it and therefore in that case the provisions of section 344 will apply. But in that case there would be no appeal. An appeal only lies from a conviction and there would be no conviction if the judgment was not signed. So soon as the judgment is signed section 344 has no application.

Mr. B. Venkatapatiraju (Ganjam *cum* Vizagapatam: Non-Muhammadan Rural): Sir, I have given notice of a similar amendment. The Honourable Sir Malcolm Hailey stated that there is no racial question involved. With all due deference to him I may state it is adding insult to injury. He has not only allowed whipping to Indians, but he has removed it in the case of Europeans when the Joint Committee reported that they should be dealt with equally. Moreover, they have stated with reference to this very portion which was read out by the Honourable Sir Malcolm Hailey, "subject always"—they have not given any exceptions—"to the provisions of a right of appeal" even where the sentence is one of whipping only. We are reminded more than once that we must not go back on the compromise entered into by both sides and to which my Honourable European colleagues are a party. The unanimous report of the Committee is, "subject always . . . . there should be a right of appeal." The only excuse suggested is how to provide for drafting and other matters. Is it a difficult matter to provide for drafting that a Magistrate who passes a sentence of whipping should postpone it till the appeal is disposed of? In section 390 we have:

> "When the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct."

[Mr. B. Venkatapatiraju.]

Section 391 deals with the execution of a sentence of whipping in addition to imprisonment. Perhaps I may remind the House that when we were considering the Criminal Procedure Bill we have provided section 435 as amended by the Government wherein they say that whenever a petition is put in in the Sessions Court the execution of every sentence might be directed to be stopped till it is disposed of by that authority. I will refer the House to section 435 which we passed only a few days back. Therefore, I urge that if you have to give any weight to the joint recommendations and if the Government wish to stick to the compromise entered into by the Europeans and Indians, they should be more magnanimous as to allow at least an appeal even though they may not remove whipping altogether till the matter is inquired into and what is the danger in allowing a person to prefer an appeal before he receives this degrading punishment. The matter will be judged on its merits by the higher authorities. If the Government has not lost all its confidence in the higher authorities there is absolutely no reason why the whipping should not be delayed for a few days and why the amendment should not be accepted by the Government. Therefore every Indian who feels strongly in this matter should unanimously vote in favour of the amendment even though the Government oppose it.

The Honourable Sir Malcolm Hailey: I wish to say a few words by way of personal explanation. I did not wish to interrupt Mr. Raju, nor Dr. Gour, when they were speaking, but it would almost seem from what Mr. Raju and Dr. Gour have said that they thought that I had given the House an incomplete or distorted view of what the Committee had recommended on this subject. Dr. Gour said that their recommendation was absolute. Mr. Raju said that I had departed from the recommendations of the Committee. Now, it is a charge to which I should be unwilling to plead guilty, that I have attempted to mislead the House in any way as to the purport of its recommendations; and it is therefore purely on a personal matter I rise to remove that impression. The clear and explicit words of the report are these. That citation will cover perfectly both what Dr. Gour and Mr. Raju have said:

"The majority of the Committee consider that if after the proposed inquiry the punishment of whipping is retained it should apply to Europeans and Indians alike, that it should be provided for the same offences, that the same classes of officers should have power to sentence to the punishment Europeans and Indians alike, subject always to the provisions of a right of appeal even where the sentence is one of whipping only, and to the further provision that the execution of the sentence should be suspended pending the disposal of the appeal."

I am sorry to have to read this extract a second time to the House; but it will see that it is a condition of the recommendations of the committee that the public should first be consulted. If after that consultation it is decided that the punishment of whipping should be retained, then their recommendations in regard to appeal and the like would come into force. We are proposing to make that inquiry. The matter will again come before the Legislature and again I say let us deal with the question as a whole and not piecemeal.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): I rise to say a few words in connection with this subject. I think there is nothing lost in giving the right of appeal from a sentence of whipping and the difficulties

pointed out by the Honourable the Home Member are by no means insuperable. It seems to me that so far as the second line of defence is concerned the Magistrates should have power to fix the place and time. I take it, it appears from the rulings quoted by the Honourable Mr. Percival, that there is no difficulty in postponing the execution of a sentence of whipping until the appeal is heard, and it must be remembered that even without an appeal by an accused person from a sentence of whipping the Magistrate has of necessity to postpone the execution of the sentence until the appeal is disposed of. Therefore if the principle is accepted by this House, that is, granting the right of appeal, I do not think as pointed out by Dr. Gour, the rulings quoted by Mr. Percival will affect the case at all but if there be any doubt in regard to the matter, whether the Magistrate can postpone the execution of the sentence or not, I would, with the permission of the House, add to the amendment proposed by Mr. Agnihotri the words " In the meantime the execution of the sentence should be postponed." If the House does not object and if the Chair permits, I would add those words.

Colonel Sir Henry Stanyon (United Provinces: European): I venture to offer a few words on the point before the House as far as possible from the point of view of the convict. My remarks will not be very valuable because they depend rather on induction than upon any personal experience but I am guided by such experience as I had at the Bar and on the Bench of the manner in which our magistracy exercise their discretion to award sentences of whipping only and my experience is very much in favour of the magistracy for the good sense with which that discretion has been exercised. When therefore I put forward a word on behalf of the convict, I refer to that particular class of convict to which such sentences are generally awarded. If I have the misfortune to be caught in stealing a pair of shoes or some other valueless article and I belong to a class who have not any very high traditions or feelings of caste and I am put before a Magistrate and sentenced to ten lashes, speaking from the point of view of the convict, I would much sooner have my ten lashes and go home and be done with it than sit in custody for perhaps a month or six weeks or even longer while the Sessions Judge is considering whether or not those ten lashes are to be inflicted upon me. It will quadruple, I say it without hesitation, the punishment from anticipation of what the result of the appeal may be and the detention pending that appeal will quadruple the severity of the punishment which after a brief moment of pain and shame is forgotten and therefore I doubt very much whether we shall be really doing good to the people on whose behalf this amendment is put forward if we support it and carry it. I entirely understand and appreciate the desire of Members of this House to appeal against a sentence which nothing can undo once it is executed but that is the way with most sentences. Fine is the only sentence which you can entirely undo by reversal of the conviction on appeal. It is one of the disadvantages and disabilities of our human institutions. But I think, choosing between the two and having regard to the way in which the discretion of Magistrates is exercised in inflicting sentences of whipping only, the present law is really better for the convict than any right of appeal would be.

Mr. President: Amendment moved:

" In clause 21, after the words ' Magistrate of the first class ' where they occur for the first time insert the words " and the words ' or of whipping only ' "."

The question is that that amendment be made.

The Assembly divided:

AYES—48.

Abul Kasem, Maulvi.	Joshi, Mr. N. M.
Agnihotri, Mr. K. B. L.	Kamat, Mr. B. S.
Ahmed, Mr. K.	Mudaliar, Mr. S.
Asad Ali, Mir.	Muhammad Hussain, Mr. T.
Asjad-ul-lah, Maulvi Miyan.	Mukherjee, Mr. J. N.
Ayyar, Mr. T. V. Seshagiri.	Nabi Hadi, Mr. S. M.
Bagde, Mr. K. G.	Nag, Mr. G. C.
Bajpai, Mr. S. P.	Nayar, Mr. K. M.
Barua, Mr. D. C.	Neogy, Mr. K. C.
Basu, Mr. J. N.	Pyari Lal, Mr.
Bhargava, Pandit J. L.	Rajan Baksh Shah, Mukhdum S.
Chaudhuri, Mr. J.	Ramayya Pantulu, Mr. J.
Clark, Mr. G. S.	Rangachariar, Mr. T.
Cotelingam, Mr. J. P.	Reddi, Mr. M. K.
Das, Babu B. S.	Sarfaraz Hussain Khan, Mr.
Ghulam Sarwar Khan, Chaudhuri.	Schamnad, Mr. Mahmood.
Ginwala, Mr. P. P.	Shahani, Mr. S. C.
Girdhardas, Mr. N.	Singh, Babu B. P.
Gour, Dr. H. S.	Sinha, Babu L. P.
Gulab Singh, Sardar.	Subrahmanayam, Mr. C. S.
Hussanally, Mr. W. M.	Tulshan, Mr. Sheopershad.
Iswar Saran, Munshi.	Venkatapatiraju, Mr. B.
Jamnadas Dwarkadas, Mr.	Vishindas, Mr. H.
Jatkar, Mr. B. H. R.	Yamin Khan, Mr. M.

NOES—34.

Aiyar, Mr. A. V. V.	Jeejeebhoy, Sir Jamsetjee.
Allen, Mr. B. C.	Ley, Mr. A. H.
Blackett, Sir Basil.	Lindsay, Mr. Darcy.
Bradley-Birt, Mr. F. B.	Mitter, Mr. K. N.
Bray, Mr. Denys.	Moir, Mr. T. E.
Burdon, Mr. E.	Mukherjee, Mr. T. P.
Cabell, Mr. W. H. L.	Percival, Mr. P. E.
Chatterjee, Mr. A. C.	Rhodes, Sir Campbell.
Crookshank, Sir Sydney.	Sams, Mr. H. A.
Dalal, Sardar B. A.	Sassoon, Capt. E. V.
Faridoonji, Mr. R.	Singh, Mr. S. N.
Fraser, Sir Gordon.	Spence, Mr. R. A.
Haigh, Mr. P. B.	Stanyon, Col. Sir Henry.
Hailey, the Honourable Sir Malcolm.	Tonkinson, Mr. H.
Hindley, Mr. C. D. M.	Townsend, Mr. C. A. H.
Holme, Mr. H. E.	Webb, Sir Montagu.
Innes, the Honourable Mr. C. A.	Willson, Mr. W. S. J.

The motion was adopted.

Clause 21, as amended, was added to the Bill.

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

"In clause 22, after the words 'three months only or' insert the words 'and or of whipping only'."

Sir, the House has just decided to provide an appeal from the sentence of whipping in cases of ordinary trials. Now this clause refers to summary trials and here also I beg the indulgence of the House to accept the amendment and allow me to provide for an appeal from a sentence of whipping in summary trials as well. I need say nothing further, as the House has already given an indication of its attitude in that respect.

Mr. H. Tonkinson: Sir, it may perhaps appear surprising that after the last vote of this House, one should be speaking in opposition to this amendment, but, Sir, I think it is more surprising that that vote was given for it is not only one amendment but many amendments of the Code

which will be required if an appeal is to be permissible from sentences of whipping only. My Honourable friend, Mr. Hussanally, suggested, 'why not let the man out on bail.' Under what provision of the Code of Criminal Procedure can a man who has been convicted and sentenced to a sentence of whipping be let out on bail? Again, who is going to give bail in such a case?

Dr. H. S. Gour: I rise to a point of order. Is the Honourable Mr. Tonkinson in order in addressing this House upon an amendment which has already been carried?

Mr. President: The Honourable Member will have observed that the reason why Mr. Agnihotri made no speech was because he said that the arguments were the same as on the previous amendment. Mr. Tonkinson is in order.

Mr. H. Tonkinson: Sir, the recommendation of the Committee, as has been pointed out by the Honourable Leader of this House, was subject to the proposed full inquiry into the question of whipping. Now, what, if I may venture to prophesy, is the probable result of that inquiry? It is, Sir, that there will be no cases in which sentences of whipping only will be inflicted. The probable result will, I think, be that the cases in which sentences of whipping may be imposed will be cases that come under section 4 of the Whipping Act, or cases of juvenile offenders, and so far as section 4 of the Whipping Act is concerned, those are cases in which usually whipping is inflicted in addition to sentences of imprisonment, and for those cases we have of course the present provision of section 391 of the Code. I submit that it is impossible reasonably to give effect to the amendment proposed by the Honourable Member without making many other amendments in the Code of Criminal Procedure.

Mr. W. M. Hussanally: I am surprised, Sir, at the statement made by the Honourable Mr. Tonkinson that a man who has been sentenced to whipping cannot be bailed out. In almost every case when an appeal is lodged in an appellate court an application for bail is made, and very often the appellate court lets out the man on bail pending the decision of his appeal. If that be so, I see no difficulty in an application being lodged for bail in the case of a man sentenced to whipping along with his appeal. And if that is done the appellate court has the power to let him out on bail. Further, Sir, I believe that after the last vote the House will only be stultifying itself if it does not vote for this amendment as well.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I am surprised at the attitude taken up by the Government on this subject. There are only two sections which we are concerned with at present. As regards one of the sections we have provided that in the case of whipping there shall be an appeal. What Mr. Tonkinson now wants us to do is to say that in the other case of whipping there should be no appeal. Is it possible for the House to countenance such an argument? He says we will have to make other amendments in the Code. That we will have to do, and fortunately for us the Criminal Procedure Code amendment Bill has not yet been passed into law and the Government will have time to consider the amendments consequential on this change and to make the Code consistent with what we have done to-day. There are only two sections

[Mr. T. V. Seshagiri Ayyar.]

in this Bill on the subject; as regards one of those sections, we have decided that there shall be an appeal against whipping; and are we going to commit this House to the position that as regards the other section there should not be an appeal? I am astonished at the way the Government has been dealing with this question of whipping. They do not seem to have realized the deep and abiding nature of Indian feeling in regard to this matter. I hope that the House as a whole will accept this amendment.

Dr. H. S. Gour: I desire to say a very few words in reply to Mr. Tonkinson. Honourable Members will remember that when we were discussing the Code of Criminal Procedure several amendments dealing with questions relating to racial distinctions were withdrawn on the ground that they would more appropriately come up under the Racial Distinctions Bill. I therefore submit that when an amendment like the one which has just been passed has been passed by the vote of this House, it is up to the Government to make consequential changes in the Code of Criminal Procedure to give effect to that amendment. I cannot understand the attitude of my friend, the Honourable Mr. Tonkinson, that this amendment should not be passed because, forsooth, some other amendment has been passed and certain consequential changes in the Code of Criminal Procedure would be necessary. Sir, this passage in our report has been read by the Honourable the Home Member and has been referred to by the Honourable Mr. Tonkinson, and if either of those Honourable gentlemen ever suggested that the Joint Committee on Racial Distinctions left the matter in doubt, let them quell that doubt by referring to the last few lines of their recommendation in which they pointed out that whatever may be the public opinion, one fact is clear and upon that they categorically recorded their recommendation in the following words:

> "Subject always to the provision of a right of appeal, even when the sentence is one of whipping only, and with the further provision that the execution of the sentence should be suspended pending the disposal of the appeal."

I ask the Honourable the Home Member whether he is prepared to give effect to this part of the recommendation of the Racial Distinctions Committee. If he is then I submit he has to accept the amendment which is before this House.

The Honourable Sir Malcolm Hailey: It is a pity that we should have to return again to the controversy as to the exact meaning of the words of the recommendation of the Racial Distinctions Committee. It is not, I think, of any avail to Dr. Gour to read the last part of the sentence and omit the first. I read the whole to the House. I am quite content that the House should judge on it as a whole; whether in short I am right in maintaining that the whole of the recommendation in that sentence is subject to the condition which finds a place in the beginning of the sentence, namely, that an inquiry should be made and if after the proposed inquiry whipping should be retained then the consequences referred to should follow. I was of the opinion that we were giving effect to the intentions of the Committee when we stated that we would make the proposed inquiry and that the matter would again be laid before the Legislature after that inquiry had taken place. I am afraid I cannot admit that I have in any way offended against the recommendations of the Committee.

The House however has voted on the previous amendment, and I recognize that it would be of little avail for us to take a division on this second amendment. If Mr. Tonkinson pointed out certain defects in the law, it was only to supply a lacuna in the previous discussion. It was necessary to make it clear to the House that the amendment which they had passed would not in itself effect what was desired. I have no desire to waste the time of the House in taking a division on clauses which I might describe as of a consequential nature. I quite realize that if in the other class of sentences you are to have an appeal, then, in spite of the obvious difficulty of arguing an appeal from a summary decision, you must in logic have an appeal there also. I confess I would have preferred infinitely that the House should have exercised a mature judgment on this question, that it should have had, before it came to a decision, that full inquiry which the Committee desiderated. I regret that it has sought to settle this question piecemeal, for I do not think myself that that is the wisest form of legislation. The House would have been well advised if it had given itself the opportunity of taking into consideration what the High Courts, the Local Governments, and the public had to say on the subject.

