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LEGISLATIVE ASSEMBLY.

Thursday, 25th 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.

VIEWS OF LOCAL GOVERNMENTS ON MATTERS OF PUBLIC IMPORTANCE.

259. *__Mr. Manmohandas Ramji__: Will the Government be pleased to state:

(*a*) whether they ask the opinions of Local Governments as a whole, that is, the Executive Members and Ministers together, or separately, when referring for opinion on matters of general public importance,

(*b*) whether they have received the opinions of the Members and Ministers jointly or separately,

(*c*) if not which of the Local Governments do not submit the opinions of Ministers, and

(*d*) whether the Government propose to consider the desirability of directing all Local Governments to do so in future?

The Honourable Sir Malcolm Hailey: The normal course followed by the Government of India in consulting a Local Government is to ask for the opinion of the Local Government which means the Governor in Council in relation to reserved subjects and the Governor acting with his Ministers in the case of transferred subjects. The Governor General in Council is not primarily concerned with the procedure adopted by the Local Government for the formulation of its opinion on such references, but I would invite the attention of the Honourable Member to clause IV of the Instrument of Instructions to the Governors of the various provinces in accordance with which the Governor is directed to encourage the habit of joint deliberation between himself, his Councillors and his Ministers. Generally speaking the opinions received from Local Governments are given as the joint opinion of the Local Government, though occasionally the particular opinion of individual Members of the Executive Council and Ministers is given separately. The Government of India have no sufficient information to enable them to discriminate between Local Governments in this respect, and they do not propose to issue any direction in the matter.

RENTS IN DELHI AND SIMLA.

260. *Munshi Iswar Saran: (*a*) Will Government state the basis on which rent for the Government houses in New Delhi is charged from the occupants of those houses?

(*b*) Is it a fact that a number of junior officers occupying Government houses in New Delhi are also paying rent to Government for their houses in Simla?

(*c*) Is it a fact that for the five months that these officers are in Delhi, they have to pay separately rents for two houses, one in Simla and the other in Delhi?

(*d*) Is Government aware that in such cases the combined rent for the Simla and the Delhi houses, even excluding the charge for furniture, works out to a high percentage of their salary?

(*e*) Do Government propose to direct that the total house rent charged by Government for residence provided by it should not exceed 10 per cent. of the officer's salary?

Colonel Sir Sydney Crookshank: As the answer to this question is very lengthy, I propose, if I have the permission of the Chair, to lay it on the table.

(*a*) Rents for residences in Delhi are recovered on a seasonal basis, the season being reckoned as a period of five months.

2. The rent assessed for each building is a sum calculated to cover cost of

(*a*) interest charges on the capital cost calculated at the rate at which Government is borrowing money at the time of construction,

(*b*) maintenance charges,

(*c*) municipal and other taxation.

The amount that can be recovered from each individual is, however, limited to 10 per cent of his pay, but over and above this, extra rent, which is not limited in any way, is recovered for electric installations, special services such as water supply and plumping, and furniture. Each of these being assessed in a similar manner to the rent of the building itself.

3. As the rate of interest under 2 (*a*) above has varied considerably since construction was first started in Delhi, advantage was taken this year when revising rents—as necessitated by the introduction of the Fundamental Rules—to pool the interest charges so as to ensure all being treated alike. For the sake of convenience rents were pooled for (*a*) officers' residences, and (*b*) residences of ministerial establishment. The average rates so calculated worked out to

Officers.

4½ (round) in the case of buildings and electric installations.

4¼ (round) in the case of special services.

Ministerial establishment.

4½ (round) in the case of buildings.
4 (round) in the case of electric installations.
4 (round) in the case of special services

as compared with the uniform rate of 8½ per cent in force before the issue of the Fundamental Rules. The allowance made for repairs is as follows:

—	Officers.	Ministerial establishment.
	Per cent.	Per cent.
Building	2	1½
Electric installations	3½	4
Special services	3½	5½

The maintenance charges vary with the specification of the work.

(*b*) Yes.

(*c*) Yes.

(*d*) The proportion which actual recoveries bear to salaries is as follows:

(*i*) Junior officers drawing Rs. 1,350 to Rs. 1,999 . 10·6 without furniture and 12·2 with furniture.

(*ii*) Junior officers drawing Rs. 900 to Rs. 1,349 . 12·2 without furniture and 14·4 with furniture.

(*e*) The matter is under consideration.

UNIVERSITY ELECTIONS.

261. ***Munshi Iswar Saran:** Will Government state if the Hindu University at Benares and the Muslim University at Aligarh will be given the right of electing their own representatives in the coming election?

The Honourable Mr. A. C. Chatterjee: Government do not at present propose to take any action in this direction.

Mr. K. Ahmed: Isn't that derogatory to the principle of education, and that is one of the reasons why students are boycotting the Government Universities and they say that they should be nationalised? Isn't that so, Sir?

The Honourable Sir Malcolm Hailey: It is a question of opinion.

STATEMENT OF GOVERNMENT BUSINESS.

Mr. Deputy President: I should like to know from the Leader of the House if he has any announcement to make with regard to the forthcoming business before the House.

The Honourable Sir Malcolm Hailey (Home Member): We propose, Sir, to hold a meeting to-morrow, Friday, to continue the discussion on the Criminal Procedure Code (Amendment) Bill. As regards next week, it will

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be devoted entirely to Government business. But we do not propose next week to continue the discussion on the Criminal Procedure Code Bill. There will probably be four or five meetings, and it is proposed to take into consideration the Reports of the Joint Committees on the following Bills which were presented on the 15th and 16th January:

The Indian Boilers Bill,

The Indian Mines Bill,

The Cotton Transport Bill, and

The Cantonments (House-Accommodation) Bill.

It is also hoped to take into consideration at an early date the Report of the Joint Committee on the Workmen's Compensation Bill which was presented yesterday. It is also proposed to refer to a Joint Committee the Indian Cotton Cess Bill which was introduced in the Assembly on the 23rd instant.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Is there any meeting on Saturday next?

The Honourable Sir Malcolm Hailey: It is not proposed to hold a meeting on Saturday.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Will there be an off day in the week following?

The Honourable Sir Malcolm Hailey: In the week following we shall have an off day either on Saturday or Friday; it depends on the progress we make with business.

Mr. Deputy President: The House will now proceed to 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.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, the amendment which I have to move is intended merely to make clear what is apparently the intention, namely, when a person, after having undergone some portion of his imprisonment is released on condition and that condition is broken, and he is again ordered to go back, he must give security only for the unexpired portion of the period. That is the object of the amendment in clause 6, paragraph 2 and paragraph 3, section 124. My amendment has been slightly altered by the draftsman which Government accepts, and therefore, Sir, in place of the amendment as it stands, I move that the following be substituted:

"That in sub-clause (*iii*) of clause 23, for the second paragraph of the proposed new section 6 the following be substituted:

'(*a*) Unless such person then gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period

equal to the period between the date of the breach of the conditions of the discharge and the date on which except for such conditional discharge he would have been entitled to release) the District Magistrate or Chief Presidency Magistrate may remand such person to prison to undergo such unexpired portion, and

(*b*) in the third paragraph for the word 'may' the words 'shall, subject to the provisions of section 122' be substituted; and after the words 'original order' the words 'for the unexpired portion aforesaid' be inserted."

Both these amendments are merely intended to make it clear that the bond required or to be given will only be for the unexpired portion. I want to make it clear that it should not be for the whole length of time, because he has already undergone a portion of that period. To make that clear, I move that amendment.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, Government accepts these amendments.

Mr. Deputy President: The amendment moved is:

"That in sub-clause (*iii*) of clause 23, for the second paragraph of the proposed new section 6 the following be substituted:

'(*a*) Unless such person then gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of the discharge and the date on which except for such conditional discharge he would have been entitled to release) the District Magistrate or Chief Presidency Magistrate may remand such person to prison to undergo such unexpired portion, and

(*b*) in the third paragraph for the word 'may' the words 'shall, subject to the provisions of section 122' be substituted; and after the words 'original order' the words 'for the unexpired portion aforesaid' be inserted."

The question is that that amendment be made.

The motion was adopted.

Bhai Man Singh (East Punjab: Sikh): Sir, the amendment (No. 84) standing in my name . . . .

Sir Henry Moncrieff Smith: I think this amendment has been disposed of by the discussion we had the other day. It is substantially the same as the amendment moved by my learned friend Mr. Rangachariar, and the House on that amendment expressed the opinion that they would prefer to have the law as it stands in the Code maintained. If my friend is moving the proviso, that is a different matter; but the first part, the substantive amendment has been disposed of.

Mr. Deputy President: I take it that the Honourable Member is moving the second part: "Provided further that in case, etc., etc. . . . ."

Bhai Man Singh: I do not propose to move the second part.

Mr. Deputy President: The question is that clause 28, as amended, stand part of the Bill.

The motion was adopted.

Mr. Deputy President: Under the ruling I have given amendment No. 86* in the List of Business is outside the scope of the Bill and is therefore out of order.

No. 87† is also outside the scope of the Bill and therefore I have to rule it out of order.

The question is that clause 23-A stand part of the Bill.

The motion was adopted.

Mr. B. Venkatapatiraju (Ganjam *cum* Vizagapatam: Non-Muhammadan Urban): Sir, on behalf of Mr. Agnihotri I move:

"That in clause 24 in sub-section (1) of section 133 for the words "he thinks fit" the words "is adduced" be substituted."

The new section 133 (1) says:

"Whenever a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class considers, on receiving a police report or other information and on taking such evidence (if any) as he thinks fit, that any unlawful obstruction or nuisance should be removed etc. . . . ."

Now, Sir, when a Magistrate wants to take evidence under this section it is in order to show that there is a necessity for taking action, and I think it is better that the evidence adduced should be allowed to be taken by the Magistrate. Because he may otherwise decide to take only such portion as he thinks fit and not the whole. This section leaves it too much to the discretion of the Magistrate, and I therefore suggest the addition of the words "is adduced."

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* "86. After clause 23-A insert the following clause:

'23-B. To section 128 of the said Code the following proviso shall be added, namely:

'Provided that no such force shall be used to the members constituting such assembly if they do not offer resistance to their being arrested'."

† "87. After clause 23-A insert the following clause:

'23-B. After section 131 of the said Code, the following section shall be inserted, namely:

'131-A. Where under the provisions of this Chapter any person proceeds or determines to disperse any such assembly by the use of fire-arms the following rules shall also be observed:

(1) Fire-arms should be used only if such assembly cannot otherwise be dispersed and no fire-arms should as a rule be used except on the written authority of a Magistrate of the highest class available on the spot. Provided that when immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public the seniormost police or military officer present on the spot may give the written authority instead and the same shall be communicated to the nearest Magistrate forthwith.

(2) Before the assembly is fired upon the fullest warning should be given by all available means to the assembly that unless it disperses within a given time it will be fired on.

(3) The person giving the authority to fire shall ordinarily give such interval between the warning and firing as he considers sufficient in all the circumstances of the case.

(4) A full report of the occurrence shall be made in all cases when such assembly is dispersed by the use of fire-arms to the nearest first-class magistrate within 24 hours of the occurrence and such report shall be a public document.

(5) If the person is himself a first-class Magistrate his report shall be made to the District Magistrate and if the person is a District Magistrate his report shall be made to the Local Government.

(6) Notwithstanding anything contained in section 132 any person injured by the use of fire-arms or any parent or guardian, husband or wife of a person killed by the use of fire-arms may make a complaint against any person for any offence committed by him by reason of any act purporting to be done under this Chapter'."

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, in this Chapter of the Code we are dealing with public nuisances and it will be seen that the amendment proposed refers to the first step in the procedure. The District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class on receiving a police report or other information and on taking such evidence, if any, as he thinks fit—is empowered to issue a conditional order. The order, Sir, is only a conditional order, an order to the person to whom it is directed to appear and show cause against or else to comply with the direction in the order after it has been received by him. It is open to him later to produce any evidence he thinks fit and to show cause against. I submit, Sir, that it is entirely unnecessary here to make it compulsory for the Magistrate to take all the evidence which is adduced, because the full inquiry follows afterwards. The words in the Code as they stand at present are, " as he thinks fit," and it is not proposed in the Bill to amend those words. I submit, Sir, that this is all that is necessary, in view of the fact that we are dealing only with the preliminary stage. It is just the same thing as if you were taking cognizance of an offence on a complaint. You merely examine the complainant and then a summons is issued and so on, and you proceed to hear evidence afterwards. The conditional order under this section has practically no more effect than a summons addressed to an accused person. In these circumstances, Sir, I submit that it is entirely unnecessary to make the amendment proposed by my Honourable friend.

Rao Bahadur T. Rangachariar: Sir, I support the amendment. The object of this clause is for a Magistrate to make up his mind on a complaint made either by the Police or it may be by a private individual. He has got to decide it himself in the first instance and he asks the man to appear either before himself or some other Magistrate of the first or second class and move to have the order set aside. So that in the first instance it is a conditional order. Therefore the Magistrate has to adjudicate on the information given by private parties, and the only option given to the party to whom notice is given is to set aside that order. It is therefore but right that the Magistrate should take the evidence which is adduced before him before he makes that order. It is not as if you issue notice on a complaint or anything of that sort. I therefore think that there is a great deal of substance in the amendment.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I oppose this amendment. If the Honourable Members will turn to section 133 they will find that an order that has to be passed for the abatement of a public nuisance may refer, for instance, to any building, tent or structure, or any tree in such a condition that it is likely to fall. Now, if the Honourable Mover's amendment is accepted, is the structure or building to fall in the meantime while evidence is being recorded by the Magistrate? And any person who wishes to give evidence may summon and resummon witnesses and the danger to be averted in the meantime may not be averted at all. The object of section 133 is to provide a speedy remedy in cases of public nuisance. The chapter itself beginning with section 133 is of a quasi-criminal character; the proceedings are more or less of a civil character, and I therefore submit that the amendment, if adopted, will delay the proceedings and no good will be served by taking all the evidence that is adduced in a case. The Magistrate may think that one or two witnesses are quite enough to

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establish a good *primâ facie* case for immediate action. If his discretion is fettered by having to record all evidence that is adduced, it may be wholly unnecessary and it may be wholly superfluous. The evidence will be recorded and in the meantime the public nuisance may be perpetrated. I therefore submit that the discretion given to the Magistrate is a sound one and should not be interfered with.

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

The motion was adopted.

Mr. Deputy President: The question is:

"In clause 24 in sub-section (1) of section 133 for the words 'he thinks fit' substitute the words 'is adduced'."

The motion was negatived.

Mr. T. V. Seshagiri Ayyar: (Madras: Nominated Non-Official): I beg to move the amendment (No. 89) which stands in my name, *viz.*:

"In clause 24 in sub-section (1), paragraph 2 of proposed section 133, insert the words "from any public place or" after the words "be removed" and omit the said words where they at present occur in the said sub-section."

The amendment is purely a drafting suggestion. If the Government is not prepared to accept it, I am not going to press it. The section would read better if my suggestion is adopted. The second clause of section 133 reads thus:

"that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public or from any public place, or"

I am asking that the words "from any public place or" be transposed immediately after the words "be removed." If my suggestion is adopted, the paragraph will read thus:

"that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public, or"

That is purely a drafting suggestion. I move it and leave it there.

Sir Henry Moncrieff Smith: Sir, I suggest that it is unwise for this Assembly to make this amendment for the very simple reason that if a change is made in the law, the Courts would ask what the intention of the Legislature is. The actual transposition of the words will not affect the substance of the clause, but some Magistrates may ask why the words have been transposed now and they may come to the conclusion that the intention of the Legislature is to make the words "from any public place" governed by the words "which is or may be lawfully used by the public." I think it undesirable that we should make a change.

Mr. T. V. Seshagiri Ayyar: If the Government draftsman does not want it, I do not press it to a division.

Mr. Deputy President: Amendment (No. 89) was, by leave of the Assembly, withdrawn.

Lala Girdhari Lal Agarwala (Agra Division: Non-Muhammadan Rural): Sir, my two amendments Nos. 90 and 93 go together and I therefore ask for leave to move them together.

Mr. Deputy President: It would be convenient to the House if the Honourable Member would move his amendment No. 90 at this stage.

Lala Girdhari Lal Agarwala: Sir, my object is this. Amendment No. 90 would be necessary only if amendment No. 93 is there; otherwise it would not be necessary at all. Both go together. I may be allowed to explain this. These amendments are amendments in the proposed new section 133 about conditional order for removal of nuisance. It says: "Whenever a District Magistrate, etc., on receiving a police report or other information and on taking such evidence (if any) as he thinks fit, finds that the conduct of any trade or occupation, or the keeping of any goods or merchandise is injurious to the health or physical discomfort of the community". Now, the amendment I propose is that after the word "health" the word 'morality' may be inserted and the word 'physical' may be expunged, and at the end an Explanation may be added to the following effect:

"Action may be taken under this section for suppression or regulating of brothels and disorderly houses as well as places used for gambling in Satta, Badni or share-marketting as also places inhabited by prostitutes or used for storage, distribution or sale of intoxicents."

The word 'physical' would become unnecessary if this Explanation is added, because there are some discomforts which may not be called physical discomforts, which may be mental discomforts. For example, if a brothel is maintained close to the house of a gentleman, although he would have no physical discomfort, he will have mental discomfort. Of course, I know that in some districts action has been taken under the section "Nuisance" in matters like this. But others think that the section 'Nuisance' is not wide enough to include these matters. As the section is being redrafted, I submit that it should be made quite clear that this sort of nuisance should be allowed to be removed whenever there is any just cause for grievance. Now, I have added the words "Satta, Badni or share marketting" with this object. In some places there is gambling and there is a law for gambling. Similarly there is gambling in shares which becomes a nuisance in certain places. Government should have power in certain cases to stop licenses or to regulate them. That is the object of my amendment which I move. It runs thus:

"In clause 24 in section 133, sub-section (1), paragraph 3, after the word 'health' insert the word 'morality' and omit the word 'physical',

and at the end of section 133 add another Explanation as follows:

'*Explanation.*—Action may be taken under this section for suppression or regulating of brothels and disorderly houses as well as places used for gambling in Satta, Badni or share-marketting as also places inhabited by prostitutes or used for storage, distribution or sale of intoxicants."

