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CONTENTS.

LEGISLATIVE ASSEMBLY.

Wednesday, 17th January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.

Secretary of the Assembly: I have to inform the House of the unavoidable absence of Mr. President at to-day's meeting.

Mr. Deputy President then took the Chair.

QUESTIONS AND ANSWERS.

Railway Concessions to Travellers.

145. ***Mr. K. Ahmed:** (*a*) Are the Government aware that in the East Indian Railway and the Bengal Nagpur Railway, concession return tickets for the 1st and 2nd class passengers are being issued at a fare and a third during the Christmas and other holidays?

(*b*) Do Government propose to introduce similar concession return tickets in all State Railways for the 1st, 2nd and Inter class passengers during the Pujah, Christmas and Easter holidays?

The Honourable Mr. C. A. Innes: The introduction of concessions of this kind is within the competence of Railway Administrations and the Government have no doubt that they are fully alive to the desirability of restoring them as soon as circumstances permit, but the Government will bring the matter to the notice of Agents.

Mr. K. Ahmed: A supplementary question, Sir. In view of the fact that the company-managed Railway can grant such a concession, could not the Government of India in the State-managed Railway grant that concession?

The Honourable Mr. C. A. Innes: I have already said that the Government of India propose to bring this matter to the notice of Agents.

Mr. K. Ahmed: When will that be, Sir?

The Honourable Mr. C. A. Innes: Now, Sir.

Sir Deva Prasad Sarvadhikary: Is it at all proposed to restore the old return tickets independent of the Pooja, Easter and X'mas concessions? If so, when?

The Honourable Mr. C. A. Innes: I think that was a question which was asked by Mr. K. Ahmed. All I am prepared to say is that we propose to bring the question of restoring concessions of this kind to the notice of Agents in order that they may consider whether now or at some later date they are in a position to restore these concessions. That, I am afraid, is the only answer I can give at present.

Mr. J. Chaudhuri: Is the Honourable Member aware that the Bengal Nagpur Railway gave some Pooja concessions while the East Indian and Eastern Bengal Railways did not give any concessions? Does he not think it desirable that there should be uniformity in this respect?

The Honourable Mr. C. A. Innes: I was not aware of that fact.

Mr. N. M. Joshi: May I ask, Sir, why these concessions are extended only to 1st and 2nd class passengers and not to 3rd class passengers?

The Honourable Mr. C. A. Innes: I am afraid I cannot answer that question without examination.

Mr. N. M. Joshi: May I know if the Government is prepared to consider this question?

The Honourable Mr. C. A. Innes: No question will be considered without Agents.

INCONVENIENCES TO LOWER CLASS PASSENGERS ON E. B. RAILWAY.

146. ***Mr. K. Ahmed:** (*a*) Are the Government aware that in the Eastern Bengal Railway there are certain restrictions, (*a*) for Inter class passengers who are not allowed to travel by the Darjeeling and Dacca Mails when travelling less than 100 miles, and (*b*) for third class passengers who are not allowed to travel by the Darjeeling Mail trains when travelling for less than 200 miles?

(*b*) Are the Government aware that these restrictions are causing great inconveniences to the travelling public as there are not sufficient number of available trains for them which are always over-crowded?

(*c*) Do Government propose in the interest of the travelling public to remove those restrictions as early as possible?

The Honourable Mr. C. A. Innes: (*a*) Yes. These restrictions were imposed as intermediate and 3rd class accommodation on the trains referred to is limited and the object is to prevent passengers travelling long distances being inconvenienced by other passengers for whom another and a suitable train service is provided.

(*b*) and (*c*) Government are not aware that the restrictions referred to cause inconvenience, and do not propose to take any action in the matter.

Mr. K. Ahmed: Are not the Government of India aware that there were a number of trains before the Darjeeling Mail started in the afternoon? For instance, there was the Shillong Mail, passenger and other local trains running within the limited area some time ago?

The Honourable Mr. C. A. Innes: I did not catch the Honourable Member's question.

Mr. K. Ahmed: Is my Honourable friend aware that from Sealdah which is a suburban town East of Calcutta on the other side of Howrah, trains are not for the last two or three years running regularly? For instance, the Shillong Mail is not running at all. It used to start by 2-30 P.M. There were other trains also which used to run within the limited area, and they have also been stopped?

The Honourable Mr. C. A. Innes: The train service is arranged by the Agent, and I have no reason to suppose that the Agent has not arranged a suitable service.

Mr. K. Ahmed: Do I take it, Sir, that the Agent's statement is to be taken as gospel truth and that the Honourable the President of the Railway Board and the Honourable Member in charge are not to answer questions notices of which have been given?

The Honourable Mr. C. A. Innes: The principle of Government is to trust their Agents in all cases unless anything is brought to notice in which the Agent is clearly wrong.

Mr. K. Ahmed: Is it not desirable that the department should be abolished? Is it not a burden on the public revenues?

DAMAGE BY FLOODS IN RAJSHAHI DIVISION.

147. ***Mr. K. Ahmed:** Will the Government be pleased to state: (*a*) the number of men, women and household animals that died and the amount and extent of the damage including the losses of crops, huts, goods and chattels, etc., sustained by the people during the flood in the districts of Rajshahi Division in September last; and

(*b*) what was the extent of damages and the amount of loss sustained by the Eastern Bengal Railway?

The Honourable Mr. C. A. Innes: (*a*) The Honourable Member is referred to the Press Communiqués on points of this kind which have already been issued by the Government of Bengal.

(*b*) The information is not yet available. It will be supplied to the Honourable Member on receipt.

Mr. K. Ahmed: A supplementary question, Sir. Is it not a fact that Rai Bahadur Ralla Ram, ex-Engineer, was deputed by the Government of India to inquire and report on the subject?

The Honourable Mr. C. A. Innes: Yes.

Mr. K. Ahmed: Has he not submitted a Report on the subject at all?

The Honourable Mr. C. A. Innes: I believe he has submitted a Report.

Mr. K. Ahmed: Are we not entitled to get the information that appears in that Report submitted to the Government. If so, may I ask that all these particulars should be supplied to us?

The Honourable Mr. C. A. Innes: That Report deals with technical questions as to whether sufficient waterways are provided in these railway lines. It does not deal with Part (*a*) of the Honourable Member's question. I would also add that a series of questions have been put in regarding Mr. Ralla Ram's deputation, and I would suggest to the Honourable Member that he should wait till the replies are given to those questions.

Mr. K. Ahmed: May I ask if the Government of India will be good enough to lay that Report on the table so that Honourable Members of this Assembly may look at it?

The Honourable Mr. C. A. Innes: I have already said that the Honourable Member must wait till the replies are given to the questions which have been put in on this subject. I am not prepared to answer questions of this kind without having papers before me.

Mr. K. Ahmed: Will my Honourable friend be good enough to place the Report submitted by Rai Bahadur Ralla Ram on the table of this House?

Mr. Deputy President: I think the Honourable Member has already answered that question.

EMPLOYMENT OF INDIAN AUDIT DEPARTMENT OFFICERS.

148. ***Mr. Pyari Lal Misra:** Have Government ever considered the advisability of employing officers of the Indian Audit Department in charge of establishment work in the administrative offices of or under the Central Government?

INDIAN AUDIT DEPARTMENT.

149. ***Mr. Pyari Lal Misra:** Have Government ever considered the advisability of giving increased opportunities to officers of the Indian Audit Department to acquire experience of the work at the headquarters of the several departments of the Central Government?

The Honourable Sir Basil Blackett: With the Honourable Member's permission, I will answer these two questions together as they deal with the same subject. There is no doubt that it is frequently useful to have an officer of financial experience in charge of the establishment work in an administrative department, especially where the department's expenditure on establishment is large, and for work of this description officers of the Audit department, possessing special qualifications, have from time to time been usefully employed. Government are of opinion that the deciding factor must be the benefit to the administrative department concerned, rather than the personal benefit likely to be derived by an officer from experience gained in such work.

DECREASES IN PASSENGERS AND PASSENGER EARNINGS.

150. ***Mr. Pyari Lal Misra:** (*a*) Is it a fact that there is a decrease in the number of passengers since the increased railway rates came into force?

(*b*) Is it a fact the difference between the passenger earnings to date and the amount budgetted for is too big to be covered during the remaining period of the current year?

(*c*) If so, what steps do Government propose to take to make up the difference?

The Honourable Mr. C. A. Innes: (*a*) The matter is being carefully watched and comparative figures of passenger traffic on the 10 principal railways are examined every week. These figures include figures for non-budgetted lines but they indicate the effect of the new fares. They show that in the current year up to the week ending 23rd December last there was a decrease of passenger traffic of 2·4 per cent. compared with last year. On the other hand, there was an increase of coaching revenue amounting to 162 lakhs.

(*b*) The reply to part (*b*) is in the affirmative.

(*c*) Government do not propose to take any special action at present as they know that Agents have the matter in mind. Government prescribe only maximum fares. If Agents find that the fares imposed are so high as to affect revenue by driving away traffic they will, no doubt, reduce them. But it always takes some time for the travelling public to adjust themselves to new fares.

PAYMENT OF LAND REVENUE BY RAILWAYS.

151. *Mr. Pyari Lal Misra: Is it a fact that certain railways are required to pay land revenue on the lands made over to them, while others are not; and if so, on what basis is the distinction made?

The Honourable Mr. C. A. Innes: Under the terms of their contracts certain railways are entitled to the grant of land by Government free of charge. Such railways pay no land revenue.

In other cases (except those of the Assam Bengal and Tirhoot Railways which have special clauses in their contracts in regard to land) capitalised value of land revenue is paid by the Railways at the time of acquisition.

R. & K. RAILWAY: CLAIM FOR WOOD FUEL.

152. *Mr. Pyari Lal Misra: With reference to the item " Rohilkund and Kumaon Railway Extensions—compensation for waiving claim for wood fuel " in the Railway Revenue Budget, will Government kindly state the total amount of compensation, the amount already paid, the amount yet remaining to be paid and why the payments are not charged to the head " Fuel."

The Honourable Mr. C. A. Innes: The compensation payable to the Rohilkund and Kumaon Railway Company for waiving their claim for the supply of wood fuel from Government forests was settled for a lump payment of Rs. 30,000 for all claims up to 31st December 1911 and a recurring annual payment of Rs. 10,000 for 1912 and subsequent years. The payments to the Company on this account to end of 1921-1922 amount to Rs. 1,32,500.

In the accounts of the Company these payments appear as an item of receipt. So far, however, as Government is concerned, the precise method of showing the expenditure is a matter of accounting which is dealt with in accordance with the rules on the subject.

RULES APPLICABLE TO COMPANY-WORKED STATE RAILWAYS.

153. *Mr. Pyari Lal Misra: With reference to the answer given to starred question No. 15, will Government kindly state how the rules not applying to company-worked State Railways can be distinguished in the published codes from those that do apply?

The Honourable Mr. C. A. Innes: It is not possible within the limits of a reply to a question or in a general formula to indicate the precise distinction between the rules in the published State Railway Codes that apply to Company-worked Railways and those that do not so apply.

The Honourable Member, however, will be safe in assuming that the rules in the State Railway Codes so far as they relate to classification and allocation of receipts and charges, general procedure of accounts and audit, control of expenditure against grants and estimates and submission of periodical accounts and returns, are more or less as much applicable to Company-worked Railways as to Railways worked by State.

MINOR AND MAJOR WORKS ON RAILWAYS.

154. *Mr. Pyari Lal Misra: What is the test applied in deciding whether a given railway work is a new minor work chargeable to working expenses, or a new major work to be paid for out of capital funds? Does

the test relate to the nature of the new work or to the expense it involves? And if latter, when was the test fixed and when was it last revised?

The Honourable Mr. C. A. Innes: In the case of State-worked railways the limit up to which the cost of new minor works should be debited to revenue was fixed at Rs. 1,000 till 1919 and has since been raised to Rs. 2,000. These limits apply to other railways also subject to the provisions of the contracts for their working.

LAND SUPPLIED TO ASSAM BENGAL RAILWAY.

155. ***Mr. Pyari Lal Misra:** With reference to the answer given on 6th September, 1922, to starred question No. 13, will Government kindly state why the cost of land supplied free of cost to the Assam-Bengal Railway Company is shown in the statement of demands for railway capital expenditure and in what respect this free gift differs from those referred to in the answer to starred question No. 19?

The Honourable Mr. C. A. Innes: Question No. 13, which was answered on the 6th September, 1922, related to State-owned Railways, whereas Question No. 19 answered on the same date had reference to private-owned railways. This accounts for the difference in the treatment of the cost of land. The Assam Bengal Railway is a State-owned Railway and the land required for it is consequently shown in the Statement of Demands for Railway Capital Expenditure, such expenditure being booked separately as Government capital expenditure outside the accounts of the undertaking.

RAILWAY STATISTICS OF PROFIT AND LOSS.

156. ***Mr. Pyari Lal Misra:** With reference to the answer given on 15th September, 1922, to starred question No. 321, will Government kindly state the procedure usually adopted by them (a) firstly, in ascertaining which particular commodity pays and which does not, and (b) secondly in adjusting the rates, so as to make the traffic pay?

The Honourable Mr. C. A. Innes: (*a*) and (*b*) Government action in the matter of rates is confined to the fixing of maxima and minima rates. Between the limits fixed Railways are at liberty to fix such rates as they think that the Traffic can bear.

RAILWAY CAPITAL EXPENDITURE.

157. ***Mr. Pyari Lal Misra:** Will Government kindly lay on the table a statement shewing the amounts spent from each of the different sources mentioned in the answer given on 15th September, 1922, to starred question No. 319, and the pages of the Finance and Revenue Accounts of the Government of India for 1919-20, where those amounts have been recorded?

The Honourable Mr. C. A. Innes: The information asked for is being collected and will be laid on the table when ready.

ARREARS OF RENEWALS ON RAILWAYS.

158. ***Mr. Pyari Lal Misra:** Will Government kindly lay on the table a statement shewing the arrears of renewals as they stood on 31st March,

1922, on the Company-worked State Railways in respect only of the following principal items:

(1) Permanent way,
(2) Engines,
(3) Coaches, and
(4) Wagons?

The Honourable Mr. C. A. Innes: The information asked for is not at present available but the subject is one which the Railway Board have under investigation in connection with the question of depreciation.

REMUNERATIVE RAILWAY PROJECTS.

159. ***Mr. Pyari Lal Misra:** Will Government kindly state what percentage of the estimated cost of a projected railway is added on account of depreciation of property, to the estimate of working expenses in assessing the remunerativeness of the project?

The Honourable Mr. C. A. Innes: The estimate of working expenses of a projected railway is usually based on the actual working expenses of an adjoining line, and this includes the cost of renewals and replacements. No other specific provision is made for depreciation.

POWERS OF GOVERNMENT AND OF RAILWAYS.

160. ***Mr. Pyari Lal Misra:** With reference to page 4 of Volume II, of the Report of the Indian Railway Committee, will Government kindly place in the library a copy of the " Schedule of Powers of the Government of India and of the Railway Department (Railway Board) in railway matters "?

The Honourable Mr. C. A. Innes: A copy of the Schedule referred to by the Honourable Member has been sent to the Library.

CENTRAL PROVINCES PRODUCTIVE RAILWAYS.

161. ***Mr. Pyari Lal Misra:** With reference to the answer given on 6th September, 1922, to my starred question No. 17, will Government kindly lay on the table a statement comparing the estimated traffic as given by the local authorities before undertaking the surveys or reconnaissances and the traffic estimated as a result of the surveys or reconnaissances.

The Honourable Mr. C. A. Innes: Definite estimates of the traffic earnings were not given by the local authorities prior to the carrying out of the surveys.

CARRIAGE OF COAL ON RAILWAYS.

162. ***Mr. Pyari Lal Misra:** (*a*) Is it a fact that the largest portion of the earnings on account of the carriage of revenue stores is from coal carried over the home line.

(*b*) Is it a fact that the lowest rate for foreign railway coal is less than the lowest rate charged for the carriage of coal on the home line and if so, on what basis is the distinction made?

The Honourable Mr. C. A. Innes: (*a*) Yes.

(*b*) The lowest rate for Foreign Railway Loco. coal is on some Railways lower than the lowest rate for coal carried for the Home Line for certain distances.

Coal for Home Railways is carried at a low flat mileage rate, irrespective of distance, while coal for Foreign Railways is carried at mileage rates calculated on a telescopic scale, the mileage rates being high for short distances, and diminishing for longer distances.

I. M. S. OFFICERS ON SPECIAL TERMS.

163. *Dr. H. S. Gour: (1) Will the Government be pleased to state whether it is a fact that the Secretary of State has appointed or proposes to appoint 30 additional I. M. S. officers on special terms?

(2) If so, are the appointments offered or reserved exclusively to Europeans?

(3) Were any of these appointments offered to any European or Anglo-Indian or Indian Medical Practitioners? If not, why not?

(4) Were these appointments made in previous consultation with the Government of India?

(5) If so, will the Government be pleased to publish the despatches on the subject?

(6) Is the Government aware that these appointments have aroused considerable comment in the country and caused great resentment amongst Indian medical men?

(7) Will the Government state what will be the total cost of these appointments?

Mr. E. Burdon: (1) to (5) The attention of the Honourable Member is invited to the reply given on the 15th January, 1923, to the question asked by Rai Bahadur Bakshi Sohan Lal, No. 81.

(6) The Government have seen reports to this effect in the press.

(7) Apart from the special gratuity in lieu of pension, the cost of each of these specially recruited officers will be the same as that of an officer recruited in the normal way for the Indian Medical Service as the former will serve on exactly the same terms as the latter.

EXPENDITURE ON EAST INDIAN AND GREAT INDIAN PENINSULA RAILWAYS.

164. *Rai Bahadur G. C. Nag: With reference to the answer to starred question No. 333, printed at page 660 of the Legislative Assembly Debates, Volume III, will Government kindly state, with respect to the East Indian and the Great Indian Peninsula Railways, the amounts sanctioned for programme revenue expenditure for 1922-23 and the approximate expenditure incurred up to 30th September 1922?

The Honourable Mr. C. A. Innes: The information asked in regard to Programme Revenue expenditure for 1922-23, is given below:

	Amount sanctioned.	Expenditure incurred up to 30th September 1922.
	Rs.	Rs.
East Indian Railway . . .	1,73,06,000	53,45,000
Great Indian Peninsula Railway	1,97,75,000	23,25,000

CONCESSIONS ON ASSAM BENGAL RAILWAY.

165. ***Rai Bahadur G. C. Nag:** With reference to the answer given on 7th September 1922 to starred question No. 175, will Government kindly lay on the table a copy of the report which the railway authority concerned may have made showing that the advantages secured to the Assam-Bengal Railway by the development of Assam more than make up for any immediate loss through the concession granted to Assam tea gardens for conveyance of their coolies?

The Honourable Mr. C. A. Innes: The procedure suggested by the Honourable Member involves printing the report in the Council proceedings, and with a view to avoid extra printing charges I am arranging to furnish him with a copy of the relevant extract from the Agent's letter on the subject.

QUERY REGARDING ASSAULT OF COOLIE AT MOGHAL SERAI.

166. ***Rai Bahadur G. C. Nag:** Has there been any case this year at Moghul Serai of a railway coolie being assaulted by a European railway officer of the East Indian Railway?

The Honourable Mr. C. A. Innes: The Government do not know.

CONCESSIONS ON ASSAM BENGAL RAILWAY.

167. ***Rai Bahadur G. C. Nag:** With reference to the answer given on 6th September 1922 to starred question No. 13, will Government kindly state whether out of the amount of Rs. 56,42,654 the portion relating to the period ended 31st March 1921, is included in the figure of Rs. 2,33,32,601 mentioned in the answer given on 17th January 1922 to question No. 41 in the Council of State; and if not, why not?

The Honourable Mr. C. A. Innes: The answer to the first part of the question is in the negative. In regard to the second part the Honourable Member is referred to the reply given to starred question No. 155 by Mr. P. L. Misra.

PRODUCTIVE DEBT ON RAILWAYS.

168. ***Rai Bahadur G. C. Nag:** Will Government kindly state the principle in accordance with which of all productive debt incurred in connection with railway capital expenditure, that issued in connection with the purchase of railways is alone held to be dischargeable from revenue?

The Honourable Mr. C. A. Innes: The debt incurred in connection with the purchase of main lines only is being discharged from revenue in accordance with the orders of the Secretary of State and the Honourable Member is referred to the correspondence on the subject laid on the table on 6th September, 1922, in connection with question No. 10 put by Mr. N. M. Joshi.

"SERVANT OF INDIA" ON "RAILWAYS AND THE BUDGET."

169. ***Rai Bahadur G. C. Nag:** Has the attention of Government been drawn to the article "Railways and the Budget," which appeared in "The Servant of India" of 20th July 1922, and if so, do they propose to re-group and re-classify the demands either on the lines therein indicated or on any other suitable lines and increase the number of days allotted?

The Honourable Sir Basil Blackett: Government have now seen the article referred to. The number of days for the voting of demands for grants is fixed by the Governor General with reference to the state of business before the Assembly. Government are not aware that the inclusion of railway expenditure in two demands has had the effect of unduly restricting the discussion of the railway estimates within the time allotted, especially as one of the demands for railways comes up for discussion at an early stage of the voting. Any useful suggestions for improving the form of the estimates will always receive due consideration.

STRATEGIC RAILWAYS.

170. ***Rai Bahadur G. C. Nag:** Has the attention of Government been drawn to the article on " Railways and the Budget," which appeared in "The Servant of India " of 10th August 1922, and if so, will they kindly state whether they have considered the advisability of adopting any one of the following alternatives in connection with strategic railways:

(*i*) Such railways should be owned by the Army Department and paid for out of non-railway funds. They should be worked by the Railway Department for actual cost for the Army Department, who will take all losses or gains, as is done in the case of some of the railways which are worked by main line companies for actual cost for Provincial Governments, private companies, Indian States and local bodies.