However, it has not taken this course, and since it has taken a vote on the previous amendment I do not propose to take a division on the present clause.

12 Noon.

Mr. P. E. Percival: I do not wish to go into the merits of the case, Sir, but I desire to answer Dr. Gour's remarks. If he will refer to paragraph 34 of the Report, he will find that the unanimous opinion of the Committee was that the existing arrangement should continue pending the result of the proposed inquiry; so that here again the Government have acted exactly in accordance with the opinion of the Committee.

The amendment was adopted.

Clause 22, as amended, was added to the Bill.

Clause 23 was added to the Bill.

Sir Campbell Rhodes (Bengal: European): Sir, the amendment I desire to move is a very small one and I trust that both the Government and the House will regard it as non-controversial. If Honourable Members will turn to page 9 of the Bill, section 30, Chapter XLIVA, they will see laid down in the first paragraph the words " and such Magistrate shall inquire into the truth of such statement and allow the person making it a reasonable time within which to prove that it is true." I wish to insert, by my amendment, in clause 24 in the proposed section 443 (1) after the words " thinks necessary " the words " and after allowing the accused person reasonable time within which to adduce evidence in support of his claim."

In other words, I wish to bring the wording of these two sections into the same form. I think we all desire that there should be as few appeals as possible from the Magistrate and that therefore we should give instructions to the Magistrate to give an accused person time to prove his claim before he comes to a decision as to whether the case is to come on before him or before a higher court. I therefore commend my amendment for the approval of the House.

The amendment was adopted.

Mr. B. Venkatapatiraju: I do not know, Sir, whether I should omit the words 'political or.'' If those words are omitted I do not think there is any necessity for moving this amendment.* May I with your permission explain, Sir, why I have retained these words?

Mr. President: I have already ruled the words '' political or '' out of order. If the amendment hangs on that peg, then it falls.

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

'' In clause 24, omit the proposed section 445.''

Now, the proposed section 445 in this clause provides that in the case of a summons trial where the accused happens to be a European British subject or where there are racial considerations and the accused happens to be an Indian British subject, the case should be tried by a bench of two Magistrates one of whom shall be a European. I wish to put before the House the definition of summons cases and warrant cases. Under the Criminal Procedure Code summons cases have been defined to be cases relating to offences punishable with a sentence of six months and less, while cases relating to offences punishable with any other sentence, say with death or transportation for life or for a period exceeding six months are known as warrant cases. I leave out sentences of fine or whipping; they are not included in the definition of these two classes of cases. Here we provide that such offences where the maximum punishment is only six months or less than six months and such cases involving racial considerations should be tried by a bench of two Magistrates of the first class of whom one shall be a European. Sir, apart from the compromise and apart from the Report of the Committee submitted to us, I have to point out that the offences specified in summons cases are not of a serious nature; they are very light and petty offences and it looks rather a travesty of justice that such cases should be entrusted to a bench of whom one shall be a European Magistrate. What will it come to in practice? In the provincial services which form the main part of the magistracy in the provinces, hardly 1 per cent. or 2 per cent. will be European first class Magistrates. The result would be that even such light cases will have to be transferred under this section 445 for trial to the courts of sessions. Therefore, Sir, I propose that it is desirable that such petty cases should not be sent to the courts of session for trial and I do not therefore find the necessity for inclusion of the proposed section 445 in its present form in this amendment of the Code. With these words I move that proposed section 445 be deleted.

The Honourable Sir Malcolm Hailey: If in the last case there was some doubt in the minds of certain Honourable Members whether we were or were not giving full effect to the recommendations of the Committee, there can be no doubt at all events on this point. I think I am correct in saying that perhaps no question was more fully debated in the Committee, and perhaps no item was a more essential part of the compromise than this. Throughout our discussion Mr. Agnihotri's attitude has of course been that the compromise counts nothing; but the House has hitherto held that, having arrived at a settlement by agreement, it is proper to stand

* '' In clause 24 in proposed section 443 (1) omit clauses (*a*) and (*b*) and in their place substitute the following :

' that there are political or racial considerations and it is expedient for the ends of justice that the case should be tried under the provisions of this Chapter '.''

by that agreement. That is my sole argument against the amendment; but I think it is decisive.

Rao Bahadur T. Rangachariar: Sir, when I yielded to this recommendation, I may mention what passed in my mind when I supported it. We have often heard of cases not of European accused but of Indian accused who are taken to European Magistrates, especially in the planting area. The planter complains against an Indian labourer and near at hand is a European Magistrate whom he meets every day in the Club and oftentimes I have heard that European Magistrates have not rendered justice to the Indian accused. It may be summons cases, but summons cases involving imprisonment up to six months. It may be the man who is accused is the agent of a neighbouring zamindar. We have heard of disputes between planters and neighbouring zamindars—land disputes, boundary disputes, criminal trespass and such other complaints. In such cases I feel that there should be a remedy for the Indian accused and that he should have an opportunity to take his case to a tribunal which may not be so partial. Such cases are not of infrequent occurrence and therefore I think my Honourable friend, Mr. Agnihotri, has looked at it only from one point of view, from the point of view of European accused, but I look at it from the point of view of Indian accused in such cases and that is why I supported this recommendation. It gave us a lot of trouble. In fact, at one stage—the Honourable Member can look into my draft minute—I was quite against referring summons cases at all. I thought we could trust first-class Magistrates. But it was this fact which weighed with me that there was a lot of complaint, in planting areas especially, that Indian accused could not get justice at the hands of even first class Magistrates. Therefore, I support this recommendation but, let us hope these things will cease to be in existence some years hence.

The motion was negatived.

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

"In clause 24, in the proposed section 445 (1) omit the words 'of whom one shall be an European and the other an Indian."

I pointed out, a minute ago, that in the mofussil it is not practicable or probable that we shall find another European first class Magistrate excepting the district Magistrate. I think that the purpose would be equally served if we were to submit summons cases for trial to a Bench consisting of two first class Magistrates, irrespective of the consideration that one of them may be European or Indian. Therefore, Sir, I move to omit the words "of whom one shall be a European and the other an Indian."

The motion was negatived.

Dr. H. S. Gour: Sir, whatever may be the differences of opinion as regards the construction of other parts of the Racial Distinctions Committee's Report, there cannot be two opinions upon the matter which is the subject of my amendment:

"In clause 24, in the proposed section 445 in line 6 after the words 'summons case' insert the words 'punishable with imprisonment'."

The Committee in paragraph 28 pointed out that in summons cases where the offence is punishable with imprisonment the accused and the complainant shall each have the right to apply to the trying Magistrate that the accused be sent to a Bench of two Magistrates of the first class, and so on.

[Dr. H. S. Gour.]

In the Summary, in paragraph 34, sub-clause 6, printed on page 11 of our Report, Honourable Members will find that it is laid down that:

"in a summons case, where racial considerations are involved and where a sentence of imprisonment can be passed, the accused and the complainant will each be entitled to claim that the case shall be tried by a Bench."

It is perfectly clear, therefore, that the recommendation of the Racial Distinctions Committee was that in summons cases punishable with imprisonment and in no other case, where racial considerations were involved, the accused should be tried by a Bench. It was never the intention of the Racial Distinctions Committee that in all summons cases whether punishable with imprisonment or not, this special procedure should be made applicable. (*Rao Bahadur T. Rangachariar*: "Doesn't 443 cover it?") Now, section 443 deals with a warrant case where in the course of trial outside a presidency town of an offence punishable with imprisonment, if the accused at any time before he is committed for trial under section 213, or is asked to show cause under section 242, or enters on his defence under section 256, as the case may be, claims that the accused may be tried under the provisions of this Chapter, the Magistrate shall do certain things. I am not dealing with that section. I am dealing with section 445 where a Magistrate or Sessions Judge decides under section 443 that the case ought to be tried under the provision of this Chapter and the case is a summons case. (*Rao Bahadur T. Rangachariar*: "That is, under section 443.") The Magistrate trying the same shall direct that the case be referred to a Bench. Section 443 provides for a case punishable with imprisonment. Section 445 provides for a case which is a summons case not necessarily punishable with imprisonment. If the intention of section 445 and section 443 is the same and section 445 was intended to deal only with summons cases punishable with imprisonment, I am perfectly prepared to have an assurance from the Government Benches that section 445 was never intended to deal with summons cases not punishable with imprisonment. If that is the intention, I shall be quite glad to have an assurance from the Treasury Benches. But the section, as it reads, leaves me in doubt, and therefore, Sir, I have tabled this amendment.

Mr. Darcy Lindsay (Bengal: European): The question may now be put.

The Honourable Sir Malcolm Hailey: My friend opposite has, I think, anticipated my reply,—a very obvious one,—that the beginning of section 443 (1) regulates the whole procedure of the Chapter. It specifically applies to summons cases, among others; it makes a definite reference to section 242. The words used at the beginning of the section are "where in the course of a trial outside a presidency town of any offence punishable with imprisonment". We hold that those words govern the whole course of the Chapter, and there can be no doubt whatever that section 445 only refers to summons cases which are punishable with imprisonment.

The motion was negatived.

Bhai Man Singh (East Punjab: Sikh): I move, Sir:

"In the proposed new section 449, omit the words 'under the provisions of this Chapter or' from the proposed sub-clause (*a*) and sub-section (3) and omit the next following proposed sub-clauses (*b*) and (*c*)."

The object of my amendment, Sir, is to give effect to the recommendations of the Committee as they were understood. If the Honourable Members will look at section 449, they will see that it lays down that:

"(1) Where:

(*a*) a case is tried by jury in a High Court or Court of Sessions under the provisions of this Chapter, or

(*b*) a case which would otherwise have been tried under the provisions of this Chapter is under this Code committed to or transferred to the High Court and is tried by jury in the High Court, etc., etc."

Under those circumstances only a right of appeal has been provided for. This means that if the accused claims that the special provision of this Chapter should be made applicable to his case and that his case should be treated as one in which the racial questions do arise, then and then only shall there be a right of appeal against the judgment of the jury on a matter of fact. The report of the Committee, Sir, on page 6 says:

"We recommend that in all jury trials in which the jury are not unanimous or, in which the jury are unanimous but the Judge does not agree with the verdict of the jury both in the High Court and in Sessions Courts, an appeal should lie on facts as well as on law, both in the case of conviction and of acquittal (the appeal in the case of acquittal being by the Local Government) in respect both of Europeans and Indians. This right should be specially laid down in the Code and should be as free and unrestricted as in the case of any other appeal. The appeal should be heard by three judges in the case of an appeal from a decision in a High Court and by two Judges in the case of an appeal from a decision in a Sessions Court. Sections 418 and 423 too should be amended accordingly."

So, Honourable Members will find that the present Bill, as it stands, does not amend sections 418 and 423. It simply provides for a right of appeal to a limited extent, when a claim has been made under this Chapter. Therefore, it leaves out certain sorts of cases where the trial has been by a mixed jury, when no claim has been preferred under this Chapter. We have passed clause 13 of the Bill and have introduced a new clause 275 providing for a mixed jury in every case where there is a trial by jury. Further, there shall be no appeal against the judgments of the mixed jury in cases where no claim has been made under this Chapter XXXIII, while the real essence of the report of the Committee was that there should be an appeal against every order of a mixed jury, on points of law as well as on points of fact. This was a very important and integral part of the report and of the compromise. I cannot understand why we should not now give full effect to those terms of the compromise. The Committee agreed to the system of mixed jury only on the condition that in all cases and on all points of law as well as of fact, whether there is an order of acquittal or of conviction, there shall be a free right of appeal. That right has not been given and my object in requesting the House to omit the words "under the provisions of this Chapter" is that a free right of appeal may be given to either party whenever there is a trial by a mixed jury. With these remarks, Sir, I recommend this amendment of mine to the House.

The Honourable Sir Malcolm Hailey: Sir, the effect of Bhai Man Singh's amendment of course will be not only that an appeal on fact as well as on law will be given in cases where there is a mixed jury, but in all cases; that is perfectly clear. The Committee's recommendations have been stated by him. When these recommendations were put before Local Governments and High Courts, they represented to us their apprehensions that great additional cost would be involved in this measure. Some of them at all events did not object to the principle. We ourselves were prepared

[Sir Malcolm Hailey.]

to carry out the principle had it been feasible to do so. But the nature of the increase in the judicial establishments which would have followed from giving full effect to the Committee's recommendations will be shown by some of the opinions which we have received. I would refer, for instance, to the minutes reported by Mr. Justice Marten and Mr. Justice Mulla. They said:

"It is the three or four original side judges who have to take Sessions. If therefore there was an appeal to three judges from the trial judge, it would practically involve all the Original Side judges being taken away four times a year from their civil work. And this with nearly 2,600 suits already in arrear is impracticable, unless the staff of judges is increased."

I may remark that that opinion referred of course only to appeals from the High Court itself. The Bengal High Court opinion deals with the question of appeals generally.

The High Court says:

"It will probably be necessary to maintain permanently at least two benches of two Judges—instead of one such bench as at present—for the purpose of dealing with criminal appellate and revisional work from the mufassal. In times of pressure a third bench of two Judges would be necessary, for criminal work cannot wait. The increased work will, therefore, necessitate a large number of Judges to deal with it with a corresponding increase of the clerical staff of the Court. Not only so but it will also be necessary to find additional Courts."

Then the Calcutta High Court went on to point out that if the new rights of appeal were limited to racial cases, the increase of work would of course be very much less. That is precisely the reason why we accepted the suggestion of the Bengal High Court and propose to limit the scope of the Bill to racial cases, namely, cases coming under our new Chapter. On a calculation we made at headquarters we considered that the general right of appeal recommended by the Committee would involve an expenditure of possibly some six lakhs extra. We were not sure whether it would not exceed that sum, but we placed it at what we believed to be the minimum. As I have said, we have not questioned the principle. But it does not seem reasonable at present to place this extra expense on the country in spite of the protests of Local Governments against having to meet the cost. It is of course necessary to maintain the appeal in regard to fact as well as law in these racial consideration cases; because it is by that method that we can make full use of the Government's power of appeal in doubtful cases.

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

The motion was negatived.

Rao Bahadur T. Rangachariar: The amendment* which I am moving is quite in the reverse direction to my Honourable friend, Bhai Man Singh's motion. I will just briefly state what the law is as to appeals now and what the proposal now made by Government involves. I took a strong line in this direction. If Honourable Members will refer to page 19 of my Minute in the Racial Distinctions Committee's Report they will see what line I took. The Committee's recommendation recommending appeals in all jury trials, I am sorry to say, did not meet with my approval.

* "In clause 24, in the proposed section 449 (1) between the words 'lie' and 'to' in the last but one line insert the words 'against an order of acquittal'."