Sir Henry Moncrieff Smith: Sir, I think my Honourable friend's amendment will probably meet with little support in this House and therefore I shall deal with it very briefly. The question of morality is explained by my friend's second amendment. He intends to give Magistrates power under this section to deal with brothels. I would suggest to the House that this is a matter which is much more suitably dealt with by provincial legislation. We have numerous Municipal laws. (*A Voice*: 'And by the Municipalities.') There is no Municipal law in the country which does not make provision for this matter. There is a Cantonment Law which also

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provides for it. As regards gambling there are at present no less I think than nine gambling Acts in force in the various Provinces, and I think the Code of Criminal Procedure should not attempt to entrench upon them. In regard to intoxicants again, we have our Excise Law; every province has its Excise Law and the matter is fully provided for. It is therefore unnecessary that we should introduce this matter into the Criminal Procedure Code.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): I move that the question may be now put, Sir.

The motion was adopted.

Mr. Deputy President: The amendment is:

"In clause 24 in section 133, sub-section (1), paragraph 3, after the word 'health' insert the word 'morality' and omit the words 'or second,' and add the Explanation as follows:

Explanation.—Action may be taken under this section for suppression or regulating of brothels and disorderly houses as well as places used for gambling in Satta, Badni or share-marketting as also places inhabited by prostitutes or used for storage, distribution or sale of intoxicants."

The motion was negatived.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir, my amendment is:

"In clause 24 in the last paragraph of proposed section 133 (1), omit the words 'or second'."

Section 133 is used in very exceptional cases, and the right of the public is rather interfered with by District Magistrates or Sub-Divisional Magistrates. Sometimes if a building is being constructed, under this order it will have to be stopped, or if any man is carrying on a lawful trade, it will have to be stopped, and many other things which are done in the exercise of the civil rights of the people are to be stopped under the orders of the Magistrate. In such cases we want a Magistrate of the first class or a Sub-Divisional Magistrate who has got ample experience of these matters to issue the orders. The section provides that either a District Magistrate or a Sub-Divisional Magistrate, or a Magistrate specially empowered by the local Government on this behalf, shall issue these orders. But the last paragraph of clause 24 (1) says:—"to appear before himself or some other Magistrate of the first or second class." My point is that these cases being so important and involving intricacies of civil law and construction, should not be tried by second class Magistrates, but only by first class Magistrates, who are Magistrates of ample experience.

Mr. H. Tonkinson: Sir, my Honourable friend suggests that in these provisions we are interfering with the right of the *public*. I venture, Sir, to suggest that we give power in this Chapter of the Code to interfere with the actions of single persons who are committing a *public* nuisance. He suggests that because we are dealing with all these matters, the inquiry should only be held by a first class Magistrate. Now, Sir, under the existing law (and the Bill makes no change whatsoever in this respect), it is a District Magistrate, a Sub-Divisional Magistrate, or a Magistrate of the first class who makes the conditional order. Now, as we all know, in many Provinces the Sub-Divisional Magistrates will be stationed at headquarters, and there will nevertheless be tahsildars and so on scattered throughout the district. The public nuisance may be committed anywhere in the

district, and it is clear that the present law conduces to the interests of the subject by enabling the Magistrate who makes the conditional order to direct that this shall be inquired into by a Magistrate on the spot. That, Sir, is the reason why in the present law it is permissible for the further inquiries to be held by a second class Magistrate, and I submit, Sir, that it would be quite a mistake of this Assembly if they make any change in this respect.

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): I think, Sir, the amendment proposed is a very sound one. The matter is so very important that only a first class Magistrate should issue the conditional order. The idea is that he is an experienced officer, a man of very ripe experience and he knows what is what. And therefore, in its subsequent stages to entrust the inquiry to a second class Magistrate, a person who ordinarily resides in the tehsil or muffasil towns and not at headquarters, and has not much experience, is I think not very desirable.

Sir Henry Moncrieff Smith: Sir, I think my friend who has just spoken has provided one argument against the amendment. He says second class Magistrates ordinarily reside in the sub-divisional or muffasil towns. Is it not necessary that in these cases of preliminary inquiry, the inquiry should be made by a Magistrate who is on the spot? If this amendment is accepted, then in the cases to which my friend refers all the witnesses will have to move along to the headquarters town of the district where the first class Magistrate is. They will be put to considerable inconvenience and my friend, I think, by supporting this amendment is rendering himself liable to a charge of adding to the already long list of public nuisances.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): The question may now be put.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, I oppose this amendment on various grounds; firstly that it is not convenient. Supposing the obstruction or nuisance is committed at a tehsil, will you ask the first class Magistrate to go there, or will you ask the applicant to go to the place where the first class Magistrate is? He will have to take a number of witnesses and he will have to go himself. This will not add to the convenience and expedition of the work, rather it will impede it. On these grounds I oppose the amendment.

(*Several Honourable Members*: The question may now be put.)

The motion was negatived.

Mr. Deputy President: The question is that clause 24 stand part of the Bill.

The motion was adopted.

Rao Bahadur T. Rangachariar: Sir, my amendment runs as follows:

"In clause 25 for the words 'and in the manner' substitute the words 'and substantially in the manner'."

It relates to Section 139 and is a very modest and necessary amendment. That is to say, the person against whom the order is passed has to comply with it "within the time" and "in the manner" specified in the order. Honourable Members have no doubt noticed the numerous cases enumerated in section 138: to fence a tank or a well or an excavation; to repair a building; to remove or support a tree. All these

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things are given. I only provide for the safeguard that if he substantially fulfils the order in the manner required, he should be deemed to have complied with the order. I mean, supposing he is asked to put up a teak-wood support and he substitutes another equally strong wood support he would have complied with the order substantially, although not exactly in the manner required, that is to say, not literally, but substantially in the manner required. Supposing he is asked to put up a steel beam and he puts up an equally strong concrete beam, why should he be deemed not to have complied with the order? Therefore, in order to make it clear, I introduce the word "substantially."

I move the amendment, as it stands in my name.

Mr. H. Tonkinson: Sir, the Bill proposes to require the person against whom an order is made under section 133, either to perform the action directed within the time and in the manner specified in the order, or else to appear and show cause. The Bill inserts the words "and in the manner." These words were inserted by the Committee presided over by Sir George Lowndes and, if Honourable Members will refer to the remarks of that Committee on this clause, they will find that they say that "a small amendment is also required in section 135-A by reason of the amendments we have proposed in section 133." That is to say, these words have been proposed to be inserted in section 135 because of the changes that the Committee proposed in section 133. Now, Sir, what are those changes? They relate to the orders which may be issued by the Magistrate in the first conditional order. The first case in question is as follows:

Orders:

"to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation."

The next case in which an amendment was made by the Committee is:

"To remove such goods or merchandise or to regulate the keeping thereof in such manner as may be directed."

Another case is—

"To destroy, confine or dispose of such dangerous animal in the manner provided in the said order."

Now, Sir, I would ask my Honourable and learned friend whether there can be any question of desisting from carrying on or removing or regulating substantially in the manner directed any trade or occupation. Can there be any question of regulating the keeping of goods or merchandise substantially in the manner directed or of disposing of a dangerous animal substantially in the manner directed? Sir, what we want in this case to provide for is absolute compliance.

I think that the amendment proposed is open to much graver objection on another ground. My Honourable friend wishes to permit the person to whom an order is directed to plead substantial compliance. Now, Sir, what would be the result of being able to plead substantial compliance? The Magistrate will know that compliance is to be vague. Therefore, the original order will be vague. What we want, Sir, is a precise order, from which the man to whom it is directed will know

exactly what he has to do. I submit, Sir, that if this amendment is accepted, we shall be doing more harm to these people whom my learned friend desires to benefit than good.

Dr. Nand Lal: Sir, I feel bound to oppose this amendment. In the first place the word " substantially " is very vague; it is extremely difficult to determine what is " substantially " and what is not. Therefore, it will make the task of the Magistrate very cumbersome.

In the second place, I do not find any justification for introducing this word. My learned friend, perhaps on account of lack of time, failed to see what matters and what affairs this provision relates to. The word " substantially " will be misplaced altogether, and, therefore, in brief, on these two grounds, I oppose the amendment.

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

Mr. Deputy President: The question is:

" That in clause 25 for the words ' and in the manner ' substitute the words ' and substantially in the manner '."

The question is that that amendment be made.

The motion was negatived.

Mr. Deputy President: The question is that clause 25 stand part of the Bill.

The motion was adopted.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadan Rural): Sir, I propose:

" That in clause 25A the following should be substituted for the proposed section 139A, sub-sections (1), (2) and (3), namely:

' 139A. If the order made absolute under section 137, sub-section (3), or section 139, sub-section (1), is concerning the obstruction, nuisance or danger to the public in the use of any way, river, channel or place and the contention of the person against whom such order is made, is that there is no public right in respect of such way, river, channel or place, the order of the Magistrate shall be subject to any subsequent decision of a competent Civil Court ',"

to which I wish to add, with the permission of the House, the words " on that point ".

I shall explain my meaning, Sir. To understand the section we must go back to section 133, which says:

" Whenever a District Magistrate, a Sub-divisional Magistrate or, when empowered by the Local Government in this behalf, a Magistrate of the first class, considers, on receiving a police-report or other information, and on taking such evidence (if any) as he thinks fit, that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, etc., etc."

Now, the proposed section says:

" Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and, if he does so, the Magistrate shall, before proceeding under section 137 or section 138, inquire into the matter.

[Mr. J. Ramayya Pantulu.]

(2) If on such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court: and, if he finds that there is no such evidence, he shall proceed as laid down in section 137 or section 138, as the case may require."

Well, the object of the new section is first to give the party against whom an order is made, a warning that he can set up a defence that the place or river or the way in regard to which the order is made is not a public place, and, secondly, if he sets up that plea and the Magistrate finds reliable evidence in support of that plea that he should stop further proceedings until that point is decided by a competent Civil Court.

Well, it seems to me that the first remedy that is proposed to be provided by this section is unnecessary because, according to the wording of section 133 which is that " any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place," the question whether the place, river or way is a public one or not is directly an issue as soon as a preliminary order is made. The preliminary order will state that there is reason to believe that a nuisance or obstruction has been created in a place, river, or way, which the public have a right to use, *i.e.*, in regard to which there is a right of way to the public. So, whether there is a public right of way or not is a question directly in issue in the case and is a question that arises out of the preliminary order issued by the Magistrate, and I do not see any necessity for the Magistrate again warning the party appearing before him and asking him whether he sets up a defence on the ground that there is no public right of way. When the preliminary order is issued, what is the party against whom it is issued going to do? Clearly he must either say that the place or river or way is not a public one, or if he admits that it is a public one he must say that no obstruction has been created on it. These are the only two defences he can set up. The law itself makes it clear that the Magistrate has got information that the way, etc., is a public one. If there is no public right to it, if the public has no right to enter upon it, then there is no case and the preliminary order cannot be made at all. So the question whether a place is a public one or not is directly in issue and arises out of the preliminary order itself. I do not, therefore, see why the Magistrate should give a special warning to the party appearing before him. That is quite unnecessary.

Some of my friends might think that I am arguing from the bureaucratic point of view. Well, we have been acting the defence pleader rather too much during the last few days but we are here to treat the matter in a fair and dispassionate manner from the point of view of the Judge who has had to deal with these cases.

Then supposing the party sets up a plea that there is no right of public way to the place, etc., the proposed section says that the Magistrate shall not decide that point, but that if he finds there is reliable evidence in support of that contention, he shall stay the proceedings pending the decision of a Civil Court. But how is the matter to go to the Civil Court? The party against whom the preliminary order is made will certainly not go to the Civil Court. He has achieved his object. Why should he go to the Civil Court? And if he does not go, who else is to go to the Civil Court? This is a matter in which the public as a whole is concerned and the public is too diffused

to resort to costly civil proceedings. Then, is the Government to go to Court? This also is impracticable. Moreover Government can, at this rate, be driven to a Civil Court in every case. My point is that the Magistrate should himself go into the question whether there is a public right of way or not. If he finds there is no such right he will discharge the preliminary order. If he finds there is such a right to his satisfaction, let him make that order absolute but subject to the decision of the Civil Court. Then it will be for the party against whom the order is made absolute to go to the Civil Court. He will be compelled to go to the Civil Court. If he can show that the place is not a public place, then the order of the Magistrate will become null and void. That seems to me to be the only businesslike procedure in the matter, and I therefore propose this amendment.

Sir Henry Moncrieff Smith: Sir, there are very great difficulties about this amendment. If Members of this House will look at the report of the Joint Committee on the Bill they will find that the Joint Committee devoted a considerable amount of attention to this matter, and I can say from personal experience that they also devoted a great amount of time. My friend, Mr. Pantulu, wants to defer a decision as to the existence of a public right of way—to defer a decision from the Civil Court—till after an order has been made absolute. Now that is distinctly contrary to the views of practically all the High Courts. What the Joint Committee did in this case was to try and give effect to the law as interpreted by the High Courts of this country. The High Courts have laid down over and over again that where there is a denial of a public right based on substantial grounds the Magistrate's jurisdiction is ousted at once. He cannot proceed any further in this matter of removing a public nuisance. But what would be the effect of my Honourable friend's amendment? The Magistrate himself apparently (whether with or without the aid of a jury, I am not quite sure) will proceed to determine the question of the existence of a public right. Well, if he decides there is no public right, then of course it goes no further. But supposing he decides there is a public right and he makes his order absolute. My Honourable friend says, "Well, then the party aggrieved goes to the Civil Court," and after possibly very dilatory proceedings he gets his declaration that there is no public right. But will that help the man in whose interests Mr. Pantulu has moved this amendment? You have got to remember that in this case we are dealing with the removal of a nuisance or an obstruction or a danger. The obstruction may be a tree, quite a valuable tree. The Magistrate has decided that there is a public right and he has confirmed his order that the tree is to be removed. If the man does not remove it, you will see if you look at section 140 of the Code, that the Magistrate can have the tree removed himself. What good will be the subsequent decision of the Civil Court that there was no public right? The tree will have gone. It may not be a tree; it may be something of far more value. It may be a building. The building will have gone, and what compensation is the man going to get for what he has been forced to remove? The amendment made by the Joint Committee in the Bill in this respect was I think made entirely in the interests of the subject. Where there is a *bonâ fide* denial of a public right there can be no question of going on and taking executive proceedings to force the man to remove the obstruction or the nuisance. My friend asked what will be the effect of staying the proceedings when the Magistrate finds that there is a *bonâ fide* claim that no public right exists. The man has achieved his object. He has established his claim. The Magistrate has said, "I cannot

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proceed any further. My jurisdiction is ousted." Who is going to settle the matter? The obstruction continues. It is the person who is aggrieved by the obstruction who will have to take the necessary steps. If the place concerned is in a municipality, the Municipal Corporation will bring a suit. That is not an unknown thing. If it is Government property, a suit will be filed by the Secretary of State. To lay down that, even when there is a *bonâ fide* claim or denial of a public right, the Magistrate must and ought to settle that matter himself and can then proceed to make an order absolute, is, I think, most undesirable and, as I said, it is contrary to the views of all the High Courts. That matter must be decided by a competent Court. There is no question about it that a Magistrate taking an executive proceeding under this Chapter is not the proper person to decide so serious a matter as a question of title.

Bhai Man Singh: On a point of order. I submit that my amendment No. 99 is practically just the same as 95 and I may be allowed to move it and give my views upon it.

Sir Henry Moncrieff Smith Amendment No. 99 is entirely different. It does not seek to get rid of Section 139A as it stands at present. It does not get rid of that part of the section which lays down that when there is a *bonâ fide* claim the proceedings must be stayed.

Mr. W. M. Hussanally: (Sind: Muhammadan Rural): I think, Sir, there is a considerable amount of force in the contention of my friend, Mr. Pantulu. It must be remembered that proceedings under this Chapter are summary and no Magistrate will have the time or the leisure to make any elaborate inquiry into a matter of a public right of this kind. Moreover that is a matter specially within the province of the Civil Court and not within the jurisdiction of a Criminal Court. The point that has to be considered in a matter like this is whether there is a public right or not. Now, if the Magistrate comes to a decision that it is a public right, even then the man against whom that order is made absolute must have the option to go to the Civil Court and the decision of the Magistrate which will be made absolute for the time being only must be subject to the decision of a competent Civil Court where the matter will have to be threshed out at some length and after taking all the evidence that is necessary. If on the other hand the Magistrate decides that there is no public right, then what happens? Who has to go to the Civil Court? So far as the person against whom the order is made, he is quite safe. He need not trouble about going to the Civil Court at all and supposing this takes place where there is no municipality, then who has to go to the Civil Court. Certainly no member of the public will go to the Civil Court and not even a municipality in a town will care to go to a Civil Court because the Civil Court procedure is very long and costly. Sir Henry Moncrieff Smith said that the Secretary of State would file a suit. For the Secretary of State to file a suit of this kind is not an easy matter and it will take a long time. A case ought to be made out and it ought to be of sufficient importance for the Government to interfere and bring a suit of this kind on behalf of the Secretary of State. Meantime the public suffers and if the matter is not of sufficient importance to move the Government to bring a suit in a Civil Court on behalf of the Secretary of State, the public suffers. The procedure laid down in the clauses of the new proposed section are clumsy and cumbrous and I believe the amendment as proposed by my friend, Mr. Pantulu, is short and to the point. I therefore support this amendment.

Mr. Jamnadas Dwarkadas: I move that the question be now put.