(*ii*) Such railways should be taken over by the Railway Department at the cost of railway funds as a going concern for an amount equal to the capitalized value of the estimated net earnings and the difference between this amount and the amount actually spent in construction should be borne by the Army Budget.

(*iii*) The Army Budget should make up any shortage in gross earnings necessary to cover interest charges and working expenses.

(*iv*) The troops and stores should be carried at such enhanced rates as to produce earnings therefrom sufficient to cover interest charges and working expenses.

The Honourable Mr. C. A. Innes: Government have seen the article in question.

Various alternative proposals have been considered by the Government and the Central Advisory Council and the recommendations made by the latter body are now under the consideration of Government.

THIRD CLASS RAILWAY FARES.

171. ***Rai Bahadur G. C. Nag:** (*a*) Has the attention of Government been drawn to the article on " Third class railway fares " appearing in " The Servant of India " of 31st August 1922?

(*b*) Is it a fact that the Indian railways taken as a whole not only do not earn any net profits from the first class passenger traffic, but incur a loss in working that traffic, whereas they earn substantial net profits from the third class traffic?

(*c*) Is it a fact that the percentage of increases recently introduced in third class fares for distances of over 300 miles is higher than that obtaining in the case of first and second class fares?

(*d*) If the reply to either (*b*) or (*c*) is in the affirmative, do Government propose to remove the inequality (*i*) either by prescribing the extent to which railway administrations should, within the authorized maxima and minima, vary the fares? or (*ii*) by revising the maxima and minima?

The Honourable Mr. C. A. Innes: (*a*) Yes.

(*b*) It is not possible to apportion the net profits earned by railways in respect of the different classes of passenger traffic.

(*c*) This is correct in the case of certain railways.

(*d*) As advised at present Government do not propose to take action on the lines suggested. If the new rates press so hardly on long distance travel as to affect traffic and the railway revenue, Agents will no doubt reduce the rates for such travel.

CHARGE OF ANNUITY PAYMENTS TO CAPITAL.

172. ***Rai Bahadur G. C. Nag:** Has the attention of Government been drawn to the article " Robbing Revenue to pay Capital " which appeared in the " Servant of India " of 21st September 1921 and to paragraph 3579 of the minutes of evidence tendered before the Acworth Committee; and if so, do they propose to treat the annuity payments as a charge to capital?

The Honourable Mr. C. A. Innes: Government have seen the article in the ' Servant of India ' and also paragraph 3579 of the evidence tendered before the Acworth Committee.

The annuity payments are charged to revenue in accordance with the orders of the Secretary of State. The attention of the Honourable Member is invited to the correspondence on this subject laid on the table on 6th September, 1922, in reply to question No. 10, by Mr. N. M. Joshi.

THIRD CLASS PASSENGERS.

173. ***Rai Bahadur G. C. Nag:** (*a*) Has the attention of Government been drawn to the article on " Third Class Passengers " in the " Servant of India ", dated 28th September 1922;

(*b*) Do Government propose to publish in their future Railway Administrative Reports information as to the amounts spent in the year on:

additional goods engines,
,, passenger and mail engines,
,, first class carriages,
,, second class carriages;
,, inter class carriages,
,, third class carriages,
,, wagons?

The Honourable Mr. C. A. Innes: (*a*) Government have seen the article in the ' Servant of India.'

(*b*) They do not consider it necessary to add to information already being published in Appendices 16 and 17, in Volume II, of the Administration Report of Railways in India.

Mr. K. Ahmed: Would not the Government of India like under the circumstances to repudiate the statements and allegations made in those articles of the " Servant ?"

The Honourable Mr. C. A. Innes: I do not think that that supplementary question arises on part (*b*) of question No. 173.

STENOGRAPHERS ON GREAT INDIAN PENINSULA RAILWAY.

174. ***Rai Bahadur G. C. Nag:** Is it a fact that recently one or two stenographers have been brought out from England in the Agent's office of the Great Indian Peninsula Railway Company? If so, what is their pay and whether suitable candidates could not be found in India?

The Honourable Mr. C. A. Innes: The Government have no information.

The question refers to a matter affecting an employé of a railway company whose employés are not under Government control.

Mr. N. M. Joshi: May I ask a supplementary question, Sir? If the servants of the Indian Railways are not under the control of the Government of India I do not know why the Government of India should find capital for the Railways.

The Honourable Mr. C. A. Innes: The point is that we have delegated to Company Railways certain powers in regard to recruitment of staff below a certain level of pay. We give them full discretion in regard to employés below that level of pay.

Rao Bahadur T. Rangachariar: Are we to understand that Government have no voice at all in this matter?

The Honourable Mr. C. A. Innes: We do not as a matter of practice interfere.

Rao Bahadur T. Rangachariar: But where gross cases occur will the Government interfere?

The Honourable Mr. C. A. Innes: I think gross cases should first be reported for our information.

WAGON INSPECTORS.

175. ***Rai Bahadur G. C. Nag:** What is the pay attached to the post of wagon inspectors under the Director of Wagon Exchange?

Is it a fact that all the inspectors are either Europeans or Anglo-Indians, and that there are no Indian inspectors?

Were the appointments filled by public advertisement? If not, why not?

The Honourable Mr. C. A. Innes: The maximum pay attached to the post of Wagon Inspectors under the Director of Wagon Interchange is Rs. 500 a month. So far only two Anglo-Indian Inspectors one on Rs. 400 and one on Rs. 300, have been appointed.

The appointments were not filled by public advertisement because the services of qualified men were obtained from railways.

Dr. Sir Deva Prasad Sarvadhikary: May I ask a supplementary question, Sir? What are the qualifications for the appointment of these Inspectors?

The Honourable Mr. C. A. Innes: I am afraid I do not know. If Mr. Hindley were here, he would be able to answer that question, but I am afraid I must ask for notice.

Dr. Sir Deva Prasad Sarvadhikary: Have there been any Indian applicants? The Honourable Member said there was no advertisement.

The Honourable Mr. C. A. Innes: I have already said that there was no advertisement.

Dr. Sir Deva Prasad Sarvadhikary: Have there been any applicants?

The Honourable Mr. C. A. Innes: I cannot answer that question without notice.

The Deputy President then called on Rai Bahadur Pandit J. L. Bhargava to put his question No. 176 and the question was put.

Mr. K. Ahmed: With regard to question No. 175, Sir. . . .

Mr. Deputy President: I am afraid I cannot allow the Honourable Member at this stage to put any supplementary question.

DEMOLITION OF HINDU TEMPLES.

176. ***Rai Bahadur Pandit J. L. Bhargava:** (*a*) Is it a fact that the construction of the new railway line by the Great Indian Peninsula Railway Company outside the Ajmeri Gate at Delhi is likely to involve the demolition of some Hindu temples?

(*b*) Are the Government aware that the Hindu mind is very much exercised over the question and strong resentment is being felt in regard to the contemplated action?

(*c*) Do the Government propose to consider the advisability of preventing the demolition of the said temples by the Great Indian Peninsula Railway Company?

The Honourable Mr. C. A. Innes: (*a*) Yes.

(*b*) Several representations have been received.

(*c*) Friendly negotiations are in progress and it is hoped the desired object may be attained in such a way as to avoid all possibility of hurting the religious feelings of Hindus.

INTERMEDIATE CLASS ACCOMMODATION.

177. ***Rai Bahadur Pandit J. L. Bhargava:** (*a*) With reference to my question No. 189 published on page 1600 of the Official report of the Legislative Assembly Debates, Volume II, regarding intermediate class accommodation, will the Government be pleased to state if the railway administrations concerned have succeeded in providing intermediate accommodation on their lines?

(*b*) If not, by what time they may be expected to remove the strongly felt want of such accommodation?

The Honourable Mr. C. A. Innes: The Government can only supplement the information given to Honourable Member in the reply to the question mentioned by referring him to the answer given to question No. 156 on 8th September, 1922.

WHEAT EXPORTED FROM INDIA.

178. ***Rai Bahadur Pandit J. L. Bhargava:** Will the Government be pleased to state in maunds the quantity of wheat exported from India since the removal of the embargo in September last?

Mr. A. H. Ley: Approximately 35,02,000 maunds up to the 6th January.

COMMITTEE ON ARMS RULES OF 1920.

179. ***Rai Bahadur Pandit J. L. Bhargava:** Will the Government be pleased to state whether the Committee appointed to examine the new Arms Rules of 1920 have submitted their report?

(*b*) If so, what action has been taken on the same?

The Honourable Sir Malcolm Hailey: (*a*) Yes.

(*b*) The Report will be published for general information on the 20th January. The various recommendations contained therein are under the consideration of Government.

REALISATIONS ON POST CARDS, ETC.

180. ***Rai Bahadur Pandit J. L. Bhargava:** Will the Government be pleased to lay on the table a statement showing:

(*a*) the actual amount realised by the sale of postcards, envelopes and postage stamps of the value of one anna or less since the introduction of enhanced rates up to 1st January 1923;

(*b*) amounts realised from the same sources during the corresponding periods in the years 1920 and 1921;

(*c*) the estimated amount of income from the same sources for the year ending on 31st March 1923?

Mr. A. H. Ley: The necessary information is being collected and will be supplied as soon as it is available.

BILL RELATING TO USE OF FIRE ARMS FOR DISPERSING ASSEMBLIES.

181. ***Rao Bahadur T. Rangachariar:** With reference to the Statement made by the Honourable Sir William Vincent in the Legislative Assembly on the 26th September 1921 *re* the Bill to provide that when fire-arms are used for the purpose of dispersing an assembly, a preliminary warning shall in all circumstances be given,

Will the Government be pleased to state when they propose to bring up the Bill for consideration?

The Honourable Sir Malcolm Hailey: The Honourable Member is referred to the answer given by me to a similar question asked by Mr. K. C Neogy yesterday.

Rao Bahadur T. Rangachariar: A supplementary question, Sir. Have the Government in view any legislation at all in respect of this matter or are they going to content themselves with rules on the matter?

The Honourable Sir Malcolm Hailey: We shall content ourselves with the issue of executive rules on the subject.

Rao Bahadur T. Rangachariar: Will this Assembly have an opportunity of examining those rules before they are issued?

The Honourable Sir Malcolm Hailey: No, Sir.

INDIANS IN FOREST RESEARCH INSTITUTE.

182. ***Rao Bahadur T. Rangachariar:** With reference to the Statement of Mr. J. Hullah *re* the employment of Indians in the Forest Research Institute, made in the Legislative Assembly on the 15th March 1922 (Debates, Volume II, page 3102), will the Government be pleased to state—

(1) the names of experts appointed and the time when their period of appointment expires;

(2) the number of Indians appointed to work under these experts; and

(3) whether the two Indians referred to in the Statement have qualified themselves and taken the place of experts; and if the answer is in the negative, the reasons for the same?

Mr. A. H. Ley: (1)—

Name.	Date of termination of appointment.
Dr. H. P. Brown (Officer in charge Wood Technological Section).	7th December 1923.
Mr. C. V. Sweet (Officer in charge Seasoning Section).	21st August 1923.
Mr. L. N. Seaman (Officer in charge Timber Testing Section).	11th September 1923.

(2) Only one Indian has been appointed on probation as Upper Grade Assistant to the Expert for Timber Testing. The appointments of Assistants to the other Experts have been held up owing to financial stringency.

The previous statement that two Indians had been appointed was made under a misapprehension as to the nature of the work of an Indian who has, in fact, been appointed to the Chemical and not the Economic Section, and is not working under one of the temporary Experts mentioned in the previous statement.

(3) The answer is in the negative, the reason being that it takes a long period of special study for any one to qualify as an Expert in these subjects.

EMPLOYMENT OF INDIANS IN PAPER SUPPLYING FIRMS.

188. ***Rao Bahadur T. Rangachariar:** Will the Government be pleased to state:

(1) the names of the firms in India who have contracted with the Government of India for the supply of paper;

(2) whether the above firms have given facilities to Indians to work as apprentices and if so, the nature and extent thereof;

(3) whether there are any Indian apprentices working in the firms referred to above, and if so, the number of Indian apprentices working in each firm and their names;

(4) if there are no apprentices, do the Government intend to take steps to see that these firms entertain Indian apprentices and give facilities for that purpose?

Mr. A. H. Ley: The firms in question are the Bengal Paper Mills, Calcutta; the Titaghur Paper Mills, Calcutta; and the Upper India Couper Mills, Lucknow.

Government have no information regarding parts 2 and 3 of the question.

As regards part 4, the Honourable Member will understand that the agreements made with the Paper Mills are ordinary business contracts, and cannot be regarded as concessions, in return for which Government should insist on the mills entertaining Indian apprentices.

Rao Bahadur T. Rangachariar: May I ask a supplementary question, Sir? I understood from previous statements made in this House that when entering into contracts one of the conditions will be the entertainment of Indian apprentices.

The Honourable Mr. C. A. Innes: May I answer this question, Sir? I think the Honourable Member is mistaken. The statements mentioned referred to special concessions given by Government. I may say, however, that the High Commissioner has been asked to consider whether in placing contracts in England preference should not be given, other things being equal, to firms which do take Indian apprentices, and I have no objection to considering whether we should not adopt the same practice in India provided of course other things are equal.

Rao Bahadur T. Rangachariar: Will the Government be pleased to call for information under clauses (2) and (3) of my question?

The Honourable Mr. C. A. Innes: We will, Sir.

Mr. Jamnadas Dwarkadas: Is the Honourable Member aware that the Fiscal Commission has unanimously recommended that where contracts are given by Government to any firm, this condition should be insisted on?

The Honourable Mr. C. A. Innes: That recommendation will be considered in due course.

OFFICERING OF INDIAN ARMY WITH INDIAN OFFICERS.

184. ***Mr. B. S. Kamat:** (1) Have the Government of India noticed a Reuter's Cable from London published in the Indian papers in early January, in which it is reported that an article in the *Fortnightly Review* gives currency to an allegation that the "Government of India have conditionally accepted a progressive scheme for the complete officering of the Indian Army with Indian Officers within 30 years?"

(2) If so, will Government be pleased to say if there is any foundation for the statement?

(3) In this connection, will Government of India be pleased to publish their scheme for the Indianization of the Army, if they are prepared to do so?

Mr. E. Burdon: (1) Yes.

(2) and (3) The statement is unauthorised and inaccurate. The question of the measures to be adopted for the Indianisation of the Indian Army is still under correspondence between the Government of India and the Secretary of State, and the Government of India are not in a position to make any announcement on the subject.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. W. M. Hussanally (Sind : Muhammadan Rural): Sir, before we begin the business of the day I want a ruling on a point. I gave notice of certain amendments to the Criminal Procedure Code Bill on the 15th instant and I understand certain other gentlemen also have given notices of further amendments to the same Bill. I do not know what the fate of these amendments has been as I have not learnt anything about them. No doubt some of the amendments were out of time because they related to clauses which have already been decided. But other amendments, so far as I can see, are in time. For instance, I have given notice of amendments to sections 250 and 562 and these sections will be taken some time later on. The rumour is that all these amendments that have been sent in after the Session began are not going to be allowed. I should like to have a ruling upon the point from you, Sir, whether they are to be admitted. The only rule that seems to apply to amendments of this kind is rule 76 at page 28 of the Manual of Business and Procedure, which runs as follows:

"If notice of a proposed amendment has not been given two clear days before the day on which the Bill is to be considered, any Member may object to the moving of the amendment and such objection shall prevail, unless the President, in the exercise of his power to suspend this Standing Order, allows the amendment to be moved."

I do not know what is the interpretation that is put upon the words 'before the day on which the Bill is to be considered.' If the interpretation is strictly to be followed, it means 'two days before the day on which the consideration of the Bill commences.' But if the interpretation is to be a little more liberal and to include the day on which particular sections of the Bill are taken into consideration, then these amendments—at least mine—will be in order and within time. Anyway, you have got the power of allowing these amendments to come in under that part of the rule which I have been just quoting, and I would ask you, Sir, to exercise your discretion in favour of those amendments being taken in, for the simple reason that the Bill to amend the Code of Criminal Procedure is a very important one and such amendments should not be stifled and ruled out of order in this way, more particularly when they are strictly in time according to the interpretation I have given.

Mr. Deputy President: The Honourable Member has referred to one or two things which I consider objectionable. First of all, he is basing his objection on rumours which he has heard outside this hall. I think it is open to the Chair to take very strong objection to reference being made to what is happening outside this hall and nobody has any right to refer to rumours which he hears outside its precincts. Secondly, he mentioned that it was the intention of the Chair to stifle discussion on certain amendments. That is another statement to which I take very strong exception. I will give my ruling on these amendments as they come up.

Mr. W. M. Hussanally: I have heard your objections. I beg your most humble pardon. I never meant to say that the Chair was going to stifle discussion upon the subject. What I said was that it was rumoured that it was the intention of Government to stifle discussion. But whatever that be, the reason why I brought this matter up before you this morning is that I have not heard what has become of these amendments. I think I should have heard about them by now whether these amendments are going to be allowed or not, and I think I am in order in asking you for a ruling.

The Honourable Sir Malcolm Hailey (Home Member): The Honourable Member has already incurred a rebuke—if I may say so with all respect—a very just rebuke from you. He is going to get a similar one from me. He says it is the intention of Government to stifle amendments on the Bill further to amend the Code of Criminal Procedure. What basis he has for saying this and on what information he acts, I do not know; he has not vouchsafed an explanation to the House. We have tabled before us 895 amendments on the Bill, yet he suggests that it is our intention to stifle amendments. I must remind him that under the Standing Orders Government has no power whatever in this matter and whatever the malignant intention of Government might be, he is not in order in referring to it. The decision of course is entirely in your hands, and not in the hands of Government, and I am quite sure that any imputation that you are going to yield to the unreasonable demands of the Government in this respect would be resented by the House.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): I might with due respect state that, of course, it is not proper in any way to impute motives to Government or the Chair. But so far as this question has been raised, I might say that the interpretation to be put upon the words ' Bill to be considered ' does not in any way justify the interpretation ' Bill to be commenced or begun.' I think a liberal interpretation should be put upon them, namely, ' amendments to any provision of the Bill when that provision is being considered ' even if those words do not appear there. The object of two days notice for amendments is that the House should not be taken unawares but they should have those amendments printed for them and sent them home so that they may reflect and consider how to deal with them.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): With reference to what has fallen from you that the ruling will be given as the amendments come up, may I inquire what procedure is to be followed for obtaining a ruling if the amendments do not appear on the agenda at all? That is the grievance that the Honourable Member (Mr. W. M. Hussanally) has been making. Unfortunately, extraneous matters have come into this discussion which is to be regretted. But we ought clearly to understand what procedure is to be followed when there are amendments notice of which has been given two or three days before the day that they are likely to be taken up and they do not appear at all on the agenda.

Mr. Deputy President: Does the Honourable Member know of any amendments which do not appear on the paper?

Sir Deva Prasad Sarvadhikary: Some have been mentioned.

Mr. W. M. Hussanally: I have given notice of some amendments.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): May I explain? A very considerable number of amendments has been received,—the earliest I think was received at 11-30 on Monday morning, the 15th. I have not attempted to print these and circulate them. As far as possible, I will do so, but if amendments were to come in every day, it would make the task of the Department rather difficult. Sir Deva Prasad Sarvadhikray asked how Members were to obtain a ruling from the Chair if they did not know whether their amendments were on the paper or not. As a matter of fact, the Standing Order which has been cited contemplates amendments without notice and there need not be written

notice at all. There is nothing to prevent any Member of this House getting up at any moment and proposing an amendment to a clause of the Bill under consideration. That motion of his,—the amendment—is then proceeded with unless some Member of the House objects to his moving it on the ground that he has not given notice. It will then be the time for a ruling from the Chair suspending the Standing Order or enforcing the Standing Order. But there is no need for any amendment to be on the agenda paper. Any Member can move at any time with notice or without notice. That is why I think, Sir, you explained that you will have to deal with the admissibility of every amendment when an attempt has been made to move it and not before.

Mr. W. M. Hussanally: Then it will follow that the proposed amendments notice of which has been given ought to be printed and placed on the table?

Sir Henry Moncrieff Smith: I will do that as far as possible. If I receive an amendment at 10-30 this morning I cannot very well have it printed and placed on the table by the time the discussion of the Bill commences.

Mr. W. M. Hussanally: My amendments were sent in on the 15th.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): In the Manual of Procedure of the House of Commons it is laid down that though notice of an amendment is not obligatory it is usual and convenient to give notice of important amendments. I do not think it can be said that it is necessary that notice of the amendment shall be given. It is a matter of convenience for the Members that it should be given. But when the discussion of the Bill starts, it is quite open to any Member at anytime to propose an amendment without previous notice which will be considered to be right and proper, reasonable and just.

Sir Henry Moncrieff Smith: Quite so, subject to the provisions of the Standing Orders.

Rao Bahadur C. S. Subrahmanayam (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, I must say in defence of Government that they have not stifled any discussion. On the other hand, they have given every opportunity to enlarge the discussion. That being so, I think it is very unfair to attack Government. On the matter of amendments, I must say that it is a large, technical and complicated Code and for Members to complain that the amendments which they put forward at a very late hour have not been printed and put under appropriate heads is not fair. This is not a new enactment, not an unfamiliar enactment. It is 70 years or 65 years old and this particular Bill has been before the country and before lawyers for the last 8 or 9 years.