As the law now stands, in jury cases there will be a trial in the Sessions Court, you can appeal to the High Court only on a matter of law, whether it be by Government against an acquittal or by the accused against a verdict of guilty. Also in the High Court where persons are tried in the Sessions trials there is no appeal at all against the verdict of the jury. In both cases the Sessions Judge, if he disagrees with the verdict of the jury, can refer the case for the orders of the High Court, and in the High Court, if the trying Judge certifies or if the Advocate General certifies, the case can be taken before a full Bench. There is no appeal really, but there is a re-trial or re-hearing before a full Bench of the High Court. That is in consonance with the prevailing idea as to trial by jury. The man is tried by his peers and he is found guilty or not guilty and there is an end of it. That is the law as always understood here relating to jury verdicts. But, Sir, what is the proposal now? The proposal now is we are going to maintain an existing evil, the existing evil having given an accused person the privilege of choosing his own Judges. That is what we are perpetuating in maintaining the mixed jury system. (*A Voice*: "Not perpetuating.") Yes, we are perpetuating the existing system which is an evil in itself as all of us recognise, which we hope will disappear in course of time. But out of respect for the strongly expressed views of our European fellow subjects in this country we propose to retain it, namely, giving a privilege to the accused person to choose his own Judges in order to try him and not merely take the risk of the ballot. We all know what a jury trial means. The jurors are summoned from a list and each name is called, you are given a particular right of challenge up to a certain number, uncontrolled challenge and subject to the control of the Judge, a further right of challenge. Then you take the chances of the jury trial. You do not know who they are; 9 or 12 people as the case may be—your peers—sit in judgment, hear the evidence and give the verdict. That of course is not the case in the case of a mixed jury system. The accused person whether he be an Indian or an European now says "I want five out of 9 to be my countrymen." That is what he says. He does not take the chance of the trial by a court provided for him by Government, he does not use the usual ordinary machinery, but he wants to improvise a new machinery of his choice, namely, this mixed jury system. Therefore, one should expect where a person claims to be so tried that he has more confidence in that tribunal than in the ordinary tribunals, or ordinary ballot. That is why I take it he claims a mixed jury, he has more confidence in that. I think it is but right that as in the case of jury verdicts there should be no appeal, also in this case. that is the ordinary rule should apply. We have also the second ground. Here is a Court or tribunal of his own choice, and therefore when he has taken that choice, when he has taken the choice of a trial by his own tribunal, why should we allow him a right of appeal against a verdict of conviction? I can understand your imposing a penalty or condition when you give him a privilege. This is a privilege outside the ordinary criminal procedure which an accused person gets under the law. By all means attach a condition to that privilege, namely, you prefer a particular tribunal in order to try you because you have more confidence in that tribunal. Therefore it follows that you repose more confidence in the verdict, you are going to be satisfied with the verdict given by that tribunal. But the cry has been in the country, namely, where an accused person is so tried by his own countrymen, there had been miscarriages of justice, miscarriages of justice not in the shape of unjust convictions, but in the shape of unjust acquittals. I have yet to see a case where the Press or any person has complained that because a person was

[Rao Bahadur T. Rangachariar.]

tried by a mixed jury of his own countrymen there has been an unjust conviction. The cry has been the other way, namely, unjust acquittals on account of various factors, because when once it is a racial case people take sides whether it be Indian or European, it gets talked about in clubs. Newspapers give flaring headlines such as " Soldier in trouble." In this country it is the newspapers who are to blame in magnifying these cases. It is they who are responsible and create all this racial bitterness and racial animosity in this country. But for them these cases would not acquire that notoriety which they often acquire. Newspapers give headlines " Soldier in trouble," and in that way the sympathy of the people is raised, the case is talked about in clubs, ladies begin to talk about it and gentlemen sympathise with ladies, and in that way a great deal of sympathy is created in favour of the accused, and that is why people complain there are unjust acquittals in case of trials by this mixed jury system. The whole gravamen of the charge against the mixed jury system is this complaint against perverse verdicts of acquittal by jury and not verdicts of conviction. Therefore, Sir, when you are going to maintain the system, I say, if you are going to continue this privilege, impose a condition upon it, " Beware. If you are acquitted the Government will appeal against the acquittal." If you are going to abide by the ordinary privilege, leave it to the chance of the ballot, by all means have a trial by jury, take the chance of the ballot, then if you happen to be acquitted there will be no appeal against acquittal. But if you insist upon this majority, you take the risk of an appeal against acquittal, and by such means you will be discouraging such claims. Sir, we have been told to-day and also the other day that this system is going to cease to exist. If it is going to cease to exist, this is surely a method to discourage such claims being put forward by the Indian or by the European. I am sure in the case of trials in the High Court Sessions, especially in cases like the Tilak's case, the Indian accused are sure to claim this privilege of having a majority of their own countrymen. In fact, hitherto the complaint has been that in trials before the High Court, in sedition cases oftentimes the majority are composed, because of the special jury system—and there is a provision by which only a certain number are included in the special jury list—oftentimes the majority in a special jury is composed of Europeans and on account of political considerations the Indian accused, it is said, does not get a fair trial before such juries. Therefore hereafter we are increasing the chances of such claims being put forward. Hitherto the European was claiming it. Now by the proposed measure we are now going to pass, we are now going to encourage Indians to make similar claims in the High Court which hitherto they were not doing and they were not entitled to do. Therefore we are increasing the field of evil and when we are increasing the field of evil, let us impose some restriction upon it, let us impose a condition upon the privilege which a man claims. Now, what does he get? He not only gets his own court in which he says he has confidence but he gets a further right of appeal. Now take the case of the verdict of a jury in a case in the High Court tried by an eminent Judge. Unless the Judge certifies there is no further reference at all. Now what do you do. By this section you give him a right of appeal and the High Court is going to be saddled with extra work because in every conviction by a jury in a case like that he has got a right of appeal. Therefore you encourage him in making the claim. Instead of discouraging him, you are encouraging him to make a claim. Not only he gets his own jury but

he gets a further right of appeal. I say that is not a right thing to do. The right thing to do will be to discourage persons putting forward such claims and my amendment only provides a right of appeal against acquittals and that only by Government and not by private parties. Government alone will have the right of appeal in jury verdicts and the complaint hitherto has been against unjust and perverse acquittals by juries. There is no use of extending this right of appeal further unless you want to maintain this evil for all time to come. I will jump at it if I were an accused person and choose my own Judges and have a further right of appeal, whereas if I did not take the benefit I would have no right of appeal. If I take the ordinary trial I have no right to claim this privilege of a right of appeal against a conviction, but if I claim a mixed jury I get a right of appeal as well. Therefore you are encouraging every man to make this claim. Therefore let us hesitate. Let us not run away with the idea that I provide an appeal against acquittal but not against conviction. The obvious answer to that is " They are Judges of your own choice. You had confidence in them. Why should you have a right of appeal against the sentence of judges of your own choice." Therefore, I ask you in all seriousness to consider this matter. It is a very serious matter in my view. If these racial distinctions are to die, this is the surest method of getting it to die. Otherwise you are encouraging it. You will make it continue for all time. You will perpetuate it and therefore I move the amendment which stands in my name.

Colonel Sir Henry Stanyon: Sir, the whole argument of my friend, the Honourable Mr. Rangachariar, would be a very strong argument if it was not based upon one very material fallacy. The fallacy upon which it is based is that an accused person in a case under this chapter gets his own court. I say it deliberately, Sir, he does not. He gets a court, the constitution of which is the result of a compromise. I do not care which side you take, the European or the Indian, the result is the same. I take the case of the European because perhaps I am better qualified to speak on that point of view. If the European got his own court, he would get a court in which he would be tried by his peers but he does not ask for 5 out of 9. He would ask for 9 out of 9 Europeans and he would insist upon a unanimous verdict before he would feel that he had been found guilty justly by his peers. That is the European claim but by way of compromise under this Bill the European will get in a case under this chapter 5 out of 9 members of the jury who are of his own race. The race of the Judge who has to direct the jury and whose summing up must influence the verdict and who has a right to disagree with its verdict may be his own, may not be his own. He takes the chance of that again as the result of this compromise. Now, I myself am very much in sympathy with the feeling that the right of appeal should be done away with as far as possible in cases tried by jury and I would have been content to accept a law that in every case under this chapter the verdict of the majority shall be final, but that is not a point upon which I consider myself to be at liberty to push forward my own opinion. This chapter is the result of a compromise which we have all decided to accept and in view of that if there is to be any appeal at all, and Mr. Rangachariar would allow the right of appeal in acquittals, then I say the appeal should be equal for both parties and the recommendations of the Committee are absolutely sound and just upon that point. It is only where the jury are divided in opinion or where a Judge differs from the jury that this right of appeal is allowed and a moment's consideration of the matter will, I think, convince the House

[Colonel Sir Henry Stanyon.]

that as matters stand at present this appeal is very necessary. The European is tried for a serious offence, 5 European members of the jury hold him not guilty and four Indian members of the jury of equal intelligence and standing hold him to be guilty. Surely Indian public opinion would expect that some strong dominating opinion should come to a final decision upon a difference of that kind where the majority in favour of acquittal is one only. I think that this clause as we have it now proposed in this Bill is in the present condition of things absolutely necessary and I would suggest to the House which by an overwhelming majority has insisted upon a right of appeal in cases of whipping only not to interfere with the right of appeal in the serious cases with which juries will have to deal.

Mr. T. V. Seshagiri Ayyar: Sir, I have been in the habit of yielding to my learned friend on my right (Mr. Rangachariar) generally on questions of criminal law, because he has had more experience as a criminal lawyer, though I have had longer experience in the bar, but on this particular occasion I cannot in the least support the contention put forward by him. After all the Legislature that passes a law must have regard to the first principles of criminal jurisprudence and must not offend against received notions of criminal law. The right of appeal is everywhere given against a conviction and rightly too. Whoever the accused may be, whether he is an European or Indian, he is entitled to seek the assistance of an appellate court to establish his innocence. That is the first principle of criminal law, and it is that principle of law that we are insisting on all through. To give a right of appeal against an acquittal and to deny a right of appeal against a conviction would be a travesty of criminal law which I, who have had some experience of courts, cannot in the least countenance; and I ask the House not to be led away by passionate eloquence in a matter like this; it is, after all, a question of our law being sound and of our bringing our law into conformity with what is regarded as justice, and in conformity with legal notions everywhere. It may be, Sir, that by providing an appeal against an acquittal certain miscarriages of justice may be remedied. But if a man who has been convicted is not given a right of appeal, and even if one man is improperly convicted, and he has lost a chance of setting the matter right in appeal, I think Government will be charged by the most serious imputation of not giving the man his chance of establishing his innocence: and therefore, Sir, when we give a right of appeal against an acquittal, it follows as a matter of course, as a matter of consequence, that we must give a right of appeal against a conviction as well; and I do not think that anything that has been said in the course of the argument of my Honourable friend would induce the House to turn down a well recognized principle of law and to say that there should be no right of appeal against a conviction.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Sir, after the very able and eloquent speech of my Honourable friend, Mr. Seshagiri Ayyar, hardly anything remains for me to say, but although I am a layman, I have just risen to answer some of the arguments that have been advanced in such eloquent terms by my Honourable friend, Mr. Rangachariar. Mr. Rangachariar in the course of his remarks suggested, 'what right have you to say that a man ought to appeal when he is tried by the men whom he himself has chosen?' I want to give one instance at any rate of which I know where a person was concerned, of

course in a different country, by people whom technically he or she had the right to choose, and yet the verdict was such as to surprise the Judge himself,—and I do not know whether there was any appeal against it, but it was a case of glaring injustice resulting probably from the ignorance of the jury; I refer to the case of Mrs. Besant in Great Britain which occurred only in 1921 when in a Scottish Court her case was before a jury, I mean the case was tried by a jury, and the Judge summed up, and you had persons like the late Viceroy, Lord Chelmsford and the Right Honourable Srinivasa Sastri and Lady Emily Lutyens who were called upon to give evidence and they gave evidence which, after all, said that, whatever be the political propaganda of Mrs. Besant, it was certain that she was not opposed to the British connection, and the Judge led in his summing up to that, and yet you find the ignorance of the jury was such that they gave a verdict against Mrs. Besant. Now you might come across many instances in this country where a man, where a poor Indian in South Africa, for instance, may have to be tried in an Indian Court by his own countrymen and yet the ignorance of our own countrymen may be responsible for forcing on him an absolutely wrong conviction. Well, in such cases to deny to him the right of appeal to eminent Judges who know more how to deal with matters like this than laymen, would, I think, be to take a great risk and probably it would be tantamount to perpetrating an act of injustice. I therefore feel that there is ample justification for providing for appeal against a conviction by a jury, and that therefore Mr. Rangachariar's amendment should be negatived.

Dr. H. S. Gour: Sir, I should like to present to the House a few considerations in connection with my friend Mr. Rangachariar's amendment. He opened his speech by remarking that it is an elementary principle that in all cases of trial by a man's peers the verdict is final and is not open to appeal. Well, I must respectfully differ from him. Has he forgotten the provision of the English law relating to appeals against the verdict of the jury, which now allows appeals against the verdict of the jury? Then my friend's next argument was that the accused in this case has empanelled a special tribunal, a tribunal of his choice. Why not give him this alternative, that if he is to be tried by the ordinary jury, he will have the ordinary right of appeal, but if he claims and obtains a special treatment regarding the nationality of the jurors, then he will have no right of appeal? My friend made no secret of the fact that he used this as an argument for the ultimate disappearance of all racial distinctions. But for the time being he will acknowledge it that it amounts to penalising the accused by telling him that if you have this special jury, then you have no right of appeal. Now, I submit, is it fair to the accused in the dock to say that, if you wish a jury of a particular nationality, then you will have no right of appeal? Lastly, Sir, my friend has forgotten that in this country there are such things as castes and communities. It may be that the jurors are Indians, but it may also be that their verdict is perverse and inspired by considerations other than those justifiable by the evidence on record. If in a case of this kind, they perversely convicted the accused, should the accused be deprived of the right of appeal? These are the considerations which I submit weighed with the Committee, and in spite of the able advocacy of my friend, the Committee decided otherwise. I have no doubt that the House will support the Committee.

The motion was negatived.

Clause 24, as amended, was added to the Bill.

Mr. B. Venkatapatiraju: Sir, I am moving amendment No. 57.

" After clause 24 insert the following clause :

' 24A. In section 456 of the said Code the word ' European ' wherever it occurs shall be omitted '."

I may premise my remarks by stating that I am only placing before the House . . . .

The Honourable Sir Malcolm Hailey: May I interrupt the Honourable Member, Sir? I do not wish to let him remain ignorant of the fact that by clause 24 of the Bill we do away with section 456, there will be no section 456.

Mr. B. Venkatapatiraju: That may be, but that does not prevent my moving it, because that was a matter which was taken into consideration by the Committee. It was discussed there, and I am moving the amendment in order to bring out what I wanted and what was recommended by the Select Committee. But if it is repealed, I have no right to move. Its repeal is exactly what I want.

Mr. President: The point of order taken by the Home Member is quite correct. Clause 24 which we have just added to the Bill reads as follows :

" For Chapter XXXIII including sections 443 to 463 of the said Code the following Chapter and sections shall be substituted."

Therefore the amendment in the Code which the Honourable Member proposes to make, namely, to omit the word ' European ' in section 456 falls to the ground, because the new Chapter XXXIII runs from section 443 to section 449 and the old sections drop out.

Mr. B. Venkatapatiraju: I do not understand the Government saying that section 456 is omitted altogether from the Code of Criminal Procedure. If it were the case I have no amendment. But as the sections from 456 to 491 were recommended to the Select Committee and the Select Committee recommended how to modify 456 and 491, I am moving what modification is necessary in 456. I therefore appeal to the Chair, Sir, to reconsider the question whether I am not entitled to move on a matter which was submitted to the Committee and on which the Committee made a recommendation.

Mr. President: The Honourable Member should have thought of that when I put the question that clause 24 stand part of the Bill. His point of order is not strictly relevant, because I was proceeding to put clause 25. But to explain the matter to him once more and in case it is not clear to other Members, I would point out that an entirely new Chapter XXXIII has now been inserted consisting of sections 443 to 449 inclusive. The old Chapter XXXIII consisted of sections 443 to 463 and those all drop out by the decision just made by the House. Since 456 comes between 443 and 463, it drops out as well.

Clauses 25, 26 and 27 were added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move :

" that clause 28 be omitted."

Sir, under clause 27 we have extended the powers of the High Courts other than the chartered High Courts beyond what they were under the

old Criminal Procedure Code, *i.e.*, under this clause we have extended that power to those High Courts, Chief Courts or Judicial Commissioner's Courts which are not established under the Charter. Under clause 28 we extend the power of the chartered High Courts over certain territories which are beyond British India. Sir, I have not been able to find out what these territories are, whether they are the territories of Indian Princes or Feudatory Chiefs beyond British India, or the ceded territories under British administration. If the reference is to the ceded territories, then I do not understand why this right has been confined only to the chartered High Courts; if, on the other hand they are the territories of Princes and Feudatory Chiefs, then I do not understand the necessity of extending this power over their territories. I am therefore moving my amendment more with a view to find out the exact meaning of the word " territories " and the reasons for extending the powers of chartered High Courts only to such territories beyond British India. I think that that might lead to a conflict of jurisdictions between the courts in British India and those in the Indian States. I therefore move that this clause 28 be omitted.

The Honourable Sir Malcolm Hailey: The Honourable Member asks for information. I would ask my Honourable friend, Mr. Tonkinson, to supply it. He has the papers here.

Mr. H. Tonkinson: Sir, I would remark in the first place about this clause that it gives effect to the definite recommendation of the Committee. If Honourable Members will refer to paragraph 29 of their report they will see on page 10 that they say:

> " In this and other matters we would not interfere with the existing procedure in respect of Indian States."