Dr. Nand Lal: Sir, to my mind the amendment seems to be superfluous. I do not think this is a useful amendment and deserves the support of the House. May I invite the attention of my learned friend, the Mover of this amendment, to clause (2):

"If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court."

Mr. W. M. Hussanally: Who is to go to the court?

Dr. Nand Lal: That is a separate question. The Magistrate is quite prepared to give him time to have it determined.

Mr. W. M. Hussanally: Why should he go?

Dr. Nand Lal: The man, who thinks he is aggrieved, may go to the Civil Court and have it determined. If he wishes that the thing may be expedited he may do his level best to see that the decision is given on that question. Should the Secretary of State go to the Civil Court? Here time is allowed to him to have the question decided. And as I have already submitted, if he wishes the whole thing to be expedited, he may go at once and have adjudication upon that question at once. The clause says:

"until the matter of the existence of such right has been decided by a competent Civil Court: and, if he finds that there is no such evidence, he shall proceed as laid down in section 137 or section 138, as the case may require."

In the face of this provision, as I have already submitted, it seems highly improbable that this amendment may seek for the support of this House.

Sir Henry Stanyon (United Provinces: European): Sir, one can appreciate and sympathise with the motive which underlies this amendment. It is this—that by the somewhat summary order of a Magistrate, a man should not be finally deprived of what he may consider to be his private rights. But we must look also at the other side of the question, and I think there are insuperable difficulties in the way of giving support to this amendment. We can understand the position best by putting forward a simple illustration. A man is ordered to remove an obstruction from a public way. He opposes that order on the ground that the way is not a public way. If an order is made against him, as the law stands, he is not prevented from going to the Civil Court to establish his title. Or, he resists the order upon the ground that, though it is a public way, his act does not constitute a nuisance. That is a totally different position. The Magistrate finds after inquiry that it is a nuisance and he orders its removal. Are we by this amendment going to allow a man against whom the order is passed to go to the Civil Court the next day and get an injunction staying obedience to the Magistrate's order. Again, who is to be the defendant in a case of that kind to show on the opposite side in the Civil Court that it is a nuisance? Difficulties arise in connection with the arraignment of parties. It seems preposterous that every time a Magistrate makes an order regarding a nuisance which is disputed by the person against whom it is made, the Secretary of State, or the Government, or some representative of the public, should be dragged into the Civil Court to answer the claim. And, again, the amendment does not touch the other side at all. What is to happen if the Magistrate decides in favour of the person

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against whom proceedings were instituted holding that there is no nuisance? The amendment does not provide that the unfortunate public against whom the order goes in that case have to go to the Civil Court. The amendment is one-sided. It is only with regard to the private individual against whom an order is made absolute. Therefore, I think that upon a balance of advantages and disadvantages we shall be better without this amendment.

(*Some Honourable Members*: "I move that the question be put.")

The motion was adopted.

Mr. Deputy President: The question is:

"That in clause 25A substitute the following for the proposed section 139A (1), (2) and (3), namely:

'139A. If the order made absolute under section 137, sub-section (3), or section 139, sub-section (1), is concerning the obstruction, nuisance or danger to the public in the use of any way, river, channel or place and the contention of the person against whom such order is made, is that there is no public right in respect of such way, river, channel or place, the order of the Magistrate shall be subject to any subsequent decision of a competent Civil Court on that point'."

The motion was negatived.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I will, with the permission of the House, take the two amendments separately.

Mr. Deputy President: I think it will be to the better convenience of the House if the Honourable Member would take the first amendment first.

Mr. T. V. Seshagiri Ayyar: Sir, my first amendment is in these terms:

"In clause 25A in sub-section (2) of proposed section 139A, omit the words 'the Magistrate finds that there is any reliable evidence in support of such denial' and substitute therefor the words 'it appears to the Magistrate that there is a *bond fide* dispute relating to the existence of any such right'."

I had better mention to the House in what stage we are when section 139A is to be enforced. First of all, there is a police complaint or police information or some evidence before the Magistrate; on that the Magistrate comes to the conclusion that an order should be passed, a conditional order, as it is called, should be passed; and on passing the conditional order, he calls upon the person against whom the accusation is made to show cause why he should not be restrained in a particular manner. It is at this stage this section, 139A, comes in. 139A says:

"Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and, if he does so, the Magistrate shall, before proceeding under section 137 or section 138, inquire into the matter."

Then comes this clause, namely:

"If in such inquiry"—that is after the conditional order, and when the inquiry is being made—"the Magistrate finds that there is any reliable evidence in support of such denial." The House will remember that

there is to be a third inquiry either under section 138 or section 139. Therefore this is, as it were, a preliminary inquiry before the Magistrate makes up his mind either to proceed against the man or to give him a jury. At this stage to speak of reliable evidence is altogether useless. As has been pointed out by the Calcutta High Court, what ought to be done in such a proceeding is this. The Magistrate should satisfy himself that there is a *bonâ fide* dispute. The language used by me is that used by the Calcutta High Court in 31, Cal., 979. They refer to an earlier decision and say (you will find it on page 982), that the Magistrate at this stage has to see to the *bonâ fides* of the claim—then he has either to decide under section 138 by means of issuing a summons and so on, or if the person accused claims, he has to send the matter up before the jury. At this stage, to speak of reliable evidence is likely to put the accused in a very embarrassing position. Therefore all that has to be done at this stage is for the Magistrate to satisfy himself that there is an honest dispute, a *bonâ fide* dispute on the subject which requires to be further proceeded with. Under these circumstances, I submit to the House that the words 'reliable evidence' are unnecessary. I move that these words be deleted, and that the words which I have mentioned should be substituted.

Mr. Deputy President: The amendment moved is:

"That in clause 25A in sub-section (2) of proposed section 139A, omit the words 'the Magistrate finds that there is any reliable evidence in support of such denial' and substitute therefor the words 'it appears to the Magistrate that there is a *bonâ fide* dispute relating to the existence of any such right'."

Sir Henry Moncrieff Smith: Sir, personally, I regard this as more or less a matter of drafting,—and naturally I prefer the drafting of the Bill to my Honourable friend's attempt to improve it. Mr. Seshagiri Ayyar towards the end of his remarks explained that he had attempted to take the words used by the Calcutta High Court into the Bill. Well, in the first place, I would suggest that that is not a very good argument to advance in support of an amendment, because the High Courts, when they write their judgments, are certainly not drafting laws; they are trying to expound the law, and they try to do so in plain and ordinary language. But when Mr. Seshagiri Ayyar went on to read what the High Court said, I did not find the word 'dispute' at all in the extract he read. He said that the Calcutta High Court had said that the *bonâ fides* of the claim must be inquired into. Well, that is quite another thing. A dispute connotes two separate parties, a dispute between one person and another person. A claim is quite another thing. 'Claim' is really the word that we use in the Bill as it stands. It is not actually a claim, it is a claim of a negative proposition,—I think my Honourable friend will admit—a man comes up, and claims that there is not a public right,—and what do we shorten that into?—'that there is a denial of a public right.' 'Denial' is the word used, and when there is a denial of a public right, the Magistrate inquires into that denial. My friend suggested that the word 'inquiry' which occurs in the beginning of sub-section (2) of section 139A, is the inquiry which results from the issue of the notice to him to show cause under section 138. It is not quite that. If my Honourable friend will carry his eyes back a little way along sub-section (1) of section 139A, he will find that if the Magistrate questions him—that is the first thing,—the real inquiry has not yet begun—if the Magistrate questions him as to whether he denies the existence of a public right, and if the person does deny the

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existence of that right, the Magistrate shall inquire into the matter, that is to say, he shall not inquire into the whole matter of the notice issued under section 137, but shall inquire into this denial. If the Magistrate inquires into the denial, what does that mean? It means that he must take evidence. I cannot conceive what is wrong with saying, "if the Magistrate finds reliable evidence in support of the denial he shall act accordingly." I can see no improvement whatever in the words proposed to be substituted by my Honourable friend. He professes to have taken them from a High Court ruling; but that High Court ruling does not contain the words. (*Mr. T. V. Seshagiri Ayyar*: "*Bonâ fide* claim.") There is a difference between 'claim' and 'dispute.' The claim is one in a negative form; in other words it is a denial, and that is the word we are using. Moreover, as regards the words *bonâ fide*, the High Courts use it over and over again, but can my Honourable friend point out the word anywhere in the Code? My friend is rather fond of Latin tags. (*A Voice*: "It means good faith.") Well, let us have good faith perhaps, but *bonâ fide* is quite another matter; it is not used anywhere in the Code. I put it to the House that the Bill in this respect, as drafted by the Joint Committee, is perfectly clear. The Magistrate inquires into the denial. That involves his taking evidence. We merely say that if he finds reliable evidence in support of the denial he shall stay proceedings. I cannot see how that is improved by saying that "it appears to the Magistrate that there is a *bonâ fide* dispute" between the person who is asked to show cause and some other imaginary person who is not indicated at all. There is no ground whatever, I suggest, for making this amendment, which to my mind is really nothing more than a drafting amendment, and a drafting amendment on lines which would not commend themselves to a draftsman of experience.

Mr. Deputy President: The amendment moved is:

"In clause 25A in sub-section (2) of proposed section 139A, omit the words 'the Magistrate finds that there is any reliable evidence in support of such denial' and substitute therefor the words 'it appears to the Magistrate that there is a *bonâ fide* dispute relating to the existence of any such right'."

The question is that that amendment be made.

The motion was negatived.

Mr. T. V. Seshagiri Ayyar: Sir, I feel very unwilling to move the next amendment*, for the reason that Sir Henry Moncrieff Smith who has been speaking on behalf of the Government seems to think that he has done the best thing possible in the circumstances, and that every suggestion to improve the section must be regarded as altogether unnecessary or mischievous. I think myself that my amendment No. 97 (8) would certainly make the section read better; but if the Government is of opinion that they have done the very best thing possible in the circumstances,

* "(3) A person who on being questioned by the Magistrate under sub-section (1) does not deny the existence of a public right of the nature therein referred to or whose denial is not supported by *primâ facie* evidence as to the right claimed in himself shall not in the subsequent proceedings be permitted to make any such denial nor shall any question in respect of the existence of any such public right be inquired into by any jury appointed under section 138."

I do not press my amendment as there is no use in taking up the time of the House. I move it, Sir, formally, and if the Government does not accept it I do not press for a division.

Sir Henry Moncrieff Smith: Sir, I oppose the amendment.

The motion was negatived.

APPOINTMENT OF A ROYAL COMMISSION ON INDIAN SERVICES.

The Honourable Sir Malcolm Hailey (Home Member): With your permission, Sir, I desire to interrupt for a moment the discussion on the Criminal Procedure Code in order to make an announcement to the House. I think it necessary to take this course because the matter is of such importance to the House and to the public that I should feel myself to blame if I did not place it in possession of the information at my disposal at the very earliest moment. The House will remember that a short time ago we issued a communiqué with regard to certain reports in the press on the subject of the appointment of a Royal Commission for the Public Services. We stated that those rumours were unauthorized and inaccurate. (*Mr. N. M. Samarth*: " and premature"). Our words were those I have quoted. They were certainly unauthorized; they were also in their terms inaccurate. But since then, the matter has proceeded further and His Majesty's Government have arrived at a definite decision in the matter; it is that decision which I wish to take the opportunity of communicating to the House. If you will permit me I will read the exact terms of the announcement which has been authorized by His Majesty's Government, and I would ask the House to note those terms particularly, as they show at once the intention of His Majesty's Government in the matter and the exact scope of the inquiry which is to take place. I will make a copy of this available as soon as possible. The announcement is as follows:

" His Majesty's Government have decided to appoint a Royal Commission on the Services in India. The precise terms of reference to the Commission have not yet been definitely settled but will be wide in their scope. It is contemplated that the Commission will be required, having general regard to the necessity of maintaining the standard of administration in conformity with the responsibility of the Crown and the Government of India and to the declared policy of Parliament in respect of the increasing association of Indians in every branch of the administration and having particular regard to the experience now gained of the operation of the system of Government established by the Government of India Act, to inquire into the organization and the general conditions of the services, financial and otherwise, of the superior civil services in India and the best methods of ensuring and maintaining the satisfactory recruitment of such numbers of Indians and Europeans respectively as now may be decided to be necessary in the light of the considerations above referred to."

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Who pays for this Commission?

The Honourable Sir Malcolm Hailey: Might I suggest that a discussion on this matter might suitably be raised either by question or by motion. I have only made the announcement now because I thought it due to myself and to the House as a matter of courtesy that I should place this announcement before them at the very earliest moment that I could do so.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, while we are extremely grateful to the Honourable the Home Member for giving

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this House the earliest opportunity of learning of the appointment of the Royal Commission, I think I am voicing the general sentiments of this side of the House when I say that the news has come to us as a shock and that we shall take the earliest opportunity of moving the adjournment of this House to protest against the appointment of a Royal Commission. I ask you, Sir, to give us the earliest opportunity for discussing this question which is of urgent public importance, and in view of the various number of questions that have been put by Honourable Members in this connection and the discussion that has gone on in the public Press, I hope you will afford us an early opportunity of discussing this question.

Mr. Deputy President: I wish to draw the Honourable Member's attention that under the Manual of Procedure a certain procedure is laid down for the adjournment of the House and I am sure that if the Honourable Member moves it, the needful will be done at the proper time.

Mr. Deputy President then called on Mr. Agnihotri to move amendment No. 98, relating to the Code of Criminal Procedure (Amendment) Bill.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): On a point of order. Dr. Gour has expressed views on behalf of one side of the House, and . . .

Mr. Deputy President: It is open to any Member to move the adjournment of the House at the proper time and the question will be decided upon at the proper time.

Mr. Jamnadas Dwarkadas: I only wanted to say that the National Party associates itself with the remarks made by Dr. Gour.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Bhai Man Singh: I move, Sir, the amendment that stands in my name, which is as follows:

"In clause 25A add the following sub-section at the end of the proposed section 139A:

'(4) Nothing in this section or in section 133 shall prevent any aggrieved person from filing a civil suit about the existence of a public right in the way, channel, river or place concerned or the question of his title therein, and any order made under this Chapter shall be subject to the order of the Civil Court in such a suit'."

The learned framers of the Code have adopted the principle of the Court rulings and as a result of these rulings, 15 Calcutta 564 and 35 Calcutta 288, they have come to the conclusion that if the Magistrate thinks it proper and a *bonâ fide* objection is made as to whether there exists a public right or not in such a channel, and the Magistrate does not find that the claim is a flimsy one, he can refer it to the Civil Court or, if he thinks that there are no proper grounds for the claim, he can proceed with the case. But there has been another side to the question which has been left out, *viz.*, whether the order of the Magistrates in regard to the public way or right is or is not final. No doubt, Sir, there exists some ruling. There are some rulings which have held definitely that if anybody thinks

aggrieved on the point that there does not exist a public right, he can go to the Civil Court. That principle, Sir, has been held in that ruling:

"A Civil Court is not competent to set aside the order of a Magistrate made under section 521 of the Code of Criminal Procedure, on the ground that such order was made without jurisdiction because the land in respect of which the order was made is private property, and not a thoroughfare or public place. A Civil Court can, however, irrespective of an order made under section 521 by a Magistrate, try the question whether the land which formed the subject of such order is private property, and not a thoroughfare or public place as between the parties to such suit and those who claim under them."

Now, Sir, while lawyers were discussing this case, there was very great difficulty in arriving at this decision. There were different authorities and they had to convince their Lordships. I need not take up the time of the House in going through the history of these rulings. I simply want to submit that there is no reason why we should not lay it down very clearly and definitely that an order which refers to a right of the public in respect of the way, river, etc., should be subject to the final decision of a Civil Court. The sections of this Chapter as they stood did not make any reference to a Civil Court, but in the proposed sub-section (3) we have laid down as follows:

"A person who has, on being questioned by the Magistrate under sub-section (1), failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial, nor shall any question in respect of the existence of any such public right be inquired into by any jury appointed under section 138."

No doubt, Sir, we simply deny him the right to ascertain his position in those proceedings under this Chapter. But having denied him that and not having touched the existing law about Civil Courts, there is the danger that our intentions might be misunderstood, and there is no reason why while incorporating the results of certain other decisions of the Court, we should not at the same time incorporate the decisions arrived at in other rulings and make the law quite clear on the point.

The Honourable Sir Malcolm Hailey: Briefly put, my argument is that there is nothing in the Bill or Code which prevents a party from going to a Civil Court, and I think indeed the ruling which the Honourable Member read out confirms this statement. With regard to the latter part of the amendment, namely, that any order made under this Chapter should be subjected to the order of the Civil Court in such a suit, that question, I think, has already been decided by the House on Mr. Pantulu's Amendment No. 95. In these circumstances, I think I can very fairly put it to the Honourable Member that his amendment is not really required.

Mr. T. V. Seshagiri Ayyar: Sir, I think this is a very dangerous amendment to introduce. Ordinarily any order passed by a Magistrate would not stand in the way of the establishment of civil rights. If you once begin to introduce a provision of this nature, it would lead to trouble. The difficulty will arise as to whether Article 11 or 13 of the Limitation Act or whether the ordinary law of limitation should be availed of. I think if you once introduce an amendment of this nature and say that the order of the Magistrate should be questioned by the Civil Court, it would lead to great complications. Under these circumstances, I would request my friend to withdraw the amendment. The Courts have never found any difficulty in coming to a conclusion that Civil Courts can declare the rights of the parties.

Bhai Man Singh: I beg to withdraw the amendment.

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

Mr. Deputy President: The question is that clause 25A stand part of the Bill.

The motion was adopted.

Bhai Man Singh: The amendment that stands in my name refers to clause 26 and runs as follows . . . .

Rao Bahadur T. Rangachariar: Amendment No. 101 will be taken afterwards?

Mr. Deputy President: Amendment No. 101 may be taken later.