Then to complain against Government that they have not been able to print these is, I think, hardly fair. Well, after all where an amendment has been given, the Member who has given the amendment may move his amendment and the discretion is in the hands of the Chair and I suppose the discussion will take place.

Mr. Deputy President: I must repeat what I said that every amendment will be taken up and considered on its merits. It is for the House to decide whether they object to it or not. We will now proceed with the further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I beg to move an amendment to clause 11 of the Bill. The amendment which I proposed to move was to the effect that every person arrested under this section 54 shall forthwith be released on bail. On further consideration I find that the amendment which I wanted to move and of which I gave notice is very wide and that in many cases it will be very undesirable. Therefore, Sir, with your permission I may be allowed to amend my proposed amendment and to move it in this form:

'Every person arrested under this section except under clauses *thirdly* and *sixthly* shall forthwith be released on bail.'

Sir, under section 54, a police officer is authorised to arrest any person at any stage of his investigation or even before that investigation. Yesterday while explaining this section, the Honourable the Law Member was pleased to say that it was during the course of the investigation and after some material had been found by the police officer that the clause *first* of this section comes into operation, but I respectfully beg to differ from him and I beg to submit that this section generally comes into operation at a very early stage of the investigation, just at the moment when the complaint or the report is made to police or the information has been lodged with them. Before investigation or during the course of the investigation if there is any material or any sufficient evidence to warrant the trial of such a man, the police would arrest him under section 167, *i.e.*, under the chapter allotted for investigation of offences. If we refer to section 54, clause by clause, we will find that it is desirable that in certain cases where arrest is to be made the person should be released on bail because at the time of arrest there is not sufficient material for the police to put that man under trial or for an inquiry before a magistrate; and on principle that every person has a right that his liberty should not be restricted unless any offence has been brought home to him, a person arrested under this section should be entitled to be released on bail. Therefore, Sir, unless the police in their investigation find sufficient material and evidence to put him for trial such a man should be entitled to be set at liberty on bail. The only safeguard necessary should be that he may not escape from the trial that may be awaiting him or that may take place after the investigation is completed. Therefore only a security should be asked from him to appear at any time when the police or the magistrate may desire. With this object in view I will take section 54 clause by clause. The first clause of section 54 says:

'Any person who has been concerned in any cognisable offence or against whom a reasonable complaint has been made, or credible information has been received or a reasonable suspicion exists of his having been so concerned.'

Now this applies to a very early stage of the investigation and as I have said before under this clause if the arrest is to be made the man should be entitled to be released on bail. Coming to the second clause, it is said that "if the man is found in possession of stolen property, property which is suspected to be stolen or in respect of which some offence has been committed he may be arrested." In this case also, he should be released on bail, because if there is sufficient evidence against him he could be brought up for trial subsequently. In the third clause we find that if any person has been proclaimed by the Government to be an offender, that person may be arrested by the police. In this clause I submit that the police or the Government may have the right to take that man under arrest to the magistrate and have the needful done. In this clause, where the offender

has been proclaimed it is unnecessary to get any further evidence and so he might very well be kept in the lock up. In clause 4, if the man is in possession of any implement of house breaking. . . . I am sorry I made a mistake. This is clause *secondly* and the clause I referred to in connection with stolen property is clause *fourthly*. If a man is found in possession of house breaking implements, some evidence is necessary before that man could be found guilty and the man should be released on bail. Clause 4 relates to stolen property and property that is suspected to be stolen. Here also he should be released on bail. Under clause *fifthly* any person who obstructs a police officer while in the execution of his duty or who has escaped or attempts to escape from lawful custody may be arrested. I submit that in this case the man should be released on bail. There have been cases in practice in which inquiries made subsequently have shown that the arrests were generally unjustified. Sometimes if a man happens to ask the policeman simple questions criticising his action, he is likely to be regarded as having obstructed that police officer in the discharge of his duty and often he is arrested. In this case it will be a very great hardship if the man is allowed to be kept in the lock up. It may be said from the Government Benches that a person who is arrested under this clause for obstructing a police officer is generally released on bail, but I am prepared to cite to them cases in which respectable persons have not been released on bail, when they have been arrested for the offence of having obstructed a police officer and in one case even the Local Government had the inquiry made and on the basis of the report of that inquiry they held that the arrest was perfectly justified though ordinarily that man was entitled to have been released on bail. When even in cases where the provisions relating to bail are liberal, the persons entitled to be so released are kept up in the lock up, then what is to be said of cases of a non-bailable nature where the person be arrested even though it be under section 54. There is no reason to doubt that the police officer will in any way be hampered in the discharge of his duty if the person arrested under this section be released on bail. The person arrested may not be so released if there be a fear that such a man would escape justice or trial. I now come to clause *sixthly*. It says that any person who is a deserter from the Army or Navy may not be released on bail. In such cases it is but proper that the person be not released on bail. Clause *seventhly* relates to persons suspected of having committed offences outside British India. In this case also unless there is proper proof available in British India the persons arrested should be released on bail and be bound to appear before the Courts in a Native State or other territories in alliance with the British Government that made the requisition for the arrest.

Clause 8, Sir, refers to the arrest of

'Any released convict committing a breach of any rule made under section 565, sub-section (3).'

I submit, Sir, that persons coming under clause 8 should also be released on bail. My reasons for that are that under section 565 a person is released on certain conditions and if it is found that he broke certain conditions, then he be again put in the lock up, but after some proof that he did break the condition imposed. In this case also it is necessary to prove that he has broken certain conditions, and unless and until that proof be forthcoming, the man so arrested should be entitled to be released on bail. For these reasons, I submit that the arrest under section 54 should be made subject to release of the arrested person on bail and I commend my amendment, *viz.*, that every person arrested under

[Mr. K. B. L. Agnihotri.]
this section except clause *thirdly* and *sixthly* shall forthwith be released on bail.

Mr. Deputy President: Amendment moved:

"In clause 11, for the proposed sub-section (*3*) in sub-clause (*2*), substitute the following:

'(*3*) Every person arrested under this section except under clauses *thirdly* and *sixthly* shall forthwith be released on bail'."

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I rise to make a suggestion as to the procedure to be adopted before the discussion proceeds any further. We have got a chapter dealing with bails and I think it will be inconvenient to take up the matter like this at this stage. If my learned friend's amendment is discussed in the chapter relating to bail, it would be easy to find a solution for all these difficulties. Some of us have given notice of amendments as regards the nature of the bail and as regards the circumstances under which bail should be granted. If this matter is brought up under that Chapter, there will be no difficulty, because, then, I think, the Government and ourselves will be able to come to some agreement as regards the classes of persons who should be granted bail and as regards the stages at which bail should be granted. If we take it up now, I think it will to a great extent hamper the discussion of the chapter relating to bail. Therefore, Sir, I make the suggestion. If Government is agreeable to that and if my learned friend is agreeable to that, we may consider this matter later on when dealing with the chapter relating to bail.

Mr. K. B. L. Agnihotri: Sir, may I explain the difficulty?

The Honourable Sir Malcolm Hailey: We should have no objection to that course being adopted. It was one of the objections—one of the many objections—that I desired to bring against Mr. Agnihotri's amendment.

Mr. K. B. L. Agnihotri: The difficulty before me is that I wanted an amendment with the object, that a person be released on bail even though he may not be entitled to be so released under the chapter for bail; for instance, in the case of offences punishable with death or transportation for life. Supposing the House decides that persons concerned with offences punishable with transportation for life or with death may not be released on bail, then such a man if arrested under this section will not be released on bail, while under this amendment even such a person if arrested for an offence involving punishment of death or transportation, will be entitled to be released on bail until the investigation against him is completed and until the offence against him has been brought home to him. Here under section 54 a man is liable to be arrested on a mere complaint, on mere information, if it is a reasonable information. This I think is not proper and even such a man should be released on bail pending inquiry.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I support my friend, Mr. Seshagiri Ayyar, and point out that if we accept Mr. Agnihotri's amendment, it will make a mess of the Code. In this Code Chapter XXXIX deals with bail. I want to draw the attention of my Honourable friend, Mr. Agnihotri, to section 63 which says:

'No person who has been arrested by a police officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.'

The necessary safeguards are provided under this Chapter. A man is arrested for murder. He is caught red-handed and he is a desperate character. Does Mr. Agnihotri maintain that he should at once be released on bail? Is not a householder or a citizen entitled to much more protection than a confirmed criminal? I shall point out to him the safeguards that this Chapter provides. Section 60 says that a man may be arrested but . . . . .

Mr. Deputy President: Order, order. As Mr. Agnihotri objects to the postponement of this amendment to a later stage, I think the discussion must proceed.

Mr. K. B. L. Agnihotri: With your permission, Sir, I beg to accept the suggestion made by my Honourable friend, Mr. Seshagiri Ayyar, that my amendment may be considered under the Chapter for bails. I have no objection to that.

Mr. Harchandrai Vishindas: The proper procedure for Mr. Agnihotri is to withdraw this amendment.

Mr. N. M. Samarth: I oppose the course proposed. Let us discuss this particular amendment on its own merits. I think Mr. Agnihotri in assigning reasons has sufficiently demolished the case for the amendment and let us dispose of it once for all. It has nothing to do with the amendments of the sections in regard to bail, which are proposed by my friends over there. I therefore submit that the consideration of the amendment be proceeded with in spite of the fact that he has withdrawn it. He has no permission to withdraw. Unless we allow him he cannot withdraw his amendment.

Mr. Deputy President: The question is that Mr. Agnihotri be given leave to withdraw his amendment.

Mr. K. B. L. Agnihotri: I do not want to withdraw my amendment, but I only want to have the consideration of the amendment postponed to a later stage.

Rao Bahadur T. Rangachariar: May I formally move that the consideration of this amendment be postponed till we come to Chapter XXXIX, and make a correction of what Mr. Samarth said. We will be placed in a very awkward position when we come to deal with the amendments which we have given notice of as regards bail. If we refer to Rule 33 on page 85, we find that an amendment on a question must not be inconsistent with a previous decision on the same question come at the same stage of any Bill, so that if we come to any decision on this question, we will be tying our hands down when we come to deal with the Chapter concerning bail. (*Mr. N. M. Samarth*: 'No.') That may be my friend, Mr. Samarth's view, but we will be tying our hands if we come to any decision now. Merely because we are angry with Mr. Agnihotri because he has brought it at a particular stage or that he has given reasons that have demolished his amendment, let us not tie our hands now in dealing with the substantial question of bail, which is a very important question. Let us deal with this amendment when we come to that Chapter, when we can exhaustively deal with it and postpone the decision till we come to Chapter XXXIX. I therefore formally move that it be so deferred.

12 Nov.

Mr. Deputy President: The question is:

'That the consideration of Mr. Agnihotri's amendment be deferred until the clauses of the Bill relating to Chapter No. XXXIX are reached.'

The Assembly then divided as follows:

AYES—46.

Abdulla, Mr. S. M.	Joshi, Mr. N. M.
Agarwala, Lala Girdharilal.	Kamat, Mr. B. S.
Agnihotri, Mr. K. B. L.	Lakshmi Narayan Lal, Mr.
Ahmed, Mr. K.	Man Singh, Bhai.
Ahmed Baksh, Mr.	Misra, Mr. B. N.
Asjad-ul-lah Maulvi Miyan.	Muhammad Hussain, Mr. T.
Ayyar, Mr. T. V. Seshagiri.	Mukherjee, Mr. J. N.
Bagde, Mr. K. G.	Nabi Hadi, Mr. S. M.
Bajpai, Mr. S. P.	Nand Lal, Dr.
Barua, Mr. D. C.	Neogy, Mr. K. C.
Basu, Mr. J. N.	Rangachariar, Mr. T.
Bhargava, Pandit J. L.	Reddi, Mr. M. K.
Chaudhuri, Mr. J.	Sarvadhikary, Sir Deva Prasad.
Cotelingam, Mr. J. P.	Sen, Mr. N. K.
Gajjan Singh, Sardar Bahadur.	Singh, Babu B. P.
Gulab Singh, Sardar.	Sinha, Babu Adit Prasad.
Hussanally, Mr. W. M.	Sinha, Babu Ambica Prasad.
Ibrahim Ali Khan, Col. Nawab Mohd.	Srinivasa Rao, Mr. P. V.
Ikramullah Khan, Raja Mohd.	Stanyon, Col. Sir Henry.
Iswar Saran, Munshi.	Subrahmanayam, Mr. C. S.
Jafri, Mr. S. H. K.	Venkatapatiraju, Mr. B.
Jamnadas Dwarkadas, Mr.	Vishindas, Mr. H.
Jatkar, Mr. B. H. R.	Yamin Khan, Mr. M.

NOES—27.

Aiyar, Mr. A. V. V.	Innes, the Honourable Mr. C. A.
Allen, Mr. B. C.	Ley, Mr. A. H.
Blackett, Sir Basil.	Mitter, Mr. K. N.
Bradley-Birt, Mr. F. B.	Moncrieff Smith, Sir Henry.
Bray, Mr. Denys.	Muhammad Ismail, Mr. S.
Burdon, Mr. E.	Percival, Mr. P. E.
Cabell, Mr. W. H. L.	Ramayya Pantulu, Mr. J.
Chatterjee, Mr. A. C.	Samarth, Mr. N. M.
Davies, Mr. R. W.	Singh, Mr. S. N.
Faridoonji, Mr. R.	Spence, Mr. R. A.
Haigh, Mr. P. B.	Tonkinson, Mr. H.
Hailey, the Honourable Sir Malcolm.	Webb, Sir Montagu.
Hindley, Mr. C. D. M.	Zahiruddin Ahmed, Mr.
Holme, Mr. H. E.	

The motion was adopted.

Rao Bahadur T. Rangachariar: My amendment relates to section 56 (1) of the Code of Criminal Procedure which, as it is sought to be amended, will run as follows:

'When any officer in charge of a police station or any police officer making an investigation under Chapter XIV requires any officers subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may be lawfully arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing specifying the person to be arrested and the offence or other cause for which the arrest is to be made.'

The object of my amendment is that as in the case of warrants, as provided in section 80 of the Code, the contents of this order in writing should be communicated to the person to be arrested. That is the object of my amendment, when I say that the provisions of section 80 of the Code shall apply to the execution of the order in writing referred to in

this section. A slight alteration has been made in my draft by the Legislative Department, which I accept, and, therefore, I will move it in the form in which they have put it, namely:

"That in clause 12 after the word 'inserted' the following shall be added, namely:

'The officer so required shall before making an arrest notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.'

I, therefore, Sir, move that amendment in the form suggested by the Legislative Department.

Sir Henry Moncrieff Smith: Sir, the Honourable Mr. Rangachariar, by accepting the redraft of his amendment, which has been suggested to him by the draftsman, has removed one of my objections to the amendment of which he gave notice. The amendment in the form in which he drafted it was obviously unsuitable. It was necessary, if anything were to go into the Code at all, that there should be a self-contained provision in section 56 requiring that the officer who received the order in writing should on the lines of section 80 inform the person he was arresting of the substance of the order. But the redraft does not remove all my objections to this amendment. In the first place section 56 and section 80 deal with two entirely separate matters. Section 80 deals with the case of a man who is being arrested on a warrant, a warrant being laid down by the Code as a condition precedent to his arrest. It is the case of a less serious offence and it is reasonable that the man should be told what he is being arrested for. In section 56 we have the case of a person being arrested without a warrant. Now what happens in the ordinary case. The officer in charge of the police station or the officer making the investigation can arrest a man without a warrant. Does he tell the man anything? Does the law require him to tell the man anything? It does not, he just effects the arrest. No doubt it may be desirable for his own protection that the officer making the arrest should give the person some information, but the law requires nothing at all to be said to the man who is being arrested without a warrant. That being so, when the officer in charge of the police station or of the investigation deputes to somebody else his power to make the arrest by an order in writing, what additional reason has arisen that the person to be arrested should be informed of the substance of the order in writing? I think that we must draw a distinct analogy between the two cases of arrest without warrant and arrest with warrant. The Code itself says that where there is arrest without warrant it is quite unnecessary to tell the man you are arresting the offence with which he is charged.

Here again I would remind the House that there are safeguards against unlawful arrest and abuse of this power and I would like to take this opportunity of clearing up what appeared to me to be a misunderstanding in the minds of certain Members yesterday in this matter. It was suggested by more than one Member that there were all sorts of difficulties in the way of prosecuting a police officer for abusing his powers of arrest without warrant and we were referred to section 197 of the Code of Criminal Procedure. Now, if Honourable Members will look at that section and read it carefully, they will find that it applies to a very limited class of cases. An officer, a public servant—and I do not deny that a constable is a public servant—cannot be prosecuted without previous sanction in cases where he is only removable by the Local Government or some superior authority. That is the only restriction. Now, you do not want the sanction of Local Government or of some superior authority to remove a constable. I believe, as a matter of fact, that the lowest officer to whom

[Sir Henry Moncrieff Smith.]
that section applies, would be an Assistant Superintendent of Police. If I am wrong, my friend, Mr. Tonkinson, will correct me.

Rao Bahadur T. Rangachariar: Inspector of Police in Madras.

Mr. H. Tonkinson (Home Department: Nominated Official): Deputy Superintendents of Police.

Sir Henry Moncrieff Smith: My friend, Mr. Tonkinson, tells me Deputy Superintendents of Police. After all, the whole of the arguments used on this point were based on the dishonesty of the constable. We were not talking about Deputy Superintendents or Assistant Superintendents or of any superior officers. Therefore, there are the safeguards, as I said yesterday, and I think the House will now be prepared to admit that these safeguards exist. As I said just now, it may be desirable for a police officer for his own protection to inform the man of the cause of his arrest; that is entirely from the police officer's own point of view, but nothing is required by the law. I suggest that this amendment is quite superfluous.

Mr. T. V. Seshagiri Ayyar: Sir, the Honourable Member has been giving exceedingly good reasons for accepting the amendment proposed by Mr. Rangachariar. He said that a police officer, when he arrests, need not give any information to the person arrested. In the case of a warrant there is this guarantee, that the case goes before a superior officer, it goes before a Magistrate and, therefore, there is the guarantee that the matter has been considered fully by the authorities. Therefore, when a warrant is issued, there is some guarantee that there has been an offence committed. In the case of a policeman arresting without warrant, if he has not to give information to the person arrested on what charges he is being arrested, on what grounds the arrest has been made, it would be leaving the arrested person in a very unenviable position.

For example, his relations might like to know why this man was arrested, and they might be in a position to give evidence for the purpose of proving that the arrest is illegal and improper. Under these circumstances it is absolutely necessary where a police officer acts without a warrant of arrest that he must notify to the person who has been arrested the reasons for arresting him. If he has not got to give reasons, that will put the arrested person in a very grievous position. If it has not been the law hitherto, it is absolutely necessary that the law should be made to be more kind to the accused than it has been hitherto; and I think the reasons given by Sir Henry Moncrieff Smith are the very reasons which should induce this House to accept the amendment proposed by Rao Bahadur Rangachariar.

Mr. P. E. Percival (Bombay: Nominated Official): Sir, I wish to confirm what has fallen from Sir Henry Moncrieff Smith, and draw attention to the particular point that we must always consider the extreme cases in regard to proposals of this sort. Suppose we get the case referred to by Mr. Chaudhuri of a policeman who sees a murder being committed by a man. According to this proposal he has to produce an order in writing to show it to the man. There are cases in which there is absolutely no need for showing the order in writing to the man. It depends upon the particular circumstances of the case, and the policeman can exercise his discretion in the matter. He is allowed to do so. He can show it if he wishes to do so, but he is not obliged to:

Again, this is a provision which has been in force for many years. No objection has ever been raised to it; and now at the last moment it has been brought up.

I would also just like to draw attention to the fact that section 56 comes under the heading of ' Arrest without Warrant.' The whole procedure there is entirely different from the procedure followed where an arrest is made *with* warrant; not merely are the two parts of the Code different, but the whole procedure right through is different. It is a matter for the discretion of the police officer, and no definite provision is necessary in order to compel him to communicate the order in writing to the man whom he may be arresting.

Mr. W. M. Hussanally: I am afraid, Sir, I cannot agree with Sir Henry Moncrieff Smith or my friend, Mr. Percival. I think the reasons given by both of them would support the amendment moved by Rao Bahadur Rangachariar being carried.

In the case of a police officer arresting a person without a warrant, he does it on his own responsibility; but when he deputes a subordinate officer to go and make an arrest on his behalf, the responsibility does not lie with the man who actually arrests the offender. Therefore an order has to be given to him in writing to go and arrest the man. And if he is in possession of the order, then I do not see why that order should not be shown to the person. It is in the nature of a warrant; though not a warrant by a Court of law, at the same time it is in the nature of a warrant which he possesses at the time he makes the arrest; and therefore there is nothing lost by the policeman showing that order to the man whom he is about to arrest. For the sake of his own safety, I think that order ought to be shown to the man he is going to arrest. All the same he arrests without a warrant no doubt, because a warrant means an order by the Magistrate, whereas this is an order not by a Magistrate but by a superior police officer, and therefore the section rightly lies within the chapter on " Arrests without Warrant." Therefore I say it is in the interest of the person making the arrest as well as in the interest of the accused that the order be shown to him, and I hope the amendment will be carried.

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, I desire to oppose this amendment. Mr. Seshagiri Ayyar spoke with much force on the desirability of introducing a provision in the Code to make it necessary for a police officer when arresting without a warrant to explain to the person arrested why he is taken into custody, and he based his support of this amendment—which refers to the case of a policeman who is instructed by another police officer to arrest without a warrant, he based his support of this amendment on the desirability of introducing a similar amendment into section 54. Now, Sir, if the matter is of such importance as Mr. Seshagiri Ayyar would have the House believe, why did he not introduce an amendment to section 54?