And now, Sir, in this proposed section 491A we are not introducing any new provision, we are practically repeating the provisions of section 458 of the Criminal Procedure Code as they stand at present, though we have transferred those provisions to the Chapter dealing with the *habeas corpus* provisions. The *habeas corpus* provisions in section 491 will be extended to the whole of British India for all subjects of His Majesty. But as regards European British subjects we have treaty provisions with Indian States which enable us to exercise foreign jurisdiction rights in those Indian States, and those are the rights which we will be able to exercise under section 491A. We have no treaty rights which would enable us to accept an amendment of this provision omitting the word " European ".

Mr. J. Chaudhuri: Sir, may I ask the Honourable the Home Member for some information with regard to section 491? The Repressive Laws Committee of which I was a Member, recommended that the Bengal States Regulation, III of 1818, Madras Regulation 2 of 1819, the Bombay and other similar Regulations should be withdrawn. Nothing has been said with regard to them. Section 491, clause 3 of the Code now applies to European and Indian British subjects alike. In the interests of both European and Indian British subjects may I ask whether any definite step has been taken by the Secretary of State with regard to the recommendations of the Repressive Laws Committee which recommended that these Regulations should be repealed. For instance, in the frontier provinces or elsewhere British subjects may be taken into custody detained or deported, but in that case 491 as now amended will apply to European British subjects alike. So in the interests of all, I beg to inquire what action has been taken by Government with regard to our recommendation.

The Honourable Sir Malcolm Hailey: We have, I think, already finished this clause. The Honourable Member is asking for information about a subject somewhat outside the clause. If he will put that question to me afterwards either in the House or privately I shall be glad to answer him.

The amendment was negatived.

Bhai Man Singh: Sir, I move that in clause 28 in the proposed new section 491A before the word " European " insert the word " Indian."

My position with regard to this matter is this, that Indian subjects of His Majesty are as much entitled to the protection of the British Government or by the High Courts of the Crown as European British subjects. Surely, Sir, if a necessity has been felt to make a special provision in the Criminal Procedure Code for the protection of European British subjects . . . .

Mr. President: I would like to know what the Honourable Member seeks to effect by his amendment. The amendment makes the section run " . . . Indian European British subjects . . . "

Bhai Man Singh: I mean Indian or European subject. I do not propose to substitute 'Indian' for 'European.' If the Government of India has thought it fit to extend this protection to European British subjects in the Indian States, there is no reason why the same protection should not be given to the Indian subjects of His Majesty, at least to the extent that the treaties with the Indian States allow. Treaties being a sealed book to me I cannot, of course, say how far this is feasible or not. If treaty rights stand in the way, then it is quite a different thing. Honourable Members will see that the section as now framed runs as follows:

" Any High Court established by letters patent may exercise the powers conferred by section 491 in the case of any European British subject within such territories, other than those within the limits of its appellate criminal jurisdiction, as the Governor General in Council may direct."

The section, therefore, is sufficiently elastic to extend the right given under it to any territories that the Governor General in Council thinks proper; and if in the case of any other subjects such protection under treaty rights cannot be afforded to Indians, the Governor General need not direct under this section. But in the case of treaties under which that protection can be given to Indian subjects, there is absolutely no reason why it should not be so extended and if the House adopts this amendment the power will remain with the Governor General in Council not to direct such protection to be given where treaty rights do not permit it.

The Honourable Sir Malcolm Hailey: Mr. Bhai Man Singh has foreseen our difficulty in this respect; we could not make this further extension in view of the nature of our treaties with Indian States. It would be of little avail to confer on the High Courts a power under the Criminal Procedure Code which we could not implement under our treaties.

Rao Bahadur T. Rangachariar: Is it a universal clause in all the treaties, and if so, what are its terms?

The Honourable Sir Malcolm Hailey: There are a very large number of different treaties; if I am correct, the terms differ in almost every case.

Bhai Man Singh: Do not the treaties of any States allow protection to be given?

The Honourable Sir Malcolm Hailey: I should like time to examine the question, but my impression is—and I give it only as an impression—that they do not give us these powers.

The amendment was negatived.

Clause 28 was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That in clause 29, the proposed sub-section 526A be omitted."

By this clause we provide that where any person subject to the Naval Discipline Act or to the Army Act or to the Air Force Act is accused of any offence such as is referred to in proviso (*a*) to section 41 of the Army Act, the Advocate General *shall*, if so instructed by the competent authority, apply to the High Court for the committal or transfer of the case to that High Court and thereupon the High Court *shall order* that the case be committed for trial to or to be transferred to itself and *shall thereafter* proceed to try the case by jury. Sir, here we provide that in the case of trials involving members of the navy or army if the competent authority so desires, it shall direct the Advocate General who *shall apply* to the High Court and the High Court *shall transfer* that case to its own file. Under this section we compel a High Court without giving it any discretion to allow or disallow an application for transfer of that case to itself. I think it is against the principles of justice that the highest court of law in the country should be compelled to do a thing in this way and should not have a discretion to do what it thinks proper. The best course would have been to provide that the Advocate General shall apply on the application of competent authority, and the High Court, if it thinks it is in the interests of justice, to have such a case transferred to itself, may do it. Here we make it obligatory and compulsory, which I think goes against the spirit of justice and law. I therefore propose, Sir, that this special provision for the benefit of soldiers and sailors should not be allowed to exist in this Bill and that they should be treated on the same level as any other European British subject in this country. With these words, Sir, I commend my amendment for the consideration of the House.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadan Urban): Sir, luckily it is not one of the provisions which has been the subject of compromise between the gentlemen who constituted that committee, because anything that has been touched by their sacred hands cannot be touched by the profane hands of the Members of this Assembly. But luckily, Sir, this is a point about which a mere Member of this Assembly can muster up courage to make a few remarks. I wish to make it clear that I do not propose to deny this right either to a soldier or anybody else in whose favour this provision has been inserted, but I do submit with great confidence that this is a provision which offends against the jurisprudential conceptions of a lawyer. What you have in this provision is this. There is to be constituted a competent authority by the Governor General in Council. That competent authority has to decide that a particular case of a soldier is not to be tried by a particular Court. That being his opinion, he instructs the Advocate General and on that instruction the Advocate General moves the High Court and what is the result? The High court then orders that that case be either transferred or be committed to its own file. I submit, Sir, that the provision which is contained in this clause really makes the High Court a body which will register the opinion of the competent authority because the Advocate General, Sir, is only a kind of a

[Munshi Iswar Saran.]

post office. He receives the impulse from the competent authority, he transmits that impulse to the High Court, and the High Court like an automaton has to pass the desired order, whether it wills or no. Sir, in the note which has been prepared by the Department it is very naively stated "It is an extension of section 526 of the Code of Criminal Procedure". I submit, Sir, and I say so without the least fear of contradiction that this provision is a negation of section 526 of the Code of Criminal Procedure. Now, if the House will refer to section 526, what it finds is this:

"Whenever it is made to appear to the High Court:

(*a*) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(*b*) that some question of law of unusual difficulty is likely to arise, or

(*c*) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry or trial of the same, or

(*d*) that an order under this section will tend to the general convenience of the parties or witnesses, or

(*e*) that such an order is expedient for the ends of justice or is required by any provision of this Code,

it may order . . . ."

Under section 526 of the Criminal Procedure Code the High Court retains the power of going into the question, examining the pros and cons, then coming to a decision whether or not the High Court will make an order about the transfer of a particular case. But according to the provision which you have got in front of you what have you got?

"Where any person subject to the Naval Discipline Act or to the Army Act or to the Air Force Act is accused of any offence such as is referred to in proviso (*a*) to section 41 of the Army Act, the Advocate General *shall*, if so instructed by the competent authority, apply to the High Court for the committal or transfer of the case to that High Court and thereupon the High Court *shall* order that the case be committed for trial to or be transferred to itself and shall therefore proceed to try the case by jury."

I submit, Sir, in the face of this provision, the High Court has no option left in the matter. It is deprived of its right of determining the question before it, whether or not it should order the transfer of a particular case. According to this section, it is really the competent authority which will decide it and the competent authority, having decided it, instructs the Advocate General and the Advocate General moves the High Court and the High Court, as a matter of necessity, without any choice or discretion being left to it, is bound to pass the order that the Advocate General wishes it to pass. I ask, Sir, is this a sound provision? I appeal to the Members of Government not to have a provision which will really disfigure the Statute Book. The High Court in the land is being reduced—I shall not use a stronger word—to a position where it is deprived of its power of determining the question of transfer that comes before it but has simply to carry out the behests of the competent authority. I submit, Sir, regard being had to these considerations, the House will do well in pausing before it accepts this clause. And, Sir, there is that perennial and perpetual argument in my favour that this is not a clause which has been agreed to by those distinguished and all-wise men in regard to whose judgment no one dare say a word.

The Honourable Sir Malcolm Hailey: I am sorry that on Munshi Iswar Saran's first re-appearance in this Assembly, where we are all glad to welcome him back, he should have felt obliged to oppose this section.

I do not quarrel with his description of the clause. It is perfectly true, that the effect of this clause is that, if a transfer is applied for, the transfer must be made. But I do not follow him in saying that is a slight on the High Courts. That it deprives the High Court of option, I admit. But I do not think that the High Courts themselves, considering that the Executive has already a power of transferring from one High Court to another, and that here all we seek is to effect a transfer to the High Court's own files, would feel it as a slight on them. Now, Mr. Iswar Saran is aware, as the House is aware, that this is one of the two recommendations of the Committee which we have modified under instructions from His Majesty's Government. (*Munshi Iswar Saran*: "Is it binding on us?") The fact I have stated is perfectly clear; I stated it in my introductory speech; it has been canvassed in the newspapers; it was alluded to here when we had our motion for consideration, and I heard from the side opposite that it was not a matter of such importance that they need take exception to it.

No, Sir, it is binding on us. We are not obliged to register the instructions of the Home Government. But it is a condition on which the approval of the Home Government has been given. And let us again be perfectly clear about it. I do not think that the Home Government would allow this Bill unless it contained this clause. That is my belief, and that being so, I think it is right that I should put it to the House. But Mr. Iswar Saran has attacked this as an unusual measure and as disparaging to the High Court. He has not in any way gone into the merits of the question. At the risk of taking up some little time of the House, may I do so? The clause, of course, applies to a particular class of persons, those who come under the Army Act or the Air Force Act; in other words, British soldiers or members of the Air Force serving in this country.

I have already made a point of it to the House that these men come out here not of their own option, as I do, for instance, or those who are engaged in commerce. They come out here because they are part of the British Army and are drafted out here in the ordinary course of their duties. Now, compare their status in point of trial procedure in England and in India. In England, there is a perfect concurrent jurisdiction between Courts-martial and civil courts except for what are known as the five major offences classified in section 41 of the Army Act, murder, rape and the like. In spite of this concurrent jurisdiction, in practice, of course, the greater part of minor offences committed by men in the Army are tried in the civil courts, these five major offences must in any case be tried in the civil courts. Now, in England the British soldier, if he comes under trial by Civil Courts, can claim trial by a jury if he is accused of an offence the punishment for which exceeds six months. Therefore, in England, if he is to receive a sentence of above six months, he can claim a trial by jury. That would apply, of course, to all the minor offences. Then take the major offences which the courts-martial cannot try and which must come before the Civil Courts—cases of murder, rape and the like. Where is he tried there? He is tried at the Court of Assize before a Judge of the King's Bench. That is his judicial status in England. If he comes out here, what does he find? In respect of the Army Act his status is this. He is liable to the concurrent jurisdiction of courts-martial except in respect of these five major offences; if one of these major offences is committed within 100 miles of a competent court, (at present, a High Court), then the court-martial has no jurisdiction, and he is to be tried before the said High Court. For minor offences tried

[Sir Malcolm Hailey.]

before Civil Courts he will find then, that as the law will stand in future, he may be sentenced to two years' imprisonment by a Magistrate; that is, in cases in which racial considerations do not arise. In other words, he can receive—and this is the aspect of the question which will appeal to him—he can receive, in cases in which racial considerations do not arise, two years' imprisonment from a Magistrate without the benefit of a jury. Then we will take the case as it will arise under our new criminal procedure in respect of the major offences—the five excepted offences under section 41 of the Army Act. What will he find here? He will find first that he is triable by a Court of Session, instead of a High Court, as before, and in non-racial cases, the Sessions Court may only have Assessors, not a Jury. But more; he will find another change; for when as under the present procedure he is triable by a Civil Court, and not by a Court-martial, only if the offence is committed within 100 miles of a competent court, namely, a High Court, now he becomes triable by a Civil Court if the offence is committed within 100 miles of a Court of Session, that is, in far more numerous cases. Therefore, not only will it appear to him that his status in regard to minor offences is inferior to what he enjoys in England because he does not get a jury for such offences if non-racial but also because by our new legislation we propose to extend very greatly the sphere of the Civil Court jurisdiction and to lower the class of Court before which he may be tried. You must, in justice, put yourself in the mind as far as possible of the person affected, and I say there is little doubt that the British soldier coming out here will feel that he is, in regard to trial procedure, in a position greatly inferior to that which he would enjoy in England. Once again, I point out that he does not come here of his own free will. But, there is a further aspect of the case. I would like to point out that section 41 of the Indian Army Act under which certain offences are taken away from the cognisance of courts-martial is in itself an exceptional measure. It probably arises out of the history which underlies the maintenance of a Standing Army in England. Thus in India, under the Indian Army Act, there are no such exceptions in regard to persons either European or Indian serving in the Indian Army. That is to say courts-martial and Civil Courts have a perfect concurrent jurisdiction in their case. So, you have this anomaly, that whereas persons under the Indian Army Act find themselves under a perfect concurrent jurisdiction of courts-martial and Civil Courts yet by the chance that British soldiers come under the British Army Act, for certain offences they cannot be tried by courts-martial and must be tried by Civil Courts. That again is another aspect of the question which will seem undoubtedly an anomaly to the British soldier. Finally, of course, we are going to render a verdict of acquittal by a jury appealable on fact as well as law, on the part of Government, in cases involving racial considerations. This will seem to men of this class a new and strange provision. Now, in view of these facts, namely, that in regard to minor offences, and also to some extent in regard to major offences, his status in point of trial will appear to him to be already lower in India than it is in England in view also of the fact that our new procedure greatly extends the scope of civil jurisdiction over persons serving under the Army Act, because the competent court is now the Sessions Court and not the High Court, considering these two facts is it unreasonable that His Majesty's Government should have introduced this proviso in favour of the British soldier? It simply amounts to this, that the Army Commander, and

no lower authority than an Army Commander, may in certain cases exercise the right of requiring transfer from a Sessions Court to a High Court. Remember that this amounts only to a demand for transfer from a lower Civil Court to a higher; whereas under the Indian Army Act, executive authority has power to keep cases from the Civil Court altogether and retain them for Court-martial. Under section 526, if the Civil Magistrate thinks that a man should be tried by a Civil Court, instead of the court-martial, then the military authority refers the matter to the orders of the Governor General and the latter can decide that he should be tried by court-martial. As I say, all that we seek to do in order to overcome any discontent that may be caused among the members of the British Army, owing to the new procedure which we are now introducing, is to give a very high military authority, namely, the Army Commander, the right of moving for the transfer from the Sessions Court to the High Court. That application will be made only in exceptional cases. That is the sole extent of our provision, and I do not feel that in the circumstances the House will regard it as an unreasonable one.

Mr. J. Chaudhuri: (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, after what the Honourable Member has said, I do not wish to press this amendment, but all the same I feel and say on behalf of every Member on this side of the House that we should not assent to this without a protest. We have agreed to the definition of " European British subject " because the Secretary of State gave sanction to this Bill and to the recommendations of the Committee subject to our acceptance of that definition. The Honourable the Home Member has also said that this is the second condition with which the sanction of the Secretary of State was given. But I find His Excellency the Commander-in-Chief present here and I feel that I should take this opportunity of making known to him the feeling of the country with regard to this question. This amendment of the Code places the soldiers in an altogether different position from civilians, be he an Englishman or be he a native of this country. Now with regard to the Englishmen or the European British subjects who pursue civil occupation, we have nothing much to fear from them. They, many of them, carry on business or trade in the mofussil, in Narayanganj, Dacca, the Dooars in Bengal and other places and cases of oppression or assault or other graver offences are not common amongst them. But I must draw His Excellency the Commander-in-Chief's attention to the fact that the people of this country have serious grievances against the soldiers. They come out to this country for a short time. They do not understand the customs and habits of the people of this country and they do not share the same fellow-feeling as the Europeans in civil occupation do, and sometimes they do rash, negligent, and reckless things. Some of the gravest cases that I have known in the Calcutta High Court from my earliest days, for instance, the O'Hara case, the Barrackpore murder case, the shooting down of a master tailor in the Fort William and in fact the gravest cases of this type were offences committed by the soldiers. There was only a recent case in Meerut.

