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CONTENTS.

PAGES.

MONDAY, 15TH JANUARY, 1923—

Members Sworn	955
Statement laid on the Table	956—961
Questions and Answers	962—987
Unstarred Questions and Answers	987—1021
The Cotton Transport Bill	1021
The Cantonments (House-Accommodation) Bill	1021
The Indian Boilers Bill	1022
The Code of Criminal Procedure (Amendment) Bill	1022—1034
Governor General's Assent to Bills	1034
The Code of Criminal Procedure (Amendment) Bill	1034—1059

TUESDAY, 16TH JANUARY, 1923—

Questions and Answers	1061—1113
Unstarred Question and Answer	1113
The Indian Mines Bill	1113
The Indian Penal Code (Amendment) Bill	1113—1114
The Code of Criminal Procedure (Amendment) Bill	1114—1162

WEDNESDAY, 17TH JANUARY, 1923—

Questions and Answers	1163—1178
The Code of Criminal Procedure (Amendment) Bill	1179—1232

THURSDAY, 18TH JANUARY, 1923—

Questions and Answers	1233—1238
Unstarred Question and Answer	1238
The Code of Criminal Procedure (Amendment) Bill	1239—1286

SATURDAY, 20TH JANUARY, 1923—

Questions and Answers	1287—1293
Unstarred Questions and Answers	1293—1299
The Code of Criminal Procedure (Amendment) Bill	1300—1330

TUESDAY, 23RD JANUARY, 1923—

Statements laid on the Table	1331—1334
Questions and Answers	1335—1365
Unstarred Questions and Answers	1366—1368
The Indian Cotton Cess Bill	1369—1372
The Code of Criminal Procedure (Amendment) Bill	1372—1412

WEDNESDAY, 24TH JANUARY, 1923—

Policy of His Majesty's Government with reference to the Government of India Act	1413—1414
The Workmen's Compensation Bill	1415
Nickel Four-Anna and Eight-Anna Pieces	1415—1416
Resolution *re* Examination for the I. C. S.	1416—1442
Resolution *re* Scholarships to Indians for Research Works	1443—1453

PAGES.

WEDNESDAY, 24TH JANUARY, 1923—*contd.*

Resolution *re* Supply of Facilities to enable Members of Legislatures to discharge their Public Duties . . . . . . 1453—1457
Resolution *re* King's Commissions for Indians . . . . 1457—1468

THURSDAY, 25TH JANUARY, 1923—

Questions and Answers . . . . 1469—1471
Statement of Government Business . . . . 1471—1472
The Code of Criminal Procedure (Amendment) Bill . . . 1472—1489
Appointment of a Royal Commission on Indian Services . . 1489—1490
The Code of Criminal Procedure (Amendment) Bill . . . 1490—1524

FRIDAY, 26TH JANUARY, 1923—

Questions and Answers . . . . 1525—1542
Unstarred Question and Answer 1543
Motion for Adjournment . . . . 1543—1544
The Code of Criminal Procedure (Amendment) Bill . . . 1545—1581
Motion for Adjournment—Appointment of a Royal Commission on Civil Services . . . . 1581—1600

MONDAY, 29TH JANUARY, 1923—

Member Sworn 1602
Statement laid on the Table . . . . 1602—1604
Questions and Answers . . . . 1605—1612
Unstarred Questions and Answers . . . . 1612—1620
The Married Women's Property (Amendment) Bill . . . 1620
Statement of Business . . . . 1620—1621
The Indian Cotton Cess Bill . . . . 1621—1628
The Indian Boilers Bill . . . . 1628—1635
The Indian Mines Bill . . . . 1635—1652
Message from the Council of State 1653
The Indian Mines Bill . . . . 1653—1667

TUESDAY, 30TH JANUARY, 1923—

Statement of Government Business 1669
Message from the Governor General 1670
The Indian Mines Bill . . . . 1670—1690
The Cantonments (House-Accommodation) Bill . . . . 1691—1695
Postponement of General Election in Kenya 1695
The Cantonments (House-Accommodation) Bill . . . . 1696—1707
The Cotton Transport Bill . . . . 1707—1720

WEDNESDAY, 31ST JANUARY, 1923—

Message from the Governor General 1721
Gift of Books by Sir William Geary, Bart 1721
The Indian Naval Armament Bill 1722
The Code of Criminal Procedure (Amendment) Bill . . . 1722—1751
Message from the Council of State . . . . 1751—1752
The Indian Official Secrets Bill 1752
The Code of Criminal Procedure (Amendment) Bill . . . 1752—1767

LEGISLATIVE ASSEMBLY.

Thursday, 18th 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.

REPORT BY RAI RALLA RAM BAHADUR ON RAILWAY EMBANKMENTS AND FLOODS IN BENGAL.

185. ***Mr. J. Chaudhuri:** (*a*) Have the Government of India made any enquiries as to what extent the railway embankments were responsible for the disaster, caused by the Northern Bengal Flood in the Naogaon Sub-Division and the eastern portion of Bogra district on the 26th of September last? If so, have the Government of India received any report with regard to such enquiries? When will the Government be in a position to place the report on the table and publish it for general information?

(*b*) Was Rai Ralla Ram Bahadur deputed to make the enquiry? If so, when and on what terms? Was he not the officer responsible for the construction of the broad gauge line between Sara and Santahar and above?

(*c*) In deputing him to enquire, did the Railway Board take into consideration the fact that he was to pronounce judgment on his own work? Why did not the Board associate with him an independent expert railway engineer and an expert irrigation engineer to hold the enquiry and submit a joint report?

Mr. C. D. M. Hindley: (*a*) Enquiries have been made and a report received. It is hoped to publish it shortly.

(*b*) Rai Bahadur Ralla Ram was deputed to make the enquiry early in November 1922. The terms have not yet been finally settled.

Rai Bahadur Ralla Ram was Engineer-in-Chief of the Eastern Bengal Railway from 1918 to 1919 during which period work was in progress on the broad gauge line Sara to Santahar and above. This line was built alongside the meter gauge line which was built more than 40 years ago.

(*c*) All relevant facts were taken into consideration in deputing Rai Bahadur Ralla Ram to make the enquiry.

An independent expert Railway Engineer in the person of the Senior Government Inspector of Railways (Circle No. 2) and the Irrigation Officers of the Bengal Government were associated with him in holding the enquiry, but a joint report was not considered desirable.

A

BREACHES CAUSED BY FLOODS.

186. ***Mr. J. Chaudhuri:** Will the Government be pleased to state the length of the breaches in the permanent way on either side of the Adamdighi Station of the Santahar-Bogra line and at what cost the temporary diversions were made for restoring traffic along the line?

Mr. C. D. M. Hindley: The length of the breaches was 600 feet on the east and 1,320 feet on the west of Adamdighi Station.

Information regarding the cost of restoring traffic on the line referred to is not yet available.

Mr. J. Chaudhuri: Will the Honourable Member furnish the information when it is received,—will he ask for information as to the cost of making a temporary diversion on either side of the breaches?

Mr. C. D. M. Hindley: Do I understand that the Honourable Member wishes to know the cost of making temporary diversions to carry the traffic?

Mr. J. Chaudhuri: Yes, owing to the breaches. My point is that it is better to provide waterways than to incur expenditure for repairing breaches. Will the Honourable Member obtain the information?

Mr. C. D. M. Hindley: I can obtain the information later.

FLOOD WATER CHANNELS ON SARA-SIRAJGUNGE RAILWAY.

187. ***Mr. J. Chaudhuri:** (*a*) Are the Government aware that two very important monsoon flood-water-channels have been dammed since the construction of the Sara-Sirajgunge Railway between Dilpashar and Lahiri Mohanpur Stations and that the railway agents have been repeatedly petitioned by the agricultural population of the neighbourhood for the opening out of sufficient waterways and thus save their crops from being annually submerged?

(*b*) Will the Government enquire if the late President of the Railway Board remember that this fact was mentioned by me to him in 1921 as also that an adequate opening for free passage of flood water was urgently required at the 153rd mile of the Sara-Serajgunge Railway and he promised to enquire of the agents of that Railway and take steps for providing such water passage and will the Government be pleased to state what steps had been taken by the Railway Board and the Agents, in that connection?

Mr. C. D. M. Hindley: (*a*) Complaints and petitions regarding the insufficiency of waterways in the locality referred to have been brought to the notice of Government.

(*b*) Government have ascertained that the matter is as stated by the Honourable Member. The matter was brought to the notice of the Railway Administration and estimates called for. The original proposals are now being revised having regard to the floods of September 1922.

Mr. K. Ahmed: Who is responsible for these disastrous floods?

Mr. C. D. M. Hindley: In reply to that question, I can only ask the Honourable Member to await the report of Rai Bahadur Ralla Ram which will be published shortly.

WATERWAYS AND EMBANKMENTS ON SARA-SERAJGUNJ RAILWAY.

188. ***Mr. J. Chaudhuri**: Has Rai Ralla Ram Bahadur now recommended that opening should be provided where the Bamanjan river had been completely blocked by the high and massive railway embankment at the 153rd mile of the Sara-Serajgunj Railway and another important water passage blocked at the 154th mile?

Mr. C. D. M. Hindley: Rai Bahadur Ralla Ram has recommended one opening between mile 153 and mile 154.

BRIDGE OVER DILPASHAR RIVER, BENGAL.

189. ***Mr. J. Chaudhuri**: (*a*) Are the Government aware that the bridge over the Dilpashar river not being of sufficient height and width, the river develops such a strong current at the bridge during the monsoon that boats can not pass along it without grave danger and that it will appear from the local police report that many boats have been known to capsize there resulting in losses of life and cargo?

(*b*) Do the Government propose to make an enquiry with regard to this from the District Magistrate of Pabna and the Sub-Divisional Magistrate of Sirajgunge and take steps for remedying the defective construction of the bridge?

Mr. C. D. M. Hindley: (*a*) The attention of Government has been drawn to the alleged loss of boats and lives at the Dilpashar bridge which is mentioned in a pamphlet by the Honourable Member on the Bengal floods.

(*b*) The necessity for the inquiry suggested does not arise as a scheme for substituting larger spans at this bridge has already been approved.

APPOINTMENTS TO I. M. S.

190. ***Mr J. Chaudhuri**: (*a*) Will the Government be pleased to state whether the Secretary of State for India has consulted the Government of India with regard to the 30 appointments that he proposes to make in the Indian Medical Service? Have these appointments been made in England and, if so, on what principle have the selections been made?

(*b*) How many Indians were temporarily appointed by the Government of India to the Indian Medical Service, during the War and how many of them have been provided with permanent appointments and how many of them are still serving in the temporary capacity and how many have been demobilized?

(*c*) Have the claims of those who are still serving in the temporary ranks of the Indian Medical Service for being appointed permanently to at least half of the 30 appointments, been represented to the Secretary of State by the Government of India and if so, with what result?

(*d*) What is the total strength of the permanent staff of the Indian Medical Service at present and how many of these are Europeans and how many Indians?

Mr. E. Burdon: (*a*) and (*c*) The attention of the Honourable Member is invited to the reply given to question No. 81, recently asked by Rai Bahadur Bakshi Sohan Lal.

(*b*) The total number of Indians granted temporary commissions in the Indian Medical Service during the war was 1,004; of this number, 97 have been granted permanent commissions. The number still serving in a temporary capacity is 154, while the number of officers demobilised plus casualties is 753.

(*d*) The present strength of the Indian Medical Service is 709; of this number, 554 are Europeans and 155 Indians.

REVERSE COUNCIL BILLS.

191. ***Mr. J. Chaudhuri**: Have the Government of India made up the account of the losses that were incurred over the sale of the Reverse Council Bills? If so, will they be pleased to state the amount?

The Honourable Sir Basil Blackett: It has been calculated that the loss on the sale of Reverse Councils in 1920, *i.e.*, the difference between the number of rupees received in India and the cost at which the funds for meeting the Reverse Councils were remitted to England, amounts to between 28 and 29 crores of rupees. A Memorandum on Exchange gains and losses during the five years 1917-18 to 1921-22, inclusive is about to be published in response to a request which was made in the other House last year.

Mr. T. V. Seshagiri Ayyar: As regards the sales of Council Bills now being advertised, do the Government expect to profit out of these, or are they likely to have the same result as in 1920?

The Honourable Sir Basil Blackett: The question of profit and loss in exchange is rather a difficult one to answer questions about, when you have a rate for accounting purposes which is 2 shillings and a rate of something like 1*s*. 4*d*. obtaining in the market. There is obviously a theoretical loss as compared with the 2*s*. rate; on the other hand, at the present moment exchange is being sold at something over 1*s*. 4*d*. and there is obviously a gain as compared with 1*s*. 4*d*.

Mr. T. V. Seshagiri Ayyar: Why are Government advertising for the sale of Reverse Councils?

The Honourable Sir Basil Blackett: These are not Reverse Councils. They are Council Bills, and, as was publicly stated at the time, the sole purpose of the sale of Council Bills at the present moment is to put the Secretary of State in funds for the purpose of meeting Indian expenditure at Home, and it does not imply a decision for or against any particular policy.

Mr. Jamnadas Dwarkadas: What will be the effect of the sale of Council Bills on imports and exports?

The Honourable Sir Basil Blackett: That is certainly a question of opinion, but obviously what the sale of Councils at the present moment is doing is to pay for a certain number of exports.

Mr. J. Chaudhuri: Is it not the proper thing when exchange shows an upward tendency? It does not prejudice Indian finances?

The Honourable Sir Basil Blackett: I do not think that question really arises, but perhaps I may be allowed to express the opinion that it is

better, if you have to remit, to take advantage of the moment when exchange is there than to be forced to remit at a moment when exchange is not there.

INDIA'S WAR DUES.

192. ***Mr. J. Chaudhuri:** (*a*) What was India's total war dues from England at the close of the financial year 1919-1920 in rupees at the then current rate of exchange and how and when have the same been paid and how much has been credited to Indian revenue in all in equivalent of rupees? (*b*) What losses, if any, has India suffered owing to fall of exchange in respect of such war transactions?

The Honourable Sir Basil Blackett: (*a*) and (*b*) The amount due by the War Office to the Government of India (including expenditure incurred in England by the India Office on behalf of the War Office) at the end of 1919-20 was £715,316. This amount was repaid by the War Office in April, 1920. The outstanding amount was for March, 1920, when the rate of exchange was 2*s*. 9*d*. the rupee and at the time of payment the rate was 2*s*. 8*d*.

The claims against the War Office were converted at the rate of exchange current for the month or period in which the expenditure was incurred by the Government of India and there was therefore no loss on exchange on the transactions.

EXPENDITURE ON N.-W. FRONTIER EXPEDITIONS.

193. ***Mr. J. Chaudhuri:** Will the Government be pleased to state the total expenditure incurred in connection with Waziristan and other North-West Frontier expeditions from 1920 to the end of 1922?

Mr. E. Burdon: The total military expenditure incurred in connexion with the North-West Frontier and the occupation of Waziristan, including the Wana Column, during the years in question, was as follows:

	North-West Frontier expeditions.	Occupation of Waziristan and Wana column.
	Rs.	Rs.
1920-21	6,81,80,584	14,40,10,480
1921-22	8,76,544	6,92,79,139

The figures under North-West Frontier expeditions for 1920-21 represent arrear charges on account of the Afghan War and those for 1921-22 readjustments on account of the Afghan War.

Mr. K. Ahmed: Is it worth while spending such a huge amount of money considering that there is not much prospect of getting back the amount spent?

Mr. Deputy President: That is a matter of opinion.

Mr. J. Chaudhuri: Are these figures with which my Honourable friend has furnished me inclusive of the expenditure up to the end of December, 1922?

Mr. E. Burdon: No, those figures are not available yet.

OPERATIONS ON N. W. FRONTIER.

194. ***Mr. J. Chaudhuri:** (*a*) How many officers and men are now employed in active service in the North-West Frontier? (*b*) What is the strength of the aircraft and airmen in active service there? (*c*) Have the air operations resulted in any saving in military expenditure there? If so, to what extent?

Mr. E. Burdon: (*a*) and (*b*) It would not be in the public interest to furnish the information desired by the Honourable Member.

(*c*) In so far as the matter can be judged by present experience, it cannot be said that the air operations have yet effected a saving in military expenditure.

UNSTARRED QUESTION AND ANSWER.

NON-CO-OPERATION MOVEMENTS.

87. **Lala Girdharilal Agarwala:** (*a*) Are the Government aware that non-co-operation against the present system of government is being preached and practised extensively in India by a certain section of the people?

(*b*) If so, are the Government aware of the causes of the non-co-operation movement?

(*c*) Have any steps been taken or are they proposed to be taken to remove the causes which lead to the non-co-operation movement?

The Honourable Sir Malcolm Hailey: (*a*) I am aware that it is preached; I am not aware that it is extensively practised.

(*b*) and (*c*) The Honourable Member is referred to the White paper published in England and reproduced in the columns of the Press in India on 18th May, 1922. I cannot, within the limits of an answer to a question, enter upon an exposition of causes and policy.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, may I ask if anything can be done to improve the temperature of this room?

Mr. N. M. Samarth (Bombay: Nominated Non-Official): May I ask in what direction?

The Honourable Sir Malcolm Hailey (Home Member): Does the Honourable Member refer to the moral or physical temperature?