Mr. T. V. Sheshagiri Ayyar: An oversight.

Mr. P. B. Haigh: Quite so; an oversight. The matter is of such small importance that when the principal section was before the House Mr. Seshagiri Ayyar did not find it necessary to amend that section.

Rao Bahadur T. Rangachariar: Section 54 has not yet left the House.

Mr. P. B. Haigh: The Bill has been before Honourable Members for months and months. They have had plenty of opportunity to examine its provisions, and if this is a matter of so much importance, certainly Honourable Members should have introduced an amendment to section 54, and put the amendment in this section as a mere corollary to that.

Now, as regards Mr. Hussanally's argument, he says it is very desirable that the policeman who is furnished with a written order should show it to the person arrested. Well, in 99 cases out of 100, it will be desirable, and the police officer in his own interests will show it. But there is no need to make it compulsory. But I think it may be fairly contended as against the amendment that an amendment of this sort ought not to be put in now at this stage when it will render the whole position of section 54 illogical. I will again repeat that the proper course to adopt would have been to amend section 54 and let the amendment under this section follow as a corollary to that; and I trust, Sir, in order to prevent confusion creeping into the Code by amendments being introduced 'through an oversight' that the House will reject this amendment.

Mr. Harchandrai Vishindas: Sir, I find that every speaker who rises on his hind legs to oppose the amendment, as a matter of fact supports it. The best illustration is of the Honourable the last speaker, who said that in almost all cases probably a police officer will communicate these contents. Well then, why not make it actual law? That shows that it would be in the interests of justice and that it would be desirable that a police officer should communicate the order, or the particulars which are subject matter of the amendment, to the person arrested. I draw the conclusion from that that he thinks it would be desirable in that case. If it is desirable, then surely it is safer to have that on the Statute Book.

Then Mr. Percival referred to the case which was cited by Mr. Chaudhuri. Supposing there was a case in which a police man catches red-handed a murderer, where is the necessity of explaining the offence to that man? But he forgets that section 56 does not relate to these cases. Section 56 relates to the case of one police officer deputing his duty to another police officer. So that a case won't arise under those circumstances, of a police officer catching red-handed a murderer. That argument therefore cannot hold water. Another argument put forward by Mr. Percival and which was a mere repetition of arguments that were put forward day before yesterday and yesterday, was that for so many years, 60 or 65 years, this provision has remained on the Statute Book and therefore it should be allowed to continue even now. I think that is a very feeble argument, because if that argument were to stand, it would follow that once a particular law is passed it should never be amended. I contend that anything that suggests itself by way of commonsense to mankind by their experience and by their powers of reasoning may be introduced even if it was not made the subject matter of the original law. At this very moment you have the instance of Mr. Seshagiri Ayyar telling you that it was through oversight that he did not suggest the amendment in section 54, when he was taxed by the previous speaker, because there are many things that do escape our reasoning, or our memory or our observation.

But that is no reason why this provision should not come into 56. I think that kind of argument was entirely beside the point; because Mr. Seshagiri Ayyar did not propose an amendment to section 54, therefore he is out of court when he supports an amendment to section 56. The only valid argument for an opposition to take up would be to show that such

an amendment under section 56 is not relevant, that it does not fit into the section, is not appropriate. I say it is appropriate. The words that Mr. Rangachariar has embodied in his amendment which has been laid before you, Sir, do fit in with section 56 as it stands. Therefore there is nothing in that objection. So, I say, Sir, as I said in the beginning that the case for the amendment is being strengthened from time to time from the mouth of every speaker who gets up to oppose it and therefore it should be supported.

Mr. J. Ramayya Pantulu (Godavari-*cum* Kistna: Non-Muhammadan Rural): I propose, Sir, that the question be now put.

The motion was adopted.

The amendment* under discussion was adopted.

Clause 12, as amended, was added to the Bill.

Clause 13 was added to the Bill.

Rao Bahadur P. V. Srinivasa Rao (Guntur *cum* Nellore: Non-Muhammadan Rural): Sir, the amendment that stands in my name is that proviso (*a*) to sub-section (6-A) in clause 14 be omitted. That proviso runs thus:

'Provided that no such inquiry shall be made if, in the opinion of the Court in which the claim or objection is preferred or made, the claim or objection has been designedly or unnecessarily delayed.'

Honourable Members will be able to see the importance of this amendment if they will consider the provisions embodied in these new sub-sections. It will be seen that under section 88, the Court, issuing a proclamation under section 87, may at any time order the attachment of any property, moveable or immoveable, or both, belonging to the proclaimed person. Now these new provisions relate to claims preferred as regards property attached by an order of the Court under section 88. Under sub-section (6-A) if any claim is preferred within six months from the date of the order of attachment, such claim should be inquired into and the Court may allow or disallow it. These provisions are perfectly reasonable and I have no complaint against them. You have next to see the provision embodied in sub-clause (6-C):

'Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (6-A.) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute. . . . .'

Thus it will be noticed that under sub-section (6-A) the magistrate is bound to inquire into a claim put forward within six months from the date of the order of attachment, and that claim may be allowed or disallowed. If the claim is inquired into and disallowed the party is given a remedy by suit under sub-section (6-C). Now what is the effect of this proviso which I wish to be deleted? If inquiry is refused by a magistrate on the ground that the party has unnecessarily or designedly delayed, though he is within six months prescribed, the result is that no order of disallowance could be made under (6-A), and therefore he has no right of remedy under sub-section (6-C). A right to sue is given only when an order of disallowance is made and an order of disallowance can be made only after an inquiry under (6-A). Therefore if a magistrate holds that, though a claim is within the time fixed there has been unnecessary delay or that delay has been designedly made, then there can be no inquiry and no disallowance and

* *Vide* p. 1187 *supra*.

[Rao Bahadur P. V. Srinivasa Rao.]

the party is left without any remedy by a suit. I think this is really unreasonable and inequitable. If in sub-section (6-C) the words are added—"Any person whose claim or objection has not been inquired into"—I shall not have much to say. As sub-section (6-C) stands, the party is left without any remedy whatsoever; there is no provision by way of appeal in the Criminal Procedure Code and he has no right to bring a suit to establish his right to the property, simply because a magistrate thinks that the claim has been unnecessarily or designedly delayed. Honourable Members know that criminal courts are not presided over, as in the case of civil Courts, by officers who have had judicial training and who are well versed in law. We know there are magistrates of the first class, of the second class and of the third class, and that many of these are taken from the clerical department and have absolutely no legal training or knowledge whatever. It is difficult therefore to expect that they can bring a really judicial frame of mind to bear on the disposal of these claims. It is easy for a magistrate to say "You have unnecessarily delayed in this case." The words are elastic enough. For these reasons, Sir, I move that this proviso be deleted, and I hope that the amendment will commend itself to this Honourable House.

Mr. H. Tonkinson: Sir, we are dealing now with those provisions of the Code which relate to processes to compel the appearance of persons and particularly of those in sections 87 and 88 of the Code. Now under section 87 when a warrant has been issued a Court may publish a written proclamation if it has reason to believe that the person against whom the warrant has been issued has absconded or is concealing himself. If a proclamation has been issued the Court may issue an attachment order under section 88. Under that attachment order the movable or immovable property of the proclaimed person may be sold. The amendments proposed by the Bill will be clear if Honourable Members will refer to the edition of the section in which amendments are shown *in loco*. In the section provisions have been introduced relating to claims by third parties. We have not had such provisions in the Code before, and the Honourable Mover of this amendment has definitely stated that he has no complaint against them. I understand that he considers that it is a most desirable amendment of the Code. He objects, however, Sir, to the proviso (*a*). Now, Sir, these provisions are due partly to Sir George Lowndes' Committee and partly to the Joint Committee. When they drafted these provisions they had before them very similar provisions in the Code of Civil Procedure relating to cases in which claims are preferred to or objections made to the attachment of property in execution of a decree. Honourable Members in this House are no doubt very fully acquainted with the Code of Civil Procedure. I would refer to rule 58 of Order XXI and if Honourable Members will compare the wording of that rule with the wording of the proposed sub-section (6-A) of section 88, they will see that this rule has been adopted by the draftsmen. The proviso to sub-rule (1) of Rule 58 of Order XXI of the Code of Civil Procedure reads as follows: "Provided that no such investigation shall be made where the Court considers that the claims or objections are designedly or unnecessarily delayed." Now, Sir, we have had no provisions of this kind before. If the third party in question designedly and unnecessarily delays his application, surely we ought not to add to the labours of our magisterial courts in the work of investigating such claims. It is true, Sir, that the Honourable Member bases his

objection upon another point altogether. He refers to the provisions of the proposed sub-section (6-C). Now, Sir, I will repeat once again what I said before that we have had no provisions regarding inquiries into claims by third parties who object to attachment of their properties hitherto. Does, however, the Honourable Member consider that if a proclamation has issued and if attachment of the property of third parties has been made by mistake in the past, that then that third party could not bring a civil suit to recover his properties? And in what respect, Sir, will the present law in this matter be affected? The proposed sub-section applies only to cases where a claim or objection has been made and inquired into by the court. If the claim or objection has not been made and inquired into by the Court, there is absolutely no doubt, Sir, that notwithstanding the provisions of the proposed sub-section (6-C) the third party will be able in a civil court to recover his property. As, Sir, the Honourable Member does not object in principle to the proviso (*a*) but merely to this one point, and in view of what I have said as regards that, I hope he will be able to withdraw his amendment.

Mr. K. B. L. Agnihotri: Sir, I rise to support the amendment moved by my friend, Mr. Srinivasa Rao. The reply from the Government Member has not shown us the necessity of retaining this proviso (A.) He has compared the new provision in this clause with that provided in Rule 58 of Order 21 of the Civil Procedure Code. If we compare these two provisions, we find that the provision made in Rule 58 does not prescribe any period of limitation for such objections while in the sub-clause which we have added to the clause now under consideration, we find that the period of limitation for preferring objections has been prescribed to be six months. When once we prescribe the period of limitation for preferring objections, where is then the necessity of limiting the right of a man as is done by this proviso (A)? Either we should do away with the period of limitation prescribed or we should do away with the proviso (A). I would rather prefer to do away with the proviso A, because when we provide the period of limitation of six months, every person who wants to bring in an objection is at perfect liberty to put in his objection even after the expiry of five months and 29 days after the attachment. Why should we limit further that he should put in his objection say 10 days after the attachment of his property? Therefore, I submit, Sir, that proviso A should be deleted as proposed by my Honourable friend. Moreover, as to the plea that a person is entitled to go to the Civil Court even if such an objection has not been admitted or is rejected by the Criminal Court, my humble submission is, that a man should be allowed to have a summary remedy also, which will be obtained in a shorter period, instead of a remedy which will be obtained in a far longer period as is the case in the Civil Courts ? Therefore, this proviso A is absolutely unnecessary, and every man should be given the right to put in his objection within the period of limitation provided in this clause, and proviso A should be deleted.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, my reading of sub-section 6 (A) with the proviso (A) leads me to think that the latter renders the former nugatory. In section 6 (A) the words are as follows: " If any claim is preferred to, or objection made to the attachment of, any property attached under this section, within six months from the date of such attachment, by any person other than the proclaimed person, on the ground ' that the claimant or objector has an interest in such

[Dr. Nand Lal.]

property and that such interest is not liable to attachment under this section,' the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part." Now the proviso (A) says ' No such inquiry shall be made if, in the opinion of the Court, in which the claim or objection is preferred or made, the claim or objection has been designedly or unnecessarily delayed '. Now, Sir, I point out to the House that in sub-section (A) a certain specific period is fixed, which, for all intents and purposes, may be considered as limitation for instituting that claim, by the third party. It is a statutory time allowed by the Code, but when we come to proviso (A), it eloquently tells us " no, the question of limitation will not be taken into consideration at all ". A door is open to a Magistrate or to a Court which may decline to make the inquiry if according to his or its way of thinking the claim is delayed unnecessarily or designedly. Sir, when a claim is lodged within six months from the date of attachment of a property, it cannot be considered to have been designedly delayed. Therefore, the argument which has been advanced from the Government Benches, I may very respectfully submit, has got no force. Now, reliance has been placed on the provision of the Civil Procedure Code. That provision is embodied in Order 21, Rule 58, of that Code. I need not read that provision, because it has already been referred to by Mr. Agnihotri. The crucial point, which is to be seen, is whether in Order 21, Rule 58 of the Civil Procedure Code, any limitation is provided. But a simple perusal of that provision will prove that no time limit is given there. Therefore, the Legislature very rightly, and very wisely, provided that, if the claimant is too late, intentionally, or unnecessarily, then his claim will not be attended to. Why? Because the Civil Court is fully competent to give determination on the question of delay, but here, the Criminal Court has not been given that competency. Here the law has, as I have already submitted, clearly specified six months. Any claim which comes before the expiry of that period of six months cannot be considered too late. Therefore, the analogy which has been drawn, with due deference to the Government Benches, is altogether misplaced. Therefore, the motion for amendment seems to be a very forcible one. It commends itself and I can entertain every hope that the official Benches will feel inclined to agree to it, unless they want the provisions of the Criminal Procedure Code to last until the Court and subsequently the lawyers argue this point.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, my submisson in support of the amendment and against this clause is based on two grounds,—(1) the inconsistency which this clause involves, and (2) its impracticability and clumsiness. The doctrine that rights are lost by acquiescence or delay, short of the specific period provided by limitation, is now exploded. Here, we have in clause 6-A a specific limitation of six months provided for the making of an application under it. Six months is not a very long time, as things move in the courts of law in this country, for a person to find out, if he was absent, that his property has been attached and for him to formulate his claim. Having given that six months definitely by law, and having provided in clause (*b*) that, if a claim is made within the time prescribed, the death of the claimant shall not cause it to abate but his representative may carry it on, neverthless in the middle we have this clause (*a*) introduced, which leaves it to the ideas and idiosyncrasies of each particular Magistrate as to whether or not a claim should be inquired into, albeit it may be within the time

prescribed. That, upon the face of it, is inconsistent; and I think that above all things it is essential that a Legislature should be consistent with itself. But the impracticability of clause (*a*) is still greater. It provides that inquiry is to be refused where the claim or objection has been 'designedly or unnecessarily delayed'. A claimant comes up five months after the attachment and makes his application. The court may, under 6-A, inquire into it. Or the court may, under this sub-clause (*a*), do what? Refuse off-hand to inquire into it? No,—hold a preliminary inquiry to question whether application has been 'designedly or unnecessarily delayed.' Now, how is the court to do this? Surely no one will support a Magistrate who says: 'You might, I think, have made this claim within one month, you have made it in two months; I think you must have designedly or unnecessarily delayed', and so saying summarily throws out the claim. No High Court would allow a Magistrate to dispose of the matter in that way. Therefore, every court called upon to inquire will have to hold a sort of preliminary inquiry, take evidence and so on, as to whether the claim or objection has been designedly or unnecessarily delayed. Obviously, all the time that is taken in holding that preliminary inquiry might be very much more profitably spent in holding an inquiry on the merits of the claim.

Therefore, it is submitted, that clause (*a*) seems to be, more or less, a draftsman's error. Nothing better than that. And I support the amendment that it should be removed.

Sir Deva Prasad Sarvadhikary: Sir, I think the Government would be well advised in accepting this amendment, and saving time unless under sub-clause (6-C.) it wants to see the work of the civil courts very much added to. Mr. Tonkinson is commendably anxious that the work of the criminal courts should not be added to. The inevitable result of summarily dealing with these investigations under 6-A (*a*), as has been very aptly pointed out, will however be to add considerably to the work of the civil courts.

There is a further reason—a small reason from certain points of view but fairly big from others. Six months is never too long in these matters, even with regard to civil proceedings. Where an attachment of property has taken place in a village in a criminal case, we can well imagine and picture to ourselves the commotion and almost the panic that takes place in the family or among the share-holders. It takes a longer time for them to gather themselves up as it were and obtain advice and to take their claims to the court than a civil attachment would involve. That is another phase of it that makes it very necessary that the limitation of six months should not be interfered with in the way that is proposed. Supposed parity of reason between the Civil and Criminal Codes, as has been pointed out, cannot for a moment hold water, for the circumstances are utterly different. I do not think what is given with one hand under clause 6-A should be taken away by the other under clause 6-A (*a*).

Mr. N. M. Samarth: I have, Sir, an amendment to propose to this amendment. My amendment is:

"That the following words be added at the end after the words 'unnecessarily delayed,' namely:

'Beyond the six months from the date of such attachment'."

Now, my reason is this. It may be that you provide here six months. There are many cases in which the High Court or the Court before which

[Mr. N. M. Samarth.]

the case goes has power to excuse delay and an application may be made to show that, although six months have really expired—well, it may be by two days or three days, there was sufficient cause for delay and in such a case the proviso will say that no such inquiry shall be made if, in the opinion of the court in which the claim or objection is made, the claim or objection has been designedly or unnecessarily delayed beyond six months but not if it has been so delayed with lawful excuse or with excuse which may be permitted.

Therefore, I submit that the following words be added at the end: " beyond the six months from the date of such attachment ".

The Honourable Sir Malcolm Hailey: With regard to the amendment which has been put forward by Mr. Samarth I wish to call your attention to the fact that it is one of substance. We have provided in the Bill for a period of six months. Our only dispute at present is whether the investigating Magistrate should be allowed to refuse an inquiry in cases which have been unnecessarily delayed within that six months. Mr. Samarth's amendment is really a proposal to increase the period of six months.

1 P.M.

Mr. N. M. Samarth: It will be made clear by my amendment.

The Honourable Sir Malcolm Hailey: Mr. Samarth's proposal is an entirely new point of substance which it is, I suggest, inadvisable to admit at this stage.

With regard to Mr. Srinivasa Rao's amendment, our feelings are that it would be better if the Bill were allowed to stand as drafted. It was very fully considered by the Joint Committee and accepted by them. But it is not a point on which we are inclined to attach great importance, and, I would add in the interests of the time of the House, that it is not a point on which we should ourselves press for a division. I think it would be better, therefore, if we simply accept the excision of proviso (*a*) and pass on.

Mr. J. Ramayya Pantulu: I do not think, Sir, that the amendment proposed by my friend, Mr. Samarth, can be accepted.

The Honourable Sir Malcolm Hailey: It has not even been admitted.

Mr. J. Ramayya Pantulu: Is it not before the House?

Mr. Deputy President: No. The original question is before the House.

Mr. J. Ramayya Pantulu: Then I support my friend, Mr. Srinivasa Rao's amendment. The law has fixed the period of six months within which any objection can be made, and having given those six months, it proceeds by means of proviso (*a*) to take away that right by giving power to the Magistrate to reject a claim or not to entertain the claim on the ground that the matter has been delayed. Having fixed a period within which claims can be made I think the law ought not attempt to take away that right. I therefore support the amendment of my friend, Mr. Srinivasa Rao.

Mr. R. A. Spence (Bombay: European): I move that the question be now put.

The motion was adopted.

Mr. Deputy President: The amendment moved is:

'That in clause 14 in the proviso to proposed sub-section (6-A.) omit clause (*a*).'

The motion was adopted.

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

"In sub-section (6 BB) omit the words 'or second"

By adopting my amendment, sub-section 6 BB would read as follows:

'Provided that, if it is preferred or made in the Court of a District Magistrate, such Magistrate may make it over for disposal to any Magistrate of the first class or to any Presidency Magistrate, as the case may be, subordinate to him.'

In Civil Courts, it is the Court in which the objections are filed that decides the objection. The Joint Committee say in their report about clause 14:

'The sub-sections which the Bill adds to section 88 imply that the Court which issues an order of attachment or endorses the same under sub-section (2) is to investigate and determine a claim or objection. We think that a limited power to transfer claims and objections for disposal to subordinate Magistrates would be useful, and we have, therefore, provided that District Magistrates may transfer such cases to Magistrates not below the rank of second class Magistrates, and that Chief Presidency Magistrates may likewise transfer cases to Presidency Magistrates subordinate to them."

Sir, from this it is clear that the court in which the objection is preferred is the proper court to decide the objection, but some power has been given to the Chief Presidency Magistrates and the District Magistrates to transfer such objection cases to the file of any other subordinate Magistrate. The Joint Committee provide in the Bill that such objections may even be transferred to the second class Magistrates who could dispose of such cases. But I do not know why they did not extend that power to third class Magistrates. So far as I can understand, I think that their reason in limiting this power was that probably the third class Magistrate was not regarded as very efficient in deciding such objection cases. They have therefore limited it to second class Magistrates only. My submission is that on that very ground on which that limitation has been made even the second class Magistrates should be debarred from inquiring into such objection cases that are filed before the court of the District Magistrates and the discretion that has been given to the District Magistrate should not be extended far enough. He should only have power to transfer such cases to first class Magistrates who are more experienced than Magistrates of the second and third class, and they only should be empowered to inquire into such cases that might be transferred from the Court of the District Magistrate. Therefore, Sir, I submit that the power for transfer given to second class Magistrates to inquire into such cases be taken away and be restricted to first class Magistrates. The cases before the District Magistrate are very serious and sometimes it may happen that even the objection cases may also be important. With these words, Sir, I commend my amendment for the consideration of the House.

Mr. H. Tonkinson: Sir, the Honourable Member has explained that he wishes that the right of transferring inquiries into these claims which is given to the District Magistrate and to the Chief Presidency Magistrate by the proviso to proposed sub-section (6 BB) should be restricted so as to enable the District Magistrate and the Chief Presidency Magistrate to transfer such inquiries to Magistrates of the first class only. He takes his

[Mr. H. Tonkinson.]

objection, Sir, upon the ground that Magistrates of the second class are not competent to make such inquiries. If that, Sir, is his objection, I would venture to suggest that he ought to have proposed amendments to other provisions of this section. He himself, Sir, drew attention to the provisions of proposed sub-section (6B). Under that sub-section claims or objections under sub-section 6A may be preferred or made in the Court by which the order of attachment is issued. Now, Sir, what courts issue orders of attachment?