Bhai Man Singh: My amendment runs as follows:

"In clause 26 (1) insert the following as sub-clause (i) and renumber the subsequent sub-clauses accordingly:

'(i) In section 144, sub-section (1), after the words 'in cases where' and before the words 'in the opinion of' the following words shall be inserted:

'on credible information received'."

I think it would be better and for the convenience of the House that I should move only the first part of my amendment at this stage. With your permission I should like to speak only on this part of the amendment first.

Mr. Deputy President: Very well.

Bhai Man Singh: Sir, it is a subject which really vitally touches the rights and liberties of my countrymen. Section 144 is one of those sections of which there has been the greatest abuse, and this section is perhaps the widest possible in its scope, and against it there is practically absolutely no remedy provided. Therefore, Sir, I would beg the Honourable Members of this House to give their careful attention to the point whether we are to leave this section 144 as wide and the powers of the Magistrates under it as free as they are at present. Sir, there have been cases where the most respectable, most responsible persons have been ordered not to enter a certain town. I remember very well when our well known countryman Pundit Madan Mohan Malaviya was ordered not go to Ambala City and not to deliver his lecture, and I know as a matter of fact that Ambala City is perhaps the most docile town in India—(*An Honourable Member*: "You come from it")—I come from it, of course, and if there are wrong-doers there, you may take it that they are an exception, as the history of my own city shows that there have been no sort of affrays or riots there on political grounds, and perhaps Ambala has supplied the least number of political prisoners during the last two years. So Ambala was a most peaceful place where the most innocent speech of Pundit Malaviya would never have caused any disturbance of the public tranquillity or public peace, nor would his entry into the city of Ambala have caused danger to human life or safety. But all the same the terms of the section are very wide and in the opinion of the Magistrate he has to comply with it. I submit that we must provide very strong safeguards against the abuse of the power given under this section, and this is one of the first safeguards that I am suggesting. I am suggesting, Sir, that the Magistrate should only take action "on credible information received." In the Code we find that whenever we give a power to a Magistrate, he can only move on information received. For example, I may refer Honourabe Members of the House to

sections 107, 108, 110 and 133. In section 107 the Magistrate is informed. Similarly section 110 says when the Magistrate " receives information " that any person within the local limits of his jurisdiction is a habitual robber, etc. For the purpose of even robbers and worse criminals where we provide that there shall be a regular trial later on, even in those cases, we want the Magistrate to go upon a certain sort of information received, and I submit that, in revising this Code, we have improved upon those words, I do not remember the exact words. If I knew we were going to amend the Code like that, I would perhaps have suggested those very words instead of my present form of " on credible information received." All the same I submit there is no reason why a Magistrate should proceed on no information being received. Certain rulings of the High Court too are in my favour. I refer the House to 38 Calcutta, page 876. In that case the petitioner excavated a tank on his own land adjoining the house of the opposite party, and the latter objected to the excavation on the ground that his house would be thereby rendered unsafe. No likelihood of a breach of the peace appeared from the police report or the written statements of the parties, but the Magistrate made the order under section 144 of the Criminal Procedure Code without inquiry or recording any urgency. There are two things, Sir, without inquiry and without recording any urgency. Then, Sir, in the body of judgment when the facts are being described, it is said:

" Then, on the 19th April, and without further enquiry and without recording any urgency in the matter, the Magistrate made his Rule absolute not on the ground reported by the police, but as appears from his present explanation, from his personal apprehension that the parties would break the public peace "

Everywhere under the criminal law we want to exclude the personal information of the magistracy, but under section 144, as it at present stands, the Magistrate has the right to order a person not to enter such and such a place on his own personal information. I am sorry there was no revision or appeal provided directly against this section. Whenever the matters have come before the High Courts, it has been mostly in an indirect way. In certain cases the High Courts have inquired about it while they were discussing the fact whether the Magistrate had properly exercised his jurisdiction or not, or whether he had fulfilled all the formalities laid down under this section or not. Most of the rulings under this section are concerned only indirectly with this matter, as when a man has broken an order and has been convicted under section 188 of the Indian Penal Code and those matters have gone on revision to the High Court, then the High Courts had chances to pass remarks about the work of the Magistrate. In this case the High Court have definitely held that the order was not passed on any real apprehension properly arrived at. By using the words " properly arrived at." Their Lordships definitely meant that the Magistrate should come to his conclusions by recording some sort of evidence, by getting some sort of information about it. There is absolutely no reason why the Magistrates should proceed without any information. Further on, Sir, we have got a series of rulings where the High Courts have held also that they should record evidence. I draw the attention of the House to 13 Weekly Reporter, page 46. Of course these are old rulings and they refer, therefore, to sections of the old Code.

" Section 62 of the Code of Criminal Procedure does not authorise a Magistrate summarily to direct a person to remove a wall erected on land that has belonged to any other person in the absence of evidence showing that a riot or affray was likely to occur."

[Bhai Man Singh.]

There are a number of rulings which have held to that point. One ruling says:

"There is nothing in section 62 of the Criminal Procedure Code to justify a Magistrate in making an order for the removal of a bund or other obstruction or nuisance on the mere report of a police constable."

Not only has it been held that the Magistrate is not to proceed on his own information but it has been held that he is not to proceed merely on the report of the police.

"Before making such an order he ought to take evidence from the defendant and, if necessary, on both sides."

Again, Sir, if we look to other series of rulings where cases have gone to the High Courts when there has been a conviction under section 188 of the Indian Penal Code, there the High Courts have held that, if there is no strong, no clear, evidence that the disobedience of the order would lead to a breach of the peace, then the conviction is illegal. I submit, Sir, if the Magistrate has not got good evidence to support his order, where is the use of his passing an order? Supposing he passes an order under the section, a man who breaks it cannot be punished. Unless there is very clear evidence to support the conviction and to prove that there would have been a breach of the peace on account of the disobedience of the order the man would go scot free. Where is the use of making any law behind which we have got no sanction? The last principle was held in 4 Punjab Record, 1916, and in many other rulings. So, I submit, there is absolutely no reason why we should not see what are the definite safeguards that should be provided under section 144. I may point out one more fact, Sir. No doubt an order under the section stands for two months only; but two months may mean a lot; two months may sometimes have disastrous effects on a person. Supposing, Sir, having delivered a very fiery speech on some religious matter, I have made myself obnoxious to a certain class of persons at Ambala and the Magistrate thinks that my going there would cause a riot or a breach of public tranquillity. A certain person at Ambala has filed a suit against me for Rs. 20,000. I have defended that suit, I cannot altogether depend on giving written instructions through a pleader. I want to be present personally. Well, the District Magistrate says: "My dear Sir, I do not care for that, you can appear through a pleader." There is a very clear provision in the civil law that a man can appear through his pleader. The District Judge could very well say "I do not care for the order of the District Magistrate; you can appear through your counsel." There could be another thing. Supposing a man says "I think Man Singh will become bankrupt and run away. In that case there might be an attachment before judgment. Where should I be? There can be infinite hardships through the abuse of this section. The very liberties, the very right of speech, the very right of political propaganda even within proper limits, has been checked by the abuse of this section, and there is absolutely no reason why we should allow this section to remain as it stands without providing sufficient safeguards against its abuse.

Sir, with these remarks, I recommend this amendment, No. 1 of this series, to the House.

Dr. Nand Lal: Sir, there has been an amount of criticism in connection with the applicability or inapplicability of this section, namely, 144, of the Criminal Procedure Code, and I think the author of this amendment has rendered some service in putting forward the amendment under discussion. May I invite your attention, Sir, to the general principle of law? It is this, that every Magistrate and every Judge has to form his opinion on some data before him. I think no Honourable Member of this House will deny the correctness of this proposition. But, when we come to the provisions of this section, what do we find? The section says: In cases where, in the opinion of a District Magistrate, a Chief Presidency Magistrate, Sub-divisional Magistrate, or of any other Magistrate (it has been amended a bit) specially empowered by the Local Government or the Chief Presidency Magistrate or the District Magistrate to act under this section, immediate prevention or a speedy remedy is desirable. If there is some sort of evidence before the Magistrate, of course the matter being so urgent, he is fully competent to take action. His opinion based on some evidence must be respected and the orders passed by him must be given the greatest possible regard. But the defect in the present provision is this, that he can form any opinion, *suo motu*, of his own accord, without having anything before him, and, therefore, the provisions seem to be very defective; and I think the arguments which have been advanced in favour of the insertion of the words " on credible information received " will meet the criticisms which have been, as I have already submitted, levelled against this section.

On this ground I very strongly support this amendment.

Sir Henry Moncrieff Smith: Sir, the Honourable Mover of this amendment said a good deal about section 144 as a whole. What he said about his amendment amounted, I think, only to this, that he desired that the law should lay down that a Magistrate should not act on his own knowledge but should receive credible information from some outside person that action under the section was necessary. Sir, I doubt whether it carries us very much further, because, if the Magistrate forms an opinion, he can only form that opinion on information that he has received. If he takes action on his own knowledge, well, his knowledge was not born inside him but comes from outside. The House will remember, I think, what the purport of section 144 is. In the first place, it is a power in the hands of the Executive to take speedy and immediate action. It is placed deliberately in the hands of the Executive, in the hands of those who are responsible for the maintenance of peace and order in the district, in the hands of those who are responsible for seeing that there is no disturbance of the public tranquillity. Bhai Man Singh referred to a case where a certain gentleman received an order under this section to prevent him from visiting Ambala. Well, in that case the Magistrate must have acted on information. The information as a matter of fact in that case would probably come from some other place, possibly Allahabad, where the gentleman in question lives. It must have come from there and in that case the amendment which my friend proposes to sub-section (1) would not have carried the Magistrate's case any further, nor would it have carried the case of Pandit Madan Mohan Malaviya any further. The House has already on one or two occasions adopted the phraseology of section 204, which is at the beginning of the Chapter, which tells a Magistrate how he is to proceed on a complaint. The words are " If in the opinion of the Magistrate there is

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sufficient ground for proceedings." The Government, Sir, has no objection to introducing these words into section 144. They do not fit in very well. It would read something like this then:

"In cases where in the opinion of a District Magistrate "—or of any of the other Magistrates referred to—" there is sufficient ground for proceeding under this section, and immediate prevention or speedy remedy is desirable."

That is not entirely satisfactory because of the form of the section, but I think it would meet the views of the House?

(*Some Honourable Members*: "Yes.")

Bhai Man Singh: I would accept the amendment.

Sir Henry Moncrieff Smith: Then I would ask leave to move the amendment in that form as an amendment to my friend's amendment No. 102.

Mr. T. V. Seshagiri Ayyar: Will the Honourable Member read out the amendment as he himself would have it—the whole of it?

Sir Henry Moncrieff Smith:

"In cases where in the opinion of a District Magistrate "—I leave out the other Magistrates referred to—" there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable."

Mr. T. V. Seshagiri Ayyar and **Dr. Nand Lal:** Yes, that will meet the case.

Mr. Deputy President: The amendment moved is:

"That in Clause 26, to sub-clause (*i*), add the following:

'and after the words "under this section" the words "there is sufficient ground for proceeding under this section and" shall be inserted'."

The motion was adopted.

Mr. B. Venkatapatiraju: Sir, I move:

"That in clause 26 in sub-clause (*i*) after the words 'of the' insert the words 'second or'."

It evidently means that the delegation by the Local Government to District Magistrates and Chief Presidency Magistrates should be limited to first class Magistrates. Already there is power, Sir, for Sub-divisional Magistrates but there are first class Magistrates who are not Sub-divisional Officers. This is an important section and I think it would be better to confine it to first class Magistrates. I may mention that under this section the other day in the Nellore district a second class Magistrate issued a notice that no meetings should be held in that town, and it so happened that the District Board had to meet. They did not know what to do. In defiance of the order of the Magistrate they held the meeting, and the Magistrate was unable to do anything. Subsequently the District Magistrate cancelled the order. In such an important matter as this, therefore, it is absolutely necessary that we should entrust it to persons who have much experience, and I propose therefore that first class Magistrates only should be given this power. I move the amendment.

The Honourable Sir Malcolm Hailey: We have already considered the possibility of the Local Government empowering a first class Magistrate. Mr. Raju would now make it impossible for them to empower a second class Magistrate. He quoted as a reason one instance in which a second

class Magistrate issued an order which certainly seemed objectionable. But his friends here I know would be prepared, were I to invite them to do so, to produce a large series of orders by first class Magistrates and even by District Magistrates themselves which were equally from their point of view objectionable. The fact that a second class Magistrate occasionally issues an objectionable order is not in itself sufficient ground for saying that no second class Magistrate should be empowered under this section.

I said the other day—and I hope Mr. Agnihotri will not mind my saying so—that my friend is liable to a crisis of nerves whenever certain sections of the Code are touched. Our treatment of meetings is just one of those points which affects my Honourable friend in this regrettable way. But this Chapter has a very wide scope and extends far beyond the treatment of meetings. There must be many occasions in which a second class Magistrate, distant many miles from a first class Magistrate or Sub-divisional Officer, finds himself face to face with a crisis of this nature. He has not time to wait. The matter is urgent and in the words of the Code " a speedy remedy " is desirable. He cannot afford to state the case to the first class Magistrate and get his orders. I would put it to this Assembly that this is a matter which really must be decided on the spot and on first hand information, and it is necessary that, in many out of the way places where there is only a second class Magistrate, he should be empowered to pass the necessary orders. Again I would ask the House not to confine itself entirely to the case of meetings, for, as I say, the Chapter has a very much wider scope.

Mr. Deputy President: The question is:

" That in clause 26, in sub-clause (*i*) after the words ' of the ' the words ' second or ' be inserted."

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, the amendment which I move runs as follows:

" In clause 26 to sub-clause (*i*) add the following at the end:

" and after the words ' such Magistrate ' where they first occur the words ' after recording his opinion that the other powers with which he is entrusted are insufficient shall be inserted."

That is to say, the object of my amendment is this. This is a reserve power in the hands of the Magistrate—section 144. I ask Honourable Members to remember what all powers we have hitherto given to the Magistrate to secure public peace and public tranquillity. We have now extended the scope of the chapter relating to taking security for keeping the peace. Honourable Members will remember that breach of the peace or disturbance of public tranquillity takes place either by the direct act of the party concerned, that is, by himself committing the breach of the peace or by committing a wrongful act which will provoke a breach of the peace. Both those cases have been provided for in section 107. Persons of bad character are already provided for. As Honourable Members remember, persons convicted of offences involving a breach of the peace are also provided for by section 106. I said that the scope of the preventive powers has been extended by the amendments we have hitherto carried. I mean this. When proceedings under the security chapter are being taken, we have now given power to the Magistrates to pass interim orders pending the inquiry, so that persons called upon to give security either for keeping the peace or for good behaviour are called upon to give interim

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bonds in urgent cases, so that urgent cases are also provided for. Now under this section 144, I may mention to Honourable Members, action may be taken against wrongful acts and also against rightful acts which are likely to create a breach of the peace or disturb the public tranquillity. Honourable Members who have either applied this section or practised in courts where they have to apply this section will remember on many an occasion perfectly legal acts on the part of the individual have been prohibited because public peace is of more importance than the exercise of legal rights, so that temporarily even the exercise of legal rights can be suspended under this section 144. That is the object of this section. Whereas section 107 prohibits only wrongful acts, section 144 can prevent rightful acts. Let us remember that. Therefore having regard to that, the Magistrate's duty, it will be readily conceded, is to protect subjects of His Majesty in the exercise of their lawful rights. But if he finds it impossible to protect the subject, having regard to the urgent nature of the case, having perhaps regard to the fact that he has not got sufficient police force at his back in order to enforce the exercise of the right or having regard to other circumstances, he is obliged to take action under section 144, he is permitted to resort to this. High Courts have recognised this power. The legal exercise of lawful rights has been prohibited under this section because it is necessary that this reserve power in the hands of the Magistrate should exist. Now, I say deliberately that this is a reserve power because in order that he may suppress the exercise of lawful rights, he must have taken all other measures in his power, such as taking security from the person who threatens to commit a breach of the peace. Now, for instance, I have known of cases where in consequence of some religious disputes between parties or in consequence of caste disputes between parties, low castes and depressed classes have been prohibited from carrying processions in streets because it was not a *mamool* and the higher castes take exception to this innovation and therefore the Magistrates in Madras very often had to prevent the exercise by these poor people of their lawful rights by having resort to this section. I am not going to refer to merely political cases. In ordinary cases which come up before Magistrates, in consequence of disputes between various castes, in consequence of disputes for precedence for honours in temples and other places, section 144 is a section which is frequently used and therefore it has been laid down by the High Courts that this section should not be resorted to unless the other powers with which the Magistrate is entrusted are found to be insufficient. I have taken the language from a decision of the Madras High Court so early as in 6 Madras, where in consequence of religious disputes between Hindus and Muhammadans, in consequence of the question as to whether Hindus can beat drums in front of mosques, this question came up before the courts. This particular case was an offshoot of what is known as the Salem riots case, which originated in consequence of this dispute between Hindus and Muhammadans. There the High Court had to examine the propriety of the order. They point out there distinctly that the power conferred upon a Magistrate under section 144 is an extraordinary power and the Magistrate should resort to it only when he is satisfied that the other powers with which he is entrusted are insufficient. The authority of the Magistrate should be exercised in defence of rights rather than in their suspension. But at the same time they recognised there may be occasions when he may have to suspend, that is when he is powerless, when the other powers which he has got are not sufficient and therefore I say that before taking action under this section

he should deliberately come to the conclusion that the other powers, namely, sections 107, 108 and 109 and the police force at his back are insufficient to secure public peace and he must come to that conclusion before he takes action under this section and the heading of the chapter also will support my argument as Honourable Members will notice. These are temporary orders in urgent cases of nuisance or apprehended danger. So that it is really intended for the preservation of the public peace, because the Magistrate is powerless to act otherwise. For instance, I know of a case where a person walking down a street saw a flag on the top of a house which offended his feelings and directly he passed an order to pull down that flag. Who is going to take offence at the flag being hoisted on a particular man's house? That is a right. It was a Home Rule flag. In those days Dr. Annie Besant was not a favoured person at the hands of the Government. She was a suspect and now she is the accredited representative of Government. Therefore an extremist of to-day becomes a moderate of to-morrow and the non-co-operator of to-day may become a co-operator of to-morrow and I am not sure whether Mr. C. R. Das will not be an honoured guest in this House. Therefore in the political passions of the moment action is taken. Section 144 was applied to Dr. Annie Besant as mercilessly and as ruthlessly as against other persons who did not find favour with the authorities. There was, I remember, Sir, another case where a person carried Dr. Annie Besant's portrait on his chest, and, Sir, he was ordered to take it down because he was going to offend the feelings of the loyal and law-abiding section who take offence at these trifles—these people who profess loyalty take offence at these things on mere pretences, as we all know, and on this pretext action is taken; and therefore, Sir, I ask that by all means prevent the exercise of lawful rights, the exercise of legal rights of holding public meetings; preaching to the public is a legal right, we have understood it, of British citizenship in the British Empire. Pandit Madan Mohan Malaviya, who once adorned this Chamber in its former existence, has been prevented from preaching at public meetings. By all means resort to this procedure. I have no objection. In fact the Honourable the Home Member the other day spoke of me as being the ingenious lawyer who suggested to them this extraordinary and exceptional course. I disclaim that compliment. But assuming that it is correct, then I am here, Sir, trying to undo the mischief which I have done. Will you please assist me in undoing that mischief? You say you have acted on my advice—I feel it a great compliment that you acted on my advice, that the Government of India, the mighty Government of India have acted on the advice of poor Rangachariar—assuming that it is correct, I am trying to undo the mischief which I have done myself; and therefore, Sir, I ask, not that we should prevent the use of this section. I know in many cases this section is a very useful section. I know it from my practice of 32 years, I know that section 144 is a very necessary section, but at the same time Magistrates are tempted, the police are tempted, to make use of this section, when parties, rich parties at times of religious disputes, resort to this section. Other persons resort to this section, find it a cheap method of getting an order in their favour,—one order under section 134, another under 145, and the man who is able to get the ear of the police or of the Magistrate gets an order under this section, and the lawful rights of ordinary persons are thus invaded under the guise of this section. Therefore, I ask that there should be this safeguard which I suggest—it has also been suggested by a Full Bench of the Madras High Court in 6 (Madras 203) and also as early as in 19 Calcutta by the Calcutta High Court (19 Calcutta 248, 876) and also