Mr. Deputy President: I take it that it is the Honourable Member's intention to draw the attention of the Department concerned to the temperature that prevails at present and to warm it up. (*Rao Bahadur T. Rangachariar*: Yes.) Well, I have received complaints from several Members with regard to this matter and I am sure the Department concerned will do the needful to meet the wishes of the Members.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. Deputy President: 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 move that:

"At the end of sub-clause (*i*) of clause 16 the following be added:

'for the words 'three years' the words 'one year' shall be substituted'."

Section 106 comes under the Chapter for the prevention of offences. Under that section, if a Magistrate is of opinion that it is necessary to require some person to execute a bond for keeping the peace, the Court may call upon such person to execute a bond to be of good behaviour for a period not exceeding three years. So far as I have been able to find out, Sir, before the amending Act of 1898 the period specified under this section was only one year and it was changed to three years in the amended Code. In section 107, which is also a preventive provision the period fixed for a bond to prevent a breach of the peace is only one year. Similarly in section 108, also a preventive section, the period is fixed at one year. It is only under section 106 that somehow or other the period has been fixed at three years. Under sections 107 and 108 when a breach of the peace is apprehended a man can be bound over for one year. But under this section after a man is convicted of a breach of the peace, he is, in addition to that, asked to execute a bond. Under this section he has therefore to suffer two penalties instead of one, as is provided in sections 107 and 108. Moreover the punishment for the offences specified under section 106, may even extend up to seven years. Under these circumstances I submit that a period of three years in section 106 is rather excessive. It should ordinarily be fixed at one year, and if at the expiry of that period the man has not improved, then action may be taken against him under section 107 or 108. It is not necessary that at the very moment of conviction for an offence a man should be made to suffer the additional penalty of being bound over for three years. I therefore commend to the House that the period of three years provided under section 106 is excessive and unnecessary, and in its place a period of one year be prescribed.

The Honourable Sir Malcolm Hailey (Home Member): The Honourable Member is I think inaccurate in his history of the case. If I understood him correctly, he said that, until the revision of 1898, the period had only been one year. I find, however, that in 1861 the period was one year if the order was passed by a Magistrate and three years if the order had been passed by a Court of Session. Subsequent Codes, for instance the Code of 1882, give three years when passed by a Magistrate. The provision, therefore, has stood for a considerable period of time.

Now, I do not wish to lay too much stress on the mere length of time during which this provision has stood in our Code. I think it can be defended on its merits. The Honourable Member says that, since under section 107 one year is sufficient, the period of three years under this section is, to use his own words, "rather excessive." I note that on this occasion he is milder in his condemnation of the preventive sections of our laws than he has sometimes shown himself, and he is obviously not fully convinced of the injustice of providing this period of security. But what

[Sir Malcolm Hailey.]
are the facts? Under section 106 a man must already have been convicted of an offence and it must be an offence, as we saw yesterday, of a nature which argues in itself that he is likely to repeat an action which will lead to a breach of the peace or other disorder. Now, there may be parts of the country where people generally are of so peaceable a disposition that violent breaches of the peace, at all events on a concerted scale, are not common. But those who know Northern India will bear me out when I say that there are areas where vendettas live long with its baleful history of crime, there are places where a village quarrel once begun involves not only long litigation but a long history of violence. Is it unreasonable, therefore, that, when people have been convicted of rioting or one of the graver offences which we left yesterday in the section, that the Magistrate should say "There is every reason to believe that these people will continue in their career of violence. It is no use my binding them to keep the peace for twelve months. There will be no really preventive or deterrent effect unless I am able to bind them over to keep the peace for three years." That is not an unreasonable requirement in itself. But there is another side to the question. When the Magistrate has a case of this kind before him he is himself able to temper punitive justice. He can give a shorter period of imprisonment if he knows that by a due use of this salutary section he will secure a longer period of keeping the peace; and this constitutes the substantive reason why it is necessary and advisable to provide for so long a period as three years. I do not remember that we have received suggestions elsewhere for curtailing this period. As I have said, it has stood long. I would put this consideration to the House that, if the public generally, if legal associations generally, if the High Courts, in commenting on the provisions of our amending Code, have found nothing seriously at fault with a provision of this nature, it is inadvisable here and now to upset it on what seems to me at all events *a priori* considerations and on— and I do not wish to use too harsh a word— the somewhat vague considerations put forward by the Honourable Member.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, I am afraid I must join issue with the Honourable the Home Member with reference to the last portion of his remarks. We are here, Sir, as representatives of the people and we cannot delegate our functions to other persons however highly placed they may be. We are here to see that legislation is properly enacted. The mere fact that other persons have not noticed the hardship of a particular legislative provision is no ground for us to refuse to consider that question on its merits. Sir, let us consider this question on its merits. I am really surprised that the Government should take this attitude on a matter like this. Here we have yesterday included offences which ought not to have been included under this section. The Honourable the Home Member told us to-day that we have taken care only to include offences which involve a likelihood of a repetition of a breach of the peace. I doubt whether we have done so at all. If two women quarrel in a bazar, that is a common affray. If we, for instance, go to a railway station and have hot words with the railway or the ticket clerk, that is an affray. It is a public place. And, for instance, if some of us lose our temper here and exchange hot words, as may not be unlikely, that is also an affray. For all these things you can give one month's simple imprisonment or even let off with a fine of Rs. 5. But the section says you may be called upon to give security for a period not exceeding three years.

The Honourable Sir Malcolm Hailey: Will the Honourable Member kindly read the definition of "affray."

Rao Bahadur T. Rangachariar: I will gladly be corrected if I am wrong, but I do not think I have overdrawn or underdrawn the picture.

The Honourable Sir Malcolm Hailey: But read it.

Rao Bahadur T. Rangachariar: Anyway, in simple offences for which a man may merely get a fine you still give the power to a Magistrate to bind him over for keeping the peace for three years. Look at the hardship of it; look at the difficulties of getting sureties. After all you have to get sureties to stand for you and they have to be watching your movements for three years. It will be a considerable hardship on people to produce those sureties. What is the necessity for giving such long periods, as if the man will not improve within the year. It is merely keeping a sort of machinery *in terrorem* over his head. Look at the moral effect it has upon the man. You do not give him a *locus poenitentiae* and you keep him as a suspected citizen and make him more and more troublesome to the country. I do not think it is at all right that this sword should be kept hanging over a man's head for such a long period. One year is a reasonably long period and I do not see that there should be any objection to reducing it. I do not understand what is the logic of it. As we all know this period commences after he comes out of prison. First of all he is sentenced to imprisonment for the offence and there he is safe away, it may be for one year, for two years or for three years, as the case may be. Having been in jail, he comes out and then security is to commence from that date for two years or three years after the date of his release from jail. You do not give him a chance to improve; on the other hand, you make a worse citizen of him than he would ordinarily be.

Therefore, considering it from all points of view, I submit that the amendment moved is a modest one and I commend it to the House.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, the Honourable Member declined the invitation of the Honourable the Leader of the House to read the definition of an affray.

Rao Bahadur T. Rangachariar: I have not got it with me, otherwise I would have done so.

Mr. H. Tonkinson: So I propose to do so now. Section 159 of the Indian Penal Code reads as follows:

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

I would only invite the attention of the House to the fact that section 106 has always included assault. It has also always included offences involving a breach of the peace. Sir, if two or more persons disturb the public peace by fighting in a public place, surely that is an offence involving a breach of the peace. The section in question has always been included within the purview of section 106 and could not have been excluded having regard to the words which follow in section 106 as it will be when amended by the Bill.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): What do you mean by "disturbing the public peace" when two people quarrel in the street.

Mr. H. Tonkinson: Those are the words, Sir, in the Code.

Mr. T. V. Seshagiri Ayyar: True, but you can disturb the public peace by words.

The Honourable Sir Malcolm Hailey: You certainly cannot commit an affray.

Mr. H. Tonkinson: " By fighting in a public place " are the words in the section.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, I think there is some misapprehension with regard to the scope of this clause to which exception is taken by the Honourable Mover of the amendment and those who sustain it. The arguments that they have advanced in support of the amendment appear to me to proceed upon this basis, that in every case a man is to be bound down for three years. It is nothing of the kind. That period is merely a maximum giving power to a Magistrate in an extreme case to pass the maximum sentence. The actual term which is to be fixed for each particular case must necessarily be left to the discretion of the tribunal called upon to make the order. A celebrated lawyer of England once said that the wisest rule that the brain of man can devise can be reduced to an absurdity by putting up an extreme case. I readily admit that if upon a first conviction for a simple affray in the street or at a railway station a Magistrate were to convict the parties, fine them Rs. 10 each and then bind them down for three years, the order would be an absurdity. But I will take the very illustration which my extremely able friend, Mr. Rangachariar (if I may so speak of him) took, that of an affray caused by the action of a railway official at a railway station. Now I take it that my friend has come from time to time to Delhi. Let us suppose that on the platform there is a ticket-collector, an Irishman, with an uncontrollable temper. We will take it that his rudeness leads to an affray which comes before a Court and for which he is punished during one session of this Assembly. At the next session he repeats his rudeness to my friend again, and again brings about an affray. On this occasion the Magistrate says " It is not enough to fine you. You are evidently a man who has not got much control over himself and therefore I will bind you down to keep the peace for a year. " Notwithstanding that, at the next session the whole thing is repeated once more. Surely, in a case like that, though it is only an affray, the whole of the public will call upon the Magistrate to tie down that man for three years so that the public may have peace for that time at least. That is a case of a simple affray where the wise discretion of the magisterial power would be able to meet the case to the satisfaction of all people. This is only an enabling term to meet all possible cases. It is in one case of affray probably out of a hundred in which any Magistrate would resort to these powers at all; and it is certainly not more than one case out of five hundred in which he would be impelled by his sense of justice to fix anything like the maximum period. Therefore I say that we are not condemning all offenders to a three-year bondage. We are merely giving a Magistrate a maximum power which would be rightly exercised by him in a case which was extreme. Therefore unless it can be shown that granting this power to the Magistrate has been the cause of abuse or undue persecution or injustice in the past, we ought not in this work of amendment to interfere with an old standing rule.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, the amendment has been based on a number of grounds—as for instance, that the preventive section 107 of the Criminal Procedure Code only fixes one year, that in the case of a man who has already been convicted, section 106 will be applied simply to prevent him from committing the same offence again, and that in the present Criminal Procedure Code we have only this session introduced also Chapter VIII of the Indian Penal Code, therefore the period of three years seems to be very excessive. To my mind, none of these grounds has categorically been refuted. Now the grounds which have been advanced in opposition to this amendment are that the law relating to three years has stood the test of many years, that it is simply a period which will hardly be used in practice in respect of petty cases, and that it is a maximum period which in all cases probably will not be resorted to. These are the grounds which have, as already submitted, been advanced in opposition to this amendment. Now we have got to examine these grounds. After having compared them I feel constrained to arrive at this conclusion, that the contentions, raised on behalf of the Government, have no force.

Now, great emphasis has been laid on the interpretation of sections 159 and 160, Indian Penal Code. When I read the provisions of section 159 the words which I think have got greater applicability are the words "disturb the public peace." But when we come to the provisions of section 107, Criminal Procedure Code, the words are "likely to commit a breach of the public peace." Now the Honourable the Home Member will readily accede to my contention that there is a great difference between these two forms of wordings "To commit a breach of the public peace" and "to disturb the public peace." These two different expressions have got quite different meanings. I think he will agree with me when I raise this point that to disturb the public peace is of a very mild character, and if he concedes that, then he will, I believe, concede so far as the mitigation of the period also goes. Now, Sir, at the time of framing any rule or making any rule of law, three things ought to be taken into consideration very seriously; one the propriety of that rule of law; and the propriety of that rule of law is to be judged with reference to the circumstances or with reference to the data which formulates the grounds and reasons for framing that law. Now, in the present Code, as I have already submitted, section 160 of Indian Penal Code has also been incorporated; and what is the punishment? The punishment, you will be glad to see, is one month or fine. Now a man is punished to undergo one month's imprisonment or sentenced to pay a fine of Rs. 5; but when he gets released from jail then he may be bound over for three years. Is there any propriety in this? The fine is five or ten rupees, or the imprisonment is for one month; but after his release from jail he may be bound over for three years. (*Cries of* "Why?") It is quite true the words are "may be"; of course I cannot ignore the words "may be." But the first class Magistrate can pass that order; there is no law that prevents him from passing that order. He has got the competency to do that. If he is competent to pass that order, there will be no clog in his way to do so. I do not mean to say that the Magistrate shall; he may; therefore, there is yet no propriety, and I think the Government Benches will be well advised if they will accept this amendment. The second point which I wish to urge is, that in most cases severity of sentence produces a great amount of sympathy for the man who has been punished. So if this provision, relating to the period of three years, is incorporated in the present Criminal Procedure Code it is sure to invite criticism in

[Dr. Nand Lal.]
some quarters and there will be great sympathy with the man who has been bound over for three years and that sympathy will go against the proposed provision of this section, under discussion, namely, 106, Criminal Procedure Code. Therefore on that score also I appeal to the Government Benches that they will very kindly accede to this contention which has been raised by the Honourable Mover of the amendment, that the period may be reduced to one year.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): Sir, I am afraid I cannot agree with the proposal that the period of three years be reduced to one year. As a Magistrate of some experience, more especially in the outlying parts of Sind and the Upper Sind frontier district, where there are almost perpetual feuds between some sections of the community which begin with very small beginnings but go on for a number of years, sometimes even up to 20 years, I have found that revenge has been taken not only by the sons of the people originally involved, but even by their grandsons; and disputes lead to very serious results in the course of time, even to murders and bloodshed. In such cases it is necessary that such breaches of the peace should be nipped in the bud by binding down people for a much longer period than one year if the peace of the country is to be maintained. At the same time I admit that the period of three years looks rather a long period, more especially as I believe this order is not appealable—I am speaking subject to correction—but at this present moment I do not remember that this order is appealable. . . .

The Honourable Sir Malcolm Hailey: Yes.

Mr. W. M. Hussanally: I think it can only be revised but not appealed against. . . .

Mr. H. Tonkinson: Subject to the provisions of sections 411 to 418 of the Code any person convicted has a right of appeal.

Mr. W. M. Hussanally: Not against the order of being bound down. On that point I am not sure at the present moment; but my impression still is that the conviction can be appealed against but not the order binding him over for a particular period. But whatever that may be, I think it will be a fair compromise if the period of two years is put down. If that is approved by the Government as well as by my friends on the other side, and if I am allowed to move that amendment I shall do so with pleasure.

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, I trust the House will not allow themselves to be led away by the arguments that have been used by Mr. Rangachariar and Dr. Nand Lal. Both these speakers have argued their whole case by choosing an extreme proposition and it is the more remarkable that they should have done so—at all events that Dr. Nand Lal should have done so—after the very careful exposition of the matter which the Honourable the Home Member has given. Now, do any Members of this House really seriously believe that any magistrate is likely to bind over for a period of three years a person who is convicted for the first time of a petty assault or an affray at a railway station? Honourable Members know perfectly well that such a thing is most unlikely to happen, and that if it did happen, there are superior Courts which could certainly deal with the case. It can be dealt with on appeal or, quite apart from

the question of appeal, there are such authorities as District Magistrates and Sessions Judges who would call for the papers in such cases and upset an absurd order of that character; and in the last resort there is the High Court. Those Honourable Members who ask us to amend the clause in order to provide against an absurdity of this sort really ask us to alter the Code so that the magistrate should not have the power to bind over for three years, even though in serious cases they do require it. We have heard from the last speaker from his own experience that small beginnings may develop into very serious matters that may call for a long period of restraint by means of a bond; and if the House is going to yield to these arguments it means that the magistracy will be deprived of a power which they now possess of maintaining the public peace. There is one further point which was referred to by the Honourable the Home Member which I should like further to emphasise. And that is, the fact that the provisions of this section empower a Magistrate to give a small substantive sentence because he knows that he can keep the peace for a further period merely by the imposition of a bond. I have no doubt that many Honourable Members have studied the recent Report of the Committee which was appointed to investigate Prison Administration, and one of the points which they have dealt with at great length is the necessity for some provision in the law which will make it possible to keep offenders under supervision without condemning them to undergo actual detention. This is one of the sections in our existing law which makes that possible and I have no doubt that every Member of this House, who is also a Magistrate, must on several occasions have had an opportunity of making use of this section to enable him to inflict a smaller substantive sentence.

Finally, there is just one point which I should like to refer to in Mr. Rangachariar's speech. He inquired, where was the logic for giving a First Class Magistrate power to bind over a man to keep the peace for three years when he can only impose a substantive sentence of two. Well, I confess this is a mathematical argument which I find it rather hard to follow. If it is going to be carried to its logical conclusion, we ought to give a Sessions Judge power to bind over a man for 7 or 10 years or 20 years or even for life. I do not really think that it is an argument on which any stress can be laid. I would again appeal to Members of this House to realise that if simply on account of the bad cases, the imaginary bad cases, that have been put up before them, they are going to alter the law, they will be causing a serious defect in the Code and I would add that if it had been the intention of Honourable Members who support this amendment really to do away with the possibility of Magistrates requiring a bond for a long period in petty cases such as an affray, the proper means to adopt would have been to move a separate amendment bringing cases of that kind under a separate regulation, and not to impair the power which the law gives to Magistrates to deal properly with really grave cases.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): I move, Sir, that the question be now put.