Mr. K. B. L. Agnihotri: I may explain, Sir, that it is not my object that Magistrates of the second class should not be empowered to inquire into objections regarding property attached and filed in their courts, but my only point is that the District Magistrate should not have power to transfer inquiries into objections filed in his Court to Magistrates of the second class.

The Honourable Sir Malcolm Hailey: Is the Honourable Member raising a point of order?

Mr. K. B. L. Agnihotri: I was simply explaining the object of my amendment which I thought was not properly understood.

Mr. H. Tonkinson: I will proceed, Sir, with the remarks which I was making when the Honourable Member interrupted me. I was indicating that the only ground which he had given in favour of his amendment was the ground that second class Magistrates were not sufficiently efficient to hold these inquiries. I was pointing out, Sir, that second class Magistrates will make these inquiries, and now when he interrupted me he says he does not object to that. That being so, I will proceed somewhat further to indicate what cases will usually be covered by the proposed proviso to sub-section (6BB). If Honourable Members will refer to sub-section (2) of section 88 of the Code of Criminal Procedure which we do not propose to amend at present, they will find that orders for the attachment of property may be issued for the attachment of property in other districts than that in which the Magistrate issuing the order exercises jurisdiction. Those warrants of attachment may be executed in such other districts if they have been endorsed by the District Magistrate or the Chief Presidency Magistrate. Well, Sir, the proviso will generally take effect in these cases. We do not want to require the Chief Presidency Magistrate or the District Magistrate to hold the inquiries in such cases, and I submit that second class Magistrates according to the Honourable Member who has moved this amendment, are fully competent to inquire into such claims or objections if there are claims or objections in regard to attachments issued by the Court. Thus, Sir, there is no reason whatsoever why such inquiries should not be transferred to them in these cases to which I have referred.

Mr. K. B. L. Agnihotri: Then, why not extend it to third class Magistrates?

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

The motion was negatived.

Rao Bahadur T. Rangachariar: My amendment is No. 25 which runs as follows:

"At the end of clause 14 insert the following:

'(6D). If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from attachment'."

I must briefly explain to Honourable Members what is the procedure with reference to proclamation and attachment of property. Sections 87 and 88 of the Code are the sections dealing with that subject. Under section 87 " If any Court has reason to believe that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation." Section 88 authorises the Court in the following terms:

" The Court issuing a proclamation under section 87 may at any time order the attachment of any property, moveable or immoveable, belonging to the proclaimed person."

So that, even before the 30 days are over the Court is entitled to order the attachment of the property, both moveable and immoveable. The object of this proclamation and attachment is a compulsory process to compel the party to appear in obedience to the summons or warrant of the Court, and there is no provision here ordering the release of property from attachment in case he complies with the condition contained in the proclamation. This is a slip, I take it. Whereas section 89 provides that if within two years from the date of attachment any person whose property is or has been at disposal of Government—or has fallen at the disposal of Government after the time specified, appears and shows that he has sufficient cause for not appearing, then the property shall be restored to him or, if the property had been sold in the meanwhile, the proceeds shall be restored to him. But if he appears within the time limited, there is no provision ordering the release of attachment. An attachment has got some legal effect as Honourable Members are aware. It prohibits the party from alienating the property. It prohibits the Civil Court from attaching the same property over again and various other complications do arise. Therefore it is necessary that once the condition on which the attachment has been made is fulfilled, the attachment should cease *ipso facto*. Therefore, in order to make it clear, I propose this that if the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from attachment. I therefore move the amendment as it stands in my name

Mr. H. Tonkinson: Sir, my Honourable friend, Mr. Rangachariar, has suggested that the omission of this clause is due to a slip. I would suggest that the amendment that he has moved is quite unnecessary, in view of the provisions of sub-section (7) of section 88. I am aware that Mr. Rangachariar referred to this sub-section himself. That sub-section says:

" If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government."

That is the only provision, Sir, which we have had hitherto. If the person appears in response to the proclamation, then clearly the property never becomes at the disposal of Government, and as for the Magistrates—what have they done hitherto all these years? They always at once release the property from attachment as my Honourable friend is quite aware. If it goes on beyond this period to such periods as are dealt with in section 89, which has been referred to, then we have provisions for the restoration of the property or the net proceeds to the proclaimed person. I think it is quite unnecessary to make an addition of this proposed sub-section to section 88 of the Code.

Mr. T. V. Seshagiri Ayyar: What Mr. Tonkinson fails to note is this. If there is an attachment, it debars the alienation of the property; and it puts a difficulty in the way of the property being dealt with. It may be that under sub-section (7) the Government may take certain action under certain contingencies. Suppose the Government does not take such action. Still the attachment is there, if once an attachment is made, unless there is an order of Court releasing the property from attachment, the attachment will subsist. What we want is that there should be power to make an order releasing the property from attachment. If you make a provision for releasing the property from attachment under that same sub-section, it may not be necessary for Mr. Rangachariar to press his amendment. But there must be a provision somewhere that if the person does appear within six months the property shall be released from attachment. The attachment should not be allowed to subsist, for that will make it impossible for the man to deal with the property. That was the point made by Mr. Rangachariar and Mr. Tonkinson has failed to meet it.

Sir Henry Moncrieff Smith: Mr. Seshagiri Ayyar says that there must be an order releasing attachment, and that unless this amendment is made in the Code, there will be no order withdrawing the attachment. That is entirely wrong. If the man appears within six months, then the attachment is automatically withdrawn. (*Voices:* 'No, no.') What I mean is that the Magistrate automatically makes an order withdrawing the attachment.

Mr. T. V. Seshagiri Ayyar: Give him that power.

Sir Henry Moncrieff Smith: It is quite unnecessary and quite superfluous. The original framers of the Code cannot have omitted this provision by an oversight. The Code has been overhauled again and again and every time this particular amendment has been regarded as unnecessary. It has been left for Mr. Rangachariar after all these years to discover what he thinks has escaped the attention of the Legislature.

Rao Bahadur T. Rangachariar: I never had a hand in it before.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

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

Mr. Deputy President: Mr. Rangachariar's amendment No. 25 is before the House.

Amendment moved:

"At the end of clause 14 insert the following:

"(6D). If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from attachment."

The question is that that amendment be made.

The motion was adopted.

Rao Bahadur T. Rangachariar: Sir, I move Amendment No. 27 which runs as follows:

"After clause 14 insert the following clause:

"14A. In sub-section (7) of section 88 of the said Code, the words 'or until the final disposal of any claim preferred or objection made under the provisions of this section' shall be inserted between the word 'attachment' and the word 'unless'."

Amendment No. 26 will be moved later. When a claim petition is made in reference to an attachment made to property by a third party, it has to be made within six months from the date of the attachment and there will be an inquiry and decision under the procedure prescribed in clauses 6A and 6B. Now, under clause 7 of that section, Honourable Members will notice that if the proclaimed person does not appear within the time specified in the proclamation, the property under the attachment shall be at the disposal of Government, but it shall not be sold until the expiration of six months from the date of the attachment. That is all that it provides. It does not provide for a case where a claim is made and not disposed of within six months. Then the property may be sold as the section stands now. I therefore propose that the property should not be sold until after six months (retaining it as it is) and we must also ensure that the property should not be sold until the claim is disposed of. That is the object of the amendment. The wording as it stands in print I wish to alter somewhat simply to bring out the meaning clearly. The wording as I propose now will be: "or until any claim preferred or objection made under sub-section 6A has been disposed of under that sub-section, whichever period is later." That is to say, six months is allowed for objections being made. There may be one claim, there may be more than one claim. Suppose one claim is made and that is disposed of within the six months and then too the property should not be sold for six months, because you may get other claimants within the six months. Therefore I provide "whichever period is later." If there is any claim at all, that is disposed of. If there is no claim, six months should elapse, so that the property should not be sold till the matter is clear that there is a claim or there is a claim which is disallowed. For that purpose I propose the amendment.

The Honourable Sir Malcolm Hailey: Did the Honourable Member say "date" or "period"? Is it "whichever date is later"?

Rao Bahadur T. Rangachariar: Which do you think is better? I will bow to you. The thing is until the claim is disposed of. It contemplates a period. "Whichever date" I do not mind. I bow to whatever suggestion you may put forward.

Mr. Deputy President: Amendment moved:

"That clause 14 be re-numbered 14 (1) and that to that clause as re-numbered the following sub-clause be added, namely:

'2. In sub-section (7) of the same section after the words 'date of attachment' the words 'or until any claim preferred or objection made under sub-section 6 (A) has been disposed of under that sub-section, whichever date is later'."

The Honourable Sir Malcolm Hailey: I think it will be perfectly suitable as now framed by Mr. Rangachariar if the word 'and' is substituted for the word 'or.'

Rao Bahadur T. Rangachariar: That is what I originally thought. I quite accept that. It brings out the meaning. We may omit the words "whichever date is later." It will run thus:

"And until any claim preferred or objection made under sub-section 6 (A) has been disposed of under that sub-section."

Mr. Deputy President: Amendment moved:

"That clause 14 be re-numbered 14 (1), and that to that clause as re-numbered, the following sub-clause be added, namely:

"(2) In sub-section (7) of the same section, after the words 'date of attachment' the words 'and until any claim preferred or objection made under sub-section (6A) has been disposed of under that sub-section'."

The question is that that amendment be made.

The motion was adopted.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Although my motion* comes under amendments, what I have really proposed is not an amendment or alteration of a sentence or word in clause 14, but what I have proposed, is an explanation of certain words. So, it will be necessary for me to read the clause itself, and then point out why this explanation is necessary in this case. Sub-section (1) of section 88 runs as follows:

"The Court issuing a proclamation under section 87 may at any time order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person."

In sub-clause (3) of the same section we find:

"If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made:

(*a*) by seizure; or
(*b*) by the appointment of a receiver; or"

and so on. Then we find also in sub-section (4):

"If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to Government be made through the Collector of the district in which the land is situate, and in all other cases:

(*e*) by taking possession; or
(*f*) by the appointment of a receiver;"

and so on.

Now the explanation that I want to be added, is this: The words 'belonging to the proclaimed person' are capable of interpretation in such a way that they will entail hardship unless they are explained and probably the whole object will be spoiled. That is why I wish to add an explanation that when the offender is a member of a joint family, 'property belonging to the proclaimed person' means the specific interest of such a person. Sir, perhaps, in a country like England or France, or other countries where people generally live separately, this explanation will be absolutely unnecessary. In a country like England or France probably, as soon as an infant grows up, and becomes a man or a major and wants to marry, he will seek a home of his own, and unless he has a home of his own, probably he will not marry, so that practically all grown up men live separate. But in the case of India, whether they be Hindus, Muhammadans, Indian Christians or Parsees, or hold other religious beliefs, generally they live in joint families. You find in a family a grand-father, grand-mother, father, son, uncle, nephew, niece, perhaps a great-grand-father and a great-grandson all living together, and if a son wants to live in a separate home, he is looked down upon as having broken the home and having separated from his parents. It is looked upon with disapproval

*"To clause 14 add the following at the end:
"To sub-section (7) of the said section 88, the following shall be added:
'*Explanation*:—When the offender is a member of a joint family, property belonging to the proclaimed person means the specific interest of such person'."

if a son or brother should live separate, but in other countries it will probably not be looked at in the same sense. The result is, in India, people almost invariably live in joint families. As regards the rights of different persons, it may be different. In the case of a Hindu who is governed by the Mitakshara law the right of survivorship and co-partnership come in. Hindus living under the Daybhaga law, the Indian Christians and the Muhammadans, Sikhs and others also live in joint families. They may not have ancestral property, but still they hold property jointly. If a person, who has committed an offence does not appear, somehow or other, the Court is justified in issuing a warrant and then a Proclamation and attachment side by side. Under section 87:

"If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation."

And section 88 provides:

"The Court issuing a proclamation under section 87 may at any time order the attachment of any property, moveable or immoveable, or both, belonging to the proclaimed person."

The Court is not to wait even 30 days after issuing the proclamation, but may at any time order the attachment of any property, moveable or immoveable, or both, belonging to the proclaimed person. Now if such a proclamation is issued, what will be the result? Really a person may have gone to any interior part of the country on business or trade. Then what happens? We know that every place is not accessible to the railway; nor have we got postal or telegraphic communication. A man may go into the interior somewhere where you cannot get a letter even in a fortnight, and if he seeks to come home from there to a railway station or a distant place, it may take a fortnight to travel from such interior place to the headquarters station. And in the meantime a proclamation will have been issued against him without his knowledge. Of course it will be to the interest of the complainant to represent that he is concealed, or if the police do not find him in the house, and do not take further steps and say, the man is concealing himself, what has the Magistrate to do? A warrant has to be issued, a proclamation has to be issued and the man's property is to be attached. I must say here, before any guilt is established, not only is the man punished but all the members of his family are punished by the attachment order because the attachment order provides that the property can be taken possession of and so on. To be more clear I shall say, for example, several persons are living jointly; they have no ancestral property, but have acquired a house. No sooner this attachment order is issued, what will be the result? The Receiver will come and take possession of the house. Suppose I am living with my brothers and their wives and children in a house. Suppose the house belongs to A, B, C, and D jointly and attachment orders are issued against the property as belonging to D, there is no wrong in taking possession of it, because it belongs to D as well and you cannot find fault with a Magistrate because he has issued an order of attachment against the same property for it belongs to him. Suppose I have a cow and my brothers and other members of the family have a share in the cow and my children and their children are living upon the milk of the cow. Now, if I have committed some offence, or if for some offence alleged against me, the police comes and takes possession of the cow, under an attachment order by a Magistrate, you cannot blame the

[Mr. B. N. Misra.]

Magistrate for his action saying it belongs to me. There is no safety in such procedure. If the cow is taken possession of, my brothers' children or my own babies would be deprived of her milk. Say I have a house and am living under the Hindu Mitakshara family law. There is my wife who has got a right of residence in the house. Now are you going to punish my wife and turn her out although she has committed no offence, simply because a case has been filed against me rightly or wrongly and I have not appeared before a court not having any knowledge of such a fact? And will that law be sound and for the benefit of society and even in the interests of criminal law? I submit, Sir, this will be really a very hard and a very unwise law, if it will be a law where an innocent person can be turned out of a house because it jointly belongs to another. If for instance there is a joint partnership, business or firm and a case is filed against one of the members of the firm for some supposed crime. Suppose he has gone away somewhere on business and other members are carrying on the business. If this is really the law, you cannot blame the Magistrate for attaching the partnership property or the joint property belonging to the firm It also belongs to the offender undoubtedly. He may have a hundredth share or a tenth share, but it belongs to him, and the property may be attached and taken possession of.

I need not multiply instances to show how this law will entail hardship on innocent members of a family because by the custom of the country they are living together. No provision has been made in this case. I submit, Sir, the House will consider the reasonableness of the explanation I have given, not only in the interests of members of joint Mitakshara families but of all members of the Hindu or Muhammadan community, or Parsees or Indian Christians, or any community that is living jointly. Other members should not be punished for the alleged offence committed by an accused person.

Now, Sir, I have explained the other difficulties. Probably the prosecution may say, if a man is concealing himself, 'Attach the property and the other members of the family will be compelled to produce him.' The object of our criminal law is never to punish innocent people. It is a very laudable object to punish the guilty and I have never said a thing whereby a guilty person should escape or not be brought to trial. What I say is that the other members should not suffer. Supposing a man in a village has committed an offence. There is the complainant to produce him, there is the police also to find him out, there are so many agencies really to find out the man. It may be the case that a complaint has been lodged against a person who has perhaps gone away on business or without his knowledge some false complaint has been filed against him and it has been made to appear to the Magistrate that the man is absconding or concealing himself. The section says:

> "If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself, etc."

So that as soon as a representation is made the Court can issue an attachment. It generally happens that the police comes and says 'so and so is concealing himself' or the complainant comes and tells the Magistrate 'so and so is concealing himself, we cannot find him, issue a warrant against him and also this proclamation and attachment order.' Then, the result is that we have to punish the other members of the family

who are quite innocent, who would themselves be interested to point out the accused if he could be found.

Now, Sir, probably it may be said ' Well, there are already provisions for a claim; if any person's property is attached, the other members having any right or claim to the property can lay a claim.' My submission to this House is, that is really the most undesirable part of it. Now, Sir, the average family is not rich nor can they file a claim. You cannot simply go to the court and file it; you must come with money to file a claim. You must substantiate your claim, and by that time what has happened? Your wife, who never came out, is in the street and your children are somewhere not knowing where to get their food. If you had any granary or paddy or gram or wheat in your house, all that is attached. You have no food, no house to live in and no cloth to wear. Can you imagine any one in such circumstances coming and laying a claim very easily? He must pay his pleader, his mukhtear or his petition writer, whoever he may be, and must pay his court fees and adduce evidence. After all this paraphernalia has been gone through, he does not know what the decision of the Magistrate will be in such a case. If the whole provision was not on the Statute Book, it would be really wholesome, but, since there is a provision, and since some offenders may evade a trial, I think, when the Crown is prosecuting or when the Crown is the complainant, as the burden of proof always lies on the prosecution, this burden must also lie on the prosecution to specify the interest of the accused person. The prosecution can very easily find it out; I do not think there will be any difficulty. If a particular person lives in a family, his relations or interests are known to the complainant or to the police, whoever lodges the complaint. Under the Hindu law the complainant knows this man has got a certain share in the property. Even under any other system of law you must know that he has so much share or that other persons like his wife and mother have got a right of residence or his old grand-mother or old grand-father has got a right of residence. These things can be known very easily and it ought to lie on the prosecution to show the interest that an accused has in a property. Of course, so long as you do not proceed against property, there is no trouble, but once you attach property you do not touch the accused alone, you touch all the relations, all the surroundings, all the members. For instance, a poor tenant has some fields and you come and take away the paddy heaps he has harvested. The poor tenant has toiled the whole year to get some paddy from the field and you come and take away his paddy, simply because it belongs to the landlord. This morning we had so much discussion about this attachment. I submit this House will remember these difficulties of attachment and the trouble and expenses one has to undergo over these attachments. Why put a man to all this trouble, why drag him to Court and then so charitably release his property after putting him to so much trouble.

This House will also remember that, even in the Civil Procedure Code, when you attach property, at least some things are exempted from attachment, for instance, the implements of a workman or some paddy grains or paddy seeds for the poor peasant or some other things which are absolutely necessary. I think that is not at all illiberal. Will our Criminal Procedure Code be so illiberal as not to leave anything? You will attach everything without exception. No exemption of property is made under this, you lose everything. Supposing there are two brothers who have got a pair of bullocks for ploughing the land. One brother has committed or is supposed to have committed some crime. You come and take away the pair of

[Mr. B. N. Misra.]

bullocks and do not spare for the other brother even one bullock with which he could otherwise have cultivated his land. It is very hard to attach the property of a proclaimed person who is responsible for all this business, because it may belong to ten persons as well as to the proclaimed person.

Then, Sir, for wrongful attachment under the Civil Procedure Code there is some remedy. But, supposing a man wrongfully applied to the Court and said 'So and so is concealing himself' and the court issues an order of attachment for all the property, there is no provision for protection against the wrongful attachment of his property under this Code. If it is done under the orders of the Magistrate, the civil court will say 'You cannot proceed, you have no remedy practically, it was an act of a Court.' It would mean an action and then you would have to make the Secretary of State for India a party. But in practice this is never done. The interest is never specified. So in the case of joint families it is absolutely a hard and difficult procedure that has been laid down here. Under these circumstances I propose that this explanation should be added, so that the Magistrates, whether they be third class or second class, whether they be new men or experienced men, may not commit an error and innocent people may not be harassed. With these words I propose that this amendment should be carried.

3 P.M.

Mr. J. Ramayya Pantulu: I think, Sir, that the amendment proposed by my friend, Mr. Misra, is quite unnecessary, because under the section what the Court attaches is the property belonging to the defaulting man. What the property of the defaulting man is, is a question to be decided in each case as it comes up. The rights of members of a joint family are not the same all over India. They are different under different laws. Mitakshara in that respect is different from Daybhaga. Whatever it is, what the property belonging to a defaulting member is, is a question of fact to be decided in each case as it comes up. I do not see what will be gained by adding an explanation to that section, and I therefore think that this amendment is quite unnecessary.