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I believe in other cases. I therefore, Sir, ask that these words be inserted, namely: 'he should first record his opinion that the other powers with which he is entrusted are insufficient.' I move, Sir, my amendment as it stands.

The Honourable Sir Malcolm Hailey: We shall not of course object to Mr. Rangachariar's definition of the scope of this section. It does—as he recognizes—provide that the Magistrate may pass an order which will affect the subject in the exercise of his lawful acts. I shall not agree with him, however, in saying that our previous amendments of other Chapters of the Code have largely extended the scope of the preventive sections. He instances the fact that we have provided now for the issue of an interim order, but, so far from that extending the scope of the Act, I would remind him that it is entirely in the interests of the subject himself. The Magistrate always has had power under section 114 to issue a warrant at once if necessary.

Rao Bahadur T. Rangachariar: But he is bound down all the same.

The Honourable Sir Malcolm Hailey: That is true,—only as an interim arrangement, instead of being arrested on a warrant. Now the Chapter of the Act we are discussing contemplates essentially that the Magistrate shall not take action under it unless he has no other remedy under the security sections. Mr. Rangachariar desires to add an additional safeguard; he desires that the Magistrate should, as it were, place on affirmation his opinion that he has no other remedy. He points out to us numerous cases in which orders have been passed under this section, which have attracted public attention. I ask him how he would have prevented such orders in any way by the addition of the precaution which he has now proposed. All that the Magistrate has to do is to say that "in my opinion I have no other remedy possible."

Rao Bahadur T. Rangachariar: I expect him to be honest.

The Honourable Sir Malcolm Hailey: He will be honest; you won't make him more honest merely by making him assert that he is so. You do not secure that his order is reversed if his opinion of his own powers is not correct. An appellate Court would not be able to go behind his declaration that in his opinion he has no other remedy, for all that you require from him is a mere statement of opinion. It is really very much as though the Honourable Member had suggested that the Magistrate should make an oath that he was in sound mind and health before he brought the section into operation. I would remind the House of what we did a few minutes ago, namely, to insert a stipulation equivalent to that which is applied to section 204,—that the Magistrate should only proceed if he considers that there is sufficient ground for proceeding. Is it now necessary that we should, in addition, ask the Magistrate to place on paper an affirmation on his part that he believes he has no other course but to take action under this section? Do we anywhere in our Acts find that before a Magistrate comes to a decision on a case, he must make an affirmation that he has been all through the law and he is quite sure that no other section applies? Do we make him affirm that he has searched his conscience and cannot find it possible to give any other judgment? For that is the exact parallel to what Mr. Rangachariar now asks us to do. Is it not sufficient that we should simply make it necessary for the Magistrate to state that there is sufficient ground for proceeding?

Mr. J. Chaudhuri: Sir, I am entirely in sympathy with Mr. Rangachariar, but I do not think that this will improve matters. The insertion of such a clause will not improve matters because after the amendment that has been made to sub-clause (1), where it is required that the Magistrate should state that there are sufficient grounds for proceeding under the section is comprehensive enough and after that, the insertion of this clause might lead to confusion. What we have done in the Joint Committee is this. We have provided a remedy where a Magistrate proceeds under this section peremptorily. Formerly he proceeded against a person arbitrarily; he made an order, without giving any opportunity to the person against whom he passed the order, at any time to show any cause. What we have done in the Joint Committee is this. We have given an opportunity to the person or members of the general public who may be bound down, that is, against whom a prohibitory order is passed, an opportunity to show cause. I draw my Honourable friend's attention to clause (5) which we have added to the section, namely:

"Where such an application is received the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and showing cause against the order; and, if the Magistrate rejects the application wholly or in part he shall record in writing his reasons for doing so."

Thus, we say now in clause (1) that the Magistrate must make his order on sufficient grounds and later on we give the party prejudiced an opportunity to show cause. Now, I take it that my friend's amendment which is taken from a judgment is merely a matter of interpretation. If we require a Magistrate to state that he has exhausted his powers under all the other provisions of the Code, he may merely put down a statement to that effect and that would hardly give a remedy to any person affected by the order. I would therefore leave it to the Magistrates to comply with the provisions we have already made where the Magistrate is of opinion that it is a case in which an order should be made under section 144. But that he should have to put down that he has considered or exhausted all his powers under the other sections of the Code and that the case comes particularly within the scope of section 144, is, I think, unnecessary and unreasonable. I would leave it to the superior court to judge whether a Magistrate has applied this section properly or not. I have already said that what Mr. Rangachariar proposes is a matter of interpretation and not of procedure. My friend, Mr. Rangachariar, knows that the superior courts have held that if in their opinion the Magistrate has not acted within the scope of this section then they have jurisdiction to interfere under their revisional powers. So I would leave the matter as it is and leave the Magistrate to act within the scope and limitations provided under this section. If he does not comply with its requirements, I would leave it to the superior courts to interfere according to their present practice. I therefore do not think that the addition of my friend's clause will improve matters.

Mr. R. A. Spence: I move, Sir, that the question be now put.

The motion was adopted.

Mr. Deputy President: The amendment is:

"That in clause 26 to sub-clause (1) add the following at the end:

'and after the words 'such Magistrate' where they first occur the words 'after recording his opinion that the other powers with which he is entrusted are insufficient' shall be inserted'."

[Mr. Deputy President.]

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—23.

Abdul Majid, Sheikh.	Man Singh, Bhai.
Agarwala, Lala Girdharilal.	Misra, Mr. B. N.
Ahmed, Mr. K.	Mukherjee, Mr J. N.
Ahsan Khan, Mr. M.	Nag, Mr. G. C.
Ayyar, Mr. T. V. Seshagiri.	Nand Lal, Dr.
Basu, Mr. J. N.	Neogy, Mr. K. C.
Bhargava, Pandit J. L.	Rangachariar, Mr. T.
Das, Babu B. S.	Shahani, Mr. S. C.
Gour, Dr. H. S.	Subrahmanayam, Mr. C. S.
Gulab Singh, Sardar.	Venkatapatiraju, Mr. B.
Jamnadas Dwarkadas, Mr.	Vishindas, Mr. H.
Jatkar, Mr. B. H. R.	

NOES—45.

Abdul Quadir, Maulvi.	Hullah, Mr. J.
Abdulla, Mr. S. M.	Ikramullah Khan, Raja Mohd.
Aiyar, Mr. A. V. V.	Innes, the Honourable Mr. C. A.
Akram Hussain, Prince A. M. M.	Ley, Mr. A. H.
Allen, Mr. B. C.	Mitter, Mr. K. N.
Blackett, Sir Basil.	Moncrieff Smith, Sir Henry.
Bradley-Birt, Mr. F. B.	Muhammad Hussain, Mr. T.
Bray, Mr. Denys.	Muhammad Ismail, Mr. S.
Burdon, Mr. E.	Nabi Hadi, Mr. S. M.
Cabell, Mr. W. H. L.	Percival, Mr. P. E.
Chatterjee, Mr. A. C.	Pyari Lal, Mr.
Chaudhuri, Mr. J.	Samarth, Mr. N. M.
Crookshank, Sir Sydney.	Sarfaraz Hussain Khan, Mr.
Dalal, Sardar B. A.	Sen, Mr. N. K.
Davies, Mr. R. W.	Singh, Mr. S. N.
Faridoonji, Mr. R.	Sinha, Babu Ambica Prasad.
Ghulam Sarwar Khan, Chaudhuri.	Sinha, Babu L. P.
Gidney, Lieut.-Col. H. A. J.	Sircar, Mr. N. C.
Gulab Singh, Sardar.	Spence, Mr. R. A.
Haigh, Mr. P. B.	Stanyon, Col. Sir Henry.
Hailey, the Honourable Sir Malcolm.	Tonkinson, Mr. H.
Hindley, Mr. C. D. M.	Zahiruddin Ahmed, Mr.
Holme, Mr. H. E.	

The motion was negatived.

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

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

Bhai Man Singh: Sir, I suppose my amendment* No. (2) was included in the previous amendment and so I shall proceed with clause (8) of my amendment No. 102. It runs:

"Add the following sub-clause after the present sub-clause (*i*) and renumber the subsequent clauses accordingly:

"(*iii*) in sub-section (1) the words 'or tends to prevent' shall be omitted'."

* "(2) Substitute the following in place of the present sub-clause (*i*):

'in sub-section (1) for the words 'of any other Magistrate' the words 'a Magistrate of the first class' shall be substituted'."

If we read the terms of section 144 we will find that it is not only unchecked but it is as wide as possibly it could be; we are to see now whether there is any necessity or whether it is advisable at all to bring in all possible things under this section and within its scope. The section runs:

"In cases where in the opinion of a District Magistrate, a Chief Presidency Magistrate, a Sub-divisional Magistrate, or of any other Magistrate.....immediate prevention or speedy remedy is desirable,

such Magistrate may..... direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or disturbance of the public tranquillity or a riot or an affray."

Now, there are three things included in it, one, actually preventing, the other tending to prevent, and the third, risk to life, property, etc. Now, I submit that the term 'tend to prevent' is such a vast term that anything, even the remotest cause, may be brought within it. We are giving the magistracy a power which should be used very sparingly, a power which is highly summary. I cannot understand why we should make this section so vast that not only should we provide for an order to prevent, but for an order tending to prevent, annoyance, etc. Everything, perhaps even the remotest causes, can be said to tend to prevent a thing. A man, a perfectly good and honest man, is passing through a place where *goondas* live; some people come and chaff at him; his friends might object to it and they might even find a little quarrel over it. If we stop that man from going there altogether,—his motives may be perfectly right, his object may be perfectly sound, he may be going there on a perfectly lawful errand—but the order to stop him from going there may tend to prevent a breach of the peace. It is such a far-fetched thing that I at least cannot see anything to justify the inclusion of such words in the section. I think the matter is so very clear that no further discussion over it is needed and I hope the Government will see the reasonableness of the demand.

Sir Henry Moncrieff Smith: Sir, the point here is perhaps a little subtle, but I hope to be able to make it clear to the House. The removal of the words 'tends to prevent' would undoubtedly weaken the section very much and I do not think there is any risk of their being used to meet such a case as has been cited by the Honourable Mover. Of course the words 'tends to prevent' are much milder than the words 'likely to prevent,' but we should consider what the section lays down. We will take any case referred to in the section; say it is a case of obstruction; the Magistrate has come to the conclusion that a speedy remedy is desirable to prevent this obstruction; he has to do his best to provide that remedy. He thinks of a course of action; he is prepared to issue a direction under this section, but he says "This course that I propose—I cannot conscientiously say to myself that it is likely to prevent the obstruction; I cannot foresee what the result of my action will be; but it is up to me to do my best, to do all I can towards helping to prevent that obstruction." In other words, he has to do what he can; he has to take action which in his opinion will tend to prevent the obstruction. The word 'likely' in fact is equivalent to 'probable' in this case; and the wording 'tends to' is perhaps slightly stronger than 'possibly.' That is all. We cannot be certain that his action will probably prevent a breach of the peace, and yet, my friend by suggesting the omission of the words

[Sir Henry Moncrieff Smith.]

' tends to prevent ' will prevent him from taking any action, though he has come to the conclusion that an obstruction is imminent, that he must take immediate steps and if he does not he will be called into question, no doubt by his own Local Government, for not having after all done anything whatever to prevent the obstruction. Therefore, I suggest that these words ' tends to prevent ' must remain and that there is no risk whatever of their being used in the fashion in which the Honourable Mover has suggested.

Mr. Deputy President: The question is:

" That in clause 26 add the following sub-clause after the present sub-clause (*i*): ' (*iii*) in sub-section (1) the words ' or tends to prevent ' shall be omitted '."

The motion was negatived.

Bhai Man Singh: Sir, my next amendment is:

" That in sub-section (1) the word ' annoyance ' wherever it occurs shall be omitted."

I think I am treading on very safe ground in proposing this amendment. Perhaps I was quite safe in my previous amendment also, but it has met with a contrary fate; but I think I am on the safest ground in proposing this thing. In giving such summary powers, such clear executive powers, why should we give power to order not only something that removes any annoyance but something that is likely to prevent, that tends to prevent an annoyance?

We have got here the words ' obstruction, annoyance or injury, or risk of obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety.' Therefore ' annoyance ' here means something that is not covered by injury to human life, injury to human health or injury to human safety. Sir, if there is anything that causes annoyance the doors of the regular courts are open to everybody to take any steps he likes. So where is the reason, where is the justification for saying to a man ' Look here, I am annoyed by such and such action of yours. I will go to the Magistrate and get an order issued against you.' Suppose there is a marriage going on in the house of a rich man, and the *tom tom* is being beaten near by. Another man may have some influence with the Magistrate; he goes to him and writes a letter saying that ' so and so is beating his *tom tom*, which causes great annoyance to me.' The Magistrate goes forth and says ' thou shalt not beat thy *tom tom* '! No doubt the order is only for two months, but to a person who is stopped from celebrating his festivities in connection with his son's or daughter's marriage, it means a great thing. Similarly, a man gets up at 5 o'clock in the morning and begins to sing. It causes annoyance to me. Well, the Magistrate to whom I complain, goes forth and issues an order to stop him from singing in the mornings at 5 o'clock because a speedy remedy is necessary, because so and so is annoyed. I really cannot understand what you mean by speedy remedy and immediate prevention consistently with the idea of annoyance where no danger to human life or health or safety or obstruction or injury is concerned, or where there is no danger of a disturbance of the public peace or tranquillity. I for one really fail to see how on earth we can put in this word in this section. I hope therefore that my Honourable friends will consider well and vote for this amendment.

Mr. R. A. Spence: Sir, I oppose this amendment for the reasons put forward by the Honourable Mover of it. I consider that if this word 'annoyance' is left out, and if the Magistrate has not got powers to prevent people from committing annoyances, there is a very great danger of loss of life and possibly of loss of property. What we propose to do in our law is to prevent crimes as far as possible. There might be many other crimes committed, because people lose their temper owing to annoyance caused by the beating of *tom toms*, and I think that, should a Magistrate be of the opinion that annoyance is being committed which is likely to cause some one to commit a breach of the peace, then it is a very sensible law that the Magistrate should be able to stop that man from committing such annoyance. Therefore, if this clause is left out, I think there will be a danger of loss of life and loss of property to which the Honourable Mover of the amendment so feelingly referred. Therefore, I hope that Honourable Members in this House will not be of the opinion of the Mover of the amendment and that they will not give him that favourable consideration which we should like to give him if only we agreed with him.

The Honourable Sir Malcolm Hailey: I should like to supplement, if I may, in two words, what my Honourable friend, Mr. Spence, has just said. I must say that when I heard Bhai Man Singh's speech, it did occur to me what a bad Magistrate he would make; for he thinks of a variety of things which would never enter the mind of one of our Magistrates. Could he really imagine that a Magistrate would pass an order in favour of a rich man that no body should beat a *tom tom* in the vicinity of his wedding?

Bhai Man Singh: Such orders are daily passed.

The Honourable Sir Malcolm Hailey: All I can say is, that if Magistrates do exist to whom such considerations occur, then I have never met them.

But, why do we desire the retention of the word 'annoyance'? I can answer it by referring to what Mr. Rangachariar said this morning. He realised that under section 144 a Magistrate has very often to deal with cases of a religious origin, and there is no greater source of trouble in certain parts of the country than cases in which one person sets out to cause annoyance to another religious community. I put it that action of this kind is not and would not be covered by the words of the section unless we retain the word 'annoyance'. It is simply for that reason that I think the retention of this word is salutary, and I commend it to the Assembly on that ground and on that ground alone.