Sir Montagu Webb (Bombay: European): I move, Sir, that the question be now put.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir, I have also given notice of the same. I think if the fate of this amendment is decided I shall not have a chance of speaking. . . . .

Mr. Deputy President: I shall give the Honourable Member an opportunity to move his amendment at the proper time if he likes.

Mr. B. N. Misra: Sir, the amendment is the same.

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

The motion was adopted.

Mr. Deputy President: The amendment moved is:

"That at the end of sub-clause (*i*) of clause 16, add the following:

'for the words 'three years' the words 'one year' shall be substituted'."

The motion was negatived.

Mr. Deputy President (to Mr. B. N. Misra): Does the Honourable Member wish to move his amendment?

Mr. B. N. Misra: That is why I was appealing to you to give me an opportunity to speak on my amendment.

Mr. Deputy President: I am told it drops out. It cannot be moved.

Mr. K. B. L. Agnihotri: Sir, I do not wish to press my second amendment* contained in item No. 36.

Mr. Deputy President: The question is that clause 16, as amended, stand part of the Bill.

The motion was adopted.

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

"Renumber clause 17 as 17 (*iii*) and before sub-clause (*iii*) insert the following sub-clause:

'(*i*) in sub-section (1) of section 107 of the said Code for the word 'informed' the words 'satisfied on information and on taking such evidence if any, as is adduced' shall be substituted and the words 'by wrongful act' shall be inserted after the word 'person'."

Mr. Deputy President: May I draw the Honourable Member's attention that he might deal with the first part only?

Mr. K. B. L. Agnihotri: Yes, Sir. I wish to take the first part only. Here I think I am on surer grounds according to the Honourable the Home Member because the word 'informed' has been found to be very contentious and there have been many rulings by High Courts as to what the word 'informed' should mean. It is desirable therefore that the meaning of this word be made more clear when we are now amending section 107. I therefore propose, Sir, that for the word 'informed' the words 'satisfied on information and on taking such evidence if any, as is adduced' be substituted. Under the law as it stands, the Magistrate has no other alternative but to proceed against any person under section 107 the moment he receives an information as to the likelihood of his committing a breach of the peace. Of course, the High Courts have been vested with large powers to give proper interpretation to the words used, but the law as laid down in that section is not clear. It is therefore with a view to avoid the difficulties that have been felt by Magistrates that

* "In clause 16 omit sub-clause (*ii*)."

the meaning of this word be made clear. In certain provinces circulars have been issued asking the police officers not to put up such cases until the District Superintendent of Police permits them to do so. All these difficulties could be overcome if we were to put in, in clear language the exact meaning of this word in the way I have suggested. It is also necessary that the Magistrates should not proceed on the mere information of a police officer but they should require some evidence to support the allegations on the report of the police officer. It is just possible that in emergent cases it may not be convenient to produce witnesses before the Magistrate to support the police report, but in practice we find that the police officers generally put up cases where they have received a number of complaints to that effect. At the same time, during the period necessary for referring the matter to higher officers and for obtaining permission the necessary evidence could be secured for production before the Magistrates. I therefore submit, Sir, that it is necessary in the interest of justice and to safeguard the interests of the people that the courts should be satisfied on any information and on taking such evidence as is adduced, before they issue any such process as provided in section 107. With these words, Sir, I commend my amendment for the acceptance of this House.

Mr. Deputy President: The amendment proposed is:

"Renumber clause 17 as 17 (*iii*) and before sub-clause (*iii*) insert the following sub-clause:

'(*i*) in sub-section (1) of section 107 of the said Code for the word 'informed' the words 'satisfied on information and on taking such evidence if any, as is adduced' shall be substituted and the words 'by his wrong act' shall be inserted after the word 'person'."

Mr. K. B. L. Agnihotri: I have dealt only with the first portion of the amendment, Sir.

Rao Bahadur T. Rangachariar: Sir, may I be permitted to move a small amendment to this amendment of Mr. Agnihotri's? I am sure my Honourable friend will also accept it. I would move:

12 Noon.

"That the words 'or evidence' be substituted for the words 'and on taking such evidence, if any, as is adduced."

I may explain, Sir, what I mean by it. Having regard to the nature of the case the Magistrate has to take action in order to prevent a breach of the peace. He either acts on information or on evidence. The information will be in the shape of police reports, I take it. It is clear, as the section now runs, he is merely informed. I want him to take some responsibility before he takes action. I am quite prepared to trust the magistracy of this country, as the Honourable Mr. Haigh would ask us to do, but there are Magistrates and Magistrates. I know a Magistrate who, if Rangachariar travelled from Howrah to Madras and the Magistrate on the way at Waltair receives information that Rangachariar is going to deliver a speech at Madras, he takes action at Waltair station under section 107. When I am in the train I am arrested, taking action on some information from the Howrah police or some telegram or other, and I am detained at Waltair to prevent me from giving a speech at Madras. Will the Honourable Mr. Haigh believe that such things happen? They do happen. They have happened. There are Magistrates and Magistrates. Would the Honourable Member believe that 107 is used for all sorts of purposes? If I go and stop outside a toddy shop and preach to

[Rao Bahadur T. Rangachariar.]

my friends "don't drink," the contractor says "Rangachariar is going to commit a breach of the peace by preaching 'don't drink.'" The contractor, of course, gives information, the Magistrate is satisfied. His revenue suffers, Ministers suffer for want of money to carry on their development programme and the Government suffer for want of revenue. Now, here comes the Magistrate and says "use 107." Would any Magistrate in England dream of taking such a step? Here we have had Magistrates who have done it. It is on the mere colour of information of this sort that action has been taken under section 107 in various matters when, if public opinion were really strong, if the Honourable Sir Montagu Webb and others would join hands with us in such matters, Magistrates would be taught a better sense of their duty. And what action has been taken when this matter was brought to the notice time and again of the Government authorities? This matter of the arrest at Waltair by abuse of this section was brought to the notice of the Home Member in this House by me twice or thrice. Well, what action has been taken against the Magistrate? Did the Legislature ever contemplate the use of this section in such a way that a man travelling between Howrah and Madras, not being a resident of Waltair, should be detained at Waltair and bound over? Was this section ever contemplated to be used in that manner? What do the Government authorities do to deal with the Magistrate? If at least those who control the action of the magistracy take steps to punish such cases, then we can have full confidence in them. But on the other hand, they get M. B. E.'s and O. B. E.'s and promotion. Sir, it is because of this—not that we want to distrust Magistrates, not that we want the public peace broken, but, Sir, we have had bitter, sad experience of the way in which this section has been used, abused, misused. That is why we want to put in some safeguards so that the magistracy cannot take action like this. A Magistrate is informed by telegram. What is the responsibility he takes? Is he satisfied? Should he not be satisfied on the information? Therefore, I ask that the Legislature should throw some responsibility on the Magistrate by the language of the section itself. Therefore, he should be satisfied "on information or evidence." That would make him pause and hesitate and that action would be open to revision by the higher authorities; but mere information—he will simply take shelter under this section and say "I was informed. I did not care to investigate whether it was credible information or not." He is not even told that it must be credible information, as we have in the case of the police when they have to arrest. If he is informed merely, he can take action under section 107. I think, Sir, that it ought not be left like that. At the same time, I cannot agree with my Honourable friend, Mr. Agnihotri, that you should make it compulsory on the Magistrate to take evidence in all cases. That is why I make it "or." I should very much like to make it "and" but I think it would be putting fetters on the Magistrate, because he may take action on police reports. Then you have some inquiry afterwards. As my Honourable friend knows, the first thing is that a notice is issued under section 112, then evidence is taken, in the presence of both parties. It is far better too that evidence is not taken before because you will be tying down witnesses beforehand. If you compel a Magistrate to take evidence beforehand, namely, in the absence of the parties, you run the risk of getting the witnesses committed beforehand, even before the accused has had an opportunity of cross-examining those witnesses. Therefore, there is that risk if you compel evidence to be taken beforehand. So

that you will be reduplicating work by insisting on evidence being taken beforehand and you will be throwing additional risk in the way of the accused. But at the same time I ask that the Magistrate should be held responsible for action taken under 107, and I therefore hope that my friend, Mr. Agnihotri, will accept it and I hope the House will also accept my amendment. If Honourable Members will turn to section 96 of the Code. Section 96 or 87, where action somewhat similar has to be taken by Magistrates, section 87, which deals with a "proclamation for the appearance of a person against whom a warrant has been issued," also says "if the Court has reason to believe (whether after taking evidence or not)" So also in section 96 "Where any Court has reason to believe, etc."

It will be more satisfactory than the present state of things, and therefore I commend my amendment to the House.

Mr. Deputy President: Further amendment moved:

"That the words 'or evidence' be substituted for the words 'and on taking such evidence, if any, as is adduced."

Sir Henry Moncrieff Smith (Secretary: Legislative Department): Sir, my Honourable and learned friend, Mr. Rangachariar, has in his concluding remarks very ably disposed of the substance of that portion of Mr. Agnihotri's amendment by which he would require evidence to be taken in every case. Mr. Agnihotri indeed based his argument for the amendment on the ground that High Courts had found great difficulties with regard to section 107 which necessitated an immediate amendment of this word "informed" I have looked at the rulings. I know there are numerous rulings on the subject of section 107. But as far as I can see, the difficulties have not arisen from the use of the word "informed" merely. At all events numerous difficulties have not arisen with regard to that word. Mr. Rangachariar has moved an amendment to Mr. Agnihotri's amendment which would have the effect of substituting for the word "informed" the words "satisfied on information or evidence". He has given us his own experience in Madras. (*An Honourable Member*: "Not his own.") Mr. Rangachariar deceived me, because I understood him to say that the Magistrate fearing that Mr. Rangachariar was going to deliver a speech at Madras had him arrested at Waltair. (*An Honourable Member*: "Not he, but his friend.") Mr. Rangachariar's friend had an unfortunate experience, and I am sure every Member of this House sympathises with him. But the amendment which Mr. Rangachariar proposes would make no difference whatever in the case of his friend. Mr. Rangachariar has overlooked the fact that the Magistrate who took his friend out of the train at Waltair and arrested him was not acting under section 107, sub-section (1) which we are now considering, but was acting under section 107, sub-section (3). Now, under sub-section (3), on this particular point at all events, we have no amendment before us. The wording of section 107 (3) is different. It is "When any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace, etc." Here we have "has reason to believe". It is not merely information, but "has reason to believe." It is perhaps a little less strong than "satisfied", but nevertheless it was not merely information that the Magistrate in Madras could have acted on. He must have had reason to believe. Otherwise his order was not justified. Therefore, this pitiable picture which Mr. Rangachariar has drawn should, I think, be dismissed by Members of this House from their minds at once,

[Sir Henry Moncrieff Smith.]

because it is entirely irrelevant to the matter which is now before us. Let us confine ourselves to section 107 (1), that is, a Magistrate on the spot who is taking action against the man on the spot, not a Magistrate sending a telegram to some one in another District to take action. All the arguments that have been used in favour of this amendement have for some unknown reason—I do not know what it is—assumed that action under section 107 is always taken by a Magistrate at the request of the police—on a police report. Well, my experience is—I have been a Magistrate for a considerable number of years myself and there are many others in this House who have been Magistrates too for long periods—that action under section 107 generally follows an application made to the Magistrate, and in that case, there is nothing whatever to prevent the Magistrate calling for additional evidence. Therefore, from that point of view, the addition of the words "or evidence" does not carry us any further. Mr. Rangachariar leaves it still to the discretion of the Magistrate as to whether he will call for additional evidence or not. The Magistrate always has that discretion. We do not want to provide for the taking of evidence in this case because there is always the power to call for evidence if the Magistrate wishes to get further information.

Now, we are left with the difference between "is informed" as we have it in the Bill and "is satisfied on information" as the movers of these two amendments would have it. I think perhaps that Mr. Rangachariar has been a little inclined to overlook what section 107, sub-section (1), is and to what it is leading. The Magistrate is informed that a person is likely to commit a breach of the peace. He just issues a summons for the man to appear and show cause why an order should not be made against him to keep the peace. Under 107 (1) the Magistrate does not issue an order to the man at once to give security. It is merely a summons to come before him and show cause why an order should not be made. That is a very different thing indeed. They are two very different propositions. If the Magistrate was going to issue an order under the first sub-section to any person at once to find security to keep the peace, well then I quite agree that the words "is informed" are nothing like strong enough. But what happens? Let us take the case of an ordinary complaint to a Magistrate that an offence is actually being committed. In 95 cases out of 100 what does the Magistrate do when such a complaint is made before him? He examines the complainant. He has got to do that. But he does no more. He makes no further inquiry. Out goes the summons and the accused has got to appear before him. That being the case, is there any reason why, in this which is the preliminary corresponding step to the presentation of a complaint of an offence before a Magistrate, the Magistrate should require anything more than information where he has indeed the power to call for evidence if he wants to? I do not think, Sir, there is really very much more to be said on this matter. The case has been misrepresented by Mr. Rangachariar. The difficult case which he placed before us arose, not under sub-section (1) which we are now dealing with, but under sub-section (3). The Magistrate has power to issue a summons on a mere complaint in writing. Why should he not have equal power when information is given to him to issue a summons requiring a man to appear and show cause? That is what happens in every criminal case based on complaint or information.

Rai Debi Charan Barua Bahadur (Assam Valley: Non-Muhammadan): In my humble opinion, the Honourable Mover of this amendment has

rightly hit upon the flaw in the law as it stands at present. We are chiefly concerned with the source from which the information has emanated. Now, as the law stands at present, the Magistrate is simply concerned with the information and is not concerned with the source from which it has emanated. The source may be a man of immature understanding, or even a lunatic. The present law does not make any difference whatsoever whether the information comes from a person who is a deliberate liar or a person who is of immature understanding or a lunatic. So, it is quite necessary that, before action is taken, before the machinery of criminal law is moved, the Magistrate should be satisfied. Without his satisfaction no steps should be taken in the matter. A man should not be disturbed, he may have many callings to attend to, and in the midst of those callings he should not be disturbed. The man moved against may have many enemies. Those enemies very often find it convenient to move the Courts from time to time against him. So, to make a safeguard against all these things it is very proper that the Magistrate should not only be informed but he should be satisfied by some sort of inquiry, whether private or public, or by taking any evidence whether *in camera* or in the open Court. It makes no difference, but he ought to be satisfied. There ought to be some person who should be responsible for the issuing of the summons or warrant, and he should also be responsible for the inconvenience suffered by the man to be brought before the Court. So, considering these circumstances, it is quite proper that the amendment should be made. With these words I beg to support the amendment.

Mr. B. Venkatapatiraju (Gunjam *cum* Vizagapatam: Non-Muhammadan Rural): I expected that Government would accept the reasonable amendment proposed by the Honourable Mr. Rangachariar, and I am sorry to say that Mr. Rangachariar had to condemn a Magistrate of Vizagapatam, from which district I come. But I can assure Mr. Rangachariar that the Magistrate, though he was obliged to utilise this section, was not at all responsible for it, when we know the true circumstances which necessitated the arrest of Mr. Muhammad Ali at Vizagapatam. The warrant issued against him in order to prosecute him at Karachi by the Bombay Government had not been received in time, but the Magistrate was ordered to detain him. He did not know under what section he could detain him, and therefore he thought that section 107 was the only possible section that he could apply before he received the warrant. Therefore he detained him there and showed him every respect and every consideration. He treated him very well awaiting the receipt of warrant. As soon as the warrant was received from the Bombay Government he was released and was arrested on the warrant. Therefore I say that the Magistrate was compelled to do that under the system under which he was working and was not at all responsible for the thing he did. Now, in these days we must protect ourselves against a very possible abuse of power, whether intentional or unintentional. In this case what my Honourable friend, Mr. Rangachariar, has suggested was actually in the old Code. It was somehow or other removed and the word "informed" was put later on. Under the old Code of 1872, in the corresponding section of 491 the words used here in place of the word "informed", the words "any report or other information which appears credible and which the Magistrate believes" Why on earth this clear phraseology was removed and that ambiguous word "informed" was substituted I cannot say, but we find a certain difficulty in interpreting that word because in order to

[Mr. B. Venkatapatiraju.]

take a Magistrate to task we must say that he is acting on his own discretion, when he is satisfied on information or evidence. It may be the Magistrate may say even on the information of the police, "I am satisfied". But the point is that he must be satisfied and not merely be informed. But as the section stands at present, if you say "informed", you cannot blame him because he has acted on the information received, because he is not doing anything illegal, though he is not satisfied, if he proceeds under it. Therefore the old language and the present suggestion of Mr. Rangachariar are quite in consonance with each other and will achieve the object which the Government has at heart. I therefore appeal to Government that they will agree to a clear and unambiguous language being used in the Act in order to avoid misconception and abuse of power.

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): Sir, in order to form a correct opinion upon the merits of the amendment now before the House, it is, I venture to submit, necessary to refer to certain other sections of the Criminal Procedure Code. As it has been pointed out by the Honourable Sir Henry Moncrieff Smith, all that section 107 warrants a Magistrate to do is to issue a notice to the person informed against to show cause why security should not be taken from him to keep the peace. After the notice has been issued, or rather when the Magistrate has made up his mind to issue such notice what is he by law required to do? If Honourable Members will turn to section 112 of the Criminal Procedure Code, they will find that according to that section:

"When a Magistrate acting under section 107 (that is, the section with which we are at present concerned) deems it necessary to require any person to show cause under such section, he shall make an order in writing setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the number, character and class of sureties (if any) required."