Mr. W. M. Hussanally: Sir, I endorse every word of what my friend, Mr. Pantulu, has said and I think the amendment proposed by my friend, Mr. Misra, is unworkable. It is impossible for the attaching officer to know what the specific interest of a particular person would be in a joint family estate. That is a matter of fact which must be ascertained on a regular inquiry and that inquiry will come in when a claim is put in by the other members of the joint family, to claim that property or specific share of the property as their own. In the commencement when a property belonging to a person is attached, the officer attaching has absolutely no grounds of inquiry as to what specific interest that man has in the property. Therefore I say the amendment proposed will be entirely unworkable and I think quite unnecessary.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I rise to support the amendment, but I may preface my point by stating at once that the amendment proposed suggests wholly a question of onus—that is to say, it suggests that the person attaching the property of an absconder should start with the idea that the property he is going to attach is the property of the absconding person. There is a great deal in a clear formation of this preliminary idea, and the difficulties arising from indiscriminate procedure have been pointed out by my friend, the

proposer of the amendment. In the Civil Procedure Code when an attachment is intended, an application has to be filed in which a declaration has to be made as to the property intended to be attached. The petition has to be verified and it has to be stated that to the best of the declarant's knowledge, information or belief as the case may be, the contents are true. But there is no such obligation laid upon the Magistrate who proceeds to attach the property of an absconder and therefore a certain amount of carelessness is likely to come in and does come in, at times. That is a thing which ought to be avoided, if possible. No doubt a judicial inquiry cannot be held at that stage, but if Magistrates come to know that they have got to pay some attention to the matter and make out a *primâ facie* case connecting the property to be attached with the absconder before they proceed against the property of the man, it will certainly be a step forward towards the realisation of the object of the amendment. I submit, Sir, if the point be looked at in that way, there is something in the amendment. If it be accepted, Magistrates, before attaching the property of the absconder, will try and ascertain, as far as possible, whether it really belongs to the person who has committed the offence. That being so, a safeguard which is not to be found now in the Criminal Procedure Code will be introduced into it by indirect means, by the proposed amendment. Therefore, Sir, I submit that instead of putting indiscriminately all persons who may have some interest in the property wrongly attached, to the necessity of coming into court and proving his case, in order to save it from wrongful disposal, the Magistrate should be required to pay more attention to this matter of attachment, and find out in the beginning whether the property that is going to be attached is really the property of the absconder or not. Therefore, Sir, I submit that the amendment ought to meet with acceptance in the House. There is nothing harmful in the proposed amendment. It merely attempts to clear up the question of the duty of a Magistrate in this connection to a greater extent, than now. The difficulties which are likely to arise and are likely to be faced in the beginning of the proceedings are calculated to be removed, to a great extent by the House adopting the underlying principle of the amendment.

Rao Bahadur T. Rangachariar: I wish to offer some words of explanation for the consideration of the Mover of this amendment to say whether his amendment is really necessary. The explanation deals with the joint family. Now a joint family may be under the Dayabhaga law or under the Mitakshara. Take the case of the Mitakshara family. The law differs from Province to Province as regards the right of an undivided member of an undivided family. In Madras every member has got the right to alienate his interest in the property or rather his share, at the date of the alienation, in the property. In other Provinces where the Mitakshara law prevails, he has not got that right. No doubt in all Provinces the Court can seize and sell the interest of an undivided member in the family property. Therefore to speak of specific interest of an undivided member in a joint family jars on my ears, because there is no such interest in the joint family property. There is no specific property. It is not consonant with law to speak of an undivided member having a specific interest. You can talk of undivided interest—that is, his share on partition, if a partition should take place.

This section has stood so long and I do not think any difficulty has been felt in the application of it. It is not a new wording. The wording has been there all the time and the section has not given any trouble at all. The matter came up once before the Madras High Court, and there

[Rao Bahadur T. Rangachariar.]

it was decided by my Honourable friend sitting on my left when he was on the Bench and another learned Judge. But of course you cannot seize the whole property, you can only seize the undivided interest of the absconding member. Even if a Receiver is appointed—and in that case I believe a Receiver was appointed—the Receiver can only take the interest of the undivided member, restoring the rest of the profits to the family members.

My Honourable friend, Mr. Misra, no doubt has pointed out the difficulties in the way; but of course his explanation is not likely to remove those difficulties. How does he remove those pictures that he has drawn to us of a wife and other members of the family being thrown on the streets and all that? It is still open under his explanation to attach the undivided interest of the absconder, and when you have attached you can appoint a Receiver and of course there must be some remedy and some means of getting at the offender. Therefore I do not think really it would improve matters if we add this explanation. On the other hand you are introducing a new thing; probably in provinces where the man has not got alienating power, it may be possible for them to contend that it is not property belonging to the offender at all, whereas now you make a definite statement by adding the explanation here saying that in the case of a particular joint family he may have an interest in that property. Therefore it is better to leave it as it is because the law differs from province to province and it has not created any difficulty so far and the specific interest is unknown to law, and therefore you will be introducing a thing which is unknown to law. I do not think, therefore, we will improve matters by adding this explanation.

Rai N. K. Sen Bahadur (Bhagalpur, Purnea and the Santhal Parganas: Non-Muhammadan): Sir, the Honourable Mover seeks to add an explanation to the words used in section 88—' belonging to the proclaimed offender. ' He wants to have an explanation added that the words ' belonging to a proclaimed offender ' in the case of a joint family should mean the specific interest of such person. This explanation if adopted will complicate matters more than the difficulties already pointed out. In a joint family governed by the Mitakshara law where the law of survivorship prevails, there is no member who can say what his specific interest is in his family property; he has got an undivided share, but not a specific share; unless there is an amicable partition made between the members of the family or unless there is a partition suit instituted in a civil court and the matter is decided and the interest defined, no one can say what his specific interest is. In a case where there is an attachment under section 88 the Magistrate has to attach the property ' belonging to the offender. ' In a joint undivided family that would mean the undivided interest of that offender and as has been pointed out by the Honourable Mr. Rangachariar it has been held by the Madras High Court that even an undivided share in a joint Hindu family can be attached. But if an explanation is now added, and if it is said that you must attach the specific interest of the offender, what would be the result? The result would be that the Magistrate must specify the interest of the offender before he can put up the property to sale. Will the House expect the Magistrate to go to the civil courts and have a partition suit instituted and have the interest of the offender defined before he can put up the property to sale? Certainly, Sir, this House cannot expect Magistrates to go to civil courts to have the interest of an offender defined before they can put a property to sale. Furthermore if you put in the words ' specific interest ' there will

be no purchaser forthcoming, unless the specific interest has been defined; so that if you add these words as an explanation, the complications would become more complicated. Then, Sir, you will find that the result of this amendment if accepted would be that an offender will be at large with immunity and the other members of his family will have every facility to screen him and keep him from the law. I consider, therefore, that this amendment, although the object in bringing it may be good, is not one which this House can accept or ought to accept. The illustrations given by the Honourable Mover regarding the cow and a house, I am sorry, do not appeal to me in any way. The offender, if there is a cow in the family, has got some interest—an undivided share—in it. The cow has to be attached, but a portion of it cannot be attached. You cannot say to the court " well, this portion of the cow is the specific interest of the offender." You have to attach the cow and take it to court, sell it and sell the undivided share, whatever it is, in the cow and the other members of the family may have the sale proceeds. That is all that can be done. In the case of a house the undivided share of an offender can be sold, and I do not think any case has cropped up till now where the ladies of the house have been turned out of the house because the offender's share has been sold. So, Sir, I have tried my level best to find if this amendment can be accepted, but I am sorry that I have not been able to follow the argument of the Honourable Mover that this amendment will improve the situation. On the contrary, my own impression is, that it will complicate matters more than what he has described. With these remarks I beg to oppose the amendment proposed by the Honourable Mover.

Mr. J. Chaudhuri: I beg to move that the question be now put.

The motion was adopted.

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

The motion was negatived.

Clause 14, as amended, was added to the Bill.

Mr. B. N. Misra: Sir, I beg to move the following amendment:

" In clause 15 insert the following at the beginning :

' In sub-section (1) of section 103, for the word ' two ' the word ' five ' shall be substituted '."

Sir, as regards searches it is provided that there should be two or more respectable inhabitants of the locality to attend a search; the officers generally take only a small number, say two persons and they are really the village headmen or some others who are really interested in the prosecution. Now under clause (5) of this section we have " Any person who without reasonable cause refuses or neglects to attend and witness a search under this section when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code." So strictly speaking there will be no difficulty in getting more witnesses.

In excise and other cases where smuggling of opium and other drugs are in question, generally the department comes forward with one or two informers who attest the search list when it is made. In these cases other villagers or respectable men are not called to attest the list. Strictly speaking, in any village two or more people can be found, and there will be no difficulty to get more persons to avoid suspicion. There is another difficulty, Sir. Sometimes you have got only two witnesses in the search list; sometimes they fall ill, or they don't come, and when the case comes

[Mr. B. N. Misra.]

up it has to be adjourned from time to time till those witnesses turn up. (*A Voice*: "There is the word 'more'.") Well, if you take the word "more", accept them as five, there is no objection to that; but the difficulty is, if there are only a small number of witnesses, it is not good, because some of them may happen to be interested only in the prosecution, or sometimes they may not be present when they are called, on account of illness or any other cause, and the case will have to be adjourned many times. It is of course a simple matter, my amendment does not really deal with the substance, but it is simply a safeguard. If there are more persons it is better. That is why I have put the word 'five' in place of the word 'two'. Instead of giving the option to two, you can have more than five and there will not be any hardship. With these observations, Sir, I commend my amendment to the House.

The Honourable Sir Malcolm Hailey: I do not know, Sir, whether the House desires that I should argue this section? (Cries of "No, No".) I am probably right in assuming that they think this amendment is unnecessary.

(*A Voice*: "Unworkable".)

(*Voices*: "The question may now be put".)

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

The motion was negatived.

Bhai Man Singh (East Punjab: Sikh): Sir, the amendment that stands in my name reads thus:

"Omit clause 15 *or in the alternative if the amendment to omit the whole clause fails*, add the words 'if necessary' after the word 'may' in sub-clause (1)".

I would speak only on the first part of my amendment for the omission of clause 15. Clause 15 gives power to a police officer making an inquiry to compel any person to sign as a search witness. He may issue an order in writing to them or any of them so to do. After that clause you have "After sub-section (4) of the same section the following sub-section shall be added, namely: 'Any person who without reasonable cause refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code'." I may submit, Sir, that really speaking this sub-clause creates a new offence or rather brings a certain act within an offence which does not already exist. In 26, Madras, 449, it is held that refusal to sign a search is an offence under section 187 or 188, and it is now held that a police officer should be given authority to ask anybody whom he likes to sign as a witness. If that order is in writing and if the person to whom it is issued refuses to sign, then he is liable to be prosecuted under section 187.

This practically means giving an additional power to the inquiring police officer there and then to ask anybody to be a witness and then, if he refuses, to prosecute him under section 187. I submit, Sir, that in creating any new offence or say in bringing any acts within the sphere of any offence by a new Act of Legislation, a very good case should be made out in favour of this innovation. Personally, I have not known many cases where the police officers have found very great difficulty in finding such witnesses. The effect of this amendment would be that the inquiring officer will have an additional means of harassing respectable people in the villages whomsoever he would like to do. There might be certain persons who would be

expected to be defence witnesses or there might be certain persons who for certain reasons may not be able to sign the search list or they would not like to be put to the trouble of signing that search list, and when we find that there has not been any special difficulty up till now and we have done without this power for so many decades, I see no reason why this innovation should now be made.

The Honourable Sir Malcolm Hailey: As Mr. Man Singh says, this is of course a case in which we add a new penalty to the Code. I recognize that it is our duty to explain clearly to the House the circumstances in which we propose to add this provision. I can best do so by reading an extract from the recommendation of Sir George Lowndes' Committee—which dealt with this matter, and which added this clause:

"We accept the proposal of the Bill to penalise an unreasonable refusal or neglect to attend as a search witness, but would make it a condition precedent that the person in question should have been required to attend by an order in writing from the police-officer. In order to make this clear, we have, in addition to the new sub-section (5), made a small amendment at the end of sub-section (1).

We think that the power thus given to the police, practically to compel the attendance of respectable witnesses from as near as possible to the place where the search is to be effected, should go far to put an end to the objectionable practice of bringing semi-professional search witnesses from a greater distance, and will also prevent the frustration of searches by the unreasonable refusal of witnesses to attend, which, we understand, is by no means uncommon. If executive instructions are issued to the police that, with this new sub-section to back them, they are, whenever possible, to require the attendance of respectable witnesses from the *immediate* vicinity, we think that a considerable improvement will be effected."

The new provision therefore has two aspects. Firstly, it is designed to prevent the frustration of searches by witnesses refusing to attend. That, of course, is a provision made to assist the administration of justice. But secondly, as the recommendation I have just read out to the House clearly shows, it is also intended to prevent an actual malpractice—a malpractice of which I dare say some here have seen instances—namely, the practice of bringing in as search witnesses men who are practically professional witnesses. It was, therefore, made for the protection of the public. Now, it is true, as Bhai Man Singh says, that we have done without this provision for a number of years. He implies, however, that, because we have done without it for a number of years, we ought still to be able to dispense with it. Surely not, Sir, if malpractices actually occur, and if we can prevent them by the insertion of this provision. He is, I think, afraid mainly of the penalty section. I may point out that this section only becomes operative if any person, without reasonable cause, refuses or neglects to attend. I do not argue the case regarding the requirement that notice should issue in writing since this is really only a condition precedent to the penalty provision. For my own part I do not feel that it is in any way unreasonable that when searches have to be made, the ordinary citizen should be required to assist in such searches and to witness and sign the search list; it is not a very heavy or very onerous requirement, and it is far better that power should be given to compel the attendance of respectable witnesses than that it should be left entirely to the discretion of the police to bring in their own semi-professional witnesses.

Bhai Man Singh: May I know if any special difficulty has been felt up till now?

Mr. W. M. Hussanally: I may tell my Honourable friend that in large cities, especially Karachi, as a Magistrate I know that the police have had difficulties in finding people to go with them to witness searches very often.

Rai G. C. Nag Bahadur: (Surma Valley *cum* Shillong: Non-Muhammadan): I bear the same testimony from my experience also.

The Honourable Sir Malcolm Hailey: I see on looking through our files that the Local Governments have frequently pointed out the necessity for some such requirement as this, owing to the difficulty frequently experienced in obtaining search witnesses. I would further point out to the Honourable Member, in justification of the provision which we propose to insert, that it was published at an early date as part of the Bill and I think that we have received only one criticism of it, and that criticism was of a very mild nature. It merely suggested that, in issuing executive instructions, we should make it clear that witnesses should come from the immediate vicinity.

Mr. Deputy President: Amendment proposed:

"Omit clause 15."

The motion was negatived.

Bhai Man Singh: I do not propose to move the other part* of my amendment.

Mr. K. B. L. Agnihotri: Sir, I propose an amendment to clause 15. My amendment runs as follows:

"In clause 15, sub-clause (1) after the words 'to do', add the following proviso:

"Provided that no pleaders, barristers, solicitors, attorneys, or mukhtars shall be required to attend and witness the search."

My object in moving this amendment is that these are the persons who have to deal with courts of law and who have to deal also with the accused and the offenders in such cases and also with the property involved. These are the persons that may have to conduct the prosecution or the defence of such offenders and may have to file suits regarding the property damaged or destroyed in the search. Therefore so far as possible, these persons should be left alone. I therefore propose, Sir, that these persons should not be required to attend and witness the search as is intended under section 103. They are exempted from being jurors or assessors. I therefore submit, Sir, that my amendment be accepted by the House and clause 15 be amended accordingly.

Mr. W. M. Hussanally: May I request my Honourable friend, the Mover, to add the words 'medical men'?

The Honourable Sir Malcolm Hailey: Here again, Sir, is a matter which I am doubtful if the House desires that we should argue at length. There are many members of this honourable profession in the House and I am not at all sure that Mr. Agnihotri really voices their wishes in this matter. May I point out one consideration? I do not suppose that members of the legal profession have any stronger desire than other classes of society to avoid their obligations to the public, and to their fellow-men. They are probably as ready as any men to recognise their duties. Again, busy men as they are, they are not the only busy men in ordinary life. My friend, Mr. Hussanally, pointed out that there are doctors, and he might have added that there are engineers, there are merchants who have equal difficulty in giving up their time. It is difficult, therefore, to see why we should make an exception in favour of this one class. But I can

*"Add the words 'if necessary' after the word 'may' in sub-clause (1)."

give a substantive reason why, on the other hand, it is advisable to include them, for I can imagine no class of men are more likely to keep a critical eye on the proceedings of the police than the class to which Mr. Agnihotri refers.

Rao Bahadur T. Rangachariar: There is some misapprehension on the part of the Honourable the Home Member. The object is not to save ourselves the trouble of taking part in this sort of function, but really to enable an accused person to have the services of pleaders and barristers in case he has to defend himself. That is why they are exempt from jury, and that is why they should be exempted from this sort of work which renders them liable to be called as witnesses. If perhaps at a remote place there are only one pleader or two and they are called on to witness a search, they would disable them from defending the accused person because they will be witnesses and the accused will be prejudiced. It is a well-known rule in the Bar and in the profession that no person who is a witness in a cause can undertake the conduct of such a case. It is a well-known rule amongst us and I do not think that any respectable member of the profession will depart from it. If he is likely to be called as a witness, he should refuse the brief. It is therefore throwing a disability on the profession and that is why this amendment is sought to be made.

Colonel Sir Henry Stanyon: With all deference to those members of my profession who take a different view, I venture to oppose this amendment. I agree with the Honourable the Home Member in saying that the members of our profession ought to take their fair share in furthering the administration of justice. I do not think that if I were a witness to a search, that mere fact would, upon any ground of forensic etiquette with which I am acquainted, prevent me from acting as counsel either on behalf of the prosecution or on behalf of the defence in the case which might arise as a result of that search. Moreover I think that the proposed amendment is largely unnecessary. We should look at the practical effect of the proposed exemption. We have a great deal of protection in the natural aversion of a police or other searching officer to ask any barrister or pleader or other member of the legal fraternity to take part in his investigation or search proceedings. It is true, as has been remarked, that members of the legal profession are exempt from service on juries. It seems curious and inconsistent that they are not exempt from service as judges; and perhaps there may be arguments against their exemption from juries. But analogies are not safe, and on this simple matter of exemption of the profession from witnessing searches, I say that the danger to the profession is so remote and so small that we need not encumber the Code with this amendment.

Mr. Muhammad Yamin Khan (Meerut Division: Muhammadan Rural): I support the amendment on monetary grounds. I think every member of the Bar who practises on the criminal side has to fear this a great deal and he must support this amendment. Supposing a police officer thinks that such and such a man is my client and reposes great confidence in me, he may be tempted just to take me as a search witness. And if I happen to be a search witness my position will be very critical because I will not be able to accept a brief on behalf of my client and at the same time be a witness against him. On this point I think it is advisable that this amendment should be accepted and a proper latitude and a free hand should be given to the legal practitioners who should not be hampered in the discharge of their proper duties.

Mr. J. Chaudhuri: I would oppose this amendment. In the interests of the general public it is important to select reliable witnesses and it is very difficult to get the proper sort of persons to attend a search party. Apart from the narrow view that my professional friends take, I think it will be in the interests of the public that they should get some respectable people to accompany them in the search and if they are lawyers, it is all the better and therefore I oppose this amendment.

Dr. Nand Lal: I support this motion for amendment which speaks for itself. I do not only look to the monetary interests of the lawyer class but also to the practical phase of the question. Supposing a Barrister or a Pleader or a Vakil or a Mukhtar is brought on the list of those persons who may be called upon as witnesses to see the search and the time fixed for searching the house is, say, 10 o'clock and he has got two cases in which he defends the accused in Court, he cannot perform two public duties. The latter is not less responsible than the former. The police ask him to come as a witness. He ought to perform that duty but on the other hand he has got his professional duty to defend an accused. For the defence of the case of his client he, as you know, is responsible. He cannot perform two duties at one and same time. He must ignore one to do the other. Therefore, it will not serve any useful purpose to bring members of the Bar on the list of witnesses who may be called upon to examine or witness the search, and, consequently, an exemption may be extended to them. And we have got a very faithful analogy in support of it, which is this, that lawyers are not enlisted as assessors or jurymen and the underlying principle is,—that in the first place they are very busy, and in the second place, their profession is of great usefulness to the public at large. Therefore, it is quite proper that exemption may be given to them and I am in favour of this amendment which has so ably been moved.

Mr. T. V. Seshagiri Ayyar: Sir, I do not wish to give a silent vote upon this matter. It is not a question of pure selfishness on the part of the legal profession, which has prompted Mr. Agnihotri to move this amendment. The position is this. If a lawyer is asked to be present at a search and thereby to become a witness to the search, in the subsequent stages when the case itself is being heard, (if he is a witness), he would not be allowed, as decided by the Allahabad High Court, to appear as a pleader. It is not only handicapping him at the outset, but it will make it impossible for him later on to do any work for the client who knows him and wants him. After all, the search would not suffer by excluding this class of persons. It has been considered as a good principle of law, that persons who are connected with its practice should be exempted from serving on the jury. And what is the necessity for making a change now and asking lawyer to witness the search? Any number of people could be got to witness the search. To make a lawyer witness the search and subsequently debar him from being of service is putting a double penalty upon him, which I do not think this House should countenance. I therefore think that Government and this House should accept the amendment which has been moved.

Mr. W. M. Hussanally: I rise, Sir, to oppose this amendment, chiefly on the grounds mentioned a few minutes ago that if lawyers are to be exempted, there is much more reason why medical men should be exempted, also because they are very frequently concerned with cases in which the life and death of their patients are concerned. Suppose, Sir, a medical man is on his way to visit his patient, and that it is a very urgent

call, and on the way he is waylaid by a police officer and compelled to attend a search, what is the poor man to do? Is he to visit his patient or is he to obey the commandments of the law and accompany the police officer? If lawyers are to be exempted, I see no reason to compel medical men to attend these searches, and if medical men are to be exempted, why not Engineers? Then, practically it comes to this that all professional men are to be exempted from attending such searches. The difficulty pointed out is not very great. As regards the contention that lawyers will not be able to defend their clients, if they are witnesses to the search, as a rule there are a number of lawyers in almost every station, so that if one gentleman has been by chance waylaid by a policeman to attend a search, there are a number of other gentlemen available to be engaged in defending the client.

Mr. J. Chaudhuri: I move that the question be now put

The motion was adopted.

Mr. Deputy President: Amendment moved:

" In clause 15, sub-clause (1) after the words ' to do ', add the following words:

' Provided that no pleaders, barristers, solicitors, attorneys, or mukhtars shall be required to attend and witness the search '."