I shall take this occasion to protest against the remarks that have been made by my Honourable friend, Mr. Rangachariar, with regard to newspapers. But for the newspapers these offences which are committed inland, in the mofussil, would not have come to light. The newspapers in this country do a distinct service in bringing to the notice of the public and to the notice of the authorities, military and civil, all the offences committed by these newcomers into our country.

[Mr. J. Chaudhuri.]

But, to return to my subject, what was the position of soldiers up to now? The position was this that British soldiers or other British-born subjects were absolutely in the same position; they could apply to the High Court to be tried there. (*A Voice*: "Court-martialled.") I am not concerned with court-martial. With regard to civilians, in a way—whether we regard it as satisfactory or not—they have been put on an equal footing with His Majesty's Indian subjects. But this Bill places the soldiers in a different category altogether. Their status remains what has hitherto been provided for, for Europeans, by the Crimnal Procedure Code, that is, they can apply to the High Court and have their cases transferred there. I do not look at it from the point of view that my Honourable friend, Munshi Iswar Saran, does, that it is a slur on the High Court, That is a minor question. If they are tried in the High Court, I have the fullest confidence in the High Court that so far as judges are concerned justice will be done there. But I should draw the attention of His Excellency the Commander-in-Chief to the fact that there is another party to the question. Supposing a soldier, inland, in the mofussil, commits some grave offence against an ordinary poor subject of His Majesty, if these cases are transferred to the High Court, the poor man has to bring the witnesses before the High Court and it means expense and serious inconvenience to him. I have said that I am not going to be obstructive and I am not saying this to support the amendment, but merely to record our protest for the time being. I would not press this House to a division over this question. But at the same time I wish to draw the attention of His Excellency that, since this provision places the practical authority in His Excellency's hands, it enhances his responsibility and those of the commanding officers under him, and, I am sure, he will exercise his judgment and see that the poor people of this country get justice in such cases and that this procedure is not needlessly used against them where it is likely to be oppressive or expensive to them or where by reason of distance or expense they may not be able to stay away from home or to take their witnesses with them to prove their case in a distant Presidency town. We have great regard for His Excellency who is a leader of men and who has risen to this high position because he has always been so kind and courteous, brave and courageous and has treated his men justly and fairly. A General cannot command his army unless he is strict and absolutely fair and just. I would appeal to his soldierly instincts that when he issues instructions to the officers concerned, that he may direct them that whenever a soldier does any wrong to the humblest of His Majesty's subjects, they should exercise their discretion in the interests of justice and see that the man is adequately punished. With these observations I would ask my Honourable friend not to press this amendment. I record this protest, hoping that later on a time may come when these invidious distinctions will be withdrawn. I resume my seat without any further comment.

His Excellency the Commander-in-Chief: I should like to reply to my Honourable friend at once. I think he may have, the House may have, every confidence not only in my own sense of justice, but also in that of what is described in this Bill as the competent military authority. That competent military authority we have restricted to the four Army Commanders who control the various sections of the Army in India, and I might perhaps call the Honourable Member's attention to a paragraph in the Statement of Objects and Reasons of this Bill at the bottom of

page 2, that it will be restricted to those officers " who are already entrusted with very high responsibilities and they are confident that it will be only in exceptional cases that these officers will use the power which it is proposed to vest in them." I can assure the House that I will see that this is carried out.

Rao Bahadur T. Rangachariar: My friend, Mr. Chaudhuri, this morning, in that expansive mood of his, of praise and protest, has included me in the category under protest and my friend, Dr. Gour, with his innate sympathy for such protests directed against me cried ' Hear, hear.' What did I say this morning? I objected to the flaring head lines in the papers about soldiers in trouble and thereby creating prejudice in the minds of the Jury. I do not object to newspapers bringing to light grave cases of assault. On the other hand I welcome it. My friend, Mr. Chaudhuri, has entirely misunderstood my remarks and has directed his protest in a wrong direction.

Dr. H. S. Gour: May I suggest one short amendment which while keeping and preserving the sense of the amendment proposed by the Government will perhaps spare the High Courts their dignity in this matter. That is that the word " may " be substituted for the word " shall ". Then the section will read " the High Court may order that the case be committed for trial to or be transferred to itself ", etc. The Honourable the Home Member will perceive that he has already pointed out that only very few and exceptional cases are likely to come under the provisions of this clause and I think he will also admit that the supreme court for the trial of such cases and for the decision on matters of this kind is the High Court. We have no doubt that His Excellency the Commander-in-Chief and his Army Commanders will use wise discretion in selecting such cases but the final order must, I submit, rest with the High Court and I think if this small amendment is accepted it will be highly appreciated by the House and I have no doubt that the Honourable Mover of the amendment will then withdraw his amendment. I shall also withdraw mine, which is worded exactly in the same terms.

Mr. President: I cannot put the amendment to substitute the word " may " for the word " shall " as long as the proposal is made to omit the whole clause. I must dispose of the one before I can take up the other.

Dr. H. S. Gour: With the permission of the Mover of the amendment I should like this small change to be made and withdraw the rest, both his amendment and mine.

Mr. K. B. L. Agnihotri: If this is done, I will withdraw.

Mr. President: I cannot satisfy that condition. It is for the Government to say.

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

The Honourable Sir Malcolm Hailey: I am afraid I shall be under some imputation of misleading the Honourable Member if I do not object at this stage. The Honourable Member must not withdraw his amendment under any impression that I shall be able to accept Dr. Gour's amendment. I regret that I am not able to do so.

Mr. President: Amendment moved:

" To substitute the word ' may ' for the word ' shall ' in the third last line of new section 526A."

[Mr. President.]

The question is that that amendment be made.

The motion was negatived.

Mr. President: Clause 29 was added to the Bill.

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

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

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

"In clause 30 omit the proposed section 528D, sub-section (2)."

Sir, I confess my inability to comprehend the necessity of retaining this sub-section (2) to clause 528D. We have already provided in the body of the Bill that no Magistrate shall give punishment for more than what he is authorised to sentence under this Bill. We have also provided in the body of the Bill, and specifically provided, that second and third class Magistrates shall not have jurisdiction over European British subjects for the trial of offences punishable with fine exceeding Rs. 50. Over and above that, we now further provide here that nothing in this section shall be deemed to authorise any Court to exceed the limits prescribed by the Code as to the amount of punishment which may be inflicted on an European British subject or to confer jurisdiction on any Magistrate of the second or third class for the trial of European British subjects. This clause becomes superfluous. But this clause has reference to clause (1) above. Clause (1) above puts the European British subjects under the jurisdiction of Magistrates under other enactments made by the Governor General in Council although such persons are not expressly referred to therein. It may be said—and that is the point which also strikes me—that the above clause refers to the punishments that may be prescribed under any other enactments that may be made by the Governor General in Council. If it refers to the punishment that is provided there, then probably this clause may after all be necessary, otherwise when we have already laid down a specific provision in this Bill for a particular class of people, it does not seem necessary that there should be any express provision like clause (2) of this section 528D. Moreover, Sir, some confusion is likely to arise by the insertion of this clause, and that would be by way of contradistinction. We have provided in a previous part of the Bill that under certain circumstances Indian British subjects and European British subjects shall have equal rights but here we specify only one of these classes of people and by this contradistinction it may lead to a supposition that in the case of an Indian British subject a sentence could be passed for a period exceeding the period allowed under this law. These two doubts occur to my mind, so I think it better to put the point before the House and to have it cleared by the Government. With these words, Sir, I move the amendment which stands in my name.

Mr. Deputy President: Amendment moved:

"In clause 30 omit the proposed section 528D, sub-section (2)."

Rao Bahadur T. Rangachariar: Sir, I wish to draw the attention of the Government to the latter portion of this clause (2). It seems to me

to go beyond the agreement arrived at between us. It was not the intention of the Committee at all to deprive second and third class Magistrates of jurisdiction over European British subjects. On the other hand it retained the jurisdiction of second and third class Magistrates, but it only gives the option to the accused person, in case he wants a trial elsewhere, that he may take it to any other tribunal. The jurisdiction is there; it is only an option given to the accused person under certain circumstances. As the clause now stands, in clause (2), if Honourable Members will follow the language of clause (2):

"nothing in this section shall be deemed to confer jurisdiction on any Magistrate of the second or third Class for the trial of such subjects"—

and it is going beyond the object of the provision. Here you deliberately take away the jurisdiction of second and third class Magistrates for the trial of such subjects, whereas we retained it under the law as we proposed, we retained it,—I mean, in this Code, as we proposed to enact it, but this section assumes that we confer no jurisdiction at all, that is to say, we will have to modify the clause by adding some such clause except as provided herein. Some such qualifying phrase is necessary, otherwise it may mean that "under any other law", that is to say, section 528D, clause (1), refers to other laws by which offences may be created. Second and third class Magistrates will have no jurisdiction at all. That is how I read it.

"Unless there is something repugnant in the context, all enactments made by the Governor General in Council or the Indian Legislature which confer on Magistrates or on the Court of Session jurisdiction over offences shall be deemed to apply to European British subjects, although such persons are not expressly referred to therein."

Then, the second clause runs:

"Nothing in this section shall be deemed to authorise any Court to exceed the limits prescribed by this Code as to the amount of punishment which it may inflict on an European British subject or to confer jurisdiction on any Magistrate of the second or third class for the trial of such subjects."

You take away entirely the jurisdiction from second and third class Magistrates even if the accused do not object. I do not think it is the intention of the Legislature, certainly not the intention underlying the compromise arrived at, and I think some saving phrase is necessary,—"save in the circumstances aforesaid" or something of that kind. Without that, it is absolutely taking away the jurisdiction from such Magistrates,—I want the Government to consider that.

The Honourable Sir Malcolm Hailey: Sir, it will be seen of course that this clause 528D reproduces, in effect, the existing section 459 of the Criminal Procedure Code. I may say at once, that it was not the intention of Government to take any new powers under this clause, or in any way to insert provisions repugnant to what has gone before in the Bill, or to the agreement effected by the Committee. I wish to make this perfectly clear. Indeed I think that if you read the second part of this clause, sub-clause (2), the words, "or to confer jurisdiction on any Magistrate of the second or third class" have not in themselves the effect of depriving Magistrates of the second or third class of any jurisdiction that has previously been conferred on them in this Bill. All they convey is that sub-clause (1) shall not, in itself confer any jurisdiction on such Magistrates. I appreciate, however, the difficulty which my Honourable friends have felt. I do not think that they themselves are striving, certainly not Mr. Rangachariar, for the complete exclusion of this clause,—what they want is that it should be elucidated, so

[Sir Malcolm Hailey.]

that it shall be made clear beyond any possibility of doubt that we are not seeking fresh powers here or doing anything repugnant to the agreement of the Committee. That clause will be very carefully examined. It is indeed possible that in the process of consolidation the whole of it may have to go out. For the present I would ask that it may be allowed to stand. We shall scrutinise it carefully, and if further elucidation is required in order to effect the purpose we have in mind, we shall certainly do so, and I am sure we shall receive the agreement of the House in any necessary drafting amendment.

Mr. K. B. L. Agnihotri: Sir, on the assurance given by the Honourable the Home Member, I beg to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Dr. H. S. Gour: Sir, I feel I am leading a forlorn hope in asking this House to accept the amendment* which stands against my name. I have already said two days back what I consider to be my view regarding the conferment of jurisdiction over non-British Europeans and Americans. I can only express a hope that the Honourable the Home Member will remember what I said, and when the process of consolidation is in progress he may see the force and the strength of the conviction, at any rate, of the non-official Members of this House, and remove from the Code of Criminal Procedure the exceptional provisions relating to non-British Europeans and Americans. As regards the Americans I should like to present to the House the latest cable which runs as follows:

"Washington. In case relating to Bhagat Singh who obtained certificate of citizenship in Oregon several years ago the Supreme Court to-day (*that is the 19th of this month*) ruled that high-caste Hindu of full Indian blood was ineligible for American citizenship on ground that he was not free white person within the meaning of the law."

I am afraid, Sir, some such sub-conscious mental attitude has dictated to the Legislatures of the earlier days in introducing the preferential clauses relating to non-British Europeans and Americans. I have protested before and I do so once more in the name of the House. I do not wish to press my amendment but I only ask the Honourable the Home Member that if he will consult the opinions of non-official Members of this House, he will be well advised in reconsidering those provisions relating to non-British Europeans and Americans.

Clauses 30 to 40 were added to the Bill.

The Title and Preamble were added to the Bill.

Clause 1 was added to the Bill.

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

I would ask the indulgence of the House for a few minutes. A few days ago when I moved for consideration, immersed as we seemed likely to be at short notice in details arising out of the amendments, I did not take the opportunity of thanking the House for some very kindly references to myself. I do so now, and from a very full heart. We frequently hear it said that this is the last year of this Assembly and perhaps its last

* "In clause 30, in the proposed sections 528A, 528B, 528C and 528D, omit the words 'or an American' and 'or American' wherever they occur."

session; and whenever we hear that, we on these Benches have I am sure a feeling of regret. My colleagues here have in the last two and a half years made many friends; and certainly I can say myself that I have been treated with a forbearance and with a kindliness which is altogether characteristic of India, and which to many of us makes service for India not a duty but a devotion.

And now, as regards our Bill—I use that word advisedly, for I have never regarded it purely as a Government measure; I have regarded it simply as a measure intended to register the agreement between two great communities on a vital subject. If there is any credit due for the passing of it, it is due to those who came to that agreement. I have already paid my tribute to the services of Dr. Sapru. I hope I may be allowed to add here an equal tribute to one who endeared himself to this Assembly, my predecessor the Honourable Sir William Vincent. (Hear, hear.) I should like also, if I may mention—as they say at the University *honoris causa*—those Members of the Assembly who contributed to that happy result.

I think that the discussions on the amendments have shown that our draftsman and Mr. Tonkinson, the custodian of the inner counsels of the Committee, have well and truly given effect to the intentions of that Committee. We have had but one small difference of opinion on the amendment relating to whipping. The House has taken its own decision on that point, and if, as I fear, the inevitable result will be that persons sentenced to whipping will for the future have a considerable period of anticipation of the pains of whipping before, as well as subsequent experience of those pains of whipping behind, I will not for the moment cavil at what the House has done. For the rest the Bill does, I think, give effect and give good effect to what the Committee decided.

I do not wish to repeat myself nor to say anything again of the great importance which I have attached and which I know the country has attached to this measure. A short time ago I was writing to one who has been honoured here above all others as promoting the cause of Indian reform, and was trying to sum up what we had achieved so far since the Government of India Bill was passed. I said that I could not do so yet. After all the mere enactments of a Legislature or the concrete instances in which the Legislature forces its will on the executive are not of importance. What is important is the atmosphere in which the Legislature does its work; the spirit which actuates it, the ideals and the objective which it has in view. I said that I could not yet sum up the results, but that an occasion was coming which I hoped would enable me to do so; for if the course of the discussions on this question India showed that she had the temper of true statesmanship, that she was willing to make concessions in order to gain the good will and co-operation of Europeans in the common task of promoting India's political progress, rather than to satisfy her own immediate feelings based on resentment for the past, and if on the other hand Europeans were willing to make sacrifices in order to prove to India that they were prepared not only to recognize the strength of Indian sentiment on this question, but to assist in the solution of India's own difficulties, then there could be no doubt that we shall be able between us to make the reforms a success. For, whatever belief one may have in the future of India, whatever confidence one may have in her future, I have one cardinal article of faith. India may march onwards, but she cannot march alone. If she is to gain responsible Government

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from Parliament, then she will have no stronger argument than this, that the Europeans resident in India also desire it and are willing to co-operate in its development. If she is anxious to gain an equal position in the Empire, an Empire which is not an agglomeration of States, but is the very embodiment of the British spirit, then all the more will she need the goodwill and assistance of the Europeans resident in India, for if she has their co-operation, then the other component States of the Empire will know that whatever outward form the Government may take, there will be a guarantee that in everything she does, in the spirit of all her enactments and all her actions there will be nothing inconsistent with British standards and ideals. I think, Sir, that by this measure we have gone far to prove that we can gain that consummation. I think that we have shown that Indians on their part realise that they must take Europeans with them in the development of their country in the future—I am not speaking of the past—I am not speaking of what the European services have done for India or what European commerce or industry or engineering or science has done for India in the past—there are abundant proofs of that—I am speaking only of the future. I honestly believe that we can now prove that Indians value the assistance of the Europeans resident in India as partners in the development of their administrative and political problems; that we can equally prove—and this perhaps is equally important—that Europeans on their part realise that it is necessary for them to assure India that they are prepared to take a real interest in the development of purely Indian questions. I think we can prove that; and if we can do so, we are all the happier in the occasion and the time. For it was only one brief year ago when a section of Indian politicians, numerous if mistaken, and persistent if pernicious, were preaching as the cardinal article of their faith racial animosity and racial hatred. We can show to the world that the better India, the India which will count in the future will have none of that, that such feelings do not represent in any sense the real characteristics of the better Indian mind; we can show that the course of India's political progress is not going to be blighted and marred by a persistence of racial animosity.