Now, even a cursory perusal of this section will make it quite clear to Honourable Members that the Magistrate is required by the provisions of this section, in addition to certain matters, to inform the person against whom the order to show cause is issued, of the substance of the information which the Magistrate has received. (*Mr. T. V. Seshagiri Ayyar*: "Why".) Then, section 113 proceeds to say:

"If the person in respect of whom such order is made is present in Court, it shall be read over to him, or if he so desires, the substance thereof shall be explained to him."

Then, according to section 115:

"every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same."

So it will be seen by Honourable Members that before the date of his appearance before the Magistrate to show cause the person against whom the proceedings are being taken is furnished fully with all the information that is necessary, even with a copy of the order which the Magistrate has recorded before the issue of the process, in order to enable him to meet the case on his appearance in Court. But this is not enough. You will see what certain other sections require in addition. Section 116 says:

"The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered"

and so on.

Mr. T. V. Seshagiri Ayyar: The question now is about the first stage. There are subsequent stages. We are now concerned with the earlier stage.

The Honourable Dr. Mian Sir Muhammad Shafi: But is there any ground whatever either in equity or in law for requiring anything further than what is mentioned in section 107? I am trying to substantiate the position that there is none. I am trying to show that the Code of Criminal Procedure provides for every possible safeguard in so far as the interests of the person against whom the order to show cause is issued are concerned. And now if you will turn to section 117 it enacts:

"When an order under section 112 has been read or explained under section 113 to a person present in Court or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken and to take such further evidence as may appear necessary."

It will be clear therefore from a perusal of these sections that under section 107 a Magistrate acts upon the information which has been received by him that a certain person is likely to commit a breach of the peace, he sends the substance of that information to the person concerned and on the appearance of the person concerned before him, he proceeds to inquire into the truth of the information which has been given to him and upon which information process has been issued against the accused. The word 'accused' is really a misnomer in cases of this kind. The person proceeded against has the fullest opportunity of showing cause and testing the veracity of the information received. He, as a matter of fact, can, under the law, require the police or whoever is really acting in the matter to produce evidence to prove and it will be on the prosecution to prove that there is any intention on the part of such person to commit a breach of the peace. In the absence of such evidence of course no Court will be warranted to require him to furnish security.

The Honourable Sir Henry Moncrieff Smith pointed out to the House that even in more serious cases of commission of offence all that is needed is either complaint or information and in that connection I would invite the attention of the House to section 190 of the Criminal Procedure Code. This is what the section says:

"Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-divisional Magistrate and any other Magistrate specially empowered in this behalf may take cognizance of any offence (*and here I refer to* (c) *as we are not concerned with* (a) *and* (b) *in connection with the point which is now before the* House) upon information received from any person other than certain persons named that such offence has been committed."

So you will see that the Legislature in section 107 has practically adopted the same phraseology with reference to action upon information as they have adopted in section 190 in ordinary prosecutions for an offence. Where is there any reason therefore to justify any change of phraseology in section 107 when even as regards the commission of offences exactly the same phraseology has been adopted by the Legislature in section 190 of the Criminal Procedure Code. I submit that the nervousness which is displayed in certain quarters in connection with the language used in section 107 is really not justified. There is another section in the Code of Criminal Procedure to which in this connection I ask leave to refer and that is section 204. It says:

"If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding and the case appears to be one in which according to the fourth column of the Second Schedule a summons should issue in the first instance he shall issue his summons for the attendance of the accused."

[Dr. Mian Sir Muhammad Shafi.]

Now Honourable Members will see that the procedure laid down in this section 204 is practically identical with the procedure laid down in section 107. So far as Government is concerned they would not mind changing the phraseology so that the words in section 107 should be the same as the words in section 204. That really does not touch the substance, but the substance so far as the question is concerned is this: These three sections really stand on identical footing and there is no reason whatever to introduce in section 107 anything further in substance than what is contained either in section 204 or section 109.

Rao Bahadur T. Rangachariar: If the Honourable the Law Member will accept the words " If in the opinion of the Magistrate there is sufficient ground for proceeding ", etc., we have no objection to that.

The Honourable Sir Malcolm Hailey: The exact words will be " The Magistrate may, if in his opinion there is sufficient ground for proceeding," etc. The procedure is exactly the same as in 204.

Rao Bahadur T. Rangachariar: Will you kindly move it in that way?

Mr. Deputy President: The question is:

" Renumber clause 17 as 17 (*ii*) and before sub-clause (*ii*) as renumbered insert the following sub-clause:

' (*i*) That in sub-section (*i*) of section 107 of the said Code after the words ' The Magistrate may ' the words ' if in his opinion there are sufficient grounds for proceeding ' shall be inserted."

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, the second amendment to this clause which I have notified to move is that the words ' by his wrongful act ' shall be inserted after the word ' person.' The relevant portion of the present section as it stands is that any person is likely to commit a breach of the peace, or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity. As the words ' to do any wrongful act ' does not govern the former portion of the clause, I fear that any person is likely to be summoned under section 107 and be bound over for keeping the peace even though the likelihood of a disturbance of the public tranquillity be by his rightful act. The clause is ambiguous, it is not clear and may make a man liable to be bound over, even for his rightful act. I, therefore, wish to substitute that only such person be bound over to keep the peace for a disturbance of the public tranquillity whose action be wrongful, and should not be liable if his action be rightful. Sir, sometimes it may happen that a person may be engaged in doing an act or saying something which he may have a right to do and say and it is likely that his speeches and actions might indirectly result in or provoke a disturbance of the public tranquillity and the Magistrate will under the clause as it stands be justified in binding over such persons. I submit that this should not be the case. The person who is not justified and has not got the right to say what he says or to do what he does, should then certainly be bound over but not otherwise. Therefore, Sir, I put my amendment before the House for its consideration.

Mr. Deputy President: The amendment moved is:

" That the words ' by his wrongful act ' shall be inserted after the word ' person ' in sub-section (1) of section 107."

Sir Henry Moncrieff Smith: Sir, I am afraid I have not entirely followed the argument of the Honourable Mover of this amendment. He seems to have a fear that a person, by a rightful act, an act which he is entitled to commit, is likely to cause a breach of the peace or a public disturbance. I cannot follow that at all, because a breach of the peace or a disturbance of the public peace is a wrongful act in itself, and therefore all that Mr. Agnihotri's amendment would lead to would be, information to a Magistrate that a person by his wrongful act is likely to commit a wrongful act. It does not carry us any further at all. The wrongful act is provided for in the next few words of the section—a wrongful act which will probably occasion a breach of the peace. Therefore I would suggest that Mr. Agnihotri's amendment is not an improvement on the Code.

Mr. Deputy President: The question is:

"That the words 'by his wrongful act' shall be inserted after the word 'person' in sub-section (1) of section 107."

The motion was negatived.

Bhai Man Singh (East Punjab: Sikh): Sir, the amendment that stands against my name runs as follows:

"In clause 17 insert the following sub-clause (*1*) and renumber the existing sub-clause accordingly:

'(*1*) In section 107, sub-section (*3*), after the words 'that may occasion a breach of the peace or disturbs the public tranquillity' the words 'and there is an immediate danger of such breach of the public peace or disturbance of the public tranquillity' be inserted'."

Sub-section (3) of section 107 relates to a Magistrate who is not empowered to take action under sub-section (1) and runs thus:

"When a Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons."

Mr. K. B. L. Agnihotri: On a point of order, Sir, I think my amendment No. 2 will precede Bhai Man Singh's amendment. This amendment concerns sub-section (3), while my amendment precedes sub-section (3).

Mr. Deputy President: I think, as has just been pointed out to me, it would be to the convenience of the House if Mr. Agnihotri were allowed to move his amendment first.

Mr. K. B. L. Agnihotri: Sir, my amendment is to the effect that after sub-section (2) of the same section, that is section 107, the following sub-section shall be inserted, namely:

"(2-A) Proceedings under this section shall not be taken against a person for delivering political speeches or doing political propaganda work which he be lawfully entitled to do."

Sir, when I moved my first amendment for the insertion of the words 'by his wrongful act' the Honourable the Secretary of the Legislative Department was pleased to say that he could not follow me or my argument for the insertion of those words. He said how would it be possible that a man by committing a rightful act could be bound over under section 107

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

for disturbing the public tranquillity. I may submit, Sir, that it often happens that persons engaged in political propaganda work or in delivering political speeches create excitement among the people; there is thus a likelihood of disturbance of the public tranquillity in the place; it may be said that it is doubtful also as to who will be liable for such a disturbance. Sometimes a Magistrate has held that the person guilty of delivering speeches or creating such an agitation is liable for it; sometimes, Courts held, that the persons who made such speeches or delivered such lectures simply provoked the disturbance but is not an actual wrong-doer as could be bound over under this section. In such cases the person delivering the speeches may have a right to deliver such speeches and still he may sometimes be bound over. In order to clear away that wrong impression I proposed my previous amendment. That point would be still clearer by the insertion of the sub-clause which I now propose. It must be in the experience of Honourable Members that during the latter part of the year 1921 and the early part of 1922, when there was much political excitement in the country, many speakers were hauled up under this section and bound over to keep the peace. The authorities may probably have thought it likely that further speeches and unwarranted agitation might excite people in the districts and thereby cause disturbance of public tranquillity. I wish by this amendment to put a stop to such actions on the part of District Magistrates and others. It has been pointed out only a short time ago by the Honourable Mr. Rangachariar that a case of the same type occurred when the arrest of Mr. Muhammad Ali took place at Waltair. Apart from that, Sir, there have been many cases in almost all the provinces in which persons engaged in enlisting volunteers, or in realising subscriptions for the Congress funds, or in delivering speeches, or exhorting or calling upon the people to observe the principles of temperance and to boycott liquor shops, or doing other temperance or political propaganda work were bound over. This amendment will put a stop to such practices on the part of the authorities. I submit, therefore, Sir, that my amendment deserves the consideration of the House, and I move that the amendment be made.

Bhai Man Singh: Sir, I rise to support the amendment put forward by my friend, Mr. Agnihotri. Coming from the Punjab I am all the more in a position to say that this section 107 has been much more rather the most abused in the Punjab in connection with the Akalis than perhaps in any other province. Hundreds of them were put into jail for refusing to give bail when action under section 107 was taken against them. But in point of fact, not a single breach of the peace was caused by them in the sense in which the section means. All of them were arrested with a view to crush or stop a certain movement and for quite ulterior motives. I fail to see why a section which was meant to punish offenders who really broke the public peace should be used for the ulterior object of putting down a political or religious movement simply because a certain Local Government has taken it into its head to put it down. With these remarks, Sir, I support the amendment.

1 P.M.

Mr. Deputy President: The question is:

"That the following sub-section shall be inserted after sub-section (2) of section 107 of the said Code, namely:

"(2-A) Proceedings under this section shall not be taken against a person for delivering political speeches or doing political propaganda which he be lawfully entitled to do."

The Assembly then divided as follows:

AYES—19.

Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Gulab Singh, Sardar.
Jatkar, Mr. B. H. R.
Lakshmi Narayan Lal, Mr.
Man Singh, Bhai.
Misra, Mr. B. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Reddi, Mr. M. K.
Singh, Babu B. P.
Srinivasa Rao, Mr. P. V.
Venkatapatiraju, Mr. B.

NOES—42.

Abdul Majid, Sheikh.
Ahmed Baksh, Mr.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Barua, Mr. D. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Chaudhuri, Mr. J.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Ginwala, Mr. P. P.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Hussanally, Mr. W. M.
Innes, the Honourable Mr. C. A.
Jafri, Mr. S. H. K.
Jamnadas Dwarkadas, Mr.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Samarth, Mr. N. M.
Sarvadhikary, Sir Deva Prasad.
Sen, Mr. N. K.
Singh, Mr. S. N.
Spence, Mr. R. A.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Yamin Khan, Mr. M.

The motion was negatived.

Bhai Man Singh: Sir, the amendment that stands in my name runs as follows:

"In clause 17 insert the following sub-clause (*1*) and renumber the existing sub-clause accordingly:

'(*1*) In section 107, sub-section (*3*), after the words 'that may occasion a breach of the peace or disturbs the public tranquillity' the words 'and there is an immediate danger of such breach of the public peace or disturbance of the public tranquillity' shall be inserted'."

Sub-section (3) of section 107 runs thus:

"When any Magistrate not empowered to proceed under sub-section (*1*) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons."

This sub-section, as Honourable Members may have seen, refers to the case of a Magistrate who is not empowered to take action under sub-section (1). He is not empowered to call upon a man to furnish security; he is not empowered to proceed against him. But this sub-section is, in a sense, more stiff than the first sub-section. Under sub-section (1) only a notice has to be issued to the person concerned and he is called upon to show cause, but under sub-section (3) a Magistrate who has not got the

[Bhai Man Singh.]

power to proceed with the case has got the power only to arrest the person and send him on to the other Magistrate having power to proceed under sub-section (1). Of course, the framers of the law, as it stands, saw that they had to provide some safeguards in this sub-section. Therefore, they have used the words "*has reason to believe* that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that *such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, etc.*" These two safeguards are there. A junior Magistrate may see that he cannot stop a breach of the peace without arresting the person, but the breach of the peace is to come say ten days afterwards. What I want is that a special provision should be made in such a case that such Magistrate should not have the authority to arrest that person if the breach of the peace is to come later on and he has got time simply to refer the matter to the District Magistrate or to some other Magistrate empowered to deal with the case. I want that the junior Magistrate should not have the authority to arrest a man at once and send him on to the other Magistrate concerned if there is time to do so. Really speaking, no action can be taken under sub-section (1) also if the breach of the peace is not imminent. That being the case, Sir, my position becomes stronger that such a provision should be definitely laid down in this sub-section (3).

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, with your permission I shall move the amendment which stands in my name which is No. 39 on the Agenda. It runs as follows:

"In clause 17 after the word 'substituted' where it first occurs insert the following:

'after the word 'may' the words 'after recording his reasons' shall be inserted'."

This amendment relates to sub-section 4 of section 107.

In the first place, Sir, there is a mistake in that sub-clause which I have overlooked and also the Government have overlooked and which we may be permitted now to correct:

"A Magistrate before whom a person is sent under this section may in his discretion etc. etc."

That relates only to sub-clause (3). He is not sent under this section but under sub-clause (3).

Some Honourable Members: That has been corrected by the Government.

Rao Bahadur T. Rangachariar: I beg your pardon then, it was a slip of mine.

Now take the case of a person—one Magistrate thinks he is likely to disturb the public tranquillity, and that his detention is necessary. He sends him on to the Magistrate having jurisdiction. The latter will initiate the proceedings. He will do so, as has been pointed out by the Honourable the Law Member this morning by issuing the summons containing the substance of the information, etc. Here this Magistrate before whom a person is sent under this section may at his discretion detain such person in custody. I only wish to make it obligatory on him to record his reasons for detaining the person in custody, so that he (the

Magistrate) may pause and think and come to the conclusion that really the detention of this person is necessary in the interests of public peace. As the clause runs now he may detain him "at his discretion." That discretion really contemplates that he should bring his mind to bear upon the question whether the man's detention is necessary or not. If he is to bring his judicial mind to bear upon the question, why should he not record the reasons which impel him to take the extraordinary course of detaining a man when only an inquiry is contemplated. He has to initiate the inquiry by issuing a summons; then to record evidence and then bind him over if he finds that security is needed. Therefore this being an extraordinary step, that of restraining a person and detaining him in custody, it ought to be taken with care and caution, and that is why I want to provide that he should record his reasons therefor. I move the amendment which stands in my name, namely:

"In clause 17 after the word 'substituted' where it first occurs, insert the following: 'after the word 'may' the words 'after recording his reasons' shall be inserted'."

Mr. H. Tonkinson: Sir, I venture to suggest to my Honourable friend that the amendment which he has moved is quite unnecessary. Let us take the cases which are governed by sub-section (4) of section 107. There are the cases in which a Magistrate not empowered to take action under sub-section (1) has proceeded under sub-section (3). Before that Magistrate can take the action that he is allowed to take under sub-section (3) of detaining the person in custody, he must record his reasons in writing —that is to say, it has already been decided by a Magistrate that it is necessary and that no other action will probably prevent a breach of the peace; and this Magistrate has already recorded his reasons in writing.

Rao Bahadur T. Rangachariar: If that is so, why the discretion?

Mr. H. Tonkinson: Why should the Magistrate before whom this man has to appear record his reasons again? Let us go a little further into the provisions of the Code. Under section 112 when a Magistrate acting under section 107 deems it necessary to require any person to show cause he must make an order in writing setting forth the substance of the information received. Then Sir, the action under section 117 immediately follows, and if Honourable Members will refer to sub-section (3) of section 117 as it will stand after the Code has been amended as is proposed in this Bill, it will be seen that this Magistrate himself must also record his reasons in writing. It means, Sir, that one Magistrate after another must continually be recording reasons; and I suggest, Sir, that it is quite unnecessary to record reasons in this intermediate stage.

The motion was negatived.

Rai Sahib Lakshmi Narayan Lal (Bihar and Orissa: Nominated Non-Official): Sir, Mr. Agarwala has authorised me in writing to move his amendment if you kindly permit me to do so. Sir, the amendment that I am going to move runs as follows:

"In clause 17, before the words 'pending further action' insert the words 'or enlarge him on bail'."