The motion was negatived.

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

"In clause 26, the present sub-clause (*iii*) in the proposed sub-section (5) omit all the words after 'shewing cause against the order' and re-insert them as sub-section (7) in the form given below, and add the following and re-number the sub-section (5) as sub-section (8):

'and on his so appearing either in person or by pleader, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken and to take such further evidence that may be adduced'."

I think the last words "that may be adduced" have been omitted, and I may be permitted to add them, because the sentence is incomplete without them.

"(6) Such inquiry shall be made, as nearly as may be practicable in the manner hereinafter prescribed for conducting trials and recording evidence in summons cases."

[Bhai Man Singh.]

"(7) If, upon such inquiry being made the Magistrate is satisfied that the order should stand wholly or partially it shall pass an order to that effect, otherwise it will accept the application and while passing any such order about the application the Magistrate shall record his reasons in writing for doing so."

I also beg leave of the Chair to alter the word 'it' to 'he', because it is a clear mistake—I do not know whether it is my mistake, or it is my typist's mistake or it is of the printers here.

The object of my amendment, Sir, is very clear. I want that when a man is asked to show cause, and when he appears and objects to the order and files an application, that order should stand, and he should be given full opportunity to produce his evidence as in a summons trial, and the order of the Magistrate in disposing of the application should be like a judgment, really speaking in the sense in which we have got the word 'judgment' in the Criminal Procedure Code. I do not know, Sir, how the learned members of the Joint Committee in this respect tried to keep on the section as a mere executive thing in the Criminal Procedure Code. I should like to read out the note of the Joint Committee on this clause:

3 P.M.

"We accept the amendment made in section 144 by this clause. It was suggested to us that section 144 should be elaborated so as to enable a person aggrieved on an order made under the section to require the Magistrate to make a judicial inquiry regarding the truth of the information on which he had acted and thereby to bring in the revisional powers of the High Court. With the exception of Saiyid Raza Ali we think this proposal goes too far and that it is necessary to maintain the executive character of the provisions under section 144."

This shows clearly, Sir, what is the object of avoiding such like provisions in the section and keeping it the mere summary thing. We are, however, prepared and we have proposed an amendment to this effect, to lay down that a person aggrieved shall be entitled to apply to the Magistrate and show cause against an order and that the Magistrate shall give him an opportunity to be heard in person or by pleader and shall record his order in writing giving his reasons for his rulings. Sir, there is absolutely no use in taking half-hearted measures in adopting half measures in such matters. If it was the business of the Magistrate to see to it, where was the use of providing that he should record his reasons or anything of that sort, if you think that he should be altogether unchecked and uncontrolled in this matter? If his discretion is to be a judicial discretion in the real sense of the word, I see absolutely no reason why we should avoid the writing of evidence in such cases.

Sir, while speaking on my first amendment to section 144 I submitted to the House a long list of rulings wherein the High Courts have consistently held that the Magistrate should take evidence before passing orders and in cases where there had been convictions the High Courts have required that there should be very credible evidence on the file to show that such and such dangers were actually apprehended otherwise they have quashed the convictions under 188 for disobedience of such orders. I submit, Sir, that, if the Magistrate shall have the right evidence, if the man disobeys the order in order to secure his conviction, I see absolutely no reason why he should shrink from doing so at this preliminary stage when the original order is being passed. It is all very well to say: "all these are summary proceedings, these are very minor things." But, Sir, how on earth is it to be tested? At present, as I submit, Sir, there is only an intricate method of testing the validity of such orders, that is through revision. Some of

us have sent in amendments to provide for revision or an appeal against this order by itself and if we are to have any revision or appeal to this order we must make this provision here also that the Magistrate should take the proper evidence in the case. I cannot imagine why such evidence should not be taken. If there is danger of annoyance, if there is danger to the public safety, if there is danger of a breach of the public peace, why should the Magistrate try to keep his information secret? Why should the executive action fear the light of the sun and try to issue its orders in darkness? Where is the ground in giving such powers to the Magistrate that he should not write any evidence and should maintain or quash his own orders. I should really feel obliged if any of the Honourable Members from the Government would tell me the substantial injury, the substantial loss that would occur if the Magistrate is required to write evidence in such cases. The worst criminals, when they are required to procure security, are given that chance. Their trial is to be according to a summons trial as provided in the courts. I for one, Sir, cannot understand why on earth should we leave this section as it is and let the Magistrate decide arbitrarily whether he should or should not do. I submit, Sir, that this is just in the spirit of what our highest courts have held and while we are amending this section, we should not let this point escape and should bring in the spirit of these rulings in the courts itself.

Mr. Deputy President: Amendment moved:

"In clause 26, the present sub-clause (*iii*) in the proposed sub-section (5) omit all the words after 'shewing cause against the order' and reinsert them as sub-section (7) in the form given below, and add the following and renumber the sub-section (5) as sub-section (8):

'and on his so appearing either in person or by pleader, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken and to take such further evidence that may be adduced.'

'(6) Such inquiry shall be made, as nearly as may be practicable in the manner hereinafter prescribed for conducting trials and recording evidence in summons cases.'

'(7) If, upon such inquiry being made the Magistrate is satisfied that the order should stand wholly or partially he shall pass an order to that effect, otherwise it will accept the application and while passing any such order about the application the Magistrate shall record his reasons in writing for doing so'."

Rao Bahadur C. S. Subrahmanayam (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, with regard to the provisions which have been so strongly criticised by my friend, Bhai Man Singh, I think it is necessary to remember that under every criminal law, under the criminal jurisprudence of every civilised country, there are first the penal provisions which punish a man who has committed an offence, and there are other subsidiary provisions which enable the authorities to prevent the commission of crimes and also others which will prevent the disturbance of public tranquillity. Now, the question is whether we should have in this Code provisions which come under the head of those that prevent disturbances of public tranquillity. Now, if in enacting those provisions, we were to take up the position that we were trying offenders and the inquiry should assume the form of a trial, whether a summons case or a warrant case whatever it may be, that it should take the form of a trial, we must then contemplate to what extent this inquiry will be enlarged. Now, I ask you, apart from being technical lawyers—as ordinary men—do you think that provision like these should assume the form of trials? Are not these provisions intended to be taken when a responsible officer thinks that there is a disturbance of tranquillity and the other things mentioned in the

[Rao Bahadur C. S. Subrahmanayam.]

clause? Now, when he suddenly comes to the conclusion—and these conclusions can only be come to on the spur of the moment or on the occurrence of things which could not be anticipated—then what advantage is there for the men who are prevented from exercising those alleged legal rights to let the proceedings take the form of a regular trial. Will it profit them, will it advance the cause of peace in the locality, or will there be any good in giving these the form of trials? Now, it is in that view that this section is very important. And the amendment that was made, that is the addition that was made, was in reference to the view which has been frequently expressed that this section has been put to uses which were not originally so fully contemplated, in order to enable those who are interested in these proceedings to know and also the higher authorities to judge whether officers taking action under these sections had exercised a fair amount of discretion and applied their minds to the facts which gave occasion for the order. Therefore, if the House approves that this provision is a provision which is to be used in an emergency in order not to punish people but to prevent an apprehended danger or disturbance, then I think the line of criticism adopted against this provision would not be justified. But if this provision is to be treated as a penal provision and subjected to the scrutiny of an appellate court, if this order is to be treated as a sentence on conviction against the person and higher authority is to sit on this matter as an appellate court, then I think those who bring themselves into this provision are not likely to be benefited, because the action would have been taken, and after the action has been taken and the prevention has been enforced the inquiry is going to begin. What is the advantage? Immediate action is, what is wanted and what is probably not refused even by my friend, Mr. Man Singh. After that immediate action has been taken what is the advantage of having a regular inquiry? Is it to demonstrate to the world that the Magistrate has exercised his discretion wrongly or is it to benefit the person aggrieved? Therefore, I think that these elaborate provisions which my Honourable friend wants to tack on to this section will really do no good, and so I think it is best to leave the clause as it stands.

Dr. Hand Lal: Sir, I differ from the last speaker, the Honourable Mr. Subrahmanayam that in the case of preventive measures no proof or evidence is necessary. I agree with him that this is a preventive step no doubt. In emergent cases, where promptitude is required, as I have already submitted, that preventive measures are generally effective. But when he says that no judicial proof is necessary, and that no inquiry, so far as the taking of evidence is concerned, is necessary, I join issue with him. When I see the opinion of the Select Committee, when they say in clear words that the character of these proceedings is executive, I feel surprised. If any witness in those proceedings tells a lie he will be hauled up under section 193 (of the Penal Code). If you hold, Sir, that these are judicial proceedings, then any statement which is made will be made on oath, and in order to come to a determination in regard to the conduct of the man proceeded against, the proceedings will be given the character of a judicial proceeding, and if inspite of there being no proof, a decision is given against him, then that decision, I submit, will be wrong. The argument that has been very strenuously set forth by the last speaker is, "Of what avail would it be if an elaborate inquiry and a proper investigation be made." In reply I may say that the good of it would be that the man who is feeling aggrieved, and who is affected by that order, will realise that he put forward the whole of his evidence, and that the Magistrate has

come to the conclusion after hearing them. This will more or less be a satisfaction to him. But if he is debarred from putting forward his evidence, then certainly he will say that justice has not been done to him. And on the top of it what will be the effect on the public mind? They will think that orders are being passed simply in accordance with the whim or sentiment and opinion of the Magistrate and no proof is taken. Then the Honourable the Opposer of this amendment says, "It is purely discretionary. The Magistrate is allowed to exercise his discretion." Certainly the Magistrate should be allowed to exercise his discretion. In connection with an amendment which was moved some time back I submitted to the House and I am reiterating the same submission that the discretion should be based on some data. The discretion should not emanate from the mentality of the Magistrate alone. The discretion, in any case, must be based on the inference which is to be drawn from the material on the record, and if this discretion is based on some proof on record, and has been exercised judicially, then certainly it must be respected. The Court of revision will take it as a true and proper discretion, namely, the High Court will then feel reluctant to interfere. But if this discretion is to be exercised in the manner in which my learned friend wishes, then, I say, his view is erroneous. It is altogether wrong. My learned friend opposed this amendment on this ground and I think that that ground is a fallacious one. Look at the stringency of the law which is embodied in this section. Arguments have already been advanced by the Mover, with reference to certain words and the natural consequence thereof, and I, sympathising with those arguments, submit that the present law, as is incorporated in section 144, has invited a great amount of criticism. It has evoked that criticism which it is extremely difficult to meet with. I submit that the amendment, which has been proposed, is a very modest one and will be a good safeguard, and I think the Government will be pleased to accept it. Where is the difficulty in accepting this sort of amendment? It (the amendment) suggests, "and on his so appearing either in person or by pleader, the Magistrate shall proceed to inquire into the truth of the information". Are the Government Benches really serious to say that he should not inquire into the truth? I think they will accept my contention that the Magistrate ought and should inquire into the truth of the information. Unless and until he finds the truth of the allegations he should not pass the order. Then clause No. 6 says:

"Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trials and recording evidence in summons cases."

All of you know, Sir, that this is a very innocent form of procedure. It does not mean that a regular charge will be framed and after framing the charge the witnesses will be recalled for cross-examination once more.

Then my learned friend, the Opposer of this amendment, says, "Oh, what is the use of a regular trial?" I may tell him that real trial begins after framing the charge. But here trial means that evidence will be recorded and the Magistrate will come to certain conclusion after having gone through that evidence. It is not a regular trial which we find in warrant cases, because a charge is framed, the accused is called upon to explain and then to adduce evidence. Similarly sub-clause (7) is also of a very modest nature:

"If upon such inquiry being made the Magistrate is satisfied that the order should stand wholly or partially it shall pass an order to that effect."

[Dr. Nand Lal.]

I think the whole House will agree with this view which has been suggested and recommended. If after having gone into all these materials he is satisfied, that the order should stand, it may be done so. Now what is the difficulty in the way of accepting this innocent sort of amendment? It will set at naught the criticism which has been levelled against section 144 of the Criminal Procedure Code. Therefore with these few remarks I support this amendment very strongly.

Mr. H. Tonkinson: Sir, I rise to oppose the amendment. I believe it will not be necessary to make more than a very few remarks to support those made by my Honourable friend, Mr. Subrahmanayam. Let us remember, Sir, what this section deals with. It deals with cases in which immediate prevention or speedy remedy is desirable. In such cases the order absolute has already issued. That order will only remain in force for 2 months. Under sub-section (4) of section 145 of the Code as it stands at present, the Magistrate has power to rescind or alter the order which he has made. The Joint Committee inserted a provision in that sub-section to enable the Magistrate to take such action either *suo motu* or else on the application of the person aggrieved. Then in sub-section (5) the Joint Committee has provided for the action which they consider should be taken when the person aggrieved appears before the Magistrate. In place of these provisions, the Honourable Member proposes to introduce the whole paraphernalia of a summons trial, and that, in a case of an order which is to remain in force for two months only. I submit, Sir, that the proposal would entirely change the character of the provisions of this Chapter and would involve a gross waste of time.

The motion was negatived.

Rao Bahadur T. Rangachariar: Much as I have reason to be despondent, I rise again with full optimism in moving my amendment which is as follows:

"In clause 26 after sub-clause (*iii*) insert the following sub-clause:

'(*iv*) after sub-clause (6) as renumbered the following shall be inserted as sub-section (7), namely:

'(7) In all cases where action is taken under this section preventing 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'."

When I look behind me for my followers, they have deserted me. They have deserted me, nearly 60 of them are quietly absent in their homes—60 of the so-called people's representatives. Is it any wonder that people outside threaten to repudiate debts contracted by this Assembly when their representatives choose to absent themselves like this, on important occasions? Sir, I said I am not despondent. Although I am like a general without soldiers, I see in front of me gentlemen to whose intellect I am going to make an appeal and I rely on their sense of gallantry that they will receive a general without soldiers with open arms and make honourable peace with him. Sir, the amendment which I move is an old friend, he is coming up again. (*Mr. J. P. Cotelingam*: "Sessions Judge.") It is with reference to the use of these executive sections for preventing meetings being held or preventing people from addressing meetings. Sir, it must be admitted that the credit for applying this section to public meetings and to public speakers belongs not to the Government of India but to the Burma Government, the Upper Burma Government. Some Magistrate in Upper

Burma in the year of grace 1916 for the first time applied this section to prevent a meeting being held. That was the solitary instance in which section 144 was applied till the eventful year of 1921, the latter part of which saw the use of this section spreading like plague and other diseases all over the country. One of the objections raised the other day was that we single out this out of the lot, as my Honourable friend for whose opinion I have got very great respect pointed out, I mean Sir Henry Stanyon. Why we single out this out of all the rest is answered by this fact, namely, that it is a novel use of this section—you will agree with me that it is a novel use of section 144 to prevent citizens from exercising their elementary rights of either addressing their co-citizens or holding meetings. Sir, some of my legal friends had their legal conscience very much perturbed, especially my Honourable friend, Mr. Mukherjee, that I spoke of action being taken, that I spoke of action being taken to prevent a person from addressing or holding meetings. They said, "Oh! What bad language you have used? Under section 107 action is not taken, but order is passed. Therefore your language is wrong. Under section 107 action is not taken to prevent a meeting being held or to prevent a person from addressing a meeting, but to get security for keeping the peace. Therefore your language is unhappy." Therefore, they said it is out of place in section 107. I am glad to be able to satisfy them in that respect so far as section 144 is concerned. Magistrate acts under this section. Magistrate prevents a person from doing a particular act. Therefore, those two technical objections which were taken advantage of even on the Government Benches disappear. Now, the third objection taken was, "What an ineffective remedy you are providing? A report to the Sessions Judge!" Well, he reports to the Sessions Judge. It may be based on materials or it may be based on no materials. What is the Sessions Judge to do? It is said what is the object of this remedy? It is so ineffective. Do you really believe that the Government think it is ineffective? If it is so ineffective, why do they oppose it? If it is such a harmless remedy that I am proposing, why do they oppose it? Have we not got reason to suspect that there is something behind this opposition? Do they not think this is going to be a good remedy? Are they not afraid of it? When you find the Government arguing that it is an ineffective remedy, we are men, we are not children, and we might suspect really that they believe it is going to be an effective remedy and that is why they oppose it. Therefore, Sir, these are the objections taken to this provision when applied to section 107. Under section 144 there may be an *ex parte* order; there may be a final order afterwards. In both those cases the Magistrate will have some material to go upon because he has to record his reasons, he has to record the statement of facts. And moreover further proceedings are contemplated by later amendments to the Procedure Code which provide for revision. Therefore it will not be a case in which there will be no papers for the Sessions Judge to act upon. There will be records to go upon. Therefore the Sessions Judge will be able to cancel proceedings in case they are improperly taken, when he is satisfied the proceedings are improperly taken. There is one other objection. I look with trembling feet to my friend, Mr. Samarth, who is now out of his place. I hope he will be out of his place in the lobby also this time. He thinks this is a weapon I am inventing for the benefit of the non-co-operators. I am not sure my friend will not one day be caught in the same meshes in which other people are caught. I know his sense of patriotism. When this Royal Commission comes along and when perhaps we shall have to organise a procession to the Viceroy's residence in the same way as the unemployed did to the Premier's house, I am not sure

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he will not join that procession. That section will then come into effect, and the District Magistrate of Delhi, who is I think called the Deputy Commissioner, will serve an order on my friend, Mr. Samarth: "How dare you lead a procession protesting against the appointment of the Royal Commission?" I heard my friend, Mr. Subrahmanayam, saying this was a power which belonged to other countries. I have yet to find a section in the English procedure which empowers the Magistrates to interfere in processions or meetings.