Mr. T. V. Seshagiri Ayyar: Sir, it is with a sigh of relief that we on this side of the House contemplate the close of this discussion. I do not want to disguise from the House that there have been considerable searchings of heart in regard to this matter. The atmosphere in the country has been tense and some of the Members of the Assembly felt that they have been giving away too much and have been receiving too little. Still, Sir, from the moment that the Bill was introduced there was a feeling that we should go more than half-way, and that we should as far as possible see that the compromise which was contributed to so ably by the Indian and European members should not in the least be jeopardised. With that feeling we have approached this question. We felt, Sir, that the Secretary of State's interference on one or two matters had put an extra strain upon our loyalty to the pact which had been entered into by Europeans and Indians on this matter; and unfortunate also it was that his interference should have been on a matter on which the country feels very deeply and very bitterly. Sir, in response to the appeal made by the Honourable the Home Member we were prepared to overlook even those objectionable features, and we resolved that we shall do nothing which would have the effect of wrecking this Bill. I hope, Sir, that the colonials will recognise that in giving way in the manner we have done we

have shown the true instincts of a race which has a long and glorious civilisation behind it, and which has shown itself to be capable of showing forbearance, tolerance and dignity, and I hope that the colonials will recognise that a race which has shown such tolerance and dignity on the floor of this House should be treated far better than they are treating it in their homes. Sir, before I sit down there is only one matter I should like to refer to. If there has been such smoothness in the steering of this Bill, it is due to the able captain at the helm of affairs. There have been troubled waters and but for the Honourable the Home Member and his conciliatory spirit and the way in which he treated the House, the passage of the Bill would not have been so easy as it has been. Therefore, Sir, every one of us on this side of the House want to pay a tribute to his ability and to his conciliatory spirit and to the tact with which he has steered this Bill through the House. There is another matter also which I should like to mention and that is this: having regard to everything that has been said outside this House and having regard to the feelings of our members, I hope that it will be recognised that the Members who have given notice of amendments have shown rare self-restraint, rare tact and a rare spirit to economise time—a disposition which they have not shown in regard to any other measure to the same extent. I hope the House will recognise how dignified the Members have been and how anxious they have been to see that this Bill becomes law, although they felt that some of the features were objectionable. I hope that spirit of the members will be recognised by everybody in this House and outside.

Mr. Jamnadas Dwarkadas: I rise, Sir, to further support the motion that the Bill as amended be passed, and, in doing so, I wish to make only a few observations. My Honourable friend, the Home Member, has pointed out that this country, if it wants to make an onward march to the goal of responsible Government, which has been set out for it, cannot do so without the co-operation of the European community in this country. I agree entirely with the remarks that have been made by my Honourable friend, the Home Member. But I wish also to say this that, if the members of the European community in this country had any misgiving about the treatment that they might have at the hands of Indians if political freedom was secured to this country, to them the treatment that the House has given to this measure will, I am sure, be a sufficient indication of the spirit in which Indians will always treat them in future.

One more thing has also emerged from the discussions that we have had on this Bill. While this House has been very careful in seeing that its rights are not trampled upon by any outsider, while this House has always been eager to protest against the interference of His Majesty's Government and the Secretary of State in matters which are entirely our own concern, this House has not been slow to appreciate the difficulties of His Majesty's Government and have given their support to the wishes of His Majesty's Government expressed through their Secretary of State in order that the Colonials may be included in the definition of European British subjects. That is a sufficient indication of the sense of responsibility that this country will always have of its obligation to the Empire and to His Majesty's Government. A happy result has undoubtedly come out of the measure that has been introduced, and one may expect after this that both Europeans and Indians in this country will work together hand in hand for the political and other advancement of this country. Sir, I support the motion.

Rao Bahadur T. Rangachariar: Sir, it may seem a work of supererogation that I should speak at all after my Leader has spoken. But I have heard some whispers from my Indian friends that the Bill is not all it should have been. Sir, in the concluding portion of my minute on this subject, there is one sentence which I wish to emphasise and that is that the Indian has also gained substantially by this measure. I wish to emphasise that. It is not purely a one-sided bargain, as some friends of mine are inclined to think. Sir, what has been the cause of all this resentment against Chapter XXXIII of the Criminal Procedure Code? It was the ban of distrust of the Indians which was imposed by our Codes, by our own Codes, on our countrymen. Sir, that ban has been completely removed. Do my Honourable friends realise that? Sir, whether he be a Magistrate of the second or third class or of the first class, the ground of exclusion is not on account of his nationality. The Indian has as much right to object to a European Magistrate as the European has to object to an Indian Magistrate. Hitherto, in fact the very worst part of the compromise of 1884 was that simply because Indians should happen to be District Magistrates, you provided a system by which the European could escape the Indian Magistrate by imposing a jury at his will. If the accused so desired, if he had an Indian District Magistrate before whom he had to appear, he could have a jury of his own. Sir, that also has been removed. Now not only the District Magistrate but Magistrates are empowered to try Europeans. So that it was that inferiority which was stamped on my countrymen which we all felt, and I congratulate myself and the House and my countrymen that that ban, that legislative ban, has been removed.

Another thing, Sir, which is of substance to the Indian should not be overlooked. That is the right of appeal,—against every sentence of imprisonment. We know of the degradation it brings,—a sentence of imprisonment. Hitherto, first class Magistrates and District Magistrates could have imposed unappealable sentences of imprisonment. Sir, even an hour's imprisonment you are now entitled to appeal against and thereby remove this great slur which attaches to a sentence of imprisonment. The whole of the Hindu and Muhammadan community look with horror on an unjust sentence of imprisonment and therefore, Sir, they always demanded that there should be a right of appeal. Whereas the European could have an appeal against any sentence of imprisonment, my countrymen had not that right of appeal, and that has now been arranged for the benefit of my countrymen. To that extent, the Europeans co-operated with us on that Committee, and I am glad that that has been given to us. Therefore, while I admit that still the germ of disease has not been killed, it has been considerably weakened. Its propensities for spreading has been cut short. We have cut this poisonous tree root and branch, but not all the roots. Sir, it depends upon the co-operation of both the communities whether this disease can be killed altogether. Sir, we have given a privilege to the accused person to claim a mixed jury. I do not mean merely the European accused. Both the Indian accused and the European accused are now given the privilege of claiming a mixed jury. Sir, I appeal to them and I appeal to those responsible leaders of both communities to see that this privilege is not often invoked. By inanition alone that should die out. Let there be mutual trust and confidence in each other. Let the Indian consider that he will have justice at the hands of 9 European fellow subjects of his and let the European consider that he will have justice at the hands of 9 Indian fellow subjects of his. Let him

not look at the nationality of the Judge or Jury who is sent to try him. For he must appeal to that Greater Justice which must be in the breast of every man who dares to judge his fellow beings. Put him in that position of responsibility. Sir, whether he be a European or an Indian, I am sure he will not be guided by the passions and prejudices of the moment. Therefore, Sir, I appeal to both the communities that these privileges, though they exist in law, let them exist only in name. Let the aid of those sections not be invoked too often so as to bring to the public eye those distinctions that exist between race and race. I may appeal also to the press not to magnify these incidents which occur now and then and to the politicians also the same. Here, Sir, I do not think I can express it in better words than the Home Member has done to-day about the co-operation that is needed between the two communities hereafter, and that all those who inhabit India should consider India their home, not merely a place of residence as hitherto some people have done. Let it be their home. Let India rank first in their minds, in their desires, and every other country afterwards. Then, in that spirit alone we can bring that good which we all desire should crown our efforts.

There are two matters, as I have already stated in the course of my remarks which require to be removed. The European cannot be whipped whereas the Indian can be whipped. I appeal to my European friends that they will put forth all their efforts in the direction of having that inequality removed. That should be done soon, and as regards also the tribunals which can inflict a heavier sentence. I refer to sections 30 to 34. These sections also should be modified so as to prevent Magistrates having the power in certain areas of inflicting those longer terms of punishment which Sessions Judges and Jury alone should be empowered to inflict. In those two matters we had behaved magnanimously to the European because when we were insisting on equality, we could have insisted also on equality in that respect and imposed this on the European. But we dared not do it, for we felt that would be asking for equality in injustice. When a thing is unjust in itself, let not all suffer from that injustice. Even if we have to suffer, we thought that we should not include others in the category, and therefore, having regard to the spirit which we have displayed, I hope the whole of the European community will join hands with us and see that that blot is removed. Sir, I do not look upon your presence in the Chair to-day at this hour as a mere accident. I, Sir, look upon your presence in the Chair to-day as the guiding hand of Divine Providence, that a House with an Indian majority and with an Indian Chairman has been able to pass this Bill into law.

Mr. P. P. Ginwala (Burma: Non-European): Sir, in giving my support to this Bill I am influenced somewhat by different considerations from those which have apparently weighed with many of my Honourable colleagues. In not insisting upon the exclusion of the colonials I am not influenced by such a high and ethical motive as that of magnanimity, for I do not consider that though magnanimity is a very pretty and a very amiable domestic virtue, it ought to be extended to politics, I do not believe that in politics a man is expected to give his right cheek to the man who smites him on the left. In politics the best way to reply to such a man is to smite him on both his cheeks if you can and give an extra one on the chest if possible. If you cannot do that, the less you say about the first slap you received on the face the better. But I admit, Sir, that there are occasions on which expediency is a very good reason for submitting to a

[Mr. P. P. Ginwala.]

state of affairs for which there is no remedy, and speaking for myself, I put my acquiescence merely on the ground of expediency. Retaliation is useful only if it can be effective, and we cannot offer any effective retaliation on this point. It is merely therefore on the ground of expediency that so far as the colonials are concerned, we have not insisted upon their exclusion from the Bill. We would go a long way to conciliate the good-will and the regard of our fellow-European citizens in this country and we are proud to feel, that they have joined hands with us in removing after 40 years of controversy an issue which has disturbed the tranquillity of the country. But that argument we are not prepared to apply to the Colonies. They stand on a different footing. But, as I say, there is no way out of it and we submit to their inclusion. There are other considerations which have emerged from the history of this Bill some of which are in the nature of lessons which we have learnt, and some of them I intend to utilise in future. The most important of them is the attitude of the Secretary of State himself in connection with this clause about the Colonials. Last year we were told by the Honourable the Home Member, who was then Finance Member, when we said that if military expenditure was not made votable we shall refuse him supplies, that he thought we were extending a threat to him which was not proper. Now, what has the Secretary of State himself done in this case? Not only did he give out a threat but he put it into execution. He said that his sanction was necessary to certain clauses of the Bill under section 65 of the Government of India Act and that that sanction was not to be given unless we submitted ourselves to terms which we could not otherwise have imposed upon us. That is the effect of the conditions subject to which he has given his sanction, and I would like the Honourable the Home Member to tell us whether we should not be justified in following such a high example set by no smaller a person than His Majesty's Secretary of State—that if there are certain constitutional powers vested in us, whether we should not be justified in making proper use of them in order to wrest from him or from the Secretary of State something else to which within the letter of the law we would not be entitled? Sir, it has been a splendid precedent for us and for my part I intend to use it and I am going to ask the House to use all its constitutional powers in order to get something from the Government which according to the view of Government we are not ordinarily entitled to. The second lesson that we have learnt is this. What is our position in the eyes of His Majesty's Government if our interests comes into conflict with those of the Colonies? We have on this occasion the very great advantage of having the European section of opinion entirely with us. We have got the Government of India with us on this point. We had the unanimous recommendation of a very representative committee on that point. With all these things at our back we approached His Majesty's Government, and His Majesty's Government said, "You may be agreed as much as you like. It does not suit us to agree where the Colonies are concerned." Now, I venture to ask, is that a good impression to create upon the people of this country that even when everybody in this country is agreed upon a certain position, His Majesty's Government should disregard their opinion and their wishes in order that the Secretary of State for the Colonies may be placated by the Secretary of State for India? Would the Secretary of State for the Colonies have taken a view like the view of the Secretary of State for India if the position had been reversed? I say emphatically, "No". And what is more, His Majesty's Government are afraid more of the Colonies than their own people. I will give you a concrete instance. Take the case of our fiscal policy. It is a well known fact,

that the Manchester school of politics have been free traders for many generations—I would say at least for 3 or 4 generations. They have had that tremendous influence on the policy of England, for their interests were large. They have been able to impose their will practically upon His Majesty's Government. But when the Government of India and this Assembly have agreed on protection, His Majesty's Government throws overboard, so to say, the Manchester interest. On the other hand, where the Colonies are concerned, even before the Colonies have made any complaint they are afraid of displeasing the Colonies, and therefore it is we who have got to surrender in order that the position of His Majesty's Secretary of State for India may not be jeopardised with reference to His Majesty's Government. Another lesson that we have learnt is this. As the Honourable the Home Member has pointed out and we are all agreed, it is to the interests of the Indians to work along with their British fellow subjects in this country and that working together alone they would reach their goal which we have in view and to which the Europeans themselves have committed already and in which we have received at every turn their sympathy and their attention. Again, one thing we have made abundantly clear and that is this, that this House can be depended upon for giving effect to compromises which have been made by representatives of both communities even if the personnel of the particular committee may contain persons who are not Members of this House. I look upon it as a happy augury for the future that compromises arrived at outside should be given effect to by this House if they are in accordance with national views and national ideas. Lastly I will say this, that this House also has distinguished itself. There has been no lack of debating power in the House for it has been proved that the House is capable of debating for two days a hundred and one points about which there is no controversy, and of coming to the very point with which it had started the debate. I am glad to say that after all in only a short space of two days we have been able to get through a measure for which the Government itself had allowed us three days. With these remarks I give my support to this measure which, as I have said before, brings to a happy termination a controversy which has raged for nearly two generations in this country.

The motion that the Bill, as amended, be passed was adopted.

THE CANTONMENTS (HOUSE-ACCOMMODATION) BILL.

Mr. E. Burdon (Army Secretary): I move:

"That the amendment made by the Council of State in the Bill further to amend and to consolidate the law relating to the provision of house-accommodation for military officers in cantonments, be taken into consideration."

Sir, the amendment is of an entirely unimportant character. It provides explicitly for what would necessarily take place in practice. The communication to the District Magistrate would, of course, be made in writing.

Mr. Deputy President: The question is:

"That the following amendment made by the Council of State in the Bill further to amend and to consolidate the law relating to the provision of house-accommodation for military officers in cantonments, be taken into consideration:

'In sub-clause (2) of clause 24 of the Bill, after the words 'District Magistrate' the words 'on requisition in writing signed by the Chairman of the Committee' be inserted'."

The motion was adopted.

Mr. Deputy President: The question is:

"That this Assembly do agree with the Council of State in the following amendment:

'In sub-clause (2) of clause 24 of the Bill, after the words 'District Magistrate', the words 'on requisition in writing signed by the Chairman of the Committee' be inserted'."

The motion was adopted.

THE INDIAN COTTON CESS BILL.

Mr. J. Hullah (Revenue and Agriculture Secretary): I move, Sir:

"That the Report of the Joint Committee on the Bill to provide for the creation of a fund for the improvement and development of the growing, marketing and manufacture of cotton in India, be taken into consideration."