Sir, clause (4) of section 107 supports this amendment to a great extent. It says that a Magistrate before whom a person is sent under sub-section (3) may at his discretion detain such person in custody pending further action. The wording of this clause clearly gives discretion to the Magistrate to detain the person in custody, and therefore it is discretionary with

[Rai Sahib Lakshmi Narayan Lal.]

the Magistrate to enlarge him on bail. No doubt as I read the wordings of clause (3) of section 107 I find some difficulty inasmuch as clause (3) says that a Magistrate not empowered to act under sub-section (1) shall issue a warrant for the arrest and detain the person arrested in custody when he has reason to believe that a breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody. But as the wording of clause (4) makes it clear, that the matter is at the discretion of the Magistrate to whom the man has been sent, I think it is better to have this amendment, so that it may be made perfectly clear that the Magistrate may either enlarge him on bail or detain him in custody as he thinks proper. With these remarks I move the amendment.

The motion was negatived.

Rai Sahib Lakshmi Narayan Lal: Sir, the amendment that I am going to move runs as follows:

"To clause 17, add the following 'and after the said sub-section (4) the following proviso shall be inserted, namely:

'Provided that a proceeding under this section shall not be taken when there is a *boná fide* dispute which can be properly dealt with under Chapter XII of the Code'."

Sir, it is a settled principle of law established by judicial authorities that there shall be no proceeding under section 107 of the Criminal Procedure Code when there is a *bona fide* dispute which could be properly dealt with under Chapter XII of the Code. But the addition of sub-section (9) to section 145, makes the matter a little ambiguous and the object of my amendment is to remove that ambiguity. Sub-section (9) to section 145 says: "Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107." Now, if it is necessary to have this provision in section 145, it is also necessary to have the proviso suggested by my amendment, because law and medical books should be always entirely free from any possible ambiguity. With these remarks I move this amendment.

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, the amendment which I am moving is No. 42, and runs as follows:

"After clause 17 insert the following clause:

'17A. After sub-section (4) of section 107 of the said Code the following sub-section shall be inserted, namely:

'(5) In all cases where action is taken under this section to prevent a person or persons from holding or addressing meetings, a report shall forthwith be made to the Sessions Judge who may call for and examine the record of any proceeding for the purpose of satisfying himself as to the correctness, legality or propriety of the same and pass such orders as he thinks fit'."

Sir, I did not speak on amendment No. 38 (*ii*), where my Honourable friend, Mr. Agnihotri, tried to prevent the application of section 107 for delivering political speeches. I did not do so because there may be occasions when action under section 107 may be necessary to be taken in the interests of public peace; because the wording of the section is "do any wrongful act which may probably occasion a breach of the peace or disturb the public tranquillity"; that wrongful act may include an inflammatory speech—it may be a political speech—where people are asked actually to

rise in arms. It is a political speech all the same and therefore to prevent the application of section 107 altogether to such cases was not considered by me right. But at the same time, Sir, you would have noticed strong feeling in the country against the abuse of section 107 during the last two years with reference to the holding of meetings and the addressing of meetings by individuals. There are cases where even committee meetings have been prohibited; there are cases where persons who preached against drink have been proceeded against under section 107 merely because some man, some toddy shop contractor complained that by a speech against drink a breach of the peace was likely to be committed; most likely the contractor and his men are those who break the peace. A man comes and preaches to the people "Do not drink." There are of course some who go beyond mere preaching and resort to acts of violence and restrain people from going to the toddy shop—I can understand that. Still even in cases of mere preaching many meetings have been prohibited under this section. How? It is always difficult to apply section 107. We have to trust to the good sense of the Magistrates in applying this section when they prohibit meetings or prohibit people from addressing meetings. How are you to know beforehand that a speech which is going to be delivered is such that action should be taken under this section? The speech is still unuttered and is not a written or printed speech which is available to the Magistrate which he can read beforehand; these are words unuttered which he tries to prevent by taking action under that section. That action contemplates cases of persons perhaps who by their previous speeches or by their previous conduct have indicated what they are going to say, and if so, there may be cases where they would have been convicted for such speeches if they had really made inflammatory speeches, and other sections are also available for preventing such people from speaking like that. Those are hardly cases where section 107 can be safely used—I would only put it at that—can be safely or soundly used. But it has been largely used, it has been used like this in all the provinces, not in one province, but in every province; after the abolition of the repressive laws they have found repressive laws in these two sections, 107 and 144. An ingenious legal element in the Government of India and in the Local Governments has found a remedy for the repeal of the repressive laws; repressive laws went with one hand and up came these two sections ready in their other hand, sections 107 and 144, handy, very efficient. I wonder why they took all the trouble of passing the Rowlatt Act and the Criminal Law Amendment Act and incurred all this unrest and odium and created this non-co-operation movement and the Satyagraha movement and the passive resistance movement by enacting these laws when 107 and 144 were so handy all these years. They forgot all about it until some ingenious lawyer advised them saying "Here are two handy sections, two hand-maidens, take hold of them and resort to repression in this way," and curiously enough circumstances lent themselves to their very free use of these sections. If really the matter had gone to Court, I am sure in many cases the High Courts would have set right the use of these sections. But these non-co-operators do not believe in anything; they do not believe in Courts; they do not believe even in the High Court, in which I have strong faith, and they would not go to the High Courts and therefore Magistrates were encouraged to use these sections in all sorts of ways. Therefore, Sir, I provide an automatic corrective. There are Magistrates and Magistrates. I know of a case where a Magistrate who was going on horse-back saw a boy spitting on the floor and thought that he spat at him when he was on horse-back. The Magistrate then and there on the spot tried him for insult and

[Rao Bahadur T. Rangachariar.]

whipped him. Well, Sir, he was the person aggrieved; he was the complainant; he was the Magistrate, and he tried him on the spot, and most effectively he did it. There are Magistrates of course who conceive that it is within their power to do all these things in certain tracts where still these legal or judicial ideas have not permeated and lawyers have not invaded. Of course, these things no doubt do occur, and therefore, Sir there must be a corrective, there must be an automatic corrective, to the misapplication of this section. After all, the remedy that I have provided is one which already exists in the law in certain cases. I have chosen a revising authority, an authority which is recognised by the Code Honourable Members will see in the same Chapter that when security is demanded for more than a year and if the person does not comply with the demand, such proceedings have to go to the Sessions Judge for confirmation. The order is liable to be revised and set aside by the Sessions Judge. Will some lawyer here remind me of that section? (*A Voice*: 'Section 123.') Thank you. Well, as Honourable Members will see, this section reads thus: "If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given, commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it. When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge or, if such Magistrate is a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court." "Such Court," that is the Sessions Court, "after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit": So that the Sessions Judge whom I have chosen as the revising authority is the authority recognised already as a proper authority to revise such proceedings. I only say that where action is taken under this section to prevent the holding of meetings or of addressing meetings, then it should be forthwith reported to the Sessions Judge. He on examining the records will have to satisfy himself as to the legality, propriety or correctness of such report and he can pass such order as he thinks fit. Therefore the remedy I have chosen is purely a corrective one. Sessions Judges are trusted both by the Government and the people in most cases, and therefore they can be safely relied upon to do the corrective in cases where they are grossly abused. Therefore, Sir, I have suggested my amendment which, I hope, will commend itself to the Government for their good name, because they must also see that their Magistrates do not misbehave. After all, who suffers? No doubt, the individual suffers for the time being, but by such action really the reputation of the Government suffers. I mean the people think, when Magistrates take such hasty action, that the Government do not set them right with the result that the Government becomes unpopular and it adds to the irritation among the people. After all, where is the harm in entrusting this remedy in the hands of the Sessions Judge? Is the Sessions Judge going to the rescue of the sedition monger? Certainly not. Therefore, there will be really no danger whatever in providing this remedy. On the other

hand, abuse and misuse and misapplication will be stopped. The very fact that there is a corrective in the Sessions Judge will make the Magistrates pause and hesitate and they will only take action which they should legitimately take. That fact itself will act as a deterrent against hasty action on the part of Magistrates. Therefore, looked at from any point of view, it is a necessary amendment; it is a wholesome amendment and I hope the Government will see their way to accept it.

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

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

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, it will be convenient if I draw the Honourable Members' attention to the Greaves' Committee's Report in this connection. My idea is that, instead of amending the sections piecemeal, we should adopt the recommendations of that Committee. They took evidence, they consulted all the magistrates, the sessions judges, the divisional commissioners, public bodies and lawyers. Of course, the magistrates were reluctant to part with their power but the sessions judges approved of it and the divisional commissioners also were in favour of it. I am not going to read the summary of evidence but I am only going to read the recommendations of the Greaves' Committee in this behalf. They say:

"After considering the evidence, we recommend that the powers of the district officer and those under him under the preventive sections shall be modified in the following manner:

Firstly, in ordinary cases under sections 107, 108, 109, and 110, when the district officer requires a person to show cause, the proceedings shall be sent for trial before a judicial officer, but in cases of emergency which arise under these sections and when immediate action is necessary, it shall be open to the district officer and those empowered to act under these sections, but, where they make such orders, they shall state their reasons in writing and an appeal against the order shall lie to the District and Sessions Judge. The Committee agree that all cases under section 110 should be tried locally as at present and opportunity for obtaining legal assistance should be freely given."

I would leave the drafting to the Legislative Department, and I think we might accept the Greaves' Committee's recommendations as a preliminary to the separation of judicial and executive functions. It need not wait till the scheme is given effect to. As a preliminary, it may be convenient if we introduce a clause, after section 110, in which provision is made that ordinarily in all such cases where a person has been called upon to show cause under either section 107, 108, or 109, 110, he may apply to the District and Sessions Judge that the matter should be heard by him. In such cases, the District Magistrate is to send the records to him and the matter may be judicially inquired into by the District and Sessions Judge. There is no reason why we should not entrust the District and Sessions Judges with powers to inquire in these matters. That would not increase his work very much because these cases are not very common. They come once in a way. Now, that would not create any mischief either because the Committee recommends that in emergency cases the district Magistrate may pass orders. But when he has passed an order, we may give the party the right of appeal or the record and the proceedings may be sent, as Mr. Rangachariar recommends, to the District and Sessions

[Mr. J. Chaudhuri.]

Judge, and he may look into the records and pass such orders as he thinks fit. Now, that is with regard to mofussil towns. We know that in the presidency towns the presidency magistrates may act in the same manner. There also, when he has called upon any person to show cause, the person may apply to the High Court that the matter may be heard by that court and the court may pass such orders as it may think fit. So, my suggestion is that, instead of amending these sections piecemeal, as suggested by Mr. Rangachariar, we should insert a clause after 110 or in some appropriate place in this chapter to provide that, where a person has been called upon to show cause, he may apply to the District and Sessions Judge that the matter may be judicially inquired into by him and then it will be for the Magistrate to send up the records and the Judge may look into the matter. Of course, I am not putting this forward as a final amendment but I suggest that Mr. Rangachariar's amendment may then be altered as follows:

"(5) In all cases where a person has been required to show cause under section 107, 108, 109 or 110, he may, outside any Presidency town, apply to the District and Sessions Judge, and, in a Presidency town, to the High Court that the matter may be heard by the Sessions Judge or the High Court, as the case may be, and such Court may then send for the records and, after giving him a hearing, pass such orders as the Court thinks fit."

Mr. Deputy President: Are you moving this as an amendment to clause 17?

Mr. J. Chaudhuri: I suggest it as a general provision to go after 110. Of course, I leave it to the Honourable the Home Member and the Honourable Sir Henry Moncrieff Smith to make any verbal alterations they like and to prepare a proper draft. This is not my own suggestion but it has been recommended by the Greaves' Committee and I think that the whole House will accept it.

The Honourable Sir Malcolm Hailey: I recognise that the proposal put forward by Mr. Rangachariar is in much less extreme a form than that tabled by Mr. Agnihotri, and which the House decided not to discuss. There are unfortunately certain topics which seem to give Mr. Agnihotri a crisis of nerves; when he realizes that the law gives a certain amount of power to a police officer he has a shock; when he is told that it is necessary to give preventive powers to a Magistrate the shock is renewed and his continual efforts in this Assembly have been to reduce entirely, if not to remove, the powers given to police officers and to Magistrates. He would nullify, if he could, the power to protect society which is vested in these authorities, yet such a power is an essential adjunct to good and peaceable administration. But to confine myself to Mr. Rangachariar's amendment; we have here a proposal to reduce in a somewhat milder form the operation of section 107, and I would ask the House to consider the grounds on which it has been put forward by the Mover. He commenced with a general attack (repeating to some extent what he had already said in speaking on an earlier amendment), on the way in which we have during the last two years utilised the preventive sections. 107 and 144 alike have been, he says, widely used and widely misapplied. Nay, he permitted himself to suggest that we, being at one stage unwilling to use strictly repressive laws, and at a later stage being obliged to cancel them, we, at the suggestion of some ingenious legal mind, decided to substitute the use of these preventive sections. This is the first occasion on which I have had to complain that Mr. Rangachariar has betrayed a lack of that due

modesty which is one of the requirements of a great mind. For what do I find on looking up the debates on the Repressive Laws discussion? Who was it that urged us to use the ordinary law? Who told us that the ordinary law, if it were applied consistently, was sufficient for all our purposes? Who told us specifically that 144 had always been on the Statute Book and that we ought to use it? Why, Mr. Rangachariar and no one else. If we have used those laws, we need now no excuse; for we have consistently been advised since the year 1911 onwards (when the amendment of the Seditious Meetings Act came under discussion) and the process terminated with the renewed advice given us by Mr. Rangachariar when we discussed the case of our Repressive Laws generally last year. But have we misapplied them? Well, those against whom they were applied had their own ordinary remedy in the courts and in how many cases did they seek that remedy? Mr. Rangachariar says the class of men against whom we have applied these laws would not seek their remedy in the courts; they have no belief in a High Court. Equally, if we apply these laws again, that class of men would again refuse to utilise the agency of our appellate courts, and would fail to receive the benefits of the amendment which Mr. Rangachariar has put forward. But that is by the way; and is not really the substance of my argument against Mr. Rangachariar.

Rao Bahadur T. Rangachariar: Mine is automatic.

The Honourable Sir Malcolm Hailey: He proposes under this section that in all cases where action is taken to prevent persons from holding or addressing meetings (whatever that means; I do not deal now with drafting), a report shall go forthwith to the Sessions Judge who shall thereupon, after examining the records, pass orders as he thinks fit in regard to the correctness, the legality or propriety of the decision. He tells us that the Sessions Judge is already recognised in the law as a proper revisionary authority in regard to these sections, and quotes the provisions of section 123, sub-section (2) Well, that does not certainly apply to section 107, for under section 107, the period of an order is limited to twelve months; while under section 123 only orders referring to a period in excess of one year go to the Sessions Judge. Therefore, the Sessions Judge is not recognised as a revisionary authority under section 107. What Mr. Rangachariar seeks to do in effect is to make a revisionary authority of a new type. Hitherto revisional orders have been passed by a High Court. He would have now revisional orders proper passed by a Sessions Judge. What is the necessity for this?

Rao Bahadur T. Rangachariar: Under sections 436 and 437 the Sessions Judge passes revisional orders.

The Honourable Sir Malcolm Hailey: He recommends to the High Court. He does not pass final orders himself; he reports to the High Court for this purpose.

Dr. Nand Lal: Section 435 (which says) " The Sessions Judge may, etc."

Rao Bahadur T. Rangachariar: Section 435 is comprehensive.

Sir Deva Prasad Sarvadhikary: That is an alternative.

The Honourable Sir Malcolm Hailey: If the Honourable Member will read sections 435 and 438 he will see that they do not bear out what he says.

Rao Bahadur T. Rangachariar: I said he has revisional authority in certain cases. He can order retrial, he can order further inquiry, and he can call for the records under section 435. Therefore he exercises powers of revision.

The Honourable Sir Malcolm Hailey: But what Mr. Rangachariar proposes now is that the Sessions Judge should have power to pass such orders as he thinks fit regarding the propriety of the sentence. That is a different matter. As I say, he proposes in effect, at all events with regard to the preventive sections, and in them only in regard to a certain restricted class of case, to create a new revisionary authority. I maintain that no such orders are required. The persons affected by these orders, if they have cause of complaint, have the ordinary procedure of the law open to them. He gives no special reasons why the special interference of the Sessions Judge is required in this behalf in this particular class of case. He says, "I do not wish the Sessions Judge called in everywhere to pass revisional orders in regard to the preventive sections. I only wish him to be called in in regard to meetings." Where do meetings differ from other classes of action to such an extent that it is necessary to create this special form of revision? What again does he mean by 'meetings'? Mr. Agnihotri tried to get the Assembly to agree to exclude altogether from the preventive sections, action taken against persons "delivering political speeches or doing political propaganda work." If we had argued the case (which we found it unnecessary to do) he would have found an insuperable difficulty in defining political speeches or political propaganda work. Mr. Rangachariar, doubtless recognizing this difficulty has contented himself with the expression "holding or addressing meetings." But, as I say, what are meetings? We know the term assembly, and we have a definition of lawful assembly. But meetings are not as he would seem to suggest confined to political meetings; they may be of any other kind. They may be for the purpose of organising riot or for the purpose of promoting violence of any class. If they fall into this category, would it be necessary on that account to adopt a special revisionary procedure? The scope of his amendment goes infinitely further than he himself, I think, recognises. I maintain, that in regard to these preventive sections, and particularly in regard to section 107 it is quite unnecessary to invent or adopt a new form of procedure, especially when, in doing so, you are obliged, owing to the difficulty of definition or drafting, whatever it may be, to give to your new modification of the law an infinitely wider scope than any prudent or reasonable man would care to contemplate.