Rao Bahadur C. S. Subrahmanayam: The police, not the Magistrates.

Rao Bahadur T. Rangachariar: The police have power to interfere in case of actual disturbances. They are ready with their batons and not with their fire-arms. Batons are their weapons when these enormous crowds assemble in the various squares. Magistrates of the first class do not serve orders on Mr. Ramsay Macdonald or even on Mr. Keir Hardie preventing them from holding meetings. And my European friends, whose assistance I also implore in this connection are noted for their love of liberty; I know they will not lose their liberty in this country or in any other country, and I appeal to them also to join hands with me in this matter. Sir, liberty of speech, liberty to hold meetings is a sacred right. When that right is sought to be destroyed, when it is sought to put it down under foot in this manner in which it has been done, when the Government confesses its impotence to deal with crowds while they have got such eminently highly-paid police and military to look after the peace of the country, when they think action under section 144 is necessary in order to prevent some speeches in a country where mild Hindus predominate, Sir, I am despondent about the Government. I ask them to look at it from that point of view. There are Magistrates and Magistrates who take different views of different matters. Why, Sir, the wearing of *khaddar* is obnoxious. If you put on a Gandhi cap, as it is called, it annoys, it wounds, and directly an order is passed under section 144 to remove the cap. Is our Indian Government so weak that they should resort to such silly method? Sir, I therefore say we must provide a remedy for this. I hope I have not over-stated the case. If I have, please forgive me, but this is a very vital matter. I hope you will find some remedy for the extraordinary use of these sections. I am confident that the remedy I have proposed is not as efficient as I might have made it. I purposely refrained from other remedies. I purposely refrained from suggesting that the section should not be used for such purposes, because, as I stated the other day, there may be cases when actual incitement to rebellion may take place in meetings, in which case section 144 might legitimately be used. Short of that I do not think it should be used. When it is used for such a purpose, is it not just, does it not occur to you that it is necessary that there should be some safeguard by some superior authority? What is the harm in providing this remedy I suggest, namely, that the records go to the Sessions Judge, who is a senior servant of your own, to bring his judicial mind to bear on the subject and see whether the action has been rightly taken under this section or not. May I therefore in my despondent spirits appeal to the Government Benches and my Honourable colleagues who are presenting an organised front before me, and a disorganised force behind me, to give to this modest motion the treatment which it deserves. I move the amendment which stands in my name.

The Honourable Sir Malcolm Hailey: Sir, I confess to a novel and refreshing feeling of pleasure when I hear a leader of that large and compact body of voters, whom we see so often leading his cohorts into the lobby against us, appeal to us to be merciful and not to use our strength. We are so accustomed to come into this Assembly a faithful little band of voters, prepared to encounter an enormous and determined majority on the other side, that we can hardly credit our ears when we hear that it is we who are strong, we who must not use our voting power, we who must for once listen to reason. But I feel great sympathy for Mr. Rangachariar. As he pathetically says, he stands alone. His forces are dissipated; his followers are gone. Might I suggest a remedy to him? Here is a place for him on the Government Benches; let him join us over this Bill; he may be certain that we at all events do not neglect our posts. Our faithful few are always here, and, if you do not see their faces, yet you know that they are close at hand, within call of a bell. If he will join us, he will never want followers.

But to the point, we have been through a great deal of this amendment before. We have heard before, in regard to section 107, many of the arguments which Mr. Rangachariar has addressed to us to-day. If we were hard-hearted then we curiously enough found adherents in the House. Could it have been that we and not Mr. Rangachariar were for once in the right? At all events, we are equally hard-hearted on this occasion also. Mr. Rangachariar might perhaps have had some arguable case in regard to section 107, by which an order can be passed against an individual, binding him over for a period of a year. He might have had some justification for claiming that the circumstances justified this new revisionary procedure, the order to protect the liberty of action of that particular person. But here, what does the Magistrate do? He issues an order for two months only. Mr. Rangachariar would have the proceedings of the Magistrate sent to the Sessions Judge. Meanwhile the person affected will under our new clause have asked the Magistrate to review his own order; by the time the order has become absolute some considerable period will have elapsed. Three-quarters of the mischief will be done, at all events before the Sessions Judge can get to work on the case. Mr. Rangachariar suggests that he and some of his friends might intend to go in procession to-morrow to His Excellency the Viceroy to protest against the appointment of Royal Commission; and draws a picture of the District Magistrate issuing an order under this section against him. I would advise them not to do so, because, I understand, that His Excellency will be absent from Delhi to-morrow. (*Rao Bahadur T. Rangachariar*: "We will wait on you then.") But even if they should contemplate doing so, I do not think they need fear that the District Magistrate of Delhi will issue an order against them; for judging by to-day's confession the band will be so small that he will hardly notice its existence in the street. But seriously even if we had this procedure Mr. Rangachariar desires to introduce, what would happen? The District Magistrate would issue his order to Mr. Rangachariar. Mr. Rangachariar, using our new sections (4) and (5), would go to the District Magistrate and make an application for review. The District Magistrate after making due inquiry, would make his order absolute. The papers would be sent to the Sessions Judge. Clearly, even if Mr. Rangachariar secured the good offices of the Sessions Judge, it would be a long time before he had access to His Excellency the Viceroy.

I have used this illustration to show really how little ground there is for applying this revisionary procedure in the case of proceedings so

[Sir Malcolm Hailey.]

essentially emergent in their nature and temporary in their effect. I do not here again seek to defend any action that we have taken under section 144. I do not again refer the House to the fact that Mr. Rangachariar himself advised us to use section 144. He had, I may say, predecessors in the advice which he gave us. I remind him of the debates in the Legislative Council on the subject of the amendment of the Seditious Meetings Act. On that occasion, there were authorities no less than the late Mr. Gokhale, who advised that we should use the existing sections of the Act, and I remember that it fell from the lips of Mr. Mazrul Huque himself that section 144 was sufficient for all our purposes. But that, Sir, was section 144 as it then stood. When our friends advised us then to use section 144, they contemplated section 144 in its original form; they did not, I think, ever contemplate that it should become a semi-judicial proceeding, liable to a new form of revision at the hands of the Sessions Judge. Regretfully then, in spite of all my sympathy with Mr. Rangachariar in the unhappy circumstances in which he finds himself, I ask the House to re-affirm the decision on this subject which they gave three days ago.

Mr. T. V. Seshagiri Ayyar: Sir, there has been so much good humour in the speeches which have been delivered on this amendment, that I am afraid to sound a note of seriousness in the discussion in regard to this question. Sir, none the less, there is a feeling of consternation in the country regarding the use of section 144 and I do not think I would be justified in keeping the Government ignorant of that feeling. Mr. Rangachariar's amendment would have this effect—it would check the vagaries of the Magistrates; it would enable the Sessions Judge to examine the records and come to a conclusion whether the Magistrate has acted rightly or wrongly. It is for that purpose that my Honourable friend has brought forward this amendment.

Sir, I should like briefly to explain the reason for the enactment of this section and how it is being misused. I think I am right in saying that you do not find a similar power in England, a power similar to the one which is given by section 144. (*The Honourable Sir Malcolm Hailey*: "That is right.") I think I am right in that, and I am glad to hear the Honourable the Home Member supporting me in that. The reason why section 144 has been enacted in this country is this. It was felt that the rights of advancing the ordinary citizen's rights should be secured as against the possible attacks of turbulent and unruly men who may feel tempted to take the law into their own hands. It was felt that in a country like India, where there are numerous sects and numerous religions, it is possible that the rights of one sect may be interfered with by persons belonging to another sect who are larger in number, more disciplined and who have got larger resources at their disposal. Therefore, the object of enacting section 144 was to enable the minority, who have got rights, to exercise those rights without being harassed or put down by the larger section which has got money and influence behind its back. It was for the purpose of giving this facility for the exercise of rights of the minority that this section was introduced, and you will find in the case which was quoted this morning, 6 Madras, that the Judges of the Madras High Court pointed out that the section must be used for the purpose of advancing rights and not for curbing or putting down rights.

Now, that must be the position which ought to be taken up by the Government. But, unfortunately, the section has been so used during

the last two years that Magistrates have begun to forget why it was enacted. They have begun to forget that the object was to advance the rights of citizens; and they have begun to think that the object is simply to put down the exercise of those rights. And you will find all over the country that Magistrates are on the alert and are on the look-out to get police information or some other information for the purpose of preventing the exercise of these rights. Sir, this has gone on too long and it has created, as I said in the beginning of my remarks, a sort of consternation in the country; and it is desirable that the Government should know what the feeling in the country is. I believe they know it and, as we have not the power of saying that this section cannot be used at all, I think we should accept the modest amendment that Mr. Rangachariar has brought forward that there should be a power vested in the Sessions Judge to call for the records and examine for himself as to whether the section has been used for the purpose of advancing justice or for the purpose of stifling it.

Sir, there is only one other word I should like to say and I will sit down, and it is this.

It has been said, and very rightly, in responsible quarters that the Government is doing itself injustice by allowing this section to be used in the manner in which it is used. I believe the Government is aware of what is known as the "safety valve." It would be very much better for the machinery itself, for the proper working of the machinery as well as for the safety of the machinery, that there should be a safety valve. If the safety valve is not allowed to work, the result will be that the machinery itself will break down; and I think that by putting down public meetings, by not allowing persons to speak at public meetings and by not allowing them to have their say, the Government is not doing justice to itself, but are rather impairing the efficiency of the administration. There is already great discontent in the country and I believe the Government can do a great deal to allay that discontent by modifying section 144 in the way we have suggested; and as Mr. Rangachariar would have put it, I implore the Government to see that some safeguard is provided; otherwise I fear there is great danger of the whole machinery of Government being wrecked.

Mr. P. E. Percival (Bombay: Nominated Official): Sir, there is just one aspect of the case which, I think, has not been fully brought out. It is this—several Honourable Members say that the Magistrates are not carrying out the law properly—that is to say, they are taking advantage of section 144 to enforce certain propositions which are not intended by the Code. But I do not find any statement by Honourable Members to the effect that the High Courts have held that the Magistrates were in any way justified in doing anything which would bring the law into contempt. That is to say, the objection taken is chiefly that the Magistrates are not carrying out the law correctly. The High Courts, for instance, have laid down the circumstances calling for an order under section 144. There must, they say, be some emergency, and an order passed when there is no emergency is without jurisdiction. Then again they say that the existence of such an emergency is a condition precedent to the Magistrate having power to proceed. There must be information or evidence to that effect, and the facts must be set forth in the order fully and in detail.

4 P.M.

[Mr. P. E. Percival.]

My observations have reference not only to the remarks of the last speaker but also to some previous remarks that have been made. In fact, the High Courts have already laid down certain restrictions. They go on to say that, if no immediate danger is apprehended, the Magistrate should proceed under section 133 and not under this section. So I submit, Sir, that the only remedy is to apply to the High Courts. The High Courts are the proper authority. If the High Courts say that the provisions of the law are not sufficient, it is of course up to Government to amend them. But what we find is the contrary. They say that in certain cases some Magistrates have not acted according to the law. The obvious inference is that the correct action to take is to apply to the High Courts and to get them to keep in check unruly Magistrates who do not act in accordance with the law as laid down by the various High Courts.

Well, Sir, turning to the particular amendment in this case, I am a little surprised that my friend Mr. Rangachariar should again bring up the same point, because it is really very similar to the one which has been decided by this House already. The chief argument, which I ventured to put forward on the previous occasion, I suggest, the Honourable Member has not really replied to. It is simply this, that cases of this sort do not go to the Sessions Judge. The Sessions Judge is quite a separate authority. The two authorities are the District Magistrate and the High Court. So why bring in the Sessions Judge, who is not the authority concerned in the case? The present proposal is that in certain particular cases involving meetings, the matter should go to the Sessions Judge, but that in all other cases it should go to the District Magistrate and the High Court. That was the view I suggested in regard to section 107. It is the same point here. As the Honourable the Home Member said, the case is stronger now. It is an order for two months, while the order under section 107 might be for a prolonged period. But the underlying principle is in either case the same. It is a matter, for the District Magistrate and the High Court. Therefore I suggest that, as on the previous occasion this House threw out the proposal of Mr. Rangachariar, the same course should now be adopted in regard to the present amendment.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Rural): Sir, I venture to place certain points before this Honourable House. I stand up in spite of what has been said by my redoubtable friend opposite me and I do so with my courage in my hands. I want to draw the attention of the House to one feature of the proposed amendment. The portion of the amendment which requires special consideration comes last, and there I suppose lies the most contentious point in the whole amendment. I refer to the words " the Sessions Judge may pass such orders as he thinks fit." I take it that thereby a new power is proposed to be given to the Sessions Judge, so far as the revision of the orders prohibiting public meetings, is concerned. Now, Sir, looking at section 435 of the Code, to which I had the honour of drawing the attention of the House the other day, in connection with a similar point, I find that orders passed under section 144 do not come within the purview of that section. I looked at the proposed amendments in the tabled list with regard to this section and I asked myself whether it was contemplated that this section 435 should be amended so as to bring cases under section 144 within its scope. But I found there was no amendment to that effect in the list.

Rao Bahadur T. Rangachariar: There is a proposal to that effect.

Dr. H. S. Gour: I have an amendment about that.

Mr. J. N. Mukherjee: My friend's amendment is to the effect that the whole of sub-clause (*iii*) in clause 114 be deleted.

Dr. H. S. Gour: That is enough.

Mr. J. N. Mukherjee: That is not enough. If the amendment be carried, and the whole sub-clause is deleted, this section 485 remains as it is in the Code now, and under this section, as it stands now, revision of orders passed under section 144, Criminal Procedure Code, is not permissible. No doubt, an attempt has been made in the Bill to extend to some extent the operation of section 485 by introducing certain other sections, namely, section 143 and so forth in sub-clause (*iii*), but so far as section 144 is concerned, it does not make any alteration whatsoever even supposing that my Honourable friend, Dr. Gour's amendment is accepted, that is to say, that sub-clause (*iii*) is omitted. I wish therefore to draw the attention of the House to this point.

Rao Bahadur T. Rangachariar: That is not an insuperable difficulty.

Mr. J. N. Mukherjee: No, it is not. I say if the House agrees to accept the principle of the proposed amendment and decides that revisional powers should exist in the Sessions Judge, with regard to section 144, Criminal Procedure Code, means can be improvised by which that difficulty can be obviated. But the point is one, which, I think I ought to clearly bring to the notice of the House in order that something may be done to avoid the complications and the inconsistencies—if I may say so—which are bound to arise, if my friend's amendment is adopted.

Colonel Sir Henry Stanyon: Sir, I trust that what I have to say on this amendment will not lose me the good opinion which my Honourable friend, Mr. Rangachariar, has been pleased to offer about my judgment.

Rao Bahadur T. Rangachariar: Certainly not.

Colonel Sir Henry Stanyon: The less one deserves a benefit of that kind the more one wants to hold on to it. The pathos in his appeal moved me very deeply, and if I allowed my heart to have any part in dealing with the manufacture of laws I should probably draw my sword and take my position behind the deserted " General ".

But in my humble opinion, feelings, emotions and sentiments are out of place in dealing with a measure of this kind. What we have to see is the effect upon the administration of justice of this proposed amendment. The position of the Honourable Mover is quite different here to what it was in connection with a similar amendment which he proposed when we were discussing section 107. But, in my humble opinion it is not any stronger. I have not been impressed by the argument which has been used, more than once, that there is no provision of this kind to be found in the English law. I think it is high time that we understood clearly that what is sauce for the British goose is not sauce for the Indian gander. I do not put that forward as propaganda but merely as my humble opinion. Here we are dealing with section 144, a measure which provides for action, immediate and prompt, to meet an emergency. Any order, however

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absolute, under that section has a life of exactly two months. Now, suppose that this amendment were introduced in the law. Suppose that when, after inquiry, the Magistrate has made his order absolute, he is required to report the proceedings to the Sessions Judge, and the Sessions Judge thought one way, or the other, before he passed any orders. If he acted upon the usual line of Sessions Judges, a judicial line, he would issue notice to one party or the other, or to both parties, to appear before him and argue their respective cases. He would not set aside the order of the Magistrate without issuing a rule to him to show cause. He would not support an order of the Magistrate without issuing a rule to the person against whom that order was made to show cause. How long does this Honourable House think the Sessions Judge would be occupied in completing this procedure? Sir, we have heard it said that there are Magistrates and Magistrates and I myself have accepted responsibility for saying that I have met them " from A to Z." There are also Sessions Judges and Sessions Judges, and I have met them " from Z to A." But, as a general rule, they are authorities who proceed in a judicial manner with care and deliberation and take time. In nine cases out of ten, before the Sessions Judge passed his order, the Magistrate's order itself would have died from efflux of time. Then, another point against this amendment is that it is the one breach of the rule which we find in the Code of not allowing such slow judicial interference with the executive and preventive action of Magistrates; and I think to introduce it here would not do any good to the public or to the administration of justice; but would hamper Magistrates and put Sessions Judges in a position of considerable difficulty. For these reasons, even at the risk which I feared at the opening of my remarks, I venture to oppose this amendment.

Mr. R. A. Spence: I move that the question be now put.