The question is that that amendment be made.

The motion was negatived.

Clause 15 was added to the Bill.

Rao Bahadur T. Rangachariar: We now come to the chapter dealing with the power of Magistrates to demand security for keeping the peace. The first of those sections is 106. Section 106 enables a Magistrate to impose a double penalty. He convicts the person and sentences him to the punishment he deserves, and in certain cases he is also authorised to demand security from that person by ordering him to execute a bond for a sum proportionate to his means, with or without surety, for keeping the peace for such period, not exceeding three years, as he thinks fit to fix. So that is an additional punishment imposed on an accused person who is convicted. Naturally therefore the law restricted it to certain cases where the public peace was likely to be involved by the crime committed by the accused person, so the language of section 106, as it stood was:

" Whenever any person accused of rioting, assault or other offence involving a breach of the peace, or of abetting the same, or of assembling armed men or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation, is convicted of such offence—"

then the Magistrate may impose this additional punishment. Now the object of the amendment proposed by Government to this clause is to enlarge the scope of the offence for which such an order can be made. In the first place, I do not think any case has been made out for making any amendment of this section 106. I have been looking at the literature furnished by the Government in respect to this matter. All I find is that in the report of the Lowndes Committee there is a small paragraph, on page 4, on the notes on clauses—I do not know if Honourable

[Rao Bahadur T. Rangachariar.]

Members have got their copies with them—clause 18 (1) was the proposed clause apparently; I have not seen what that clause was. They say:

"We do not like this amendment. We would, however, redraft section 106 (1) as shown in the amended Bill. We think that it is better to enlarge the scope of this section by including all offences under Chapter VIII of the Penal Code, than to involve the Court in an inquiry whether the offence of which the accused has been convicted, though not involving a breach of the peace, was nevertheless likely to have occasioned a breach."

That is the reason which they give for including the whole of Chapter VIII. The amendment now made by the Joint Committee to this Bill as it was originally put in is to exclude only, as Honourable Members will find, section 153A from out of that Chapter, because the amendment, as it now runs, reads:

"Whenever any person accused of any offence punishable under Chapter VIII of the Indian Penal Code, other than an offence punishable under section 153A thereof, or of other offence involving a breach of the peace, or of abetting the same."

So that they retain the words 'or other offences involving a breach of the peace'. Now I do not see how by the proposed section they are in any way making it easier for Magistrates to come to a conclusion. Section 106, as it stands, specifies certain offences, namely, rioting and assault, assembling armed men or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation or other offences involving a breach of the peace. So that specified offences are named there as instances of offences involving a breach of the peace. Now the whole of Chapter VIII of the Indian Penal Code is supposed to include offences involving a breach of the peace. If you will look at Chapter VIII it includes all sorts of offences and I do not see why the whole of the Chapter is included except section 153-A, which is a well-known section dealing with the creation of differences between different communities. I will briefly run through the various sections coming under Chapter VIII of the Penal Code. First of all we have being a member of an unlawful assembly. Unless, therefore, the events connected with the transaction were such that the particular unlawful assembly were guilty of acts, although they did not actually commit acts of rioting which would indicate that it was likely to involve a question of a breach of the peace, then it was left to the discretion of the Magistrate to impose this penalty. Now, 'whenever a person accused of an offence under section 143 is convicted.' It leaves it open to the Magistrate to impose this additional penalty, whether really the public peace is threatened or not. After all, this is a preventive section and not a punitive section. That has to be remembered. It is preventive, that is to say, the Court has to be satisfied that the person convicted is also a person likely to commit hereafter a breach of the peace. In order to prevent that breach of the peace, security is demanded, it is not an additional punishment which is in contemplation. The whole object is to prevent a breach of the peace, it must be necessary for the Court to be satisfied that a breach of the peace is probable. Therefore, it would have to depend upon the facts of each case, upon the circumstances of each case whether really such preventive action should be taken. In the case of rioting, of course, it is obvious; that is why the Code has taken care to specify it. In the case of assault it is obvious. There has been a breach of the peace, and, therefore, if he is a man likely

to continue such acts, then, of course, it will be necessary to impose this penalty.

4 P.M. Again if a man is convicted of assembling armed men, then obviously his object is to commit a breach of the peace; or if he is convicted of criminal intimidation, where, of course, by force he extorts property and other things—in such cases the Code has left it at that. In Madras I have not found that there have been any cases of difficulty felt by Courts in applying section 106. There have been hardly any cases where the Courts found any difficulty in construing this section and I do not find there in the commentaries (which are voluminous) any very serious cases which involved the Courts in any considerable difficulties. Let us remember also that by no amount of legislation can we avoid difficulties in Courts. You may have the most ably drawn Code. I do not think there can be any better Code than the Indian Penal Code, and even there you find frequently difficulties arising in the Courts. Courts exist for such difficulties. Courts exist to construe the real intention of the Acts; and therefore I do not think it is necessary to consider that as a valid ground. I will use the argument adopted by the Government benches yesterday, that where a Code has worked well without much difficulty you should not tamper with the Code. A case has still to be made out. No reason is given in Lowndes Committee's Report. They think it is advisable. Why should they think so? Have they condescended to give reasons why all the sections under Chapter VII should be included?

I propose just to draw the attention of Honourable Members to Chapter VIII. 'Joining an unlawful assembly'; 'Joining and continuing in an unlawful assembly.' As we all know, even women and children get caught in an unlawful assembly and it is very difficult for them to extricate themselves. Without warning an assembly is ordered to disperse, and they still continue to be members of an unlawful assembly. Is it contemplated that in such cases the Court should be empowered to impose this additional burden? Of course where they may be armed with deadly weapons and all those things, and again, knowingly join or continue in an unlawful assembly of that sort the case will be different. I do not know why, on the reasoning adopted by them here, this Joint Committee excluded 153-A from the scope of the Bill. When you promote enmity between classes, that is the surest method of bringing about a breach of the peace and yet that is excluded, I do not know why. (*Mr. N. M. Samarth*: "As a sop to Cerberus.") They give no reason.

Section 154 deals with an owner or occupier of land not giving information of a riot on his land. Such a person may be convicted. I don't see why he should be called upon to give security and be punished also for not giving information. Why should he be called upon to give security as if a riot is going to take place periodically unless it is shown that it is a place where frequent risings occur? It may be a temple dispute or a land dispute between rival parties. Why should you assume that he is not going to give information? After all the punishment is for not giving information of a riot. Once he is convicted, why should he be called upon to give security for keeping the peace? He is not a rioter. He is owner of the land on which the riot took place. Once he is convicted he is sure to take the lesson to heart and next time a riot takes place on his land he is sure to give information. But how has he committed an offence for which you can demand security? I think, Sir, the whole thing is merely due to the fact that the Lowndes Committee said so and it must be so.

[Rao Bahadur T. Rangachariar.]

This measure has come before us without proper examination of the various sections. I do not think it is necessary to tinker with the Code as it is. It has not led to any practical difficulty. The Courts have administered it without causing any irritation to the public, nor has the public peace suffered by not enlarging the scope of this section.

Therefore, Sir, I would leave well alone, even if it is unwell, to adopt the language of my Honourable friend from the United Provinces whom I welcome to this Assembly as one who contributes weighty and valuable additions to our debates—even if it is unwell, as we cannot improve it, let us leave it at that. I therefore propose to omit clause 16 (1) which proposes to amend the present section.

The Honourable Sir Malcolm Hailey: Mr. Rangachariar began by arguing that this was an attempt to take greater powers on the part of Government. But from his subsequent remarks it is clear that he laid no great stress on that statement. He realised (what is indeed a fact) that this provision of the Bill was intended merely to clear up doubts. I have read through all the papers on the subject; there never was a suggestion that we required to take greater powers in this respect. The contrary is really the case; for it is clear that under the existing Code the Court might pass an order against a man who had been convicted under 153A, whereas the new clause omits this section. Mr. Rangachariar himself thinks that it should be able to pass such an order. By this Bill we exclude . . .

Rao Bahadur T. Rangachariar: It is anomalous that it should be omitted and other comparatively innocent offences should be included.

The Honourable Sir Malcolm Hailey: Well, as to that, I will give the House the precise reason why the Lowndes Committee excluded 153A. They received a forcible representation on the subject from the Madras Vakils' Association. Whether Mr. Rangachariar is still a member of that association or not I am not aware; whether he joined in that representation or not I am equally unaware. . . . .

Rao Bahadur T. Rangachariar: It must have been done in my absence.

The Honourable Sir Malcolm Hailey: I must have the fact as it stands. But to return; the reason why this clause was introduced in its present form was simply to clear up doubts. The first authority which complained that the Act was not sufficiently precise was one entitled to consideration even from the Madras Vakils' Association; it was the Calcutta High Court. In 1911 the High Court suggested that the wording of the section was too narrow. When the matter was subsequently commented on by the various judicial authorities consulted, many pointed out that the wording left the Courts doubtful; a man might be convicted of an offence—but I will give the exact words of one critic:

> "Whereas the section provides that an order cannot be passed against a convicted person unless he is convicted of an offence of which breach of the peace is a necessary ingredient it often happens that the scope of the offence discloses a likelihood of breach of the peace even though accused is guilty of an offence of which breach of the peace is not a necessary ingredient."

The first proposal placed before the Lowndes Committee was therefore to redraft simply in order to do away with that doubt, a doubt which forces the Courts continually to inquire whether the particular offence did or did not involve a breach of the peace or

was likely to cause a breach of the peace. They objected however to the form of words proposed and thought it simpler to draft in the sense of the present clause, under which any offence punishable under Chapter VIII of the Indian Penal Code other than an offence under section 158A could be made the subject of an order by the Magistrate. That is the simple explanation why we have got this particular form of draft. That there was actually a difficulty arising from the drafting of the existing Code is, I think, clear. Mr. Rangachariar said that he was unaware of any ruling which showed that the matter had been in doubt by the Courts. Well, I have here a reference to what seems to me a very large number of rulings on that particular point. It seems to me that the commentaries show that there has been very great doubt on the subject, and that it has involved a good deal of trouble to the Courts. I quite agree with Mr. Rangachariar, and it is a proposition which I welcome from him, that where a section of procedure has stood for many years and has involved the Courts in no difficulty, it is better to let it stand; but that is not the case here; it is clear from the commentaries that this section has actually involved the Courts in a good deal of difficulty.

Now I come to the substance. I am prepared to admit with Mr. Rangachariar that in taking the whole of Chapter VIII—and its scope is somewhat extended—we may have gone somewhat beyond the strict requirements of the case, though the difference is more nominal than real. It is perhaps unnecessary that we should include such a section as 154: I agree with Mr. Rangachariar as to the absence of necessity for including such a section. A remark of the same nature might equally be made perhaps against 151. We are quite willing, as far as we are concerned, and provided that we can get the clause into a form in which there will be no difficulty involved on the part of the Courts in the matter of interpretation, to exclude such sections as seem to be entirely unnecessary. I think that if that were done, Mr. Rangachariar's point of substance would be met, while at the same time the work of the Courts would be facilitated, and facilitating the work of the Courts of course makes things easier to the public. I should be quite prepared to indicate when we come to discuss the subsequent amendments exactly what are the sections which we think it unnecessary to include, but I would put it to the House that it is advisable that we should have something definite on the lines of the drafting now proposed instead of leaving the Courts to determine on each occasion whether an offence on which a conviction had been secured did or did not involve a breach of the peace.

Rao Bahadur C. S. Subrahmanayam: Sir, in regard to this clause, I must say that I cannot agree with my Honourable friend, Mr. Rangachariar. These words in Chapter VIII have been put in order to prevent the Courts from embarking upon an enquiry as to the character of the offence. That is one object. Another object is that power is vested in Courts of first class Magistrates and higher magisterial Courts, and that power would be exercised only after considering the evidence that is placed before the Courts. If a Court comes to the conclusion that there is in the character of the people whom it had convicted a tendency to repeat the offence, this power will be utilised; it is not in every case where men are convicted that these powers would be utilised. Therefore it is the Courts trying the case which will decide the matter. Now in regard to conviction also, there is the safeguard of scrutiny by a higher Court. Well, that is so far as the merits of this case is concerned. Now we cannot admit that offences coming under this Chapter are offences which ought not to be put down in

[Rao Bahadur C. S. Subrahmanayam.]

the interests of society—I shall not use the words 'law and order' which are frequently used. When there are powerful landholders or powerful people behind, such offences are committed; they are not offences committed by peaceful inhabitants, and therefore a provision like this is necessary. You cannot say that the provision is unnecessary nor can we sneer at a provision like this. But with regard to the recommendation which is contained in the Lowndes Committee Report, I, as a member of the Joint Committee, will always look with great deference to a recommendation made by that Committee. That Committee consisted of the most eminent lawyers, men of great ability, and I should deprecate, with all respect to Mr. Rangachariar, speaking lightly of that Committee, because at that time and probably even now you cannot find a set of men who have obtained such great eminence in law as that Committee.

Rao Bahadur T. Rangachariar: I do not deny that.

Rao Bahadur C. S. Subrahmanayam: Therefore, it is hardly fair to say because the Lowndes' Committee said so and they have not condescended to give reasons their decision should not be respected. Well, I think the amendment has tended to simplify the task of the Courts which do require a certain amount of definite guidance and the power is not used by irresponsible persons, it is used by the superior Courts. Therefore, I think this clause ought to be retained and I am sorry I must oppose my friend, Mr. Rangachariar's amendment. 153A was omitted for the strong expression of opinion coming from the colleagues of my Presidency: "Section 106 as now revised may in times of political excitement be used so as to bring into disgrace prominent leaders on the one side or the other whom the Magistrate may not like. The section as it stands at present is sufficient for the purpose of preventing the commission in future of similar offences by convicted persons." It is with regard to that emphatic expression of opinion that 153A was excluded. This is the opinion of the Madras Vakils' Association, of which my friend, Mr. Rangachariar, is an ornament. Therefore, I think we would do well to leave the clause as it is.

Mr. N. M. Samarth: Sir, I also oppose Mr. Rangachariar's amendment. I do not think by leaving the section in the fluid state in which it is at present we improve matters. There has been, so far as the nature of offences for conviction of which security may be required is concerned, a good deal of discussion and division of opinion and the amended provision in the Bill, such as it is, at any rate, makes it definite that offences must fall under Chapter VIII of the Indian Penal Code, but the other clauses of that section remain and those clauses will limit again the application of certain of the sections of Chapter VIII of the Indian Penal Code to which I would draw attention.

The section proceeds to say:

"And such Court is of opinion that it is necessary to require such person to execute a bond", for what?, "for keeping the peace."

Further, 'such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties'—again for what?—'for keeping the peace during such period'. The application in practice or judicial decisions in reference to this clause of this section will, therefore, be that it must be an offence which will involve the necessity for the offender to keep the peace and not

other offences falling under Chapter VIII of the Penal Code, which do not relate to keeping the peace. If the clause remained, the natural interpretation in a court of law would be, or at any rate it is quite open to an accomplished lawyer like Mr. Rangachariar to argue before a Court and argue successfully, that the restriction therein laid down must govern the application of the section to a restricted class of offences under Chapter VIII of the Indian Penal Code.

Rao Bahadur T. Rangachariar: There are two independent conditions—one is conviction for special class of offence, and the other is proof of necessity for making the order.

Mr. N. M. Samarth: But what does the law require? Keeping the peace. That is the essence of the matter, and none of the offences which do not involve the necessity of keeping the peace would come under the purview of that section. Therefore, it is important to my mind that the section should stand as it is in the Bill and I am opposed to Mr. Rangachariar's amendment and am in favour of the proposed amendment of the section as contained in the Bill before us.

Mr. J. Chaudhuri: Sir, I also cannot support Mr. Rangachariar's amendment. It will, I think, be to the prejudice of the general public if section 153A is left out of this section. We considered that in the Select Committee and we deliberately arrived at the conclusion that section 153A should be excluded from the scope of section 106. What does my friend gain by leaving the section as it is? He does not gain anything at all. I invite his attention to the words of the present section, " other offences involving a breach of the peace ". That expression is comprehensive enough to include all the offences mentioned in Chapter VIII of the Indian Penal Code and much more. As regards section 143, *i.e.*, being members of an unlawful assembly, an assembly does not become unlawful unless they have a common object of committing an unlawful act. This implies that the object of the assembly is more or less to break the peace. But the mischief of including section 153-A—will be much greater. That will be the result of Mr. Rangachariar's amendment. . . .

Rao Bahadur T. Rangachariar: No, no. I did not say that at all. My friend is entirely under a mistake. I did not say section 153A should be included. I say leave out all the sections and leave it to the court as it was.

Mr. J. Chaudhuri: I would rather specifically leave out 153A because 153A falls within a different category. What is known as the law of sedition in English law is embodied in the Penal Code under the two sections 124A and 153A. Promoting enmity between classes, in English law, is well-known to form part of the law of sedition. So I would not leave any ambiguity with regard to these sections. We have always advocated the liberty of the press and of public meetings. A man may deliver a speech or write an article and it may be interpreted as rousing racial feeling and such racial feeling as likely to cause breach of the peace. We ought not to empower the Magistrate to act under section 106, Criminal Procedure Code, in such cases. That is why we have advisedly exempted offences under sections 153A and 124A of the Indian Penal Code from the scope of section 106, and I do not think that if we accept Mr. Rangachariar's amendment it will be any improvement or that we shall be safeguarding public interests in any way. That is why as a Member of the Joint Committee and as a Member of this House I oppose the amendment.

(*Several Honourable Members*: 'Let the question be now put'.)

Mr. Deputy President: The question is that the question be now put.

The motion was adopted.

Mr. Deputy President: Amendment proposed is:

"Omit clause 16 (*i*)."

The question is that that amendment be made.

The motion was negatived.

Mr. Deputy President: I think it will be convenient if the House considers the next two amendments and the first portion of the third amendment together.

Mr. J. Ramayya Pantulu: I do not want to press my amendment No. 32.

Mr. Deputy President: It will be convenient if the House takes Bhai Man Singh's amendment No. 33 and the first remaining portion of Mr. Agnihotri's amendment No. 34. I therefore propose to call upon the proposer of amendment No. 33 and Mr. Agnihotri and then to consider one by one sections of the Indian Penal Code which are dealt with in the two amendments.

Bhai Man Singh: The second portion of my amendment is as follows:

"For the words and figures 'other than an offence punishable under section 153 A' substitute the words and figures 'other than the offences punishable under sections 143, 144, 145, 150, 151, 153, 153A, 154, 155, 157, 158, 159 and 160'."

Of course, I would request you, Sir, to take those sections separately, because as a matter of fact . . . .

Mr. Deputy President: I have already informed the House that I propose to do so.

Bhai Man Singh: I would simply speak about section 143. This is a section that is included in my amendment as well as my Honourable friend Mr. Agnihotri's amendment. The offence under this section consists simply in being a member of an unlawful assembly. I should submit that it is quite a different thing to be a member of an unlawful assembly at a certain time and to be guilty of rioting. Really speaking, section 106, Criminal Procedure Code, is meant to bind down persons who are of a temperament that is very dangerous to the public peace. A person may be merely a member of an unlawful assembly and simply for being such a member, section 106 provides that extra punishment for him. There is no reason why that extra punishment should be inflicted on such a person simply because he is a member of an unlawful assembly. I may also submit that the Madras High Court and the Punjab High Court have under the existing law held that being a member of an unlawful assembly does not come within the purview of section 106 of the Criminal Procedure Code. Section 106, as it at present stands, as my Honourable friend, Mr. Chaudhuri, has just pointed out, contains the general words 'offences involving a breach of the peace'. Both these High Courts have held that being merely a member of an unlawful assembly is an offence involving a criminal breach of the peace. There is no reason why we should expand the sphere of section 106 and include this section therein.

Mr. K. B. L. Agnihotri: I take it that we ought to proceed section by section. I would therefore speak later on the other sections in my amendment and will for the present confine my remarks to section 143. My reasons for moving for the substitution of these sections are exactly those as were suggested by the Madras High Court Vakils Association on whose weighty authority even the Home Member and the other Members of the House declined to delete clause 16 (1) as proposed by my friend, Mr. Rangachariar. Sir, as was pointed out by Mr. Rangachariar there may be assemblies which may at some time or other be declared to be unlawful assemblies and there may be people who may happen to be in those assemblies quite innocently but because of the assemblies having been declared unlawful assemblies they are likely to be convicted under the law, in which case they are liable also to be bound over under section 106. The House, I hope, has it in its experience and knowledge that during the year 1921 there were many cases when assemblies were declared unlawful that would otherwise have been lawful so much so that even at the capital place of a province the Congress Committee meeting was declared an unlawful meeting and some persons attending that meeting were convicted. If section 106 is made applicable to the case of such people, even respectable and educated people would be liable to be bound over and therefore I submit that a section which does not involve the use of force or collection of armed people for using violence should be omitted from the purview of section 106. With these words I support the amendment that section 143 should be deleted from the operation of section 106 and be included in the exceptions.

Mr. Deputy President: The question is that section 143 of the Indian Penal Code be included among the exceptions.

Mr. T. V. Seshagiri Ayyar: I wish to make a general observation in regard to the procedure that should be adopted in eliminating certain sections. The principle which ought to be kept in mind is one which would enable Courts to construe this section on the theory of *ejusdem generis*. You have for example in this section the words 'or other offence involving a breach of the peace.' The rule that ought to be observed by the Legislature is that the offences which go before must also belong to the same category. That is the principle of what is known as construction by *ejusdem generis*. You must have the same class of cases to proceed as is mentioned in the general clause coming after. The question therefore which this House will have to decide in excluding or including certain sections, is whether those sections involve an offence relating to the breach of the peace. If that is not the intention of the Legislature, then I think the wording of the section should be completely altered. Now, as regards section 143, I do not see why it should be included. It simply is a punishment section. In section 143, you will find nothing relating to any offence. You will find two or three sections of that nature. I do not think there will be any difficulty so far as section 143 being tacked on to section 153A. But, as I said, the principle which I want the Government benches to keep in mind—and I want the Honourable the Law Member to advise the Government in the matter—is the principle of *ejusdem generis*. You cannot have any offence which does not involve a breach of the peace included in this category of sections; and so far as section 143 is concerned, I do not think the House will feel any difficulty.