Dr. Nand Lal: I may point out to this Honourable House that the character of amendment No. 42 is not universal. It is of a very limited nature. It simply says, "In all cases where action is taken under this section (that is, section 107), to prevent a person or persons from holding or addressing meetings." The recommendation embodied in this amendment is that only in all cases of this nature a report forthwith shall be submitted to the Sessions Judge, and then when we come to the latter part of this amendment it says he may call for and examine. It rests on the discretion of the Sessions Judge that on the receipt of that report he may go into it and if he finds that some sort of illegality has crept in or some irregularity has been committed, then he may take action. Not in all cases, but only when he finds that the order is wrong, the proceedings are illegal, irregular and improper and then he may take action and set that order aside or may refuse to set that order aside. This is the recommendation which has been made through the medium of this amendment.

The grounds, on which this amendment has been moved, to my mind, seem to be acceptable:—that there is in some parts of this country a great complaint that law is twisted, that some Magistrates are pliable, that they are not independent, and that they use this section 107 in place of repressive laws and rules which are not obtaining in that part of the country. That is the complaint. In order to meet that complaint it will be very wise to allow this amendment. Now, the grounds which have been set forth in answer to this recommendation are, that if we allow this amendment to be passed, then it amounts to this that the law of revision which is already embodied in the Criminal Procedure Code under sections 435, 436, 437, 438 and 439 will, to all intents and purposes, be nugatory, that it will be a new departure and, therefore, it is not proper that this amendment should be accepted. This is one of the grounds which has been set forth by the Honourable the Home Member. The other is, in how many cases this has been done. The third ground which has been advanced is this, that this law will practically deprive the magistracy of that very wise preventive power with which they have been equipped.

These grounds can be met. So far as the first ground goes, I may submit that the law of revision will not be interfered with at all, because this amendment deals with a special sort of cases. We have got special acts, special laws. Therefore, this amendment refers to a peculiar kind of orders which will be passed. It will not cover all the orders passed by the District Magistrate or any first class Magistrate, but special cases relating to meetings and relating to the speeches made in those meetings, and not in ordinary cases. So, the fear of the Honourable the Home Member seems to be very exaggerated; I may submit, with due deference to his way of thinking. I may point out to the Honourable the Home Member that any order passed under section 107, Criminal Procedure Code, is not appealable, I think he will accede to that contention. It is revisable, and who revises? The District Magistrate. An application for revision is lodged in the Court of the District Magistrate and he revises. If a District Magistrate himself passed the order, then the application for revision will be instituted in the High Court. There is no other provision which may confront me with the view that I am wrong. If the Sessions Judge finds that the order, under debate now, is altogether illegal—suppose section 107 is not applicable. Suppose a speech is made and that speech is innocent, and a constitutional one. Every man may be of this opinion that there is nothing wrong in it, but, by an oversight or by a mistake, the speaker has been hauled up and he has been called upon to show cause.—a very respectable man, one of the orators of this country. That order is illegal. Does the Honourable the Home Member seriously mean that there should be no remedy for it, that he should undergo the whole ordeal, he should try to engage a counsel, or he may not engage a counsel, he may see what will be done or what orders will be passed under section 112 or under section 114 or under section 118 of the Criminal Procedure Code. Should he wait? Should he wait for three months, for two months, or even for one month? Why should he? If the order is illegal *prima facie*, on the face of it, why should an innocent man be asked to appear before a Magistrate? The Honourable Mr. Rangachariar's amendment meets all these emergent and urgent cases and I compliment him on putting forward this amendment.

I quite see that there is a little flaw in the motion, but, the Honourable the Home Member could not see it on account of the pressure of work. Perhaps another Member of the Government may

3 P.M.

[Dr. Nand Lal.]

think of it. If this amendment would have been placed under that class of amendments which relates to section 108, then there would have been greater propriety in it. This criticism could be launched. However, that criticism could be answered in a simple way. That is this. Since 1922, either in the former or the latter part of that year, this section 107 was wrongly applied, therefore, the Honourable Mr. Rangachariar, the author of this amendment, has thought it proper to put this amendment under that very section. That is the answer which will be given to that criticism. With these submissions, I appeal to the Government Benches that they will be advised if they will accept this amendment. There is a great grievance in the country. That grievance will be set at naught. They shall have to admit, saying "Look at the fairness of the Government. They have incorporated a special provision for cases where there is any non-co-operator who is not willing to come to the Court to make an application under section 435 or under section 439. Look at the kindness of the Government. They have incorporated a special provision to see that no injustice may be done to anybody because the object of the law is that justice should be done." If any injured man or if any man against whom a written order is made does not volunteer himself to come to the Court, whether rightly or wrongly, according to his way of thinking, here is the Government quite prepared to see that justice may be meted out to him, and with that view alone this special provision has been incorporated to help those men who do not come to the Court to defend themselves. The Government *suo motu*, and on its own accord, is always very anxious to see that none of the subjects of His Majesty may be subjected to an order which is illegal. With that view this special provision may be incorporated and the Government will be thanked for it and therefore I repeat my submission that this amendment, which commends itself, may be accepted unanimously.

Mr. P. E. Percival (Bombay: Nominated Official): Sir, I do not propose to discuss the Honourable Mr. Rangachariar's observations about non-co-operators; except one remark which he made, and which, I am rather surprised to find, was repeated by my Honourable friend, Dr. Nand Lal. The statement was that, if the non-co-operators had applied to the High Court, the High Court would have set the matter right. That is to say, the law is all right, but, simply because the non-co-operators will not apply to the High Court, it is necessary for us to make a special provision, in order that they may be saved from acting under the ordinary provisions of the law. That is a rather peculiar proposition to adopt, that we should change our law because certain people are not willing to abide by that law.

Dr. Nand Lal: Because our object is to see that justice is done.

Mr. P. E. Percival: That is a very strange proposition that the law should be altered for the benefit of people who are not willing to apply to the High Court. Then there is the other question, and that is whether the appeal or revision should be to the Sessions Judge or to the District Magistrate. It has always been the case up to now that the revision lies to the District Magistrate, not to the Sessions Judge. By referring these particular cases to the Sessions Judge we shall have two co-ordinate authorities dealing with the same subject. Section 125 runs:

"The Chief Presidency Magistrate or District Magistrate may at any time for sufficient reasons to be recorded in writing cancel any bond for keeping the peace or for good behaviour"

and so on;

and it has been ruled by the High Courts, and especially the Madras High Court, that the District Magistrate can cancel any order for keeping the peace. So that it is the District Magistrate who deals with the matter, not the Sessions Judge. As under section 125, so also . . . .

Dr. Nand Lal: Supposing the District Magistrate has passed an order under section 107, then what is the remedy?

Mr. P. E. Percival: Then the man can go to the High Court. I think the Honourable Member himself said that. An application for revision can be made to the High Court. If anybody is dissatisfied with the order of the District Magistrate, why not apply to the High Court. So that the position is that there is a regular procedure laid down in the Criminal Procedure Code, by which the case goes to the District Magistrate first, and from the District Magistrate to the High Court. The Sessions Judge is not brought in in these matters of taking security for breach of the peace. The suggestion is that one particular set of cases, namely, preventing persons from holding or addressing meetings, the case should go to the Sessions Judge, and that in other cases it should go to the District Magistrate. I submit that this is not a satisfactory way of legislating in connection with this subject There is one other remark that I wish to make, namely, that I suggest with due deference that the drafting is not very satisfactory. It says " in all cases where action is taken under this section to prevent a person from holding a meeting ". Now the action is taken to prevent a breach of the peace; it is not taken to prevent a person from attending the meeting. So I suggest in any case that the drafting is not entirely satisfactory. I thank the Honourable Mr. Rangachariar for making friendly remarks about Sessions Judges. I hope he will also adopt the same attitude when he is considering the question of the powers of Sessions Judges in other parts of the Code. In this particular case, the matter is one which goes to the District Magistrate and not to the Sessions Judge; and I suggest that there is no reason why the general law on the subject should be changed, and why any one who is not satisfied should not go to the District Magistrate under section 125, or, if the order is passed by the District Magistrate, why he should not go to the High Court for revision. The Honourable Member said that the Sessions Judge is already a revisional authority. Under section 435 he is a revisional authority to the extent that he can call for the papers and refer the matter to the High Court. But the Honourable Member wishes to make him a revisional authority to deal with the matter himself. So that, from this point of view also, I suggest that no change should be made, but that the ordinary procedure should be followed, namely, application to the District Magistrate and revision to the High Court.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Not being very familiar with the Criminal Procedure Code, either as a criminal or as a criminal lawyer, it is with some diffidence that I venture to speak on this subject, and if I venture at all to do so I speak purely as " a man in the street ", a man who has to respect the law and who is likely on certain occasions to suffer from the vagaries of the law or of some Magistrates. The whole point whether the amendment moved by my friend, Mr. Rangachariar, is a healthy amendment or not depends on this: whether if it is carried it will solve a problem of constant friction both for Government and for society at large. Yesterday the Honourable Sir Malcolm

[Mr. B. S. Kamat.]

Hailey enunciated a very sound doctrine when he told the House that even from the point of view of Government the smaller the occasions for causing irritation by the action of the police, the better for Government. If that healthy doctrine were to be adopted to-day, I believe Government should offer no opposition to the amendment which has been moved by Mr. Rangachariar. To my mind, it is a very modest and a very salutary amendment. It is modest for one or two reasons. In the first place it shows confidence in Sessions Judges. In the second place, all that it wants to do is to give them the option and a discretionary power not to call for each and every proceeding of the magistrate but only in certain cases to call for records and proceedings of Magistrates, if they choose to do so. So that it means a certain amount of latitude to the Sessions Judges without throwing an extra amount of burden upon their work. Now what are the objections of Government to the acceptance of such a modest amendment as that? Sir Malcolm Hailey started by saying that if the non-co-operators are not prepared to go to the High Court, how is it possible that they will go to the Sessions Judges? Now that assumes as if Mr. Rangachariar had brought forward this amendment purely in the interests of the non-co-operators and nobody else. (*An Honourable Member*: "Primarily in their interests".) My reply to that argument of Sir Malcolm Hailey is this; as I said in the beginning, I take up my attitude purely as 'a man in the street'. I look to my own safety. I am not so much concerned about the safety or the protection of the non-co-operators, but Sir, I have no doubt to any citizen, howsoever humble he might be, I believe Mr. Rangachariar's amendment would be a safeguard and a protection in respect of his elementary rights. Sir Malcolm Hailey said that this is likely to reduce the power of the Magistracy. Certainly it is intended to do that on the healthy principle that while, on the one hand, the Magistracy is intended to prevent any breach of the peace, it is also, on the other hand, intended to safeguard the interests of honest citizens, and if there is a pitfall into which Magistrates are likely to fall by an excessive zeal or by their political bias or by the atmosphere of the country for the time being, well, there should be a safeguard provided by the law. I believe the amendment of my friend, Mr. Rangachariar, provides a very convenient and a very workable safeguard, both in the interests of Government and in the interests of the Magistracy and in the interests of citizens like myself, the man in the street. I expected, Sir, that Sir Malcolm Hailey would accept this amendment instead of shielding himself behind certain technicalities. If this is a healthy and a salutary amendment both in the interests of the citizen and of Government, as I contend it is, there should have been an alacrity on the part of Government to accept it, but the tendency on the part of Sir Malcolm Hailey was to shield himself behind definitions and behind technicalities. The first technicality which he trotted out was the revisionary powers of the Sessions Judges. Now if this is an acceptable amendment, purely on its merits, in the interests of community and in the interests of Government, a way could be found out so far as the revisionary powers of the Sessions Judges are concerned. Under sections 435 and 436 it is pointed out they have such powers; now the question of giving these additional powers or throwing this burden on them is purely a matter of administrative convenience and public interests. If it is necessary in the interests of society to throw additional burdens on the Sessions Judges, by all means let Government come forward and say

that such a burden should be thrown on them, instead of simply saying technically that such and such a power already vests in them and it is not desirable to throw additional burdens on them. It is purely a matter of technicality to raise this objection. I believe the attitude taken up by the Government as displayed by Sir Malcolm Hailey was purely what one would call an offspring of political expediency. Sir Malcolm Hailey further went on to say, or to pretend to think that it was not possible to define even the word " meeting ". It caused a great deal of astonishment to me that those who are able to frame so complicated and so comprehensive a Code as the Criminal Procedure Code are unable to find out a definition of the word " meeting ", and, then, that their Magistrates who can understand what an unlawful assembly is and who can differentiate between a lawful and an unlawful assembly would not understand what a meeting was, an ordinary meeting held for any ordinary purpose in the country. Sir, I do think that this is a tendency to shirk responsibility, to accept the principle of the amendment. I for one think, both in the interests of Government and in the interests of community, it is desirable to provide in the Code a safeguard for honest citizens who want to take part in meetings either political or otherwise, and I think Government would do well to accept this amendment either in this form or, if the drafting is considered defective, to accept it in some other form, and not give a go-by to this amendment.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, while fully sympathising with the underlying principle of my friend, Mr. Rangachariar's amendment, I have certain difficulties which I propose to place before this Honourable Assembly.

I quite see that in cases where a person is prohibited from holding a meeting or taking part in a meeting some corrective may be necessary in respect of the action of the Magistrate prohibiting the meeting, especially in these days of political conflict. But at the same time I also see that it is extremely difficult to put this amendment forward as an amendment of section 107 of the Criminal Procedure Code. My reasons are these. My friend, Mr. Rangachariar, says: " In all cases where action is taken under this section to prevent a person or persons from holding or addressing meetings, a report shall, etc., etc. " Now, in such cases the action taken must be by an order, and the order contemplated is not an order binding down any particular person against any contemplated breach of the peace, but an order prohibiting him from holding a meeting. That is an order, it seems to me, which comes under section 144 of the Code and can be appropriately considered only within the four corners of that section, *viz.*, section 144. At the same time we have this further difficulty that section 435 which is the section about revision, lays down in so many words that " orders made under sections 143, 144, etc., are not proceedings within the meaning of this section." Therefore if the amendment is put to the House in the shape in which it has been put forward, to my mind considerable legal difficulties arise, and being in sympathy with my Honourable friend, my present desire is to seek some means whereby the difficulty may be solved. But if the matter be put to the Assembly as an amendment to section 107, I feel, Sir, that I shall have great difficulty in voting in favour of the amendment, as I do not wish to introduce confusion into the Criminal Procedure Code.

Rao Bahadur T. Rangachariar: It really means, ' when action is taken under this section for the purpose of preventing a person, etc.'

Mr. J. N. Mukherjee: Of course, all orders under section 144 are orders directing a person to abstain from doing a certain thing or to take certain orders in connection with property in his possession or management; they are not orders directed against the land itself, an inanimate thing, but against a person and they cannot mean police action. And therefore I submit that the scope of section 107 is something totally different from what is contemplated by the proposed amendment. That is my view. My Honourable friend, Mr. Kamat, seems also to think that if there are drafting difficulties those difficulties could be smoothed over and the underlying principle considered in its appropriate place. That is also my difficulty, and if the House accepts the principle of the amendment, I hope it will also consider that point, and I put it to my Honourable friend, the Mover of the amendment, that he will also consider it before putting it to the vote of the Assembly.

Rao Bahadur T. Rangachariar: I shall gladly do so if I can understand what my Honourable friend's difficulty is. I am sorry I have not been able to trace it.

Mr. J. N. Mukherjee: I say that the amendment cannot come under section 107 because section 107 contemplates the binding down of a person; that is, a Magistrate may, under that section, only call upon a person to show cause why he should not be bound down for a certain time. That is quite distinct from an order directing that a certain thing should be done: that is to say, by such an order, personal liberty is not interfered with but a person is merely ordered not to do a certain thing. There is my difficulty. Of course, if such an order really comes under section 107, it is open to revision but unfortunately it does not. I may, however, point out that the proposal itself is a very harmless one indeed, and is not likely to interfere with executive action. I would like the Honourable the Home Member and the Members on the Government Benches to consider this point.

The House will see that the order in question is passed forbidding a meeting. The meeting does not take place. The event cannot be re-enacted afterwards. The danger, whatever it is, is tided over, and thereafter, according to the amendment proposed a report is sent to the Sessions Judge. The Sessions Judge cannot pass a contrary order, but will only consider the propriety of that order; that is all, and the thing will end there. My submission is that my Honourable friend, Mr. Rangachariar, is quite right when he says that, it will be well if there is some superior legal authority to check any error in the proceedings of the Magistrate; that will ensure, to my mind, a salutary provision of the law. Therefore, I put it to Honourable Members that the substance of the amendment itself is very harmless in its way, and therefore its principle, taken by itself, ought not to present any difficulties to the Government Benches. But, if it be put to the vote of the House, as it is, I regret, I shall not be able to vote for it.

Mr. J. Chaudhuri: May I inquire, Sir, what would be the attitude of the Government with regard to my suggestion? If they are disposed to consider it, it may not be necessary to go into these piece-meal amendments.