Dr. H. S. Gour: Sir, before this very important question is put to the vote, I should like to say a few words in support of this amendment. I was somewhat surprised to hear my Honourable friend who hails from Bombay (Mr. Percival) saying that the orders passed under section 144 are subject to the revisional jurisdiction of the High Courts. He is right so far that the Chartered High Courts exercise revisional jurisdiction on orders passed under section 144, not by virtue of any power conferred upon them by the Code of Criminal Procedure but despite that power and under the special power of general superintendence which is vested in the Chartered High Courts over all courts subordinate to them. But my friend cannot forget that all the courts in India are not Chartered High Courts and that there are courts which have to act and to derive their power under the Code of Criminal Procedure. Now, Sir, what does the Code of Criminal Procedure lay down. My friend the Honourable Mr. Mukherjee has pointed out that there is a special provision in section 435 which lays down that an order passed under section 144 is not a proceeding within the meaning of that section and what is its effect. The effect is that the order passed by a Magistrate, however wrong, erroneous and perverse it may be, is not subject to the revisional jurisdiction of the non-chartered High Courts. Can this Assembly tolerate this state of things? My friend, the Honourable Mr. Mukherjee, drew the attention of this House to an amendment tabled by me, Amendment No. 321, in which I shall ask the assistance of this House to delete that clause which prevents non-chartered High Courts to revise orders passed under section 144 and other sections of this preventive chapter of the Code of Criminal Procedure. But I do not know when that

time comes whether my friend, the Honourable Mr. Percival or the Honourable Mr. Mukherjee or the Honourable Sir Henry Stanyon will not forge fresh weapons from their copious armoury and find fresh arguments for the purpose of combating my amendment. If I could be sure that Sir Henry Stanyon will draw his sword and go for the Government when this amendment is moved, I shall feel some assurance that there is some hope at any rate on the other side and that they are prepared to listen to reason and give the non-chartered High Courts a jurisdiction over matters contained in section 144 and orders passed in that chapter: but can we be sure of it? Can you be sure of it? Are the Government prepared to give an undertaking that they will not use that small and compact band to vote down this amendment when it is moved and so long as we cannot be sure of it, I think we shall be justified in pressing the amendment of the Honourable Mover on my left to vote. Now, Sir, the Honourable Mr. Percival has given away the whole case by saying that an order passed under section 144 is revisable by the High Court; and when I have pointed out that it is not revisable by all the High Courts, this ground upon which my friend, the Honourable Mr. Percival, perilously stands slips from under his feet. I have not been quite clear as to what my friend, the Honourable Mr. Mukherjee, meant when he wanted to point out some technical or super-technical difficulty in the way of the Honourable Mr. Rangachariar. If I understood him aright, his point of view appears to be that the High Courts possess ordinary criminal jurisdiction over matters of this character, and it would be setting and creating a novel precedent to arm the Sessions Judge with similar revisional powers., Now, Sir, I beg to ask—it has been said this morning and said with a certain amount of cogency—that these preventive sections require a Magistrate to pass an immediate order. If that is the case, the Sessions Judge is nearer to the Magistrate than the High Courts: and I submit, therefore, if we confer upon the Sessions Judge the power to revise an order passed under this section, the procedure may be novel but it is necessary. I was somewhat surprised at that champion of popular rights and ex-Judge, Sir Henry Stanyon, standing up and saying, that though his heart was with the Mover of this Resolution, his head turned away from it. I am sure, Sir, that if he will visualise for one moment the history of the misuse of this section during the last six months or a year, and if he will bring himself to think for a moment of the huge political and public clamour that exists against the misuse of this section, I am perfectly certain, Sir, that his head will second his heart. He has said that there is no doubt that the proceedings of the Sessions Judge are judicial but they involve delay. I ask, Sir, Members of this House, what will they have,—speedy injustice or dilatory justice? I should not be unwilling to sacrifice time, I should not be unwilling even to cause a little delay if in the end the person against whom an order is passed is assured of justice. It has been said that this order is very short-lived, it can only be in force for two months, but I am sure my Honourable friend will remember cases after cases in which this order on the expiration of two months was re-affirmed and repeated, and there is nothing in the Code of Criminal Procedure to disentitle a Magistrate from passing that order again and again—and it has been done, I am told by my friends that it has been done, and I know that it has been done, and then what happens, Sir? My friend will say that if the order was of a longer duration, the Sessions Judge would be entitled to interfere. I ask him, Sir, is not that an argument in our favour for voting for the amendment when we know as a matter of fact that the short period of two months can be prolonged indefinitely by the Magistrate passing the same order on expiry of the

[Dr. H. S. Gour.]

period of two months allowed by the Statute. (*An Honourable Member*: "A separate order is passed each time.") We have been told, Sir, and told with a certain degree of insistence that this is an order calling for urgency, and the Honourable the Home Member has said that this is a preventive section, but I beg to ask what is the difference between a preventive and a punitive section when you repeatedly use this section for the purpose of preventing a man from the lawful exercise of his legal right? The Honourable Mover of this Resolution has pointed out cases in which this section is liable to be abused—and we know as a matter of fact that the magistracy in this country have not wisely used this section on numerous occasions. Knowing that full well as we do, will this House be oblivious of the cries raised during the last year and the year before asking for some redress in the direction of curbing the vagaries of the subordinate judiciary of this country? Are we here, small and scattered a band though we may be, are we here to lay the conviction of our minds and sacrifice our convictions on the shrine of delay, prevention and urgency? I am sure, Sir, that the Members of this House will rise to the height of this occasion. I beg of the Members to remember that this is a section which involves a great principle, and I hope that Honourable Members will conjointly rally to its support. The Honourable the Home Member, when he has a weak case, has a strong humour: not being able to defend a position assailed by a General without any host, he said that the Viceroy won't be here to-morrow,—as if my friend would be undisturbed if he allowed the procession. I am perfectly certain that if the Honourable Home Member had to grapple with the main issue, he too like Sir Henry Stanyon would draw his sword and come to our support. He has invited, Sir, the Honourable Mr. Rangachariar to a seat on the Treasury Benches and promised him the support of his small but consistent cohort. May I, Sir, reciprocate the compliment by inviting the Honourable the Home Member to an honoured place on this side of the House, if only for this occasion and support us not in the name of prestige, delay, prevention, urgency or power, but on the broad ground of commonsense and justice? Sir, I support this amendment.

Mr. H. Tonkinson: Sir, the whole of the remarks of the last speaker were based upon the difference between a High Court of Judicature and other High Courts which fall within the provisions of clause (j) of section 4 of the Code of Criminal Procedure. It is true, Sir, that the Code of Criminal Procedure provides no remedy by way of revision, and that nevertheless the High Courts have held that if a Magistrate exceeds his jurisdiction under this section, then they have power to interfere in the exercise of their powers of general superintendence and control given to them by section 107 of the Government of India Act. Now, if my Honourable friend would refer to the Central Provinces Courts Act establishing the Judicial Commissioner's Court at Nagpur: if he would refer, Sir, to the Lower Burma Courts Act establishing a Chief Court in Lower Burma, and to any other of the Courts Acts in question, he will find that these powers of superintendence are given to all those High Courts.

Dr. H. S. Gour: Sir, may I just rise to a point of order. I can inform the Honourable speaker that there has been a recent decision in the Central Provinces by a Bench of the Judicial Commissioner's Court negativing the power of that Court to revise proceedings under this Chapter.

Mr. H. Tonkinson: I would suggest, Sir, that perhaps if the case had been more fully argued before the Judicial Commissioner a different ruling

would have been given. We will proceed, Sir. The basis of the interference by the High Courts with orders passed under this section is that the Magistrate had no power to pass such orders under the section; and I would suggest that there is not a single lawyer in this House who would not be able to go up to any High Court and get that Court to inferfere because section 144 does not apply, which is the only reason, Sir, why the High Courts of Judicature have interfered in cases under this section.

There is another point to which I should like to refer and that is the argument that one order could be extended. I see here, Note 49 on page 262, Sohoni, that it was held in Calcutta that a Magistrate cannot by passing successive orders under this section extend the operation of an order indirectly beyond the time limited by sub-section (5).

Rao Bahadur C. S. Subrahmanayam: Sir, if I were satisfied that this clause which my Honourable friend wants to tack on would do any good, I should certainly have supported him. But I am fully convinced that this clause is not going to do any good even if, with the eloquent support it has received, it is passed. Now, the cases in which this section is frequently used are cases in which religious or caste disputes arise. Take a few concrete instances which have come under our own observation. In a place which is a Hindu stronghold a missionary comes and preaches the impropriety of worshipping idols and so on. Some years ago it was not an uncommon thing. That would naturally tend to a breach of the peace: that is, the preaching party being small and in the midst of a Hindu stronghold it would very likely be molested. In a case like that what ought a Magistrate to do? Should he not restrain the enthusiasm of the preacher? (*A Voice*: "Apply 107".) Well, section 107 applies to individuals, but this applies to the whole meeting. And it so happens that sometimes individuals who are restrained retire but others take their place. Or take the case of two sects of Hindus. That is not an uncommon thing, and you will find such cases reported in the Law Reports of the Madras High Court. They may have very serious differences of opinion which may have led to considerable litigation; one of these sections wants to hold a meeting, or what amounts to a meeting, in the midst of the opposing section. What is a Magistrate to do? Is he to stop it or allow it go on and permit the people to break each other's heads? After all there is a good deal confusion and error about the right of public meeting and all that sort of thing. Where do we get this right? Which constitutional lawyer has told you that you have a right of public meeting? I can quote you Professor Dicey. He will tell you that what is called a right of public meeting is not the right which you have been describing here in this Assembly and a question like that is not a question which can really be discussed in this Assembly. As for the rights of public procession and public meeting, you have read Professor Dicey just as well as I have. But if for a moment you want to rise to heights of eloquence and appeal to the sentiments and feelings of Honourable Members here, you may, I suppose, say that our rights are being disturbed if action is to be taken under this section. But what will happen? A Magistrate passes an order and you go to the Sessions Judge. What materials will the Sessions Judge have before him for examining the propriety of the order? The Magistrate does not record detailed evidence; he has information and knowledge of all kinds placed before him: many a thing is said before him which helps him in forming an opinion: often he has his own private information and ideas: he knows the district, the area in which he is working and the temperament of the parties to the dispute. Those are the conditions under which an order like this

[Rao Bahadur C. S. Subrahmanayam.]

would be passed: and if you ask the Sessions Judge to examine that order, how can he do it? That is the real point. Suppose the Sessions Judge disagrees with the order of the District Magistrate or the Magistrate who has taken action under this section, and he passes an order saying that the meeting may be held. What will happen? The Magistrate is responsible for keeping the peace, but he is told that a particular sect is to be supported in the exercise of its right to hold a meeting. In other words, he has to muster a sufficient force to support these people at a public meeting and so uphold the order of the Sessions Judge who had upset the Magistrate's order. Is that feasible in the districts? Has a Magistrate got sufficient forces under him for these sort of skirmishes? Let us examine both sides of this matter. Do not let us assume hastily that a Magistrate always exercises this power erroneously. That is not a fair assumption to make in arguing on a legislative enactment. If this Assembly were here discussing the particular case of Magistrates, then it would be a different matter. But when a change in the law is proposed, are we to set out with the assumption that a large number of these responsible men are going to use their powers erroneously and that therefore the law must be hedged in in various directions. (*A Voice*: "Take away all right of appeal".) If there is no right of appeal I think it would be a good thing.

There cannot be a right of appeal. The appellate Courts would not have the proper and fullest materials to judge. Therefore, I think, apart from sentiment, apart from the question of political rights, the rights of public meetings, apart from all these appeals to sentiment, I think this clause, if added to this section, is not going to do any good except probably create a certain amount of protracted litigation, probably the benefits of which will appeal to a certain class of people. Except that, there is absolutely no advantage. It is all very good to talk of the abuse of the section some time ago. Now, there is one effective check on the abuse of these executive powers, that is the check we have been forgetting, *viz.*, the local Councils. If the sections have been misused by any province, the local Councils could have taken action. I ask which local Council has taken action? (*Voices*: "How?") It has various provisions. It has got more powers than probably you and I are now prepared to mention. No local Council has protested against what you call the abuse of these sections. In my province this section has been used very considerately. Has the local Council said a word about the abuse of this section? And is this Assembly to sit in judgment on the action of Magistrates in my province? What materials has this Assembly, constituted as it is, to judge the action of the Magistrates who have used this section in my province? Now, take any other province. Has any local Council passed a vote of censure against the local Council for the abuse of this section by its executive officers? That has not been done. That is the only constitutional check. Now, you will say that the local Council is so packed with men who do not allow the exercise of rights at public meetings. That is not a point which can be solved by amending this section. Therefore, I think, apart from sentiment, apart from all the patriotic feelings which my friend for the first time has aroused in this Assembly during the discussion of this Code, I think the amendment which my learned friend, Mr. Rangachariar, has put forward is unnecessary.

Mr. R. A. Spence: I move that the question be now put.

The motion was adopted.

Mr. Deputy President: The question is:

"In clause 26 after sub-clause (*iii*) insert the following sub-clause:

'(*iv*) after sub-section (6) as renumbered the following shall be inserted as sub-section (7), namely:

'(7) In all cases where action is taken under this section preventing 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'."

The Assembly then divided as follows:

AYES—30.

Abdul Majid, Sheikh.	Man Singh, Bhai.
Abdul Rahman, Munshi.	Misra, Mr. B. N.
Agarwala, Lala Girdharilal.	Nag, Mr. G. C.
Ahmed, Mr. K.	Nand Lal, Dr.
Asad Ali, Mir.	Neogy, Mr. K. C.
Ayyar, Mr. T. V. Seshagiri.	Rangachariar, Mr. T.
Bagde, Mr. K. G.	Reddi, Mr. M. K.
Basu, Mr. J. N.	Shahani, Mr. S. C.
Bhargava, Pandit J. L.	Singh, Babu B. P.
Chaudhuri, Mr. J.	Singh, Babu Ambica Prasad.
Das, Babu B. S.	Sircar, Mr. N. C.
Gour, Dr. H. S.	Srinivasa Rao, Mr. P. V.
Gulab Singh, Sardar.	Subzposh, Mr. S. M. Z. A.
Jatkar, Mr. B. H. R.	Venkatapatiraju, Mr. B.
Joshi, Mr. N. M.	Vishindas, Mr. H.

NOES—41.

Abdul Quadir, Maulvi.	Innes, the Honourable Mr. C. A.
Abdullah, Mr. S. M.	Jamnadas Dwarkadas, Mr.
Aiyar, Mr. A. V. V.	Ley, Mr. A. H.
Akram Hussain, Prince A. M. M.	Mitter, Mr. K. N.
Allen, Mr. B. C.	Moncrieff Smith, Sir Henry.
Blackett, Sir Basil.	Muhammad Hussain, Mr. T.
Bradley-Birt, Mr. F. B.	Muhammad Ismail, Mr. S.
Bray, Mr. Denys.	Mukherjee, Mr. J. N.
Burdon, Mr. E.	Percival, Mr. P. E.
Cabell, Mr. W. H. L.	Samarth, Mr. N. M.
Chatterjee, Mr. A. C.	Sarfaraz Hussain Khan, Mr.
Cotelingam, Mr. J. P.	Sen, Mr. N. K.
Crookshank, Sir Sydney.	Singh, Mr. S. N.
Dalal, Sardar B. A.	Sinha, Babu L. P.
Davies, Mr. R. W.	Spence, Mr. R. A.
Faridoonji, Mr. R.	Stanyon, Col. Sir Henry.
Haigh, Mr. P. B.	Subrahmanayam, Mr. C. S.
Hailey, the Honourable Sir Malcolm.	Tonkinson, Mr. H.
Hindley, Mr. C. D. M.	Webb, Sir Montagu.
Holme, Mr. H. E.	Zahiruddin Ahmed, Mr.
Hullah, Mr. J.	

The motion was negatived.

Mr. B. Venkatapatiraju: Sir, the next amendment, which stands in Mr. Agnihotri's name, runs as follows:

"(*a*) In clause 26 insert the following sub-clause (*iv*):

'(*iv*) in sub-section (4) of section 144 insert the word 'judge' between the words 'magistrate' and 'may'."

"(*b*) Add the following sub-clause (*v*): 'insert the following as sub-section (7), namely:

'(7) The words 'certain act' in this section does not include the making of political speeches or the doing of political propaganda work which would be otherwise lawful'."

[Mr. B. Venkatapatiraju.]

I do not move clause (*a*); I propose to move clause (*b*). Now, Sir, after full discussion on the previous amendment it is unnecessary on my part to dwell upon the object of this section, or the scope of this section and the way it is exercised. The Honourable Mr. Seshagiri Ayyar has already pointed out how this section was abused and misused. Now Sir, whatever be the other causes for which it was intended, this section was never intended to shut the mouths of those who wish to speak on the constitutional changes in the Government. If this Bill were to be introduced with that object in view, to put an end to all constitutional agitation, I think it is high time for the Government to come and frankly say they do not want any political agitation in the country. If they do care for the progress of the country, it is absolutely necessary, that so long as there is a foreign Government, so long as there is discontent in the country, that there should be a proper opening for the people to express their views, and they can only express their views in such a way as may not gladden the hearts of the Magistrates, but to point out the defects in the administration, which annoys the Magistrate when stating the matter plainly, but all the same they are acting constitutionally. And when I say constitutionally, though I am aware that there are certain sections which may act unconstitutionally, and that is the reason why the last clause was added. When it is lawful, why should this section be utilised for the purpose of stifling constitutional agitation? I do not wish to take up much time at this hour, but I think it would be well that Magistrates should not use this section for this purpose. Do you know, Sir, that all meetings, even the reception of Members, are prevented by the Magistrates? A Magistrate has been known to issue an order that men should not go to a particular meeting, and that they should not wear Gandhi caps, and that a meeting should not be held in a particular town. Is that at all necessary and is it advisable for the good administration of the country? Is it at all likely to bring contentment to the people? If the Government wish to secure the contentment of the people, I think it is high time that the Magistrates should be deprived of these weapons where they want to exercise against constitutional political agitation, and unless this is safeguarded, I think you may pass any law now and there will be a time when everything will be changed.

Mr. Deputy President: The amendment moved is:

"Add the following sub-clause (*v*): 'insert the following as sub-section (7), namely:

'(7) The words 'certain act' in this section does not include the making of political speeches or the doing of political propaganda work which would be otherwise lawful'."

The motion was negatived.

Mr. Deputy President: The question is that clause 26 stand part of the Bill.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Friday, the 26th January, 1928.