Our Report reminds me rather of a very little dog wagging a very long tail. I hope the Assembly will not let the tail wag the dog. I allude, of course, to the Minutes of Dissent . . . .

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): I must take exception to such expressions as wagging the tail with reference to the Minute of Dissent. I do not think it is right or parliamentary.

Mr. J. Hullah: I am sure I never meant any offence. I am sorry if I have given any offence and am willing to withdraw the words.

The only point of importance that came before the Select Committee was the amount of the cess and whether the cess should be imposed on exports. There was some discussion as to whether the tax on exports would fall on the producer. For my own part I do not believe that it will, and even if a part of it does, I hold that there is nothing objectionable in asking the cultivator to pay a tiny cess which in the aggregate will amount to, at most, 9 lakhs of rupees on a crop worth, at a moderate estimate, 90 crores of rupees and covering an area of 20 million acres. It will be seen that we have proposed half the rate of cess that was provided in the Bill, but we have provided that for three years the rate of cess shall be doubled, that is to say, it will be the same as we originally provided in the Bill. Our reason for doing so is that in the beginning a good deal of money will have to be spent on capital expenditure, the chief part of which is for a technological laboratory. One of the Minutes of Dissent says that the writer fails to see the necessity of this laboratory. Its purpose up to the present has not been explained to the Assembly. On the first occasion when I introduced the Bill I confined myself only to a few remarks on the subject, and when I proposed that the Bill be taken into consideration, this particular item was not mentioned in the debate. But I wish now to explain what is the purpose of this technological laboratory, and to show that it is proposed in the interests of the producer and not in the interests of the milling industry. As I said before, the real problem in India has always been to get for the cultivator an adequate price for his cotton, and the Agricultural Department knows by bitter experience how useless are trade valuations of cottons which are tried for the first time. From the cotton producer's point of view nothing but an actual spinning trial will give the information required, and in order that the results of the trial may be of real value it is necessary that they shall be thorough and detailed. It is quite impossible to expect any commercial spinning

mill to carry out all the detailed tests. This would not only necessitate much larger quantities of cotton than can be furnished in the early stages of plant breeding, but the actual cost to the mill of a considerable number of experiments would be quite prohibitive. The plant which the Central Cotton Committee propose to instal will be capable of dealing with small samples of cotton and will afford to the plant breeder an early opportunity of having his new varieties tested. I need hardly point out the great amount of time that will thus be saved. Another function proposed for the Central Cotton Committee was that it should take up the trade classification of cottons with a view to establishing something more reasonable than the system of station names which is at present followed. In the United States of America the final universal standards have been arrived at largely as a result of technological research, and in that country technological work is done by a branch of the bureau of markets which works directly under the Department of Agriculture. Our Directors of Agriculture have placed the establishment of this laboratory in the forefront of their proposals and have insisted upon its necessity, and this request has been confirmed by the Board of Agriculture. This capital expenditure, then, on technology is directly in the interests of the producer and, as I said before the Central Cotton Committee themselves rejected a proposal that part of the work of this branch should be the testing of yarn and cloth for the mills.

In the same Minute of Dissent it is suggested that if the Legislature do decide that money should be raised for the technological laboratory it will be sufficient to put a cess of two annas a bale on cotton consumed in the mills only, putting no cess on exports, and a calculation is made that a two anna cess will just about cover the amount necessary for the technological institute. This, I may point out, leaves nothing whatever for agriculture, the improvement of which, as I have said throughout, is the primary object of this Bill. We need a great deal of money for agriculture. Excluding the cost of the Central Cotton Committee and the technological laboratory, the programme which has been submitted to the Central Cotton Committee and has received their general approval involves in all an expendiure of 29¼ lakhs of rupees in the next five years. We have now made an attempt to adjust this programme to the amount of money that we shall have under the cess if the Legislature passes the Bill in the form recommended by the Joint Committee and we find that we shall have only 23½ lakhs. It is rather late and I do not propose to take up time by describing in detail the agricultural schemes that are proposed, but I think I can satisfy the House that we have schemes which would absorb almost as much money as we should have even if the original proposal of a four anna cess on mill consumption and exports were levied. To begin with, the Central Cotton Committee itself is going to cost one lakh a year. The technological laboratory will cost 2½ lakhs to establish and a lakh a year to run. Then we have a long list of agricultural proposals. In the first place, as I mentioned before, we propose to have research studentships which will cost us, we estimate, 15,000 rupees in the first year and 30,000 rupees in each successive year. In the Punjab we have the serious problem of trying to arrest the deterioration of the valuable American crop in that province, which we estimate will cost Rs. 85,000 in the first year and Rs. 40,000 in subsequent years. Investigation of wilt and plant breeding work in Bombay will cost Rs. 25,000 a year. Work in Gujerat will cost us another Rs. 25,000 a year. Plant breeding work on herbaceum cottons in Madras will cost us,

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we think, Rs. 39,000 in the first year and Rs. 12,000 in succeeding years. The biological investigation of disease resistance in Madras will cost us, we believe, Rs. 1,25,000 in the first year in which it is started and Rs. 25,000 in succeeding years. In the Central Provinces, we estimate, we can spend Rs. 60,000 a year on plant breeding work on long staple cotton. There is no end to the amount of money that might be spent in attempting to restore the valuable long staple cotton of Berar. We propose and we hope to institute a Central Agricultural Research Institute for work on cottons and plant physiology under the black soil conditions under which cotton is so generally grown. The most suitable location for such an institute will probably be in the central parts of the country. Now, with the amount of money which we shall have under the Joint Committee's proposals we believe that we can carry on this work for no more than five years. At the end of five years we shall have actually to curtail work because the cess will produce only 4½ lakhs of which a lakh will go to the Central Cotton Committee, a lakh to run the technological institute and only 2½ lakhs will be left for agricultural development. We have left out from our programme a good deal that might be done. In the Punjab and the United Provinces research is needed to test the water requirements of cotton grown under irrigation. Another very important matter for which we ought to find money if we can is a stabilising fund to guarantee the cultivator against loss when at our instance he begins to grow some new kind of cotton. New cottons cannot be sold unless they are produced in reasonable quantities. Nobody is going to buy only one or two bales of new cotton, and the cultivator takes a considerable risk if he begins to grow this new cotton without knowing whether he can sell his produce. It may therefore be necessary to guarantee to the cultivator that we shall pay any losses which up to a certain point he may incur. The Empire Cotton Growing Corporation is giving assistance of this kind in Australia, where they have guaranteed to cotton growers a certain and definite price for their cotton and have agreed to stand a loss, if necessary of £10,000 a year. These are the kinds of work we have to do, and I have given some indication of their volume. There is any amount of agricultural work to do. The Bill is for the purpose of aiding agriculture, and we do not think that we shall have sufficient money unless the cess is imposed not only on mill consumption but also on exports.

Mr. T. V. Seshagiri Ayyar: Sir, I rise not to oppose the Bill being taken into consideration, but to make a few remarks regarding the observations made by the last speaker about the Minutes of Dissent appended to this Bill. All this morning, Sir, we had an atmosphere created by a person who knows how to play upon the feelings of the House and who knows how to lead the House and who had conducted a very controversial measure through the House with good grace, and here is, Sir, a very unimportant measure, not a measure of very great importance, and before we begin to consider it, an atmosphere was created which would certainly re-act upon the Government Benches, and it is not desirable that such a thing as this should happen. After all, we are as anxious as the Government Benches in a matter like this that the Government should be armed with funds which would enable them to conduct the inquiries; and therefore, if we venture to differ upon one or two matters, we should not be dealt with as if we were school-children led by school-masters of a very superior kind.

Mr. J. Hullah: May I rise to a point of explanation? I have already explained that I did not mean in any way to offend the Honourable Member. If I present the Report of the Joint Committee, I surely am permitted to make remarks upon the Report itself and also upon any Minute of Dissent, especially if, as I have attempted to explain, one important point dealt with in one Minute of Dissent has never previously been explained or discussed in the House.

Mr. Deputy President: After the explanation from the Honourable Mr. Hullah, this incident might be regarded as closed, and we might proceed with the consideration of the Report.

Mr. T. V. Seshagiri Ayyar: Thank you very much. If not in response to the observations made by the Honourable Member who has just spoken, in response to your wish I shall not pursue the matter any further. I think, Sir, it is desirable that this Bill should be passed into law, so that it will provide funds which will enable the Government to institute scholarships to enable them to carry on investigations on an elaborate scale. Of course I will speak on the amendments later on, but I do think that it is desirable that we should have this measure passed as early as possible. Therefore, I support the motion for the consideration of the Bill.

Sardar Bahadur Gajjan Singh (Punjab: Nominated Non-Official): Sir, as I have given expression to my feelings on occasions previous to this, I again beg to place before this Honourable House that, generally, the same amount of money is not spent in matters pertaining to agriculture as the importance of the industry requires. Now, for instance, take the case of this measure. I think some measure of this kind was due, I should think overdue, several years ago; and then, Sir, were not the poor agriculturists entitled to assistance to carry out these investigations from the Central funds of the Government of India? In my humble opinion, they were and a contribution should have been made available for these investigations long ago from the Central funds. Anyhow it is our misfortune that our point of view was rarely pressed on the Government of India. If anything in the way of agricultural research is to be done, we, the poor people, have to be taxed again. It is not in any hostile spirit to this measure that I make these remarks, but I have simply made these remarks with a view to impress the necessity of more attention being paid to the most important industry of India. I support the motion.

Mr. Deputy President: The question is:

"That the Report of the Joint Committee on the Bill to provide for the creation of a fund for the improvement and development of the growing, marketing and manufacture of cotton in India be taken into consideration."

The motion was adopted.

Mr. T. V. Seshagiri Ayyar: Sir, will you permit me to move this amendment* after the next because, if my next amendment is passed, then it will be consequential, and if my next amendment is not passed, there is no use in pressing it so far as clause 2 is concerned. The fate of clause 2 will depend upon how far the House is with me on the next amendment; therefore, I ask your permission to allow me to move that amendment after item No. 3 on the Agenda.

* "Omit clause 2(*d*)."

Mr. J. Hullah: I agree, Sir, that that would be a far more preferable course.

Mr. T. V. Seshagiri Ayyar: Sir, my amendment to clause 3 runs:

"In clause 3 omit all the words beginning with 'produced' and ending with 'British India or'; and make consequential amendments in other clauses."

Those of my friends, those of the Members of the House who have read this Bill and the minute will see with what object this amendment has been put forward. If the omission is made, the clause will read thus:

"There shall be levied and collected on all cotton consumed in any mill in British India a cess at the rate of 2 annas per standard bale of four hundred pounds avoirdupois, or, in the case of unbaled cotton, of six pies per hundred pounds avoirdupois."

The words omitted would render it unnecessary to levy the cess upon cotton which is exported. Sir, I have given my reasons very fully in the minute of dissent which I appended to this Report. My reasons, very shortly, are these. If you allow a universal cess to be levied upon cotton, the result of it will be that the producer of cotton will be affected thereby, whereas if you allow a cess to be levied only upon mill consumption in India, and give the producer liberty to sell his cotton to exporters without paying the cess, the producer would be able to insist upon the mill purchaser paying the same price which he secures from the exporter. The result is the producer of cotton would not in the first instance be in the least affected, and as I pointed out in my minute, it would not sit heavily upon the mill-owner. Some Members of the Committee refer to the fact that if we tax the mill-owner and leave the exporter alone, it would be regarded as an excise duty; that was the objection raised. I do say that to a certain extent there is justification in that, but after all, we have to see which of the two alternatives would be best in the interests of the producer. It was said that if the producer is asked to pay the cess, it would be the purchaser that would pay and not the producer. Sir, those of us who are agriculturists know very well that that is an argument which cannot hold water. Yesterday I might have been paid a particular price; to-day the purchaser would come to me and tell me that the Government has levied a cess upon it and therefore he cannot pay the price; and as I have pointed out, the ordinary producer is an illiterate man and if he hears that a Government cess has been levied, he will think that some misfortune has impelled the Government to levy the cess on his crop and that therefore he must get a price less by the amount of the cess levied. That would be the position which would be forced upon him; persons who are acquainted with the illiterate raiyats of this country would realize how easily they can be imposed upon. Under these circumstances, Sir, I ask that the provision which relates to the imposition of the cess upon cotton to be exported should be deleted. After all the Government should not be anxious to get all the money at once. They must make an experiment; and if they are going to make an experiment they should not tax the producer too much. I was reading only this morning a telegram, and I believe the Honourable Revenue Member must have read it too, regarding a Bill passed in the House of Commons yesterday or the day before. It says that the House of Commons has resolved upon compelling the spinner to pay a particular cess to the Cotton Growers Association. It is the mill-owner, the spinner, that is to be compelled to pay a particular cess in order that

improvement in cotton growing, improvements as regards research, may be effected. There is not very much cotton grown in England, but apparently the Association deals with cotton to be grown elsewhere and not only the cotton grown in England. It has for its object the exploitation of other fields for the purpose of cotton growing, and apparently the millowners are to be compelled to pay a fund to this Association, so that that Association may be enabled to go to foreign countries and select fields for the growing of cotton. That example ought to be followed in India, namely, it must be the spinners and the cotton millowners who should be compelled to pay a cess if we really want to improve cotton growing in this country, if we want more research work; I make a gift of that instance from England to my friend the Honourable the Revenue Member. I say, Sir, that if you allow the exported cotton also to be taxed, the cess must necessarily fall upon the producer, and the producer of this country is already too heavily taxed in the matter of land tax. I hope my Punjab friends, who said when the Fiscal Commission's Report was being discussed that they are likely to suffer, will realize the difficulty in which they would be placed if the Bill as introduced by the Government is passed without my amendment.

Captain E. V. Sassoon (Bombay Millowners' Association: Indian Commerce): Sir, in rising to oppose the amendment I would like in the first place to emphasise the fact that the funds which will be produced by this cess will be entirely spent for the benefit of the cotton grower. Mr. Seshagiri Ayyar has informed us that the House of Commons is proposing to put a tax on the spinners in Lancashire for the encouragement of cotton growing. The reason for that, Sir, is because England itself does not grow any cotton and therefore she is trying to encourage countries like India to grow cotton suitable for her needs. One of the points made by the Central Cotton Committee is that the type of cotton that is exported from India is not of a class which gets the highest price. If India could produce a larger amount of what is known as staple cotton, in other words, cotton suitable for the mills in Lancashire, exports from India would be perhaps diverted more to those countries which are spinning American cotton; and at any rate those exports would secure a larger price and therefore benefit the grower more than is the case to-day with the cotton now exported. Therefore, Sir, the benefit derived from the improvement of our cotton is not for the mills in India to any great extent, because we do produce to-day enough cotton, or at least in ordinary times enough cotton, for our needs of staple. Therefore the benefit by the improvement of our cotton is going to be for the grower and for the Lancashire and foreign mills. For that reason, Sir, I do not think that Mr. Seshagiri Ayyar has made out a case for making the mills in India pay for the development and improvement of cotton in order to allow better export cotton to be grown. It is true that the prosperity of the cotton grower benefits the internal trade of the country, and to that extent the mills would benefit; but that is only an indirect benefit and I quite agree with Sardar Gajjan Singh who has suggested, in fact stated, that this sum should have been provided by the Central Government. But we are not here to discuss that, and I would like to point out to the House that when it was stated that neither the Central nor the Provincial Governments could provide this amount for the advantage of the cotton grower, and it was put up to various Chambers of Commerce and also the body whom I represent, the millowners and the Chambers of Commerce voluntarily agreed that this cess

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should be laid on them, the millowners at the mill where the cess is added in with other costs of production and the exporter at the port where the cess is included in handling muccudumage and other charges. Now, I would like to refer to the point Mr. Seshagiri Ayyar has raised as to the tax being paid by the grower if an export duty is charged as well as a cess on the mills. I would like to point out that when the original question came up to the Chambers of Commerce it was stated or suggested that an export tax should be placed on cotton and the question was asked whether it was considered feasible for this to be also placed on mills. The question seems to have been reversed here. I would like to draw the attention of the House to a similar case in jute. My Calcutta friends will no doubt bear me out that at one time it was suggested that an export duty should be placed on jute and a cess on the mills in order to pay for some amelioration, I think, of port facilities. The jute mills protested against this and said that there was no reason why an excise duty should be placed on them, although I would draw the attention of the House to the fact that that raw material is a monopoly of this country and grows at their doors; but because the industry objected the tax was eventually only paid on jute exported from this country. Sir, we have not protested; we have voluntarily said that we are prepared to share part of this burden and that appears to be the only reason that I can see why it has been suggested that we should bear it all. Now, Sir, the point is made that it is the producer who will bear this cost. I would like to go into some detail as to how cotton is marketted to see whether there is any justification for this contention. The proposal is that a cess of two annas per bale of ginned cotton should be levied. Now, Sir, one bale of ginned cotton is produced by sixteen maunds of unginned cotton called kapas. This cotton is bought up-country. On the Joint Committee we had the advantage of the presence and experience of the Honourable Nawab Mahomed Muzammilulah Khan, who is not only a distinguished Member of another place but is also a practical cotton grower. This gentleman informed us that in selling his kapas at prices which would range, depending on the quality of the cotton, from Rs. 13 to Rs. 20 a maund, the fluctuations were in steps of 4 annas per maund of kapas or unginned cotton, or Rs. 4 per bale. Now does this House seriously consider that a cess of 2 annas per bale is going to have any effect on the price to the grower when his fluctuations vary Rs. 4 per bale? It is perfectly obvious that no merchant or buyer up-country can say to the grower "because we have to pay, or rather because the mill or the exporter has to pay 2 annas per bale you must therefore give us your cotton for Rs. 4 per bale less." Yet Sir, it is maintained that two annas a bale or for the first three years, four annas a bale would affect the quotation. The Honourable Member on the Joint Committee, to whom I have referred, made another very illuminating remark. He said that even if he as a grower had to pay this two annas a bale—which works out to 3 pies per maund for the first three years and 1½ pies per maund afterwards—he would still welcome this Bill as he hoped that the work of the Institute would improve his cotton by two or three rupees a maund. He finds it good business to invest a couple of pies a maund and receive a couple of rupees as dividend. Sir, even the mill profits during the boom pale before. When as I have pointed out that owing to the insignificance of the amount the quotation of the kapas is not affected the cotton grower will be getting this extra advantage, this extra two or three rupees a maund for nothing.