The Honourable Sir Malcolm Hailey: The Honourable Member asks me what is our attitude towards his suggestion. We treated it, not as an amendment, but as a suggestion only; and, obviously, we could not discuss

it in any way in this place, for it is not cognate to this particular section, any more than, I was going to say, is Mr. Rangachariar's motion truly cognate to it, since all that a Magistrate does under section 107 itself is to order somebody to show cause. We have treated Mr. Chaudhuri's suggestion as a suggestion and nothing else, which we shall have to consider. While we are discussing changes in the existing law, it is really impossible for us to enter into a discussion of the wide change involved in carrying out a separation between executive and judicial functions.

Mr. R. Faridoonji (Central Provinces: Nominated Official): The proposals made by Honourable Members have already been anticipated in the Central Provinces. All cases disposed of by First Class Magistrates are reported to the Sessions Judge in the form of daily calendars and he calls for the records of cases when he thinks inspection or revision of cases is necessary. It seems to me that a tremendous amount of solicitude and tenderness is shown for the criminal or the person from whom a breach of the peace is apprehended, while I have not heard one word of consideration for the public who apprehend a breach of the peace, or who apprehend broken bones or broken heads.

Colonel Sir Henry Stanyon: Sir, after hearing some of the speeches on the question now before us, I am more than ever anxious to endeavour to approach the consideration of it with the complacency of a cold-blooded legislator. I will examine the proposed amendment. If I feel it to be a reform, I shall unhesitatingly support it whatever may be the view of Government. The lunch interval has given me an opportunity of considering it. As it stands, it seems to me, in a special class of cases, to alter the existing law in two respects only. Firstly, it requires that a report of the proceedings should be made apparently—though there is nothing in the amendment to show who or what is the person or authority responsible to make the report,—by the Magistrate who takes action under section 107. That is the first point. As the law now stands, a report to the Sessions Judge of proceedings under section 107 would be made ordinarily by the person against whom those proceedings were taken.

The other point upon which this amendment would alter the law is that the Sessions Judge, instead of reporting to the High Court a case in which he thought some interference by higher authority was desirable, will himself be empowered to pass the final order. Now how far will that be any advantage to the general public? My own humble opinion is that, while it will delay and retard preventive action by the Magistrate on the spot, it will invite the Sessions Judge to take upon himself a responsibility which, from what I know of Sessions Judges, he will very seldom be inclined to accept. However, that is only a matter of procedure. But it seems to me that the amendment as it stands—we must take it as it stands—is open to the objection urged against it by the last speaker, namely, that of producing a certain amount of confusion. It reads:

"In all cases where action is taken under this section to prevent a person or persons from holding or addressing meetings."

That is hardly language in which one can properly describe action under section 107. It suggests that the section is likely to be used in an indirect way, not to prevent breaches of the peace but to prevent meetings which some person or some body of people consider undesirable. If the section is used to prevent a person from taking action which is likely to cause a breach of the peace, then why should one particular form of that action be made the subject of special legislative treatment? (*Rao*

[Colonel Sir Henry Stanyon.]

Bahadur T. Rangachariar: "The elementary right of citizenship.") Then we are not told that these meetings are to be political meetings or even public meetings. For all that appears in the amendment to the contrary this special treatment would have to be applied to meetings held by intending dacoits, to meetings held by intending rioters, to meetings held by religious fanatics, to meetings held by factions concerned in a dispute over land. The Honourable the Home Member has rightly said that it is an extremely difficult thing to say what is a meeting having regard to the ordinary significance of that word. Two persons can have a meeting. But I think there are two other rather serious objections to this proposed amendment. A *general* legislation of provisions for revision by the higher Courts cannot be taken objection to by anybody; but the moment you introduce a *special* clause of this kind for special cases, you make your motive clear. It has been made clear in this case. Underlying the proposal is the distrust of our Magistrates. Sir, we have heard that there are Magistrates of all kinds. Certainly there are. I have met them of all kinds, from A to Z. But, because a tool is fragile or bad, you do not cut off the hand that works it; you improve the tool. If our Magistrates are given to weaknesses, to illegalities, to too much police and too little judge, public opinion is the remedy for improving that state of things. We cannot possibly expect our Magistracy, as a body, to be encouraged to act with impartiality and in a trustworthy way if by our laws we point out to them that the public whom we represent have no trust in them. We must give them that trust and let them feel it a burden upon them to act up to it and to deserve it. That is the only way; that is how trustworthiness has been secured in England for centuries, and that is the only way in which it will be secured in India. Then I submit that it is indeed a strong objection to this amendment that it would create an exception in procedure, an invidious distinction, in respect of one particular class of action which a Magistrate believes is likely to create a disturbance or cause a breach of the peace. We have to-day caused to be accepted or carried an extremely sound principle insisted upon by my Honourable friend, Mr. Rangachariar, that action under section 107 shall depend upon an exercise of Magisterial discretion—a proper exercise of Magisterial discretion. That is undoubtedly a correct principle and a wise safeguard; but having got that and put it on the Statute Book, are we nevertheless to suggest to the Magistrate as we should do by this amendment: "We do not believe in your exercise of judicial discretion in this particular class of case, and therefore, in this particular class of case only, we command that every time you exercise that discretion, you shall at once make a report to your superior authority in order that there may be a check upon you." I think the proposition made upon the basis of the Greaves' Commission Report for a general amendment of the law of revision is a proposition that will require very careful consideration by this House when it comes up; but it is impossible to introduce a general clause of that kind as a tail to section 107. Therefore, I think; and I think so after careful consideration of everything said upon both sides of the question—it is my honest opinion, though possibly a wrong one—that by introducing this amendment into the Code we shall not do any practical good to the public at large, and we may do a good deal of harm.

Sir Henry Moncrieff Smith: Sir, I have very little to add to the very clear exposition of the difficulties of this amendment which the House has just heard from Sir Henry Stanyon. But I do want to be clear in my own mind, and I think the Members of the House should be clear in their minds, as to what the effect will be of making this amendment in

our criminal law. Mr. Rangachariar proposes that when an order has been made under this section for a certain purpose—I am not concerned with the purpose, the question of the principle of the amendment has been otherwise dealt with—but when an order has been made under section 107, the Magistrate—he does not say the Magistrate but we presume it is the Magistrate—shall make a report forthwith to the Sessions Judge. Now, we have to remember what it is he is going to report. As a matter of fact, there is no order under 107. It is a requisition. You require a person to appear.

Rao Bahadur T. Rangachariar: I did not say " order "—the wording is " when action is taken."

Sir Henry Moncrieff Smith: When action is taken. My point is just the same: action is taken. What has the Magistrate done? He has required a person to appear and show cause. The moment he has done that, he reports to the Sessions Judge. Well, what is the Magistrate then going to do? Does he go on until perhaps the Sessions Judge sends for the record or does he stay his proceedings and wait for the Sessions Judge to take action in the matter? I do not know what the poor Magistrate will do.

Rao Bahadur T. Rangachariar: I do not think there will be any difficulty. Till he gets a stay order he goes on.

Sir Henry Moncrieff Smith: Unless he gets a stay order he goes on. Very well. I should have thought it might have been better to make it clear. But let us come to the Sessions Judge. He has got the report from the Magistrate. Now, what is the report going to be? The Magistrate has reported to the Sessions Judge, " I have information that Mr. Rangachariar is likely to commit a breach of the peace. . . "

Rao Bahadur T. Rangachariar: By attending a meeting.

Sir Henry Moncrieff Smith: " I think there is sufficient ground for proceeding against him. I have therefore issued a notice upon him to appear and show cause." That is what the Sessions Judge gets. Now, what is he going to do. He sends for the record. When he has seen the record, he has got no further information to go upon.

Rao Bahadur T. Rangachariar: Then if that is all the material he will cancel it.

Sir Henry Moncrieff Smith: Mr. Rangachariar is reluctant to admit that there is anything wrong with his amendment. But I think in his heart of hearts he will himself realise that it is in the wrong place. That is not an amendment to section 107. He wants it to be much further on in the proceedings. At all events, I shall be very glad indeed if any Honourable supporter of this amendment will get up and remove my doubts in the matter. I cannot see how any Sessions Judge is going to pass any effective order of any sort. I think a sensible Sessions Judge, receiving the report of the Magistrate, will say " what is the good of this to me? " and drop it into the waste-paper basket. This will be the effect of the new procedure which Mr. Rangachariar's ingenuity is devising for us.

Mr. Deputy President: Amendment moved:

" After clause 17 the following clause be added, namely:

' 17-A. After sub-section (4) of section 107 of the said Code the following sub-section shall be inserted, namely:

' (5) In all cases where action is taken under this section to prevent a person or persons from holding or addressing meetings, a report shall forthwith be made to the

[Mr. Deputy President.]

Sessions Judge who may call for and examine the record of any proceeding for the purpose of satisfying himself as to the correctness, legality or propriety of the same and pass such orders as he thinks fit '."

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—28.

Abdul Majid, Sheikh.
Agnihotri, Mr. K. B. L.
Asad Ali, Mir.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Das, Babu B. S.
Faiyaz Khan, Mr. M.
Ginwala, Mr. P. P.
Gulab Singh, Sardar.
Jatkar, Mr. B. H. R.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.
Man Singh, Bhai.
Misra, Mr. B. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Singh, Babu B. P.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—43.

Abdulla, Mr. S. M.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Barua, Mr. D. C.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Gajjan Singh, Sardar Bahadur.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Hussanally, Mr. W. M.
Ikramullah Khan, Raja Mohd.
Innes, the Honourable Mr. C. A.
Joshi, Mr. N. M.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Samarth, Mr. N. M.
Sarvadhikary, Sir Deva Prasad.
Sen, Mr. N. K.
Shahab-ud-Din, Chaudhri.
Singh, Mr. S. N.
Sinha, Babu Ambica Prasad.
Sircar, Mr. N. C.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.

The motion was negatived.

Rao Bahadur T. Rangachariar: The next amendment which I move, Sir, is this:

"*After* clause 17 insert the following clause:

'17A. After sub-section (4) of section 107 of the said Code the following sub-section shall be inserted, namely:

'If any person who is detained in custody under sub-section (4) or is brought under arrest as provided in section 114, is prepared at any time or at any stage of the proceedings before such Court to execute a bond required of him by the order passed under section 112 to be in force until the completion of the enquiry hereinafter prescribed, he shall be released '."

The whole object of the initiation of these proceedings is to require a person to execute a bond to keep the peace for a certain period, but pending the enquiry the Magistrate considers that his detention is necessary and therefore orders him to be brought up—detention in order to compel him to give the security after the proceedings are fully completed. But

if he is prepared to give that security during the pendency of the inquiry there is no reason why he should be kept in custody when he is prepared to do it in order to go on with the inquiry, it being always remembered that this is a purely preventive chapter and not a punishing chapter. If the man is prepared to do that which he is called upon finally to do, when he is prepared to do it in the first instance pending the inquiry, there is no object in keeping him in custody. Therefore, I provide that instead of his being enlarged on bail which may not be enough—bail is merely for appearance—if he executes the bond which he is required in the preliminary order under section 112 which was read to us this morning by the Honourable the Law Member, namely, giving the period and the amount which he would eventually be required to give—if he is prepared to do that pending the inquiry, then he should no longer be detained in custody. That is the object of this amendment and I hope it will be acceptable to the House.

Mr. Deputy President: Amendment moved:

"In clause 17 add the following sub-section, namely:

'After sub-section (4) of the same section the following sub-section shall be inserted, namely:

'(5) If any person who is detained in custody under sub-section (4) or is brought under arrest as provided in section 114, is prepared at any time or at any stage of the proceedings before such Court to execute a bond required of him by the order passed under section 112 to be in force until the completion of the inquiry hereinafter prescribed, he shall be released'."

Mr. H. Tonkinson: Sir, I have two objections to the amendment which has been moved by the Honourable Mr. Rangachariar. In the first place the proposed sub-section to section 107 is in an entirely wrong place. In the second place it is quite unnecessary. As regards the suggestion that it is in the wrong place, I would merely remark that section 107 deals with persons who have been required to show cause why they should not execute a bond to keep the peace. Now in this sub-section the Honourable Mr. Rangachariar refers to persons brought under arrest under section 114. This section applies to all people who come under the provisions of section 112. That is, it covers the cases of persons who are called upon to show cause why they should not give a bond for good behaviour as well as of persons who are called upon to show cause why they should not give a bond to keep the peace. That objection, Sir, might be met by placing the amendment in another place, but in view of the fact that we are providing in clause 20 for the addition of a sub-section (3) to existing section 117, I suggest that this amendment is quite unnecessary. Under the proposal of the Honourable Member the bond which would be executed would be a bond required of him by the order passed under section 112. Under section 117, on the other hand, it has been definitely provided that the bond shall not be either in degree or in nature more stringent than the bond which the man is required to execute by the order passed under section 112. What then, Sir, is the use of this additional provision. It might be suggested, perhaps, that this will apply to an earlier stage of the proceedings than the stage of section 117. But, Sir, that is entirely incorrect because a man under the proposed sub-section (6) must have been brought before the Court. The order under section 112 must have been read and then, Sir, immediately the provisions of section 117 apply and I submit that the amendment is therefore quite unnecessary. In the interests of the subject, much more has been provided for in the Bill already than in the amendment proposed by my Honourable friend.

Mr. Deputy President: The question is:

"That in clause 17, add the following sub-section, namely:

'After sub-section (4) of the same section the following sub-section shall be inserted, namely:

'5. If any person who is detained in custody under sub-section (4) or is brought under arrest as provided in section 114, is prepared at any time or at any stage of the proceedings before such Court to execute a bond required of him by the order passed under section 112 to be in force until the completion of the inquiry hereinafter prescribed, he shall be released'."

The motion was negatived.

Mr. Deputy President: The question is, that clause 17, as amended, stand part of the Bill.

4 P.M.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, the amendment of which I gave notice has already been discussed in connection with clause No. 17. I may be permitted to move an amendment adopting the same wordings as have been adopted in clause 17, that is 'in his opinion if there is sufficient ground for proceeding, or believing,' or whatever word may be suitable,—I would leave that to the Legislative Department.

Sir Henry Moncrieff Smith: Sir, we are quite prepared on our part to accept the same amendment that we had in section 107. It will simplify matters if I move it myself, having it now in proper form. I move, Sir,

"That in clause 18 after the word 'substituted' the following be inserted:

'After the words 'such Magistrate' the words 'if in his opinion there is sufficient ground for proceeding' shall be inserted'."

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

The motion was adopted.

Mr. T. V. Seshagiri Ayyar: I move, Sir, on behalf of Dr. Gour, his amendment.* I must say at once that, speaking for myself, I should like not to move it, but unfortunately I have power and am authorised to move and not to withdraw. But I can conceive cases, in moving the amendment, cases, probably Government knows, of an effigy being carried which would have the effect of disseminating sedition; or, a caricature, a photograph: there are other ways of disseminating sedition, that is other than orally or in writing. However, Sir, I have got to move it, and I move it.

Mr. Deputy President: The amendment moved is:

"In clause 18 omit the following:

'After the words 'in writing' the words 'or in any other manner' shall be inserted'."

The Honourable Sir Malcolm Hailey: Mr. Seshagiri Ayyar has already anticipated the objection we should have brought forward against his amendment. The added words would, of course, apply to effigies, photographs, cinema shows, dumb shows and the like.

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

The motion was negatived.

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* 'In clause 18 omit the following:

'After the words 'in writing' the words 'or in any other manner' shall be inserted'."

Rao Bahadur T. Rangachariar: Sir, I move the following amendment:

"In clause 18 after the word 'manner' insert the word 'knowingly'."

My amendment relates to the same clause but is not to the same effect. The language of the clause is:

"has information that there is within the limits of his jurisdiction any person who, within or without such limits, either orally or in writing, seminates or in any manner disseminates or attempts to disseminate . . ."

I introduce the word "knowingly" before the word "disseminates," so that innocent agents may not be proceeded against; for instance, boys who handle newspapers without knowing the contents and such other persons who are merely ignorant tools in the hands of other persons, should not be proceeded against. "Knowingly disseminates"—that is the object of this amendment. I hope it will commend itself to the House, and I do not think many words are needed, unless Government opposes, in which case, of course, there are other Honourable Members who will take care of it.

Sir Henry Moncrieff Smith: Sir, I would suggest that this amendment is really not necessary. Mr. Rangachariar cited the case of the newspaper boy. Well, a newspaper boy does certainly hand on newspapers which contain possibly objectionable matter to purchasers. But I do not think it can be said that the newspaper boy is disseminating the matter.

The word used here is 'disseminating,' 'spreading broadcast,' and Mr. Rangachariar no doubt knows the Latin derivation of the word: it means the same thing as 'scattering seed.' Now, the person who scatters seed orally or in writing is not the newspaper boy. I do not think there is any doubt about that. Nor do I think there is any risk whatever of a newspaper boy being prosecuted under this section. The word "knowingly" is not a word we are accustomed to in our law; we have the words 'voluntarily' 'intentionally,' and so forth. "Knowingly" is somewhat new to us and I do not think we shall be improving the Code by introducing it.

Mr. K. B. L. Agnihotri: Sir Henry Moncrieff Smith has said that no person who sells newspapers can be bound over under this section. I should like to give him some instances which have been brought to my notice. Honourable Members may be aware that in Partabgarh during 1921, about a dozen young men were prosecuted under this section and bound over for distributing certain leaflets about the *Kisan* movement and put in prison for their refusal to give security. In another place also, very recently, a boy was punished with imprisonment for seven years under sedition for distributing *Fatwa* leaflets. It is just possible that the Magistrates may bind over even boys who sell newspapers in the streets. There will therefore be no harm if the word "knowingly," or any similar word such as "intentionally," is inserted in this sub-clause. It is on the other hand extremely desirable to insert such a word and provide a necessary safeguard.