The Honourable Sir Malcolm Hailey: Punishment for what? Do you wish to include the definition section or the offence section?

Mr. T. V. Seshagiri Ayyar: Certainly not. Punishment does not create an offence. You do not create an offence under that section.

Mr. Deputy President: The question is that section 143 of the Indian Penal Code be included among the exceptions.

The motion was adopted.

Mr. Deputy President: The question now for discussion is that section 144 of the Indian Penal Code be included among the exceptions.

Bhai Man Singh: I do not want to press for that.

Mr. Deputy President: The question for discussion now is that section 145 of the Indian Penal Code be included among the exceptions.

Bhai Man Singh: So far as section 145 is concerned, the case is just the same as of section 143, except that the assembly is ordered to disperse and it does not break up but continues. It is also practically the same thing as section 151, which provides against continuing to be a member of such assembly when it is commanded to disperse. I think, Sir, that exactly the same arguments apply in favour of section 145 as in favour of section 143, except that in the one case they have been commanded to disperse and in the other case they have not been so commanded. I submit that the mere fact that a command of dispersal has been given does not make a man guilty of having committed riot or breach of the peace. I see no reason why he should be bound over under section 106. If a member of a certain committee which is declared to be an unlawful assembly for certain political or other reasons is not to be bound over under section 143, there is no reason why he should be bound over for continuing to be a member of that assembly.

The Honourable Sir Malcolm Hailey: Sir, I think we have to look to the whole intention of this part of the Code. The intention here is to place an instrument in the hands of Magistrates which will be, in its truest sense, preventive. Now there is a great difference between a person who merely joins an unlawful assembly, (for he may frequently be in doubt up to the last minute whether that assembly is unlawful or not) and a person to whom the following description applies:

"Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, . . . "

He can be under no kind of doubt as to his action. Mr. Rangachariar said that it was ridiculous to make women and children who continued in such assemblies liable to an order under section 106. But, it is first of all necessary that they should be charged and convicted under this section 151, and it is exceedingly unlikely that they will be so charged. And you will never arrive at satisfactory legislation if, in considering your law, you emphasize only extreme cases that might be brought under a section, oblivious to the fact that you must provide for ordinary cases, and good cases, for which provision is required. There are undoubtedly cases for which we must provide under a section of this nature; I can conceive, and I am sure the Members of this House would be able to conceive, of highly dangerous assemblies, highly criminal and violent in their nature, which have been commanded to disperse, and members of which are rightly convicted because they have refused to disperse. There are such cases, and

it is only reasonable that in the cause of law and order and the public generally, persons so convicted should subsequently be held to security.

Rao Bahadur T. Rangachariar: I can recognise that such a man mentioned by the Honourable Member ought to be punished. The question is whether the offence is one which is likely to be repeated by the individual. Unlawful assemblies, as is well known, take place in the excitement of the moment. There is some temporary exciting cause and unknowingly some people join, and several other people join the assembly because they have got a temporary grievance. Unlawful assemblies are not recurring diseases; they always have got a provocation behind them. That provocation may be great or small, but often you will not get unlawful assemblies in this country without some provocation behind them. You are postulating here that such men should be bound over to keep the peace. They may be persons who have got some temporary grievance, perhaps a revenue grievance or something which excites them at the moment and therefore they join the assembly. You do not expect them to go on joining unlawful assemblies. Have you ever come across such cases? It is really confusing the issue by saying it is a dangerous offence It is a dangerous offence, and therefore you punish the man, but the question is, is it an offence likely to be repeated by the individual, and is it necessary to impose this further penalty? That is why the Legislature would generally drop this. Now you want to include it. What is the reason given? That it is a dangerous offence. But is it a reason why you should go on demanding security for three years as in the case of a habitual offender? I therefore think, Sir, no reason is made out why 145 should be included.

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): Sir, I am afraid my Honourable friend, Mr. Rangachariar, in the observations which he has offered upon this particular matter, has ignored a very material portion of the original section 106 of the Criminal Procedure Code. In order to bring any case of a conviction under any one of those sections mentioned in the Act, two things are necessary, not one thing only to which he has over and over again referred in the course of his observations. It is not merely conviction under the sections named that will justify an order under section 106. The Code goes on to say something further and it is to this second requisite that I wish to invite the attention of the House in particular. The first paragraph of this sub-section (1) merely describes the particular sections of the Penal Code, a conviction under which may make a man liable to the order specified in this section. But the second paragraph goes on to say ' and such Court (*i.e.*, the Court convicting that man) is of opinion that it is necessary to require such person to execute a bond for keeping the peace ' that the order under section 106 will be passed. That is to say, the mere fact that a man has been convicted under any one of these sections will not necessarily make him liable to furnish security under section 106. It is only when the Court is further satisfied, by reason of the peculiar circumstances of the given case before it, that it is essential in the interests of the maintenance of public tranquillity that such order should be passed that the Court will pass the order. In other words, the Court will not pass an order under section 106 in every case in which it chooses to convict a person. It is really the second essential mentioned in this section 106 that lies at the root, at the basis of the order requiring a man to furnish security.

Mr. T. V. Seshagiri Ayyar: Then why differentiate? Put in the whole Penal Code.

The Honourable Dr. Mian Sir Muhammad Shafi: Let me illustrate my meaning. My Honourable friend has laid emphasis on the case of an ordinary conviction for being a member of unlawful assembly, or offences of a similar kind. Now, supposing a man has been convicted for being a member of an unlawful assembly. Six months after that he is again convicted for being a member of an unlawful assembly. Six months or a year after that he is again convicted of a similar offence. Now, the mere fact that he has been convicted of what my Honourable and learned friend supposes to be a very ordinary offence may or may not justify the passing of an order under this section. But, when a man has repeatedly been twice or thrice convicted of this simple offence, will not the Court then be satisfied that, in the interests of public tranquillity such a man is obviously a habitual offender, a man who is given to committing this so-called simple offence, and will then call upon him to furnish security. The section requires in express terms that the Court should be of opinion that it is *necessary* to require such person to execute a bond for keeping the peace. I, for one, have not the slightest hesitation in saying that, ordinarily, the courts of law will not consider it necessary to pass an order under this section unless by reason of the particular circumstances of the case before them they are satisfied of that necessity. Therefore, I submit that it is really beside the point to say that an offence described under a certain section is a simple one and ought not therefore to be included.

Rao Bahadur T. Rangachariar: May I draw the attention of the Honourable the Law Member to section 110 (e) which deals with a person who habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace. That section provides for that class of cases.

The Honourable Dr. Mian Sir Muhammad Shafi: I merely gave an instance; that is all.

Rao Bahadur C. S. Subrahmanayam: With regard to this amendment of section 145, I think my Honourable friend, Mr. Rangachariar, has got in his mind the use of the section in regard to political assemblies—that is, assemblies which are called by that name. But if he excludes those political assemblies, if he looks to the use of the section in cases not involving any political matters, probably he will think that the section is all right.

Now take the case of religious processions. There is a dispute in regard to certain religious processions, and a certain set of people are convicted of being members of an unlawful assembly on one occasion. It is well known that on a subsequent occasion the leaders or some of the men concerned in the first offence will repeat the same kind of offence. Now in such cases is it not well that such a section should be put into the Code.

Again take the case of the rights over immoveable property. On one occasion the obstructors may be charged for being members of an unlawful assembly. The trying Courts know full well that the offence will be repeated. It may be that these people who have violated the law sincerely feel that they have a right which has been disturbed. Whatever their feelings or convictions may be, the fact remains that if the Court is

convinced that these people will repeat the offence, is it not better in the interests of those people themselves that they should be told that action under this section will be taken in order to prevent them from doing it. The ordinary class of cases which this section will cover are not political matters but matters in which there is party feeling in regard to private or communal rights; and therefore the use of the section, which can only be made by superior Courts—that is, first class Magistrates and other superior Courts—is not I think likely to lead to any cases of misuse Therefore I say that if my Honourable friends will just for a moment forget such cases of the use of this section with regard to political assemblies and look to the application of it with regard to the ordinary affairs of the country, then I think there can be no doubt in their minds as to the need for this provision.

One word I would like to say here with regard to the use of this section against political assemblies. Every power, every authority which has got the upper hand uses its power to suppress contrary opinions of a political character—not only in this country but in other countries. You may attenuate this section as much as you like; they will find other sections for their purpose. You cannot prevent that by mutilating the general law of the country. You can prevent it by the exercise of such powers as you have in this Council and elsewhere; and therefore on that ground I should be sorry to see this section attenuated. After all, an unlawful assembly is a more serious thing than an offence committed by an individual. It involves a number of innocent men. Offences which comes under this section oftentimes involve innocent men. When innocent men are involved by the action of these obstinate lawbreakers, you cannot, in order to protect these innocent men, let the really guilty men, the prime movers in a disturbance, go scot-free. One of the consequences of this is that less guilty men, by joining or helping in the formation of such disturbance, also get into trouble. You cannot prevent this and I do not think they deserve to be protected from getting into the clutches of the criminal law. Therefore I strongly appeal to the House to consider the matter dispassionately, taking into consideration the general state of affairs of the country and not merely political matters.

(*An Honourable Member*: " I move that the question be now put ".)

The motion was adopted.

The question that section 145 of the Indian Penal Code be included among the exceptions was negatived.

Mr. Deputy President: The question is that section 149 of the Indian Penal Code be included among the exceptions.

Mr. K. B. L. Agnihotri: Sir, section 149 of the Indian Penal Code refers to persons in an unlawful assembly of which one member or some members are guilty of violence. It reads:

" If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who at the time of the committing of that offence is a member of the same assembly is guilty of that offence."

Sir, there is much force in what my friend, Mr. Subrahmanayam, has put before the House that if we keep aside the political side or political

[Mr. K. B. L. Agnihotri.]

assemblies from our consideration then the provisions for binding over persons convicted of being members of an unlawful assembly is often necessary and should be allowed to remain. But we have omitted section 158A on the same basis. It is in times of panic and excitement that such sections are found to be very harsh in their operation. It thus becomes necessary that we should exclude such sections from 106 and there is no possibility of any hampering of justice or cheating justice in any way or doing away with the principles of law and order if we delete these sections that I have enumerated in my amendment. Because if a man is found to be dangerous he is convicted; if he is found guilty of any of these offences he is convicted and he is convicted for a period which the Magistrate may think will be quite enough to give a cold douche to his rashness or indiscretion. Further, after his return from jail, if the Magistrate finds that this man has not improved he can certainly bind him over under section 107, and there is no necessity why section 106 be made to apply to the case of such persons. If after binding him over under section 107 it appears that the man is incorrigible he can certainly be proceeded against under section 110. So there are ample provisions to meet the justice of the case and law and order will not be disturbed in any way if we were to include such sections as 149 and 150 in the exceptions under this Act. With these words, Sir, I commend to the House my proposal that section 149 be deleted and included among the exceptions to the section.

The Honourable Sir Malcolm Hailey: Sir, I do not think it is necessary to argue this section.

5 P.M.

Mr. Deputy President: The question is that section 149 of the Indian Penal Code be included among the exceptions.

The motion was adopted.

Bhai Man Singh: Sir, I want section 150 to be included in the exception, but I do not press it.

The Honourable Sir Malcolm Hailey: If the Honourable Member presses this, we shall have a long discussion.

Bhai Man Singh: I do not press it myself.

Mr. K. B. L. Agnihotri: I do not press it myself.

Bhai Man Singh: Sir, 151 practically goes with 145.

Mr. K. B. L. Agnihotri: I do press for it, Sir, because section 151 says:

"Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace after such assembly has been lawfully commanded to disperse shall be punished, etc.,"

and there is no reason why section 151 should not be excluded, because it is exactly the same as the section that deals with the membership of an unlawful assembly. If an assembly has been declared to be unlawful by certain legal technologies some people who happen to be members of that assembly may continue in that assembly and will be punished. It will thus happen that innocent persons may be involved. How is it possible that such a man will repeat that offence if once convicted. Therefore I submit that 151 may be included in the exceptions.

The Honourable Sir Malcolm Hailey: When you put the motion to the House, Sir, Bhai Man Singh gracefully withdrew his amendment, while my friend Mr. Agnihotri in spite of cries of 'withdraw' from various parts of the House still maintains his claim.

Rao Bahadur T. Rangachariar: You are also willing to concede.

The Honourable Sir Malcolm Hailey: We argued the case of 145 at some length, and the House agreed that 145 ought to be maintained.

Rao Bahadur T. Rangachariar: We did wrong then.

The Honourable Sir Malcolm Hailey: If I consider that the House does wrong I do not permit myself to say so. But with regard to section 151 (which is very strongly analogous to section 145,) the House will see that it is necessary, in order to fall within the scope of the section, that a person should knowingly join or continue to join in an assembly likely to cause a disturbance and should stay on after such assembly has been commanded to disperse. There is therefore a double requirement which must be complied with before he becomes amenable. It is only reasonable, therefore, to conclude that a person who does take such action is a person who is likely to repeat it. We are indebted to Mr. Subrahmanayam for the recognition that we must not in connection with this section think purely of political offenders. We have seen many cases of assemblies which had no connection with politics, and which led to very violent results, rioting, arson and murder. They are common enough in districts addicted to violence; they are well known to Magistrates in charge of such districts, and the case of those concerned in them has to be considered by those who legislate for the maintenance of order and justice. I do not believe that anybody who really had at heart the general peace of our districts at large would care to deprive magistrates of preventive powers in such cases as these, and I shall appeal to the House to deal with this on exactly the same lines as 151; it would be entirely consistent to do so.

Bhai Man Singh: Sir, by way of personal explanation I might say that I am strongly in favour of bringing in 151 in the exceptions. Why I did not press my point was that, since my amendment regarding 145 was defeated, I thought that there was no use in pressing this now.

The Honourable Sir Malcolm Hailey: You are quite right. There is none.

Mr. Deputy President: The amendment moved is that section 151 be included among the exceptions.

The question is that that amendment be made.

The motion was negatived.

Bhai Man Singh: Section 153 refers to giving provocation with intent to cause a riot. A man might say or do something in a heated moment and a riot may be caused. He may be quite careless at a certain time—it is not so great an offence that anybody should be liable to be bound down. I do not wish to say anything more at this late hour.

The Honourable Sir Malcolm Hailey: Neither do I, Sir, as the Honourable Member has deplored.

Mr. Deputy President: The amendment moved is that section 153 be included among the exceptions.

The motion was negatived.

Bhai Man Singh: I move that section 154 should be included among the exceptions. I think the case for the inclusion of section 154 among the exceptions is perhaps the strongest. The offence consists of an owner or occupier of land not giving information of riots. One really fails to understand why a man who fails to give information, if he is convicted, as he can be under section 154, should be considered such an offender that he should be liable to be bound down for so many years to keep the peace or to be of good behaviour. I think it would be terrible for any body who does not come out to give information of a certain riot that has taken place. I own land at Ambala, supposing a riot takes place and I don't go out to give information, one really fails to see where the dangerous character in me is if I do not go out to give information, that I the poor fellow should not only be convicted under section 154 but should also be bound down for three years.

The Honourable Sir Malcolm Hailey: Sir, I have not interrupted the Honourable Member while arguing his case because I saw the argument gave him considerable pleasure. But he knew already from what I said before that we did not intend to dispute the inclusion of section 154 among the exceptions.

The motion was adopted.

Bhai Man Singh: Sir, I move that section 155 should be included among the exceptions. My arguments for 155, if not more weighty, are no less weighty than for section 154—which refers to the case of "a person for whose benefit or on whose behalf a riot takes place and who does not use all lawful means to prevent it." It is quite a different thing to judge a man's character while doing a certain act, or while abetting it, but it would simply be a very dangerous doctrine to extend these things and to call a man dangerous who does not use all lawful means to prevent it. All lawful means would mean a good deal. Supposing there is a very good man: there is a certain dispute about his land or something of the sort and certain people begin to fight. He says "don't fight for God's sake." He is not such a strong man that he should be able to go and actually stop them from fighting or to be able to go and take some other steps to stop the affray or the riot. I do not understand why he should be taken to be such a dangerous man that he should also be bound over for three years over and above being convicted under section 155.

The Honourable Sir Malcolm Hailey: The kind of case that is contemplated by this section is something as follows. There is a dispute about a land, and the landowner knows that a certain section of his retainers or it may be his tenants are likely to attack and cause a riot—a well known case of this kind caused a serious disturbance some time ago—and he does not take lawful means to prevent their doing so. Taking lawful means for preventing their doing so may frequently be merely the issue of an order that none of his servants should use violence. But he stands to gain by the result of the riot. He benefits by the act of his servants and he does not take lawful means to prevent it. Therefore, he does not discharge his obligations to the State or to the Society. (*An Honourable Member:* "If he is convicted?") If convicted, it is proved that he has so failed, and should be held to security. That is the class

of offences contemplated by this section; the House will see its effect more fully by reading the section itself than by merely referring to the schedule.

Mr. Deputy President: Amendment moved is:

"That section 155 of the Indian Penal Code be included among the exceptions."

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—27.

Agarwala, Lala Girdharilal.	Lakshmi Narayan Lal, Mr.
Agnihotri, Mr. K. B. L.	Man Singh, Bhai.
Ahmed, Mr. K.	Misra, Mr. B. N.
Ayyar, Mr. T. V. Seshagiri.	Nag, Mr. G. C.
Bajpai, Mr. S. P.	Nand Lal, Dr.
Basu, Mr. J. N.	Neogy, Mr. K. C.
Bhargava, Pandit J. L.	Ramayya Pantulu, Mr. J
Chaudhuri, Mr. J.	Rangachariar, Mr. T.
Gulab Singh, Sardar.	Reddi, Mr. M. K.
Hussanally, Mr. W. M.	Samarth, Mr. N. M.
Iswar Saran, Munshi.	Sircar, Mr. N. C.
Jamnadas Dwarkadas, Mr.	Venkatapatiraju, Mr. B.
Jatkar, Mr. B. H. R.	Vishindas, Mr. H.
Kamat, Mr. B. S.	

NOES—32.

Abdulla, Mr. S. M.	Holme, Mr. H. E.
Akram Hussain, Prince A. M. M.	Innes, the Honourable Mr. C. A.
Allen, Mr. B. C.	Ley, Mr. A. H.
Bagde, Mr. K. G.	Mitter, Mr. K. N.
Bradley-Birt, Mr. F. B.	Moncrieff Smith, Sir Henry.
Bray, Mr. Denys.	Mukherjee, Mr. J. N.
Burdon, Mr. E.	Percival, Mr. P. E.
Cabell, Mr. W. H. L.	Sen, Mr. N. K.
Chatterjee, Mr. A. C.	Shahab-ud-Din, Chaudhri.
Crookshank, Sir Sydney.	Singh, Mr. S. N.
Davies, Mr. R. W.	Stanyon, Col. Sir Henry.
Faridoonji, Mr. R.	Subrahmanayam, Mr. C. S.
Gajjan Singh, Sardar Bahadur.	Tonkinson, Mr. H.
Haigh, Mr. P. B.	Webb, Sir Montagu.
Hailey, the Honourable Sir Malcolm.	Willson, Mr. W. S. J.
Hindley, Mr. C. D. M.	Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. Deputy President: The question is that section 157 of the Indian Penal Code be included among the exceptions.

Bhai Man Singh: I do not press this, nor those relating to sections 158 and 159 of the same Code.

Mr. Deputy President: The question is that section 160 of the Indian Penal Code be included among the exceptions.

Bhai Man Singh: I would like to read out the definition of affray to my Honourable friends here.

Section 160 says:

"Whoever commits an affray shall be punished with imprisonment of either description for a term which may extend to one month or with fine which may extend to one hundred rupees or with both".

[Bhai Man Singh.]

Again section 159 says:

"When two or more persons by fighting in a public place disturb the public peace they are said to commit an affray."

This is such an ordinary thing, that every man at some time or other commits this offence and I do not see why such a serious aspect should be given to it and why should we take it as such a serious thing. It means that everybody in the world should be impotent and should have absolutely no spirit in him. My friend Dr. Nand Lal has pointed out that whereas the sentence is for one month the man can be bound over for three years. I think, Sir, you will see the strange position of law if you include this section within the purview of section 106.

The Honourable Sir Malcolm Hailey: If the remark regarding the universal tendency to indulge in assault had been made in Ireland, instead of in a peaceful Assembly like this, I could have understood it better. I should be sorry to think with Bhai Man Singh that everybody is liable to commit an affray at times. To turn to the law. Let me point out to him that section 106, as it now stands, contains these words "assault or other offence involving a breach of the peace." Now, it seems to me that if we retain in the preventive sections the words "assault or other offence involving a breach of the peace" we are equally entitled to retain in those sections the offence of affray. It is exactly the kind of person who, as Bhai Man Singh says, is liable to repent assaults or affrays that we desire should be bound over to keep the peace.

Mr. Deputy President: The question is:

"That section 160 of the Indian Penal Code be included among the exceptions."

The motion was negatived.

Mr. Deputy President: The question is:

"That in clause 16 (1) for the words and figures 'section 153 A' the following be substituted:

'Sections 143, 149, 153 A or 154'."

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 18th January, 1928.