In clause 7 of the Honourable Mr. Purshotamdas Thakurdas' Minority Minute he says that all such imposition should be looked at from the point of view of the legislator, *viz.*, the underlying principle. I entirely agree with Mr. Purshotamdas Thakurdas' views in this respect; I go further; I say that the alteration suggested by the Honourable Mr. Seshagiri Ayyar should also be looked at from the point of view of the underlying principle. Now, what does Mr. Seshagiri Ayyar ask for? He says that the cess should be paid by the mills only. I submit that two most important principles are affected if his views are adopted. A cess paid by the mills and not one paid by the exporters would mean in principle the encouragement of the export of a raw material to a foreign country, say Japan, to be manufactured into yarn and then with the additional help of shipping bounties, to be re-shipped to this country to compete with Indian spun yarn. Sir, we are to-day feeling the competition of Japanese 20*s* yarn spun out of Indian cotton, and this competition will be accentuated, even if only to a slight extent, if Mr. Seshagiri Ayyar's views are adopted by this House. Now, Sir, we are talking of principles; and in principle, therefore, you will be running contrary to that principle which was passed unanimously in this House only a few days ago, that is, that the fiscal policy of the Government may be legitimately directed towards fostering the industries in India. The House will notice that it is the industries in India that are to be fostered, not in Japan or elsewhere.

Let me now take the point of the principle of an export duty. I am one of those who view such duties with great suspicion. But as Mr. Jamnadas Dwarkadas said on the introduction of the Bill, the fact that the results of this small duty do not go to the general revenues but are definitely allocated to the technical assistance of the cotton-growing industry removes the objection. Further it should not be forgotten that while there is no resolution of the House against export duties of any kind, there is one favouring the fostering and not the hindering of home industries.

The second principle that would be affected by Mr. Seshagiri Ayyar's amendment would be this; the House would be inaugurating the principle of taxing one specific industry for the direct benefit of another industry against its wishes. Sir, I do not think that this House will agree to alter the procedure which it has always taken in this respect, and particularly tax one industry for the benefit of another, except when as in this case the industry has agreed to accept the charge.

Another point, Sir, is this. The three classes directly concerned by this Bill are the cotton grower, the millowner and the exporter. The cotton-grower, as I have said, welcomes it. The millowner is prepared to bear his share of the burden. The exporter is, I think it will be found, also in agreement. I happen to be also an exporter, but I would prefer that the views of an exporter of this House whose operations are very large as an exporter and also as a buyer of kapas up-country should be listened to, as in my opinion his views would be more authoritative than anything I may say; I refer to my Honourable friend, Sir Montagu Webb, who I hope will address the House from that angle of view. But, Sir, I do suggest in conclusion that the millowners shall not be asked to bear the whole tax because in this case they have voluntarily agreed to take on a burden as it would not be a very large burden, though we are sure, for the reasons I have given, that we shall pay it all as the amount is too small to affect the producer and is too small for us to get it from the consumer of our cloth. It will simply have to come in as an extra charge.

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I think, Sir, we show that we have vision in doing this. I think, Sir, we have shown it in the past in our ideas, in our views as in the reports we put in on the Workmen's Compansation Bill, where I think it has been admitted by the Members on the Treasury Benches that they were surprised at the liberality of such views, even when we came before the Fiscal Commission—and I was one of the millowners' delegates—although supporting protection for the country we definitely said that, as matters now stood to-day, we were satisfied with the protection we got from the revenue tariff and asked for no more protection—I think, Sir, that would show that we are not narrow-minded and we are not entirely the selfish purse-proud class that some people would like to pretend that we are. I think, therefore, that, although this matter is only a small matter when it comes down to money, although the burden which we will be bearing is an infinitesimal one and I am not going to pretend that it is anything else, I think it would appear rather ungracious if, because we said: "We will take some of it," people here should say "Oh, you should bear it all." I feel I have felt, Sir, in my short presence in this House, that the millowner certainly those of Bombay,—was not exactly the blue-eyed boy of the Assembly. I did not feel that there was—I do not say we need it—that there was a well of sympathy gushing out to us from every side. But, Sir, may I suggest that, as we do our best to be fair in all matters for the benefit of this country as a country, the Members of this House should not take advantage of us for the one big crime that we have, I admit, committed, and that is to have shown that an Indian industry can be prosperous.

The Honourable Mr. B. N. Sarma (Revenue and Agriculture Member): Sir, I may assure the Honourable Mr. Seshagiri Ayyar that Government fully appreciate the spirit in which he has tabled this amendment before the House. He is anxious to protect the interest of the agriculturist and he thinks that his amendment, if carried, would effectuate that object. I hope that, before I close, I shall have convinced him that, far from effectuating the object he has at heart, he would be jeopardising to a great extent that object, namely, the promotion of the prosperity of the cotton producer. I think a few words are necessary as to the position of the Government in this matter. The Cotton Committee recommended a cess of 8 annas on all commercial cotton for the purpose of improving the growth of cotton in this country, growth of long-staple cotton, increase in yield, bettering of the market conditions and the general placing of the Indian industry on a wholesome and satisfactory basis. The Government hesitated and at first declined to impose any cess whatsoever, especially having regard to the reforms. The Central Cotton Committee was appointed by the Government in pursuance of the recommendations of the Commission, on which the interest of the agriculturist, of the manufacturers, and of the exporters, were all represented. It was a large body and they unanimously recommended to the Government the imposition of a small cess for the purpose of placing the Indian industry on a proper basis. And the Government of India in the Revenue and Agriculture Department has undertaken this measure because they have felt that they would be promoting the industry of the cotton grower; it was not their business to promote the interests of the manufacturer or the exporter. It was primarily their interest to safeguard, protect and promote the prosperity of the cotton grower and it was with this object that they have undertaken this legislation. In undertaking this legislation, the Government, of course, had the interests of the consumer

as well as of the manufacturer at heart. If, as a result of the expenditure of the money that we hoped to be able to collect, if this Bill be passed into law, the cotton manufacturing industry be placed on a more satisfactory footing, then no one would grudge it and we should welcome it. And we hoped also that the consumer would also be equally benefited, as I shall show later on how. But I shall proceed to the question as to whether this is likely to promote the interests of the cotton producers and as to whether Mr. Seshagiri Ayyar's amendment, if carried, would not jeopardise that interest. The Government, after the recommendations were received, consulted the provincial Governments who in their turn consulted all the bodies concerned and there was an almost unanimous consensus of opinion that the cess should be imposed on all commercial cotton and not merely on mill-consumed cotton. One or two even suggested that this should be confined only to exports. Bombay, Bengal, Madras, Burma, the Punjab, the Central Provinces and the Agent to the Governor General in Rajputana suggested that the cess should be imposed on all commercial cotton. The United Provinces, with their Ministers, were of opinion that it might be confined to exports alone. The Assam Government recommended that it should be confined to exports only. The Bengal National Chamber of Comerce and the Indian Merchants' Association of Chittagong were in favour of the duty being confined to exports only. On the other hand, the Indian Merchants' Chamber, Bombay, were of opinion that this should be confined to mills only. Bihar and Orissa, which does not grow much cotton and is not very much interested either way, expressed a preference that it should be confined to mill consumption. So that Honourable Members will see the Bombay Millowners' Association, the Upper India Chamber of Commerce, the Bengal Chamber of Commerce, and I believe the Karachi Chamber of Commerce, and a number of Chambers of Commerce who are interested in the matter, upheld the view that it should be imposed on all commercial cotton. Therefore, I may say that the Government were fully justified in thinking and in acting upon the assumption that the Local Governments who may be naturally presumed to protect the interests of the agriculturists, the Directors of Agriculture, the Deputy Director of Agriculture and all the agricultural officers who are more interested in the cotton grower than in the cotton exporter and various other persons who have been consulted thought that this would not hit or hit hard the agricultural producer. And, Sir, I would ask the House to consider as to whether when measures are adopted for the purpose of improving cotton growing they should not be of such a character as are likely to effectuate the object which we all have at heart. It has already been pointed out to the House that this money is going to be expended upon research in cotton growing. And the technological research which is going to be undertaken is only for the purpose of helping the cotton grower to know as to whether and how far the possibilities of the cotton that he actually grows extend, in order that it may enable him to secure a better price. Therefore, when everything that is undertaken for his benefit, when there is a vast field for exploration, I think the House will agree with me that we should not indulge in half-hearted measures and that we should try, if possible, to expend as much as we can, and too much cannot be expended, upon this desirable object. The Government, therefore, have, I think, rightly come to the conclusion that the cotton grower would not be hard hit. A number of reasons have already been advanced for the purpose of showing that in the cotton trade the variations in price so occur as to eliminate the possibility of this small cess of 2 annas making any difference whatsoever in the price which the cotton grower would get for his commodity, and I need not expatiate upon that,

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aspect of the question. Well, Sir, after all what is it that we propose to do? In deference to the wishes of my Honourable friend and to others who have expressed a doubt as to whether we are not taking too much, the Government have reluctantly agreed to reduce the cess from 4 annas to 2 annas, and we shall be soon finding ourselves in the position of having very inadequate resources for the purpose of carrying out this great object we have before us, and as has been pointed out, the industry that requires improvement is worth at least Rs. 100 crores a year. Is it too much to ask persons interested directly in industry valued at about Rs. 100 crores a year to agree to a cess of Rs. 5 lakhs—Rs. 2½ lakhs would be paid in any way because of the duty on the mill consumption—Rs. 2½ lakhs more in order to improve their condition and their prospects? I submit that it would not be really any hardship at all. The question was raised as to whether the Central Government ought not to have undertaken this themselves. The Central Government has undertaken a large expenditure on research in general and do not mean to absolve themselves from the responsibility of undertaking further research in all the important industries when and as their finances permit. But the question which faced the Government was, is the Government to veto a proposition which was placed before them by all the persons interested in the industry and say, " No " to the imposition of a cess and do nothing themselves because they found themselves in the hopeless position of having no funds with which they can advance the industry? The Government, I think, will have the sympathy of the House in that they have come to the correct conclusion that they should not veto a proposal—a unanimous proposal that was placed before them by all the interests concerned. I think, therefore, Sir, in the interests of the agriculturists whose interests my learned friend has at heart, he would not further press an amendment which will weaken the Central Cotton Committee—because it is they that will have to expend this fund—which will weaken their hands in promoting the cotton industry. A large number of the provinces which are at the present moment looking forward for help from the Central Research Institute, will, I submit, be deprived of the little help that it may be possible to extend to them if this Bill which has been already reduced in its usefulness by the Committee agreeing to a reduction from 4 annas to 2 annas is still further whittled down in the manner suggested by the Honourable Mr. Seshagiri Ayyar. I hope, therefore, that the proposal would be allowed to stand and my Honourable friend would withdraw his opposition, having regard to the remarks I have made.

Sir Montagu Webb (Bombay: European): Sir, I oppose this amendment. I do so because I think the reasons which have influenced my Honourable friend in putting it forward, are unsound, or are based on conjecture or misunderstanding. I see from his Note of Dissent and also from the remarks of my Honourable friend that his reason is that he takes it that this cess will fall upon the producer. He goes so far as to use in his Note of Dissent such expressions as " the producer will be hit," " the producer will have to shoulder the burden," and " the injury must be minimised." Well, Sir, what is the injury? This injury amounts to about one-twentieth of a pie per lb., or less than half an anna a maund. Now, Sir, if I thought that the producer of this country was going to be asked to bear any tax which would be injurious to him, I should be the first to oppose such a tax. I entirely sympathise with the view which has been expressed by my friend Sardar Gajjan Singh that Government themselves ought long ago to have found very much more money than they

have done for the encouragement of agriculture, and I think the Central funds should produce money for the investigations and improvement of cotton. But still, we all know the present financial position; and if there is a way by which the money can be produced by means of a cess, then, Sir, let us take that way. Now, Sir, as a practical exporter of cotton, I have no hesitation in saying that in my belief this cess will not fall upon the producer. I cannot imagine myself as a seller of cotton outside India or as a buyer of cotton up-country, cancelling my orders, or asking an extra 4 annas a maund for the cotton because, as Mr. Seshagiri Ayyar suggested, Government have put through a law which imposes a cess of less than half an anna a maund. That is to say, I should not ask for my buyer to pay more or the seller to accept 4 annas a maund less—and four annas is the minimum margin upon which prices ordinarily move in this country,—because Government are going to levy a cess of less than half an anna a maund. Why, Sir, speaking as an exporter, I would myself gladly pay the half an anna a maund and say nothing about it. I may say that anybody who is engaged in the practical handling of cotton would very gladly, on every transaction that he puts through, contribute half an anna a maund. I think, Sir, in practice, the charge will very likely fall on the middleman. At any rate, I defy anybody to prove that it will fall on the producer. I notice in the Report of the Indian Fiscal Commission, a document to which I am sure my friend, Mr. Seshagiri Ayyar, will attach the highest respect—that in the case of the export duty on rice, it said that 3 annas a maund " is not felt by the cultivator." If 3 annas is not felt, how much less will half an anna, or less than half an anna a maund be felt? I think, Sir, therefore, that we need not have any fear that this tax will fall upon the producer. I received yesterday from England an official Report on the Industrial and Economic Situation in China and I notice in that Report that mention is made of " the efforts now being made by the Chinese . . . to promote the growing of cotton in China according to modern methods from specially selected acclimatized seeds, efforts that are being ably supported by valuable experiments at the University of Nankin." It says that the " progress already made augurs well for the success of the work and cannot but have a marked effect on the future of the industry in that country." That is in China. Well, Sir, India cannot be behind China in a matter of this kind. I entirely agree with the Honourable Mr. Sarma that we must not be half-hearted in this matter, but that we should collect by way of cess all the money that we require. The cess will not fall upon the producer. It will give us the money we want. It will be easy to collect. It will be collected at the ports from the exporters, or at the baling presses from the exporters and also at the mills. Therefore, I favour the cess being levied on all cotton, and I oppose my Honourable friend's amendment which I would ask him to withdraw.

Mr. N. M. Joshi (Nominated: Labour Interests): I move that the question be now put.

The motion was adopted.

Mr. Deputy President: The question is that the following amendment be made:

" In clause 3 omit all the words beginning with ' produced ' and ending with ' British India or '; and make consequential amendments in other clauses."

The motion was negatived.

Clauses 2 and 3 were added to the Bill.