The Honourable Sir Malcolm Hailey: Sir, the Honourable Member has by implication at all events brought so grave a charge against our Magistracy, namely, of sending to prison for seven years boys who unknowingly disseminated information, that I am impelled to ask him whether he can assure the House that persons so convicted did not know the nature of the leaflets they were distributing. Perhaps he cannot give that assurance?

Mr. K. B. L. Agnihotri: Not under this section. No one can be punished for seven years under this section.

The Honourable Sir Malcolm Hailey: Then his objection does not apply to this section.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadan Urban): Sir, with your permission and the permission of the House, I move that the word "intentionally" be substituted for the word "knowingly".

Rao Bahadur T. Rangachariar: Sir, I accept that.

The Honourable Sir Malcolm Hailey: We are prepared to accept that.

Mr. Deputy President: The question is:

"That in clause 18, after the word 'manner' insert the word 'intentionally'."

The motion was adopted.

Mr. Agnihotri's Amendment No. 46, namely:

"That in clause 18:

Between the word 'matter' and the word 'contained', insert the words 'not true to the knowledge of such person and'."

was withdrawn.

Mr. Deputy President. The question is:

"That clause 18, as amended, stand part of the Bill."

The motion was adopted.

Mr. W. M. Hussanally: Sir, before Mr. Agarwala is called upon to move his amendment, there is an amendment standing in my name on the supplementary list which has been placed on the table to-day. I propose that in section 110 after the words 'receives information', the words 'on oath or solemn affirmation' be inserted.

The Honourable Sir Malcolm Hailey: I am afraid, Sir, I must ask for your ruling whether you admit this amendment. You will perceive, that it was received on the 15th January shortly after one o'clock.

Mr. W. M. Hussanally: I handed it in to the Notice Office at 11 o'clock.

The Honourable Sir Malcolm Hailey: Nevertheless, Sir, it was on the 15th of January, and, as I read the rule, it says that notice of amendments must be given in two clear days before the Bill is to be considered. The rule does not provide two days before any portion or section of the Bill is taken into consideration.

Mr. Harchandrai Vishindas: "Considered" is the word.

Mr. Deputy President: My ruling on the application of Standing Order 46 to the case of amendments received two clear days before the clause of the Bill to which they relate comes up for consideration is as follows:

Sub-order (1) of Standing Order 46 clearly requires notice to be given two clear days before the first day on which the Bill is considered. Therefore, all amendments of which notice was given on or after the 13th of January may be objected to under the Standing Order. As regards the

power of the Chair to overrule the objection, I propose, ordinarily, not to suspend the Standing Order in favour of such amendments, firstly, because Honourable Members have had ample time in which to consider the Bill and to formulate their amendments, and, secondly, because in a long and complicated Bill of this kind there is a distinct danger that the passing of an amendment, of which the notice prescribed by the Standing Order has not been received, may result in the overlooking of necessary consequential alterations in the Bill or of the effect of the amendment on other provisions of the Code.

I therefore rule Mr. Hussanally's amendment out of order.

Rai Sahib Lakshmi Narayan Lal: Sir, with your permission, I will move the amendment standing in the name of Mr. Agarwala.

Mr. Deputy President: Has the Honourable Member received his permission in writing?

Rai Sahib Lakshmi Narayan Lal: Yes, Sir.

The amendment that I am going to move is:

"That in clause 19 omit sub-clause (1)."

Sub-clause (1) of clause 19 is as follows:

"In class (*a*), the word 'or,' where it first occurs, shall be omitted and after the word 'thief' the words 'or forger' shall be inserted."

The effect of this amendment will be that a "forger" will not be included under the purview of section 110 of the Criminal Procedure Code. I would have liked to include a "habitual forger" under the purview of this section of the Code, but there is a difficulty which stands in my way, but for which I would not have moved this amendment, and it is this. Section 110 says that whenever a Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, or a Magistrate of the first class specially empowered in this behalf by the Local Government receives information that any person within the local limits of his jurisdiction is by habit a robber, housebreaker, or thief, etc., such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with sureties for his good behaviour for such period not exceeding 3 years as the Magistrate thinks fit. Honourable Members will find that the Code requires that the bond shall be executed with sureties, and a reference to clause 21 (*c*) of the Bill will show that such sureties can be rejected on the ground that they are not capable of controlling the movements of the person. I ask the Honourable Members to consider whether it is possible for the sureties of a "forger" to control his movements. The sureties of a habitual robber or thief or housebreaker can control his movements, because to commit his offence he has to move from place to place, he will be going from one place to another. But a forger" can forge while sitting in his house: how can a surety control his movements? It will be simply impossible for a "forger" to find a surety. A forger cannot get a surety, and when he cannot get a surety he will have to rot in jail. No surety can possibly control the movements of a "forger" unless he remains with him day and night, and therefore I say "forger" should not be included in his section.

The motion was negatived.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadan Rural): Sir, my amendment is that:

"In clause 19, sub-clause (ii), omit the words 'or abets the commission of'."

Mr. K. Ahmed: Sir, there is an amendment to omit clause 19 standing in my name.

Mr. Deputy President: We have just disposed of that.

Mr. K. Ahmed: I wish to move amendment No. 48*

Mr. Deputy President: That has been disposed of.

Mr. K. Ahmed: No, Sir. There has probably been a clerical mistake and I am the sufferer for it. Sir, before I had sent the manuscript written by myself possibly there has been some mistake. The word ' forgery ' Sir, you will see in section 110 . . .

Mr. Deputy President: Before the Honourable Member proceeds further I would like to know what amendment on the agenda paper it is that he is moving.

Mr. K. Ahmed: The word ' forgery,' Sir,—I have got the word here . . .

Mr. Deputy President: That has been disposed of.

Mr. J. Ramayya Pantulu: I propose, Sir, that in clause 19, sub-clause (ii), the words " or abets the commission of " be omitted.

This amendment relates to clause (*d*) of section 110. The present clause runs thus:

" Whoever habitually commits mischief, extortion or cheating or counterfeiting coin, currency notes or stamps, or attempts so to do . . ."

The amendment proposed by Government is this:

" Habitually commits, or attempts to commit, or abets the commission of, etc."

Abetment is now added newly to the section. According to the section as it stands now it is only the commission of an offence or an attempt to commit the offence that renders a man liable to be bound over. But now for the first time it is proposed also to bind over a man for habitually abetting the commission of an offence. My objection is this, that abetment may be by doing an overt act or simply by an illegal omission; and it seems to me that a man might be bound over for abetting by means of an overt act but not for abetting by an illegal omission. I am prepared to amend my amendment like this: " habitually commits or attempts to commit or abets by an overt act the commission of an offence . . . " So I will put it like that and I hope that it will commend itself to Government. My point is this, when you bind over a man . . . .

Mr. Deputy President: May I ask the Honourable Member to repeat what he has said? The House would like to know what the alteration is.

Mr. J. Ramayya Pantulu: I would add after the word " abets " the words " by an overt act." My point is that we should not bind over a man simply because he has been omitting to do a certain thing which he ought to have done. We can do it with regard to a man who has done an overt act. That is my point, Sir.

Dr. Nand Lal: With your permission, Sir, may I inform the author of the present amendment . . . . .

* ' In clause 19, omit sub-clause (i),'

Mr. Deputy President: Order, order. The amendment is "In clause 19, sub-clause (*ii*) after the word 'abets' insert the words 'by an overt act'."

Rai N. K. Sen Bahadur (Bhagalpur, Purnea and the Sonthal Parganas: Non-Muhammadan): May I inquire if this new amendment has been accepted by this House?

Sir Henry Moncrieff Smith: No, Sir, by no means.

Mr. Deputy President: If an objection is taken, I would rule it out of order.

Sir Henry Moncrieff Smith: I merely said that the amendment has not been accepted by the House.

Mr. Deputy President: But the question is before the House.

Sir Henry Moncrieff Smith: The amendment has not yet been accepted by the House.

Mr. Deputy President: The amendment is before the House.

Sir Henry Moncrieff Smith: Sir, Mr. Pantulu desires to put in the words 'by an overt act,' because he is afraid that somebody might be prosecuted under section 110 for habitually abetting serious offences by illegal omissions. It is a little difficult to conceive how this might arise. But in any case there is no abetment without intention. If my friend will look at the Penal Code for the definition of abetment, he will find that there is no abetment in regard to an omission unless the omission is an illegal omission and unless also the person intentionally aids, by that illegal omission, the doing of a thing. I think, Sir, the House will agree that if a person habitually and intentionally aids by illegal omissions the commission of all these offences to which reference has been made, he should come within the purview of the law.

The motion was negatived.

Mr. K. Ahmed: Sir, I move that in clause 19, in sub-clause (*ii*), omit the word 'kidnapping.'

As a general principle, Sir, when there is an offence and it is sufficiently provided for as punishable in the Indian Penal Code, I do not think it is at all necessary that this word should be included in section 110 for bad livelihood. The scope of this section is after all a preventive one and not a punitive one. Kidnapping as a profession, Sir, is very rare in many parts of India; while on the other hand, we have got some experience in our criminal court practice that young minor wives and minor members of families who are without help are kidnapped. Sometimes the relations of the minors go to the police and try by giving illegal gratification to kidnap, with the result that the engine of oppression is being put in against the interest of these persons who are infants after all. That being so, Sir, and since we see the word 'kidnapping' has been put in for the first time after so many years and is probably a good attempt, but certainly, Sir, when we come across so many difficulties, so much oppression being exercised, I submit that this word "kidnapping" should be omitted.

I therefore move, Sir:

"In clause 19, in sub-clause (*ii*), omit the word 'kidnapping'."

The motion was negatived.

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

"In clause 19 (*ii*), insert the word 'abduction' between the words 'kidnapping' and 'extortion'."

I think, Sir, while moving this amendment I am on safer ground. Here I do not wish to curtail the powers and the authority that have been vested in the Magistrates or the police and I have no fear of getting any rebuke from the Leader of the House on this amendment. I take it as my ill-luck to have received these rebukes from the Leader of the House, for the fault of having the misfortune to differ from him on certain points. My reason for moving this amendment is that, of late there has been a regular profession with certain people to take women and girls from different provinces of India to the Punjab—so much so that hundreds of females are taken from some of the provinces to the Punjab every year and sold there. So far as the Central Provinces is concerned, the Central Provinces Government deputed special officers to find out and make inquiries in that connection and certain persons are on trial and the cases are pending in the Courts of law. It generally happens that the agents or the female-catchers as they may be called, have their agencies at various places where they employ women of that district or of places in the neighbourhood in their service and after a course of time by deceitful inducements and persuasion take them to the Punjab and sell them. If any of my Honourable friends have any doubt on that matter I would refer them to the various law reports and the law journals: wherein they will find many cases of kidnapping and abduction of this nature reported. Therefore, I submit that there is no reason why when we include kidnapping we should not include abduction also in this section. Therefore, I commend my amendment for the consideration of the House.

The Honourable Sir Malcolm Hailey: Sir, I am very sorry Mr. Agnihotri should think that I have directed rebukes against him. It was far from my mind; I have indeed attempted to convince him by argument every now and then and I am glad to say have frequently received the aid of the House in doing so. On this occasion he may be quite free from any such apprehension. So far from contesting his proposal, for my part I think it is an excellent one. It was originally in the Bill as put forward in 1913, and it was perhaps in an excess of caution that it was omitted by the Lowndes Committee. I quite agree, from my knowledge of the infamous trade that is carried on in certain parts of India, that this addition should be made to Bill; it is an added pleasure to me on this occasion to find a new Saul among the prophets.

Mr. J. Chaudhuri: But the Law Member ought to repudiate the charge against the Punjab.

Bhai Man Singh: Sir, while supporting the amendment, I must strongly repudiate the charge that is brought against my province. I am sure the Honourable the Law Member will bear me out on this point.

Mr. Deputy President: Amendment moved:

"In clause 19 (*ii*), insert the word 'abduction' between the words 'kidnapping' and 'extortion'."

The question is that that amendment be made.

The motion was adopted.

Munshi Iswar Saran: Sir, I beg to move the amendment which stands in my name, and which runs as follows:

"To clause 19 add the following clause:

'(*iii*) clause (*f*) shall be omitted'."

I am afraid I shall be considered to be a very nervous person like so many other Honourable colleagues of mine in the House who object to the enlargement of the power of the Magistracy and the police. I know that in moving this amendment I am courting very severe attacks from various quarters. Some friends of mine, mostly Executive Officers of Government, have come to me and, though not in so many words, but by their gestures and by the way in which they have spoken have implied "Either you are a dangerous lunatic or you are a dangerous character yourself. How dare you move this amendment?" When I am opposed by so many distinguished gentlemen, I feel that I must be wrong and they must be right. But, unfortunately, Sir, I have not been convinced that I am wrong and I need hardly assure either the Honourable Sir Malcolm Hailey or the other Members of this House that I am in no sympathy with the dangerous people who are mentioned in section 110, and I am not at all keen on gaining the distinction which a prosecution under this section confers upon you.

But, Sir, the whole point is this. Is it really necessary to have this clause (*f*) in section 110? The House will notice that its scope has been very much extended by the amendments that have been carried to-day. Almost every kind of imaginable offence to which the provisions of this section could be made applicable has been included in sub-clauses (*a*), (*b*), (*c*), (*d*) and (*e*). I have been trying to think—I must confess without success—of a case to which clause (*f*) would apply but which would not be covered by the previous clauses. (*An Honourable Member*: "Goondas".) Yes. My Honourable friend says "Goondas." I was going to refer to Goondas. Perhaps my words will not carry the same weight with the House as the words of a very distinguished Judge of the Allahabad High Court, whom every lawyer not only in the United Provinces but all over India considers an authority on criminal law. I mean the late Sir Douglas Straight. Listen to what he says. There was a case exactly of a Goonda before him and this is what he said. I will give the facts from the report itself.

Sir Henry Moncrieff Smith: May we have the reference, please.

Munshi Iswar Saran: Indian Law Reports, Allahabad Series, Volume VI, page 132. I must at once inform Sir Henry Moncrieff Smith that I tried to find out whether this case was over-ruled but I could not get hold of the index of cases in this library. If it is over-ruled, I shall be very glad if he will tell me so. This is what the report says:

"On reading over the record and hearing Babua's pleader, Babu Lal Moha, I consider there is sufficient evidence on the record to establish that Babua is a notorious *badmash*, an extortioner, a concoctor of false cases as a means of extorting money, and altogether a terror to the town of Mirzapur. I have heard of the *badmashes* of Mirzapur (who, indeed, are notorious), and I have taken the opportunity of consulting a few of the residents of Mirzapur about this Babua, and the account they give of him is very black indeed."

That was the sort of man who went up in revision before his Lordship, Mr. Justice Straight. This is what his Lordship says:

"I am well aware that in Mirzapur, particularly, the task of the Magistrate in preserving order is an extremely difficult and anxious one; but neither he nor the

[Munshi Iswar Saran.]

Judge nor this Court is empowered by law to put a man in prison simply because he has an evil reputation. If respectable persons, who can prove facts which would constitute the credible information legally necessary to justify issue of process and requirement of security, have not the courage to come forward and assist the Magistrate in the prevention of breaches of peace or of crimes by giving evidence in Court, it is unfortunate to say the least of it, but the Magistrate is not therefore entitled to act upon inadequate proof obtained *aliunde*, which he himself describes 'as not so strong as it ought to be'. If in the interest of public order or security to property the attendance in Court of such persons was necessary, the Magistrate had the power, if he chose to exercise it, of compelling their appearance."

I have invited the attention of the House to this particular passage in the judgment of Mr. Justice Straight to show that it was a very bad case where the District Magistrate and the Sessions Judge were clearly of opinion that the man was a regular *badmash*, goonda or hooligan, call him what you will. The District Magistrate and the Sessions Judge thought that he should be bound over under section 110. But his Lordship Mr. Justice Straight sitting in revision held that the provisions of this section did not apply, and he refers,—I may tell Sir Henry Moncrieff Smith—to an earlier case reported in I. L. R., 2, All., 835, where he has laid down the principle which should guide Courts in applying section 110. Now, I submit that if the House is satisfied that there are cases which are not covered by the previous clauses together with the amendments made—apart from the question of any authority in my favour—then surely, this clause should be retained and I shall be happy to withdraw my amendment. But I fail to see why you should introduce a clause so general, and I might say, so vague that it is difficult to define it. Moreover I submit that in times of panic or of excitement it is possible that this clause may be misapplied, as indeed some clauses are being misapplied. Take the case of a goonda who either goes about beating people, trying, say, to extort money. If he is a man who goes about beating people, you can certainly have him under clause (*e*) which lays down that a person who "habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace", should be bound over under this section. Or to take another instance, if you have a man who goes about threatening people, then you can again have him under this very clause. I submit that these clauses are wide enough to cover all these cases and it is not wise to have a clause which can on account of its vagueness and indefiniteness be misapplied. I therefore move the following amendment:

"To clause 19 add the following sub-clause:

'(*iii*) clause (*f*) shall be omitted'."

The Assembly then adjourned till Eleven of the Clock on Saturday, the 20th January, 